

REPORT
OF
THE COMMISSION OF INQUIRY
INTO
THE COMMUNAL DISTURBANCES
AT
BHIWANDI, JALGAON AND MAHAD
IN MAY 1970

VOLUME II—PART III
(CHAPTERS 33 TO 45)

CONTENTS OF CHAPTERS

PART III

The Bhiwandi Disturbances

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
33	THE SETTING FOR SHIV JAYANTI		
	The meeting of the Communist Parties of April 11, 1970	33.1	5
	A bird's-eye view of R.U.M. activities prior to Shiv Jayanti	33.2	5
	The R.U.M. meeting at Taralipada	33.4	6
	The R.U.M. meeting at Kamba	33.8	8
	The R.U.M. meeting at Wani Alli	33.14	10
	The R.U.M. meeting at Neelkantheshwar Temple on April 17, 1970	33.17	12
	The R.U.M. meeting at Padgha on April 18, 1970	33.19	12
	The Muslim memorandum in connection with the Shiv Jayanti Procession	33.24	14
	The drafting of the memorandum	33.25	14
	The text of the memorandum	33.26	15
	Whether the Muslim grievances and demands were justified ?	33.27	20
	The reasons for submitting the memorandum	33.29	22
	The evidence of Hindu witnesses about the memorandum	33.31	24
	The meeting between S.P., Bhawe and the Muslim leaders	33.33	25
	The meeting between D. M., Capoor and the Muslim leaders	33.35	27
	The handing over of the memorandum to Bhausahab Dhamankar	33.36	27
	The Peace Committee meeting of April 19, 1970	33.37	28
	The meeting of the Muslim leaders at the residence of Ibrahim Maddu	33.38	28
	The R.U.M. meeting at Hanuman Tekdi	33.39	29
	The withdrawal by Abdul Salam Ansari of his signature on the memorandum	33.41	30

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
38	THE DISTURBANCES—THE NATURE OF THE EVIDENCE— <i>contd.</i>		
	The general nature of the evidence ..	38.7	112
	The partisan nature of the evidence ..	38.8	112
	The evidence about the procession ..	38.10	113
	The evidence about the outbreak of the disturbances	38.12	114
	The evidence about the course of the disturbances	38.13	114
	The infirmities in police records ..	38.17	115
	The dubious nature of F.I.Rs., police statements and panchnamas ..	38.21	116
	The oral evidence about the course of the disturbances	38.24	118
	The infirmities in the oral evidence of police witnesses	38.25	118
	The evidence of the Hindu and Muslim witnesses	38.28	120
	The evidence in respect of certain matters ..	38.29	120
	The evidence in respect of time ..	38.30	121
	The evidence about the strength of the mobs	38.31	121
	The evidence about the weapons used by the rioters	38.32	122
	The evidence of police firings ..	38.33	122
39	THE DISTURBANCES—AN OUTLINE		
	The disturbances in Bhiwandi ..	39.1	126
	The method adopted by the Commission ..	39.3	126
	The weapons	39.5	127
	Acid-bulbs	39.6	127
	Fire-balls	39.7	127
	Molotov cocktails	39.8	128
	Country pistol	39.9	128
	Country bombs	39.10	128
	The dead	39.11	128
	The injured	39.13	129
	The raped	39.23	132
	The manner in which damage to property assessed by the authorities	39.25	133
	Loss to industry and trade	39.27	133
	Damage to mosques, temples, houses and other properties	39.30	134
	Loss of property	39.33	136
	The Bhiwandi Relief Committee and the Nagarik Hitarakshak Mandal ..	39.34	138

CONTENTS

Chapter		Paragraph	Page
39	THE DISTURBANCES—AN OUTLINE— <i>contd.</i>		
	Disturbances in the Thana District ..	39.38	139
	Hartals and protest meetings ..	39.40	140
	The silver lining ..	39.42	141
40	THE SHIV JAYANTI PROCESSION AND THE OUTBREAK OF THE DISTURBANCES		
	The Shiv Jayanti processions in the Thana District ..	40.1	145
	The Shiv Jayanti procession in Bhiwandi —the rival contentions ..	40.2	145
	The questions for determination ..	40.6	147
	The R.U.M. collects villagers for the procession ..	40.8	148
	The posting of constables at points of entry ..	40.13	150
	The behaviour of the villagers—the Muslim evidence ..	40.14	150
	The behaviour of the villagers—the police evidence ..	40.24	153
	The behaviour of the villagers—Bhau- saheb Dhamankar's evidence ..	40.29	155
	The number of villagers in the procession. The R.U.M.'s object in bringing villagers to Bhiwandi ..	40.31 40.33	156 157
	The behaviour of the villagers—conclu- sions ..	40.35	157
	The route of the Shiv Jayanti procession ..	40.38	160
	Deployment for the Shiv Jayanti proces- sion ..	40.40	161
	The Photographer ..	40.44	166
	Muslims in the procession ..	40.46	167
	The jeep ..	40.48	168
	Bullock carts ..	40.49	168
	The truck ..	40.50	168
	Whether the processionists were carrying lathis, iron bars, swords and spears ? ..	40.55	170
	The arrest of the two Hindus ..	40.60	172
	The unapproved slogans shouted by the two Hindus ..	40.61	172
	The release of the two Hindus ..	40.64	174
	The start of the procession—conclusions. The behaviour of the processionists— Dhamankar's evidence ..	40.68 40.71	176 177
	The behaviour of the processionists—the Muslim evidence ..	40.76	179

CONTENTS

Chapter

40

	<i>Paragraph</i>	<i>Page</i>
THE SHIV JAYANTI PROCESSION AND THE OUTBREAK OF THE DISTURBANCES— <i>contd.</i>		
The behaviour of the processionists—the police evidence	40.82	181
The behaviour of the processionists—the Hindu evidence.. .. .	40.88	183
The throwing of 'gual'	40.94	185
The behaviour of the processionists— conclusions	40.95	185
The withdrawal of the Muslim leaders from the procession	40.96	187
Whether the D.M. and other senior officers were lured away from the route of the procession ?	40.97	187
The reason for the withdrawal of the Muslim leaders	40.104	190
Whether it was a blunder on the part of the D.M. and the other officers to go to Murtaza Fakhri's house ?	40.106	191
The talk between Ibrahim Maddu and Zumberlal Kalantri	40.108	192
The alleged attempt to drag Kalantri out of the jeep	40.109	194
The entry about the withdrawal of the Muslim leaders in the Control Room Diary	40.111	194
The unapproved slogans—the Muslim evidence	40.113	195
The unapproved slogans—the police evidence	40.116	197
The unapproved slogans—the Hindu evidence	40.127	201
The unapproved slogans—Dhamankar's evidence	40.128	202
The unapproved slogans—conclusions	40.129	203
The attitude of the Hindu leaders	40.140	206
The attitude of the Police	40.143	208
The start of the disturbances—the locale. The start of the disturbances—the wire- less messages	40.146	208
The start of the disturbances—the Police evidence	40.150	210
The start of the disturbances—the Police evidence	40.158	213
The start of the disturbances—Bhauasaheb Dhamankar's evidence	40.191	231
The start of the disturbances—the Hindu evidence	40.196	234

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
33	THE SETTING FOR SHIV JAYANTI—contd.		
	The Steering Committee meeting of April 21, 1970	33.44	33
	The meeting of the residents of Nizampura	33.45	33
	The meeting of the representatives of the R.U.M. and of the Nizampura locality ..	33.46	34
	The Peace Committee meeting of April 24, 1970	33.48	35
	The office-bearers of the Shiv Jayanti Utsav Samiti and other Committees ..	33.49	36
	The reason for the Procession Control Committee	33.51	38
	The Urs of Divanshah Dargah	33.52	38
	The visit of Suleman Sikander	33.54	39
	Baliram More receives an anonymous letter	33.55	39
	The meeting between D.M., Capoor and the R.U.M. leaders	33.56	39
	The invitation to Mr. Kalyanrao Patil ..	33.57	40
	The R.U.M. meeting in the Satyanarayan Temple	33.58	40
	The incidents of assault in the fortnight preceding Shiv Jayanti	33.60	42
	The Urdu boards	33.70	45
	The board at Wada Stand	33.73	48
	The Bhiwandi-Nizampur Municipal College compound incident	33.74	48
	The removal of the Bhagwa flag in Madarchhalla	33.75	49
	The May Day Procession of May 1, 1970 ..	33.76	49
	Baliram More's application	33.77	50
	The R.U.M. meeting of May 4, 1970 ..	33.78	50
	The arrest of persons carrying Rampuri knives	33.79	51
	The complaints of threats	33.80	51
	Dr. Mahmud Hasan's visit to Bombay and the delegation to Mr. Kalyanrao Patil	33.81	52
	The date of the telephonic conversation between D.M., Capoor and the Secretary of the Jamiet-ul-Ulema	33.84	52
	The visit of the Jamiet-ul-Ulema leaders to Bhiwandi	33.86	53
	The M.T.M. memorandum	33.88	54
	The R.U.M. propaganda in the villages ..	33.89	54

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
34	PREVENTIVE MEASURES BY THE DISTRICT AUTHORITIES		
	The follow-up action by the D.M., Thana	34.1	60
	The follow-up action by the S.P., Thana.	34.7	62
	Keeping the Government and the I.G.P. in the know	34.9	63
	The issue of orders under section 144 Cr.P.C. and section 37(1) of the Bombay Police Act	34.11	63
	An appraisal of the measures taken by the District officers	34.12	64
	The charge of laissez-faire towards the processionists	34.14	65
	The charge of bias in favour of the R.U.M.	34.15	66
	The charge of discrimination against the M.T.M.	34.16	67
35	PREVENTIVE MEASURES FOR THE SHIV JAYANTI PROCESSION		
	The strength of Shiv Jayanti procession	35.1	70
	The order under section 37(1) of the Bombay Police Act	35.2	70
	The order under section 36 of the Bombay Police Act	35.3	70
	The information about the removal of old electric bulbs and purchase of acid ..	35.4	71
	The checking of arms and explosives shop	35.5	72
	The arrest of persons carrying Rampuri knives	35.6	72
	The rounding up of bad characters ..	35.7	72
	Dy.S.P., Diwate's warning to the R.U.M. and Muslim leaders	35.8	72
	S.P., Bhave's instructions to the Taluka Police Station	35.9	73
	The cutting of telephone wires	35.10	73
	Seizure of boxes containing stones ..	35.11	73
	The information received by P.S.I., G. S. Deshpande	35.12	74
	The searches taken pursuant to Deshpande's information	35.15	75
	Deshpande's criticism of the searches ..	35.16	76
	The time of the searches	35.18	76
	Whether Deshpande did not attach any importance to the information ? ..	35.19	77

CONTENTS

Chapter		Paragraph	Page
35	PREVENTIVE MEASURES FOR THE SHIV JAYANTI PROCESSION— <i>contd.</i>		
	Whether the information received by Deshpande was true ?	35.24	78
	The subsequent movements of Deshpande	35.25	79
	Installation of wireless sets	35.26	79
	Police reinforcements	35.28	80
	The Control Room Diary	35.30	81
	The Riot Diary	35.31	81
	The Bandobast Scheme for the Shiv Jayanti procession	35.32	81
	Fixed-point bandobast on the route of the procession	35.33	82
	Policemen on house-tops	35.35	82
	Other fixed-point bandobast	35.36	83
	Bandobast at mosques and temples	35.37	83
	Mobile patrolling	35.38	83
	Bandobast with the procession	35.39	83
	Reserves	35.44	84
	Briefing of officers and men and rehearsal of bandobast	35.45	85
	Whether the police bandobast. was adequate ?	35.46	85
36	ASSESSMENT OF THE SITUATION ON THE EVE OF SHIV JAYANTI		
	The official assessment	36.1	88
	Whether the official assessment was correct ?	36.6	90
37	THE SHIV JAYANTI CELEBRATIONS		
	The inaugural function	37.1	96
	The speech of P. B. Bhavé	37.2	96
	Police reports on P. B. Bhavé's speech	37.6	99
	Sub-Inspector Dalbhide's report	37.9	100
	Head Constable Jadhav's report	37.10	101
	Oral evidence about P. B. Bhavé's speech	37.17	104
	The correct version	37.21	106
	The effect of P. B. Bhavé's speech	37.22	107
38	THE DISTURBANCES—THE NATURE OF THE EVIDENCE		
	The undisputed facts	38.1	110
	The rival cases	38.2	110
	The three stages of the Bhiwandi disturbances	38.6	111

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
40	THE SHIV JAYANTI PROCESSION AND THE OUTBREAK OF THE DISTURBANCES—<i>contd.</i>		
	The start of the disturbances—the Muslim evidence	40.210	241
	The Shakeel Kazi incident	40.214	242
	The rioting at Bhusar Mohalla	40.223	248
	The D.M., the D.I.G. (B.R.) and the S.P. in Bhusar Mohalla	40.225	249
	The attack on Latif Manzil	40.226	249
	The arson to Bhiwandi Washing Company	40.229	251
	The Muslim leaders in Bhusar Mohalla	40.231	252
	The disturbances at Old Thana Road	40.233	253
	The first police firing at Old Thana Road. The second police firing at Old Thana Road	40.236	254
	The third police firing at Old Thana Road	40.240	256
	The arson to Ishaq Bajewala's house	40.245	257
	How arson on Old Thana Road was committed	40.247	258
	Should tear gas have been used on Old Thana Road ?	40.263	266
	The time when the disturbances com- menced	40.267	267
	The start of the disturbances—conclu- sions	40.268	267
		40.272	269
41	THE COURSE OF THE DISTURBANCES— A SUMMARY OF INCIDENTS		
	Prefatory observations	41.1	274
	The incidents of May 7, 1970	41.5	275
	The incidents of May 8, 1970	41.6	278
	The incidents of May 9, 1970	41.7	280
	The incidents of May 10, 1970	41.8	281
	The incidents of May 11, 1970	41.9	281
	The incidents of May 12, 1970	41.10	282
	The incidents of May 13, 1970	41.11	282
	The subsequent incidents	41.12	283
42	MEASURES TO DEAL WITH THE DISTURBANCES		
	Prefatory observations	42.1	287
	The officers in overall charge	42.2	287
	The use of force	42.3	288
	Cane-charge and lathi-charge	42.4	288
	The use of fire-arms	42.6	289

CONTENTS

Chapter		Paragraph	Page
42	MEASURES TO DEAL WITH THE DISTURBANCES— <i>contd.</i>		
	The steps taken by the I.G.P. ..	42.10	290
	Addl. I.G.P. Modak in Bhiwandi ..	42.11	291
	Modak's headquarters	42.12	291
	The Riot Scheme	42.13	292
	The order banning assembly of five or more persons	42.14	292
	The curfew order	42.16	293
	Should the curfew order have come into force earlier ?	42.19	294
	Curfew passes	42.21	295
	Enforcement of curfew order and other prohibitory orders	42.22	296
	The Military alerted	42.24	296
	Should the Military have been called out ?	42.25	296
	Reinforcements	42.29	297
	The State Reserve Police Force ..	42.32	299
	The S.R.P. camps	42.34	299
	The Gas Squad	42.35	299
	The Mobile Striking Force	42.36	300
	The Border Security Force	42.37	300
	Messing arrangements for the Police ..	42.38	300
	Wireless sets	42.39	300
	Redeployment of police force	42.40	301
	Water supply	42.43	304
	Power failure	42.45	305
	Instalites	42.60	308
	Fire-fighting operations	42.61	308
	The fire-engines of the Bhiwandi-Nizam-pur Municipal Council	42.63	309
	The Thana fire-engine	42.64	309
	The Kalyan water-tanker	42.67	311
	The Ulhasnagar fire-engine	42.73	313
	The Civil Defence fire-engines	42.79	315
	The fire-engines of the Bombay Fire Brigade	42.85	317
	The difficulties in fire-fighting operations.	42.88	318
	Inadequacies of the fire service in the Thana District	42.89	319
	Visits of V.I.Ps. and others	42.92	321
	The exodus from Bhiwandi and the villages	42.97	323
	Obstructions on roads and highway patrolling	42.98	323
	Cutting of telegraph and telephone wires.	42.107	325

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
42	MEASURES TO DEAL WITH THE DISTURBANCES—<i>contd.</i>		
	Police protection and escort ..	42.108	326
	Seizure of fire-arms from licensed arms holders	42.109	326
	The Home Guards	42.110	327
	Medical help and sanitation ..	42.111	327
	Preventive measures by the Government after the disturbances	42.113	328
	Conclusions	42.118	329
43	THE FIRST TWO HOURS OF THE DISTURBANCES		
	The importance of the first two hours ..	43.1	333
	The questions for determination ..	43.3	334
	The rioting at Bhusar Mohalla and Old Thana Road	43.4	334
	The rioting at the Vegetable Market Road (Mandai)	43.5	334
	The lathi-charges at Habsan Alli and Bengalpura	43.11	336
	The first police firing at Kumbhar Alli and the police firing at Bengalpura ..	43.14	338
	The Muslim allegations against P.S.I., Hirwe	43.18	339
	The Muslim allegations against P.S.I., Hirwe examined	43.21	340
	The attack on the Neelkantheshwar Temple	43.40	348
	The first police firing at Habsan Alli ..	43.46	351
	The rioting at Habsan Alli ..	43.47	352
	The rioting at Lendi Bridge and the police firing at Jaitunpura	43.53	353
	The looting and arson at Teen Batti ..	43.66	359
	The police firing at Teen Batti Naka ..	43.72	361
	The looting and arson at Bazar Peth ..	43.74	362
	The rioting at Madarchhalla ..	43.78	364
	The obstruction to the Bhiwandi fire-engine in Thange Alli	43.82	366
	The attack on the Thange Alli Mosque ..	43.85	367
	The looting of the stalls near the New Fish Market	43.87	368
	The first police firing at Sutar Alli ..	43.88	368
	The second police firing at Sutar Alli ..	43.95	371
	The rioting at Sutar Alli and Hamal Wada	43.97	372

CONTENTS

Chapter		Paragraph	Page
43	THE FIRST TWO HOURS OF THE DISTURBANCES—<i>contd.</i>		
	Whether Muslim rioters used Molotov cocktails in Sutar Alli ?	43.105	375
	The murder of Farid Narvel	43.109	376
	The rioting at Gauripada	43.112	377
	The rioting at Kumbhar Alli	43.123	382
	The rioting at Khadak	43.138	389
	The police firing at Prabhu Alli	43.144	393
	The rioting at Prabhu Alli	43.161	401
	The second firing at Kumbhar Alli	43.163	402
	The arson to Ganesh Sizing Works and other Hindu factories and timber-depots on the Bombay-Agra Road	43.166	403
	The rioting at Kanheri	43.169	405
	Rioting at the Bhiwandi-Karivali Road	43.173	407
	The rioting at Khoni Village	43.176	408
	Conclusions	43.195	416
44	THE COURSE OF THE DISTURBANCES—THE FIRST NIGHT		
	A night of tragedy and terror	44.1	420
	The first police firing at the Bombay-Agra Road (near the S. T. Depot)	44.2	421
	The second police firing at the Bombay-Agra Road (near the Government grain godown)	44.4	421
	The third police firing at the Bombay-Agra Road (near the S. T. Stand)	44.7	422
	The police firing at Vetalpada	44.11	423
	The fourth police firing at the Bombay-Agra Road (near the National Garage)	44.15	427
	The attack on the Thana fire-engine	44.17	427
	The alleged attack on the police lines, the Court House and Magistrates' Bungalows	44.35	437
	The alleged rioting near Dhamankar Naka	44.49	445
	The obstruction to the Kalyan water-tanker	44.50	446
	The obstruction to the Ulhasnagar fire-engine	44.51	446
	The police firing at Khadak	44.52	446
	The second police firing at Habsan Alli	44.61	452
	The night attacks on Habsan Alli	44.63	453
	The obstruction to the Thana fire-engine at Teen Batti	44.67	454

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
44	THE COURSE OF THE DISTURBANCES—THE FIRST NIGHT— <i>contd.</i>		
	The obstruction to the Bombay fire-engine at Khadak	44.68	454
	The police firing near Sutar Alli	44.70	455
	The police firing at Gauripada	44.74	457
	The police firing at Kombadpada	44.77	458
	The arrests at Bunder Mohalla	44.83	460
45	THE SUBSEQUENT COURSE OF THE DISTURBANCES—THE MAIN INCIDENTS		
	The arrest of Shabbir Ahmed Ansari	45.1	466
	The search of Mohamedi Sizing Factory.	45.6	468
	The third firing at Habsan Alli	45.15	471
	The firing near Rais High School	45.18	471
	The arson to Abdul Tawab Ansari's factory	45.20	472
	The arrest of Abdul Tawab, his relatives and workers	45.23	474
	The rioting at Dhamankar Naka	45.28	475
	The first police firing at Nizampufa 4th Mohalla	45.30	476
	The police firing at the Bhiwandi-Kalyan Road near the Asabibi Dargah	45.33	477
	The arrests in Thange Alli	45.41	482
	The police firing at Thange Alli	45.49	487
	The firing near the Bhiwandi-Ahmedabad Road	45.53	488
	The second police firing at Nizampura 4th Mohalla	45.58	491
	The firing at Kanheri	45.71	500
	The arrest of Nazirahmed Hafizmohamed Zahid	45.78	504
	The police firing at Samadia Building	45.81	505
	The arrests from Samadia Building and Masjid Chawl	45.105	518
	The looting of Samadia Building and Masjid Chawl	45.111	521
	Conclusions on the Samadia Building incident	45.114	524
	The police firing at Gaibi Nagar	45.115	525
	The first police firing at Kacheripada and the arson to Malaysia Sizing Works	45.144	541
	The death of Mobin Ahmed Mokeef Ahmed Ansari	45.166	552
	The second police firing at Kacheripada	45.170	554

CONTENTS

<i>Chapter</i>		<i>Paragraph</i>	<i>Page</i>
45	THE SUBSEQUENT COURSE OF THE DISTURBANCES—THE MAIN INCIDENTS— <i>contd.</i>		
	The police firing near the Telephone Exchange	45.179	558
	The arson to Chauhan Colony ..	45.181	560
	The firing at Khoni Village ..	45.194	567
	The raid on the Ambassador Hotel and the miracle of the bombs that multiplied	45.197	568
	The raid on Chakkan Khokewalla's shed.	45.210	574
	The arrests at Sunderbeni Compound ..	45.215	576
	The arrests at Quarter Gate ..	45.225	580
	The police firing at Idga Road ..	45.228	583
	The police firing at Dargah Road ..	45.231	584

ABBREVIATIONS

Addl.D.M.	..	Additional District Magistrate.
Addl.I.G.P.	..	Additional Inspector-General of Police.
Addl.S.P.	..	Additional Superintendent of Police.
A.H.P.C.	..	Armed Head Police Constable.
A.I.R.	..	All-India Reports Series.
A.P.C.	..	Armed Police Constable.
Asst.I.G.P.	..	Assistant Inspector-General of Police.
Asst.S.P.	..	Assistant Superintendent of Police.
Bom.L.R.	..	Bombay Law Reporter.
B.S.F.	..	Border Security Force.
Cal.	..	Calcutta.
Cal.L.J.	..	Calcutta Law Journal.
Ch.	..	Chancery.
C.P.I.	..	Circle Police Inspector.
Cr.L.J.	..	Criminal Law Journal.
Cr.P.C.	..	The Code of Criminal Procedure, 1898.
D.I.	..	Detective Inspector.
D.I.G. (Crime)	..	Deputy Inspector-General of Police (Crime & Railways).
D.I.G. (Int.)	..	Deputy Inspector-General of Police (C.I.D.) (Intelligence).
D.M.	..	Collector and District Magistrate.
D.Ms.	..	Collectors and District Magistrates.
Dy.S.P.	..	Deputy Superintendent of Police.
D.S.B.	..	District Special Branch.
D.S.I.	..	Detective Sub-Inspector.
H.C.	..	Head Constable.
H.P.C.	..	Head Police Constable.
I.A.	..	Indian Appeals.
I.L.R.	..	Indian Law Reports.
I.P.C.	..	The Indian Penal Code.
I.R.	..	Irish Reports.
Jamaat-E-Islami	..	Jamaat-E-Islami-E-Hind.
Jan Sangh	..	Bharatiya Jan Sangh.
L.C.B.	..	Local Crime Branch.
L.I.B.	..	Local Intelligence Branch.
L.R.	..	Law Reports Series.
Mad.	..	Madras.
M.T.M.	..	All-India Majlis Tamir-E-Millat.
Mushavarat	..	All-India Muslim Majils-E-Mushavarat.
P.C.	..	Privy Council.
P.C.	..	Police Constable.
P.I.	..	Police Inspector.
P.S.I.	..	Police Sub-Inspector.
R.S.S.	..	Rashtriya Swayam Sevak Sangh.
R.T.M.	..	Shree Ram Tarun Mandal.
R.U.M.	..	Rashtriya Utsav Mandal.
S.B.	..	Special Branch.
S.C.	..	Supreme Court.
S.D.P.O.	..	Sub-Divisional Police Officer.
S.P.	..	Superintendent of Police.
Ss.P.	..	Superintendents of Police.
S.P.I.	..	Sub-Inspector of Police.
S.R.P.	..	State Reserve Police.
S.R.P.C.	..	State Reserve Police Constable.
S.R.P.F.	..	State Reserve Police Force.

PART III

BHIWANDI DISTURBANCES

CHAPTER 33

THE SETTING FOR SHIV JAYANTI

CONTENTS

Paragraph

- 33.1 The meeting of the Communist Parties of April 11, 1970.
- 33.2 A bird's-eye view of R.U.M. activities prior to Shiv Jayanti.
- 33.4 The R.U.M. meeting at Taralipada.
- 33.8 The R.U.M. meeting at Kamba.
- 33.14 The R.U.M. meeting at Wani Alli.
- 33.17 The R.U.M. meeting at Neelkantheshwar Temple on April 17, 1970.
- 33.19 The R.U.M. meeting at Padgha on April 18, 1970.
- 33.24 The Muslim memorandum in connection with the Shiv Jayanti procession.
- 33.25 The drafting of the memorandum.
- 33.26 The text of the memorandum.
- 33.27 Whether the Muslim grievances and demands were justified ?
- 33.29 The reasons for submitting the memorandum.
- 33.31 The evidence of Hindu witnesses about the memorandum.
- 33.33 The meeting between S.P., Bhave and the Muslim leaders.
- 33.35 The meeting between D.M., Capoor and the Muslim leaders.
- 33.36 The handing over of the memorandum to Bhausaheb Dhamankar.
- 33.37 The Peace Committee meeting of April 19, 1970.
- 33.38 The meeting of the Muslim leaders at the residence of Ibrahim Maddu.
- 33.39 The R.U.M. meeting at Hanuman Tekdi.
- 33.41 The withdrawal by Abdul Salam Ansari of his signature on the memorandum.

CONTENTS—*contd.*

Paragraph

- 33.44 The Steering Committee meeting of April 21, 1970.
33.45 The meeting of the residents of Nizampura.
33.46 The meeting of the representatives of the R.U.M. and of the Nizampura locality.
33.48 The peace Committee meeting of April 24, 1970.
33.49 The office-bearers of the Shiv Jayanti Utsav Samiti and other Committees.
33.51 The reason for the Procession Control Committee.
33.52 The Urs of Divanshah Dargah.
33.54 The visit of Suleman Sikander.
33.55 Baliram More receives an anonymous letter.
33.56 The meeting between D.M., Capoor and the R.U.M. leaders.
33.57 The invitation to Mr. Kalyanrao Patil.
33.58 The R.U.M. meeting in the Satyanarayan Temple.
33.60 The incidents of assault in the fortnight preceding Shiv Jayanti.
33.70 The Urdu boards.
33.73 The board at Wada Stand.
33.74 The Bhiwandi-Nizampur Municipal College compound incident.
33.75 The removal of the Bhagwa flag in Madarchhalla.
33.76 The May Day Procession of May 1, 1970.
33.77 Baliram More's application.
33.78 The R.U.M. meeting of May 4, 1970.
33.79 The arrest of persons carrying Rampuri knives.
33.80 Complaints of threats.
33.81 Dr. Mahmud Hasan's visit to Bombay and the delegation to Mr. Kalyanrao Patil.
33.84 The date of the telephonic conversation between D.M., Capoor and the secretary of the Jamiet-ul-Ulema.
33.86 The visit of the Jamiet-ul-Ulema leaders to Bhiwandi.
33.88 The M.T.M. memorandum.
33.89 The R.U.M. propaganda in the villages.

CHAPTER 33

THE SETTING FOR SHIV JAYANTI

The meeting of the Communist Parties of April 11, 1970

33.1 The Communist Party (Marxist) and the Communist Party of India jointly held a public meeting at Teen Batti Naka, Bhiwandi, on April 11, 1970. The subject of the meeting was Hindu-Muslim unity and in the course of the speeches the Jan Sangh, the Shiv Sena, the M.T.M. and the R.U.M. were criticised. This meeting did not lead to any communal tension. On the contrary, the object of this meeting was to bring about communal harmony and amity in Bhiwandi. This meeting, therefore, would not have necessitated more than a passing reference but for the fact that according to the Hindu parties and the Special Investigation Squad, Bhiwandi, this meeting, and particularly the speech made by the Marxist Communist leader, Ibrahim Maddu, was the commencement of a secret criminal conspiracy by the Muslims to attack the Shiv Jayanti procession and to murder Hindus and to burn and loot their properties simultaneously in different localities. On the face of it, it sounds strange and paradoxical that senior and responsible police officers should seriously canvass that a speech made openly at a public meeting was the beginning of a secret criminal conspiracy, but then there are many things as strange and paradoxical, if not more so, about this Squad. Since this criminal conspiracy is the gravamen of the charge in the Bhiwandi Conspiracy Case, it would be best to deal with this meeting when we come to that topic.

A bird's-eye view of R.U.M. activities prior to Shiv Jayanti

33.2 The activities of the R.U.M. right from March 1970 were directed towards the Shiv Jayanti procession; its objective being to take out the largest procession ever seen in Bhiwandi so as to overawe any opposition to the route, to take that procession past the Nizampura Jumma Mosque and to throw 'gulaal' unrestrictedly. To achieve this objective the R.U.M. carried on intensive propaganda at various public meetings, namely, at the R.U.M. meeting held on March 17, 1970 at Bhiwandi to observe the death anniversary of Sambhaji (Ex. P 76); at the Shiv Sena meeting held on March 18, 1970 at Bhiwandi (Ex. P 77); and at the R.U.M. meetings held on March 30, 1970 at Bhiwandi (Ex. P 79), April 7, 1970 at Bhiwandi (Ex. P 80), April 11, 1970 at Taralipada, Kamatghar (Ex. P 81), April 12, 1970 at Kamba (Ex. P 82), April 13, 1970 at Bhiwandi (Ex. P 83), April 17, 1970 at Bhiwandi

(Ex. P 90), April 18, 1970 at Padgha (Ex. P 506), April 20, 1970 at Bhiwandi (Ex. P 84), April 27, 1970 at Bhiwandi (Ex. P 85) and May 4, 1970 at Bhiwandi (Ex. P 87). The meetings held on March 17, 18 and 30, 1970 and April 7, 1970 have already been dealt with in paragraphs 28.76 to 28.80, 17.32, 28.83 and 28.86 above respectively. The other meetings will be dealt with in this Chapter. The R.U.M. leader also visited a number of villages round about Bhiwandi in order to carry on propaganda to induce the villagers to join the Shiv Jayanti procession in large numbers.

33.3 As at the time of the Ganpati festival of 1969, the R.U.M. wanted to take over complete control of the Shiv Jayanti celebrations and the procession and to make Shiv Jayanti an R.U.M. function. This position is quite clear from Inspector Pradhan's report dated April 10, 1970 to S.P., Bhawe (Ex. P 145). From the said report it appears that while some persons were in favour of the suggestion that the Shiv Jayanti should be celebrated both by the R.U.M. and the Shiv Sena jointly, others wanted it to be celebrated by the R.U.M. alone. It further appears from the said report that the workers of the R.U.M. met Dhamankar (C.W. 2) and promised him that 'gular' would not be thrown at mosques and that thereupon Dhamankar took upon himself to request Zuber Patel, the President of the Bhiwandi Municipal Council, to call a meeting of the Peace Committee at the earliest. The Hindu workers decided to hold a meeting of their own a day or two prior to this Peace Committee meeting and insisted that there should be no restriction on the route of the procession. The concluding three paragraphs of the said report require to be reproduced in full. They are as follows :

"It is learnt that the villagers from the villages surrounding Bhiwandi having branches of the Rashtriya Utsav Mandal and Shiv Sena would be invited to participate in the procession. They have been asked to come with decorated bullock carts. Efforts are going to be made to collect 3 to 4 thousand villagers.

Programmes of Shiv Jayanti would be celebrated on 3 to 4 days and it is intended to collect 10 to 15 thousand persons for the procession.

The situation is being closely watched and arrangement has been made to submit reports from time to time."

The R.U.M. meeting at Taralipada

33.4 The R.U.M. held a meeting at Taralipada in Kamatghar village on April 11, 1970 at 9 p.m. A handbill was printed and circulated advertising this meeting. It stated that the meeting was arranged with the object of strengthening the feeling of national integration and of spreading and propagating Indian culture and religion and that the main speaker would be Ramesh Sambhus. Along with his report dated April 10, 1970 addressed to S.P., Bhawe (Ex. G 200) Inspector Pradhan enclosed a copy of the said handbill and further stated that it was learnt that the principal speakers at the said meeting

were going to be Ramesh Sambhus and Dr. Vyas and as Ramesh Sambhus was on the verbatim list he requested that a Marathi shorthand reporter should be made available for the said meeting. In view of the fact that Ramesh Sambhus was in the habit of making inflammatory communal speeches, an order under section 144, Cr.P.C. was passed by the Taluka Magistrate, Bhiwandi, on April 11, 1970 (Ex. P 407) directing Ramesh Sambhus not to make any communal inflammatory speech at any place in Bhiwandi Taluka for a period of 15 days with effect from April 11, 1970 to April 25, 1970. Head Constable Jadhav (G.W. 10), who was on plain-clothes duty at the Bhiwandi Town Police Station, was deputed to identify Ramesh Sambhus for the purpose of serving the order on him. The order was to be served by P.S.I., S. S. Mane (P.W. 46) whom Jadhav accompanied. Ramesh Sambhus came to the meeting after it started. On Jadhav pointing him out to Mane, Mane served the order upon him. Constable Karnale of Bhiwandi Town Police Station and Shorthand Reporter of the State Intelligence Branch P. G. Karnataki were deputed to cover the meeting (P.W. 38/57/1257 : G.W. 10/14/1326-7). The report of the State Intelligence Shorthand Reporter Karnataki on this meeting is Ex. P 81.

33.5 Uddhav Teje in his introductory speech spoke on the work done by the R.U.M. He referred to the reason why the founders of the R.U.M. had boycotted the Peace Committee meeting at the time of the 1969 Shiv Jayanti and said, "The throwing of 'gulal' is the right of the Hindus. We do not want to throw it on any particular person or building. The Rashtriya Utsav Mandal has been formed to give a fitting reply to the propaganda that is being made against the Hindus". He also criticized Abdul Khaliq Momin for his speech made on March 28, 1970. He then told the people that the R.U.M. would celebrate Shiv Jayanti on May 7, 1970 and exhorted everyone to join in the celebrations. Dr. Vyas speaking next referred to the threatening anonymous letter received by him and exhorted the people to follow in the footsteps of Shivaji. Speaking last, Ramesh Sambhus said that the Hindus gave unnecessary facilities to persons of other religions and pampered them and that no action was taken against the anti-nationals. He said that the Hindu community was like a lion and that the people should roar so loudly that others would get frightened and for this purpose the people must unite and that every Hindu should be proud to be a Hindu and protect democracy and that *the R.U.M. had been formed to finish anti-nationals* and therefore all should support it.

33.6 Dy.S.P., Diwate and Inspector Pradhan had attended the Communist Parties' meeting held at Bhiwandi that very evening and after that meeting was over, Diwate and Pradhan went in a jeep to Taralipada. However, by the time they reached Taralipada the R.U.M. meeting was already over. So they returned to Bhiwandi giving a lift to Head Constable Jadhav and Shorthand Reporter Karanataki (P.W. 66/186/3910-1 ; G.W. 10/14/1326).

33.7 The speech made by Ramesh Sambhus at the said meeting satisfies the test laid down in paragraph 6.8 and was, therefore a communal speech.

The R.U.M. meeting at Kamba

33.8 The day after the Taralipada meeting, that is, on April 12 1970, Ramesh Sambhus addressed a public meeting held by the R.U.M. in Kamba village. The report of the State Intelligence Shorthand Reporter Karnataki on this meeting is Ex. P 82. The meeting commenced at 10-15 p.m. Ramesh Sambhus and a number of R.U.M. leaders addressed the meeting. Shankarrao Gavali who presided over the meeting said that they had to ensure that the Hindu religion and culture continued to survive and since the R.U.M. was performing this duty, the villagers must support it. Addressing the meeting Sharad Patwardhan said that the activities of communal bodies like the M.T.M. could be controlled only if the Hindus become united and that India was the only country where the Hindus were in a majority and that the Muslims had committed outrages and the Hindus should therefore unite. He then called upon the people to unite at the time of Shiv Jayanti. Uddhav Teje next got up to speak. At that time a slight shower fell and he began by saying that whoever caused harm to the Hindu religion would be beaten down by that shower. He then attacked the Communists for criticizing the R.U.M. at the said meeting held the previous day at Bhiwandi and said that the R.U.M. would undoubtedly destroy them and that all people except the Communists were members of the R.U.M. He said that the Communists alleged that the incidents taking place in Bhiwandi were on account of the activities of the R.U.M. and inquired who had thrown stones at the Shiv Jayanti procession, that is, the 1967 Shiv Jayanti procession. Concluding, he said that they were going to take out a procession of 50,000 strong for the 1970 Shiv Jayanti. Shantaram Tavre speaking next said that the R.U.M. aimed at uniting only the Hindus and that organizations like the M.T.M. were threatening the R.U.M. and the R.U.M. was being abused by them and that they should not tolerate this any more. He then referred to the communal riots which had taken place at Ahmedabad, Malegaon, Bhiwandi and Indore. Continuing he said that at Bhiwandi Shivaji's image had been stoned and they must put a stop to it. Datta Punyarthi also called upon the villagers to unite in order to celebrate the Shiv Jayanti. Dr. Vyas, who was the last but one speaker, in the course of his speech said :

“Whoever lives in Hindustan is a Hindu. Thus Hindu is a noun expressing class. All Hindus must unite. Why? For the progress of the nation. Religion aims at truth and justice. We are asked not to beat drums in front of mosque. I have not come here to speak against Islam. *Our religion and culture are being suppressed improperly. Yesterday the Communists held a meeting. We were criticized. Insult to Shivaji Maharaj would never be tolerated. We do not oppose Islam, but they should be*

loyal to the nation. Is it false that in Pakistan every day people are being converted to Islam? *Hindus are being harassed in Pakistan.* Even then we want their friendship. If we become strong here, they would be frightened there."

33.9 Ramesh Sambhus in the course of his speech exhorted the people to unite in order to protect the Hindu religion and culture. He, inter alia, said :

"I say that if *Shivaji Maharaj had not taken birth, all of us would have become 'Khans' (Muslims).* We have lost our power. No one realizes that we might have to face danger. The game of politics is responsible for this. No one has worked for the Motherland. We want to protect this culture. Shivaji Maharaj bowed before the Koran, put it in a box and sent it to Aurangzeb safely. Aurangzeb, however, broke the Kashi Vishweshwar Temple. The Hindu religion strives to help the helpless. The Rashtriya Utsav Mandal is doing the same work. Remove all doubts and forget differences. Anyone is welcome in the Mandal. *You should attend the Shiv Jayanti procession with great enthusiasm. Sprinkle 'gulal'.* *Everyone should take the following oath, 'I am a Hindu. I shall sacrifice body, mind and wealth for the religion.'* "

33.10 The speeches made by Sharad Patwardhan, Shantaram Taware, Dr. Vyas and Ramesh Sambhus at the said meeting satisfy the test laid down in paragraph 6.8 and were, therefore, communal speeches.

33.11 Haseenabanoo Papamiyan Shah (B.R.W. 8) was residing with her parents and other members of her family at Kamba until May 7, 1970 and was studying in the Kamba Primary School. Fearing the ugly mood of the processionists who set out from Kamba and adjoining villages to join the Shiv Jayanti procession in Bhiwandi, her father and eldest brother sent away other members of their family to Bhiwandi in an S.T. Bus. Her house at Kamba was burnt down during the disturbances and her father and brother were not traced and they were believed to have been murdered during the disturbances. She knew Dr. Vyas because he had treated her and her family. According to her evidence, Dr. Vyas had twice come to Kamba prior to the disturbances and had addressed two meetings, both in the school compound. She has stated that several children including herself, had attended these meetings. She said that at the first meeting a Bhagwa flag was put up in the compound and Dr. Vyas in the course of his speech banged his fist on the table and said that they must all unite under the Bhagwa flag and that the Muslims from Bhiwandi had become very arrogant and they should, therefore, show them their might. She was, however, noticed by one Dattatraya Lole and removed from the meeting. According to her, at the second meeting Dr. Vyas said that the villagers must all participate in large numbers in the 7th May procession and should loot and set fire to Muslim houses. She was again noticed amongst the children by Dattatraya Lole and removed from the

meeting. According to her, the inflammatory speeches made by Dr. Vyas aroused the villagers of Kamba and led to the arson to her house and the murders of her father and brother [B.R.W. 8/1(1-6)/1447-8(3). 5/1449-50].

33.12 Apart from that portion of her evidence in which she says that Dr. Vyas spoke at the second meeting that the Hindus should loot and set fire to Muslim houses at the time of the Shiv Jayanti procession, which appears to me to be an exaggeration by reason of the tragedy which had befallen her and which she links up with the speeches of Dr. Vyas, the substance of what Dr. Vyas is said to have spoken is the substance of almost all his speeches and the speeches of most of the R.U.M. leaders.

33.13 The only question about her evidence is whether there were two meetings held at Kamba or only one. There is no police report in respect of the first meeting deposed to by her. The only witness with respect to this meeting is this young girl. Though she had filed an affidavit before the Commission, before allowing her evidence to be led I had put questions to her and was satisfied that she was capable of understanding the questions which would be put to her in the course of her evidence and of giving rational answers to them and that she understood the duty of speaking the truth, though she did not understand the nature of an oath or affirmation. Accordingly, she was examined as required by section 4 of the Oaths Act, 1969, without any oath or affirmation being administered to her. She appeared to be an intelligent girl and she gave her evidence in a candid manner and did not appear to have been tutored. Except a few of them, the police reports about the R.U.M. activities in villages are not satisfactory and leave much to be desired. The R.U.M. was always anxious to spread its activities and influence in the surrounding villages and I believe Haseenabanoo when she states that Dr. Vyas visited Kamba twice and addressed meetings there on both occasions.

The R.U.M. meeting at Wani Ali

33.14 On April 13, 1970 the R.U.M. held its weekly prayer meeting in Vithal Temple in Wani Ali, Bhiwandi, where about 100 to 125 persons were present. The report of Head Constable Manjrekar on this meeting is Ex. P 83. The meeting commenced at 10.15 p.m. Bhaskar Mali presided at the meeting. Dr. Vyas spoke about the proselytizing activities of Christian missionaries. Uddhav Teje speaking next talked about the activities of the R.U.M. He said that the R.U.M. was established after the 1969 Shiv Jayanti and its branches were opened in villages and the results were proving encouraging. He declared that its field of activities would be extended throughout the Thana District and up to Janjira-Murud. He then said :

“ The lands belonging to Hindu temples are being encroached upon. There was a lake behind Nilkantheshwar temple at Bhiwandi. The Municipality re-claimed this land by spending public money. There are such lakes near all temples ; but one community has usurped

this land and constructed a mosque. Shri Baliram More discussed this issue with the Collector, Thana. It is being decided to allow half of this land to the temple and half to the mosque. This is a very bad incident. We should not agree to it. We should write and raise our voices against it. Many mosques and Dargahs of this community are being built. We must oppose this."

Such a speech had its immediate effect and a number of questions were asked from the audience, the questioners saying that this was an encroachment on the Hindu religion and not on the land of just one temple. Some people in the audience gave examples of other Dargahs and mosques in Wada, Thana and Bhiwandi. Bhai Nagle then got up and said that Pandurang Vastad should be immediately supplied with 100 lathis as he was going to train members of the R.U.M. in the use of lathis. Lohagaonkar suggested that the next prayer meeting should be held at Hanuman Temple situate on Hanuman Tekdi as the Hindus of that place had given financial aid to the R.U.M. and as anti-social activities were going on near that temple. Hanuman Tekdi is situate between two mixed localities at some distance from it and these "anti-social activities" could only refer to the activities of the Muslims. Dr. Vyas announced that the next day a meeting would be held to observe the birth anniversary of Dr. Ambedkar. At the conclusion of the said meeting Uddhav Teje got up and announced that Pandurang Vastad was ready to give physical training to the people.

33.15 The speech made by Uddhav Teje at the said meeting satisfies the test laid down in paragraph 6-8 and was, therefore, a communal speech.

33.16 Pandurang Vastad *alias* Pandurang Barku Patil, the Vice-President of the R.U.M., owned a truck and drove it himself. He used to give instruction in physical training in Veer Tanaji Vyayamshala of which the secretary was Uddhav Teje. According to the evidence of S.P., Bhave, after the said prayer meeting he had discussed the matter with Dy.S.P., Diwate and Inspector Pradhan and gave them instructions for keeping a watch on Pandurang Vastad and the Police thereafter maintained a close watch on the said gymnasium, but they did not find any lathi training being imparted thereeither by Pandurang Vastad or any one else. These facts were reported by Dy.S.P., Diwate and Inspector Pradhan to S.P., Bhave. Bhave has, however, admitted that the instructions given by him to Dy.S.P., Diwate and Inspector Pradhan as also the said report made by them to him were oral and not in writing (P.W. 4/172/689, 205/719). This certainly is strange, but I am not prepared to disbelieve S.P., Bhave on this point merely because these instructions and the said report by Dy.S.P., Diwate and Inspector Pradhan were oral and not in writing. This, however, was an important matter particularly in view of the tense situation then prevailing in Bhiwandi and the increasing tempo of the activities of the R.U.M. These instructions ought, therefore, to have been given in writing and any report thereon ought also to have been made in writing. Whether training in the use of lathis was imparted to the

members and followers of the R.U.M. or not, this meeting certainly shows that far from becoming merely vocally aggressive the R.U.M. leaders were becoming openly militant.

The R.U.M. meeting at Neelkantheshwar Temple on April 17, 1970

33.17 A meeting of the Peace Committee was called on April 19, 1970 to discuss the forthcoming Shiv Jayanti celebrations. In order to chalk out the line to be taken at the said meeting the R.U.M. called a meeting at Neelkantheshwar Temple, Bhiwandi, on April 17, 1970 and sent out invitations. About 40 persons attended, the workers of the R.U.M. being predominantly present. Amongst the prominent local leaders who were present were Dr. Vyas, Baliram More, Parshuram Tavre, Savlaram Kale, Sharad Patwardhan and Balasaheb Joglekar. Bhausahab Dhamankar, Zumberlal Kalantri and Mohanlal Karwa were invited but did not attend. Baloo Pingle was elected the chairman of the said meeting. Sharad Patwardhan first addressed the meeting. He stated that a unanimous decision about the celebration of the Shiv Jayanti should be taken so that it could be presented at the Peace Committee meeting on April 19, 1970. It was decided at this meeting that the Shiv Jayanti procession should go through the Nizampura Mohalla, that is, past the Nizampura Jumma Mosque, and no change should be permitted in this route. It was further decided that there should be no excessive throwing of 'gural' nor should 'gural' be thrown at mosques and that Hindu and Muslim leaders should stand in front of mosques to prevent the excessive throwing of 'gural'. The meeting also nominated Dr. Vyas to speak on behalf of the R.U.M. at the said Peace Committee meeting. During the course of the discussion the P.S.P. workers, Savlaram Kale and Parshuram Tavre, suggested that 'gural' should not be thrown and inquired who would shoulder the responsibility if any untoward incident took place or even if some miscreants played mischief and intentionally threw 'gural' so as to fall inside the Nizampura Jumma Mosque. They were ridiculed by the others and told that they would not tolerate any restrictions on the right to throw 'gural'. Exhibits P 90, P 146 and G 321 are the reports of Head Constable Manjrekar, Inspector Pradhan and the D.I.G. (Int.) respectively on this meeting.

32.18 The presence of Baliram More at this meeting clearly shows that by this time there was close co-operation and identity of objective with respect of the Shiv Jayanti procession between the R.U.M. and the Shiv Sena.

The R.U.M. meeting at Padgha on April 18, 1970

33.19 A public meeting of the R.U.M. was held at Padgha on April 18, 1970 under the auspices of its Padgha Branch. The police report on this meeting is Ex. P 506. Ramesh Sambhus was to have addressed this meeting but he did not attend as a prohibitory order was served upon him. As Ramesh Sambhus was to address the meeting, thand Reporter Sub-Inspector S. V. Phansalkar was deputed to

cover the said meeting, but since Ramesh Sambhus did not attend, Phansalkar did not take down a verbatim report of the speeches made at the said meeting (P.W. 4/169/187). Several R.U.M. leaders from Bhiwandi addressed the meeting. The first speaker was Bhai Nagle who gave the reasons for the formation of the R.U.M. and the necessity for its existence. He said :

“ A calamity is going to befall us. It is essential that Hindus should unite to face it. They (that is, the Muslims) cannot tolerate seeing Bhagwa flags in the Shiv Jayanti festival. Therefore Hindus united and the R.U.M. was formed. If Hindus unite like this, the Muslims would not be able to do anything. Hence they are jealous of us.”

He then attacked the M.T.M. and said that the M.T.M. had made allegations against the R.U.M. at their meetings and that a letter under the signature of the M.T.M. was received by the R.U.M. leaders saying that they should all be converted to Islam, otherwise they would be murdered. We have seen in paragraph 19.12 what the said letter was. It was an anonymous letter and according to Dr. Vyas, he and Uddhav Teje had received such letters calling upon them to stop criticizing the M.T.M. The allegation that the letter called upon them to become converts to Islam was obviously not true and was made with a view to inflame communal passions, Continuing, Bhai Nagle also attacked the Communists for having criticized the R.U.M. at their meeting held on April 11, 1970. Concluding he said, “ Muslims have no faith in us. We do not understand why they behave like this.”

33.20 Datta Punyarthi spoke about the demolition of the Somnath Temple by Mahmud Gazani. He also charged the Muslims with having damaged the Jagannath Temple at Ahmedabad and the Muslims and the Communists with being disloyal to India and said that the people in Bhiwandi had suffered and had appealed in vain to the Government and that the R.U.M. was therefore making efforts to ensure that the people, society and culture did not suffer.

33.21 Dr. Vyas in his speech also referred to the anonymous letter received by him. Continuing he said :

“ We shall not allow India to become Pakistan, We do not want another Pakistan in this country. Our culture is being hammered. Why? Bombs fell on the fair of Ramnavmi at Chaubasa. What was the Government doing? The Government should stop such aggressions. If they are not stopped, the public has right to put a stop. Our people propagated the Hindu religion peacefully but they marched an elephant to temple on Sambhaji. Civil liberties depend upon citizens. The Government is enacting different laws for different communities. There is some selfish motive of the Government, Shivaji's procession was taken out at Bhiwandi. Do not throw 'gular' at mosques. But man should live with honour and the R.U.M. was born for that purpose. It is like Lord Krishna taking birth. When Aurangzeb broke the Kashi Vishweshwar Temple, Shivaji sent a letter to him saying that it would not take a long time to break mosques. Followers living here have love for

Pakistan. Why have the Hindus in Pakistan left that country and come to their Motherland? We fought with Pakistan over Kutch and Kashmir issues. Should we not protect our culture? Therefore they are agitated and have started giving us threats. We are not afraid of them. The public would support us. Why was Pakistan created? What have we gained? A number of communal riots took place. Lord Vithoba's palanquin was stolen at Bhiwandi. The Shiv Jayanti procession was stoned and now Shiv Jayanti is approaching fast. Had there been no Shivaji, all of us would have been circumcised. There would be a meeting on 19-4-70 regarding the celebration of Shiv Jayanti. We know what will happen if the roads are obstructed. The Government calls itself secular. Then what is Tameer-E-Millat? The culture of this country is being attacked. We must stop this aggression. Vivekanand had told us to be alert to protect the country's religion and culture. Why was Jagannath Temple broken? It is our duty to correct it. We are ready to protect our country and religion. The public is ready to support the R.U.M. This is the only party which would protect our culture."

33.22 Uddhav Teje in his speech said that the R.U.M. was formed with a view to bring the entire Hindu society in India together. At the close of the meeting Pandu Vastad said that in the forthcoming Shiv Jayanti celebrations 50,000 persons should assemble.

33.23 The speeches made by Bhai Nagle, Datta Punyarthi and Dr. Vyas at the said meeting satisfy the test laid down in paragraph 6.8 and were, therefore, communal speeches.

The Muslim memorandum in connection with the Shiv Jayanti procession

33.24 At this juncture the Muslim leaders decided upon their course of action. They decided not to attend the Peace Committee meeting called on April 19, 1970 but instead to submit a memorandum to the Chairman of the Peace Committee and the authorities listing their grievances and setting out their demands. In view of the intense communal tension then prevailing in Bhiwandi a move more unwise, tactless and impolitic can hardly be imagined. It was a move most likely to harm the Muslims and capable of being turned by their opponents to their own advantage, as in fact it did happen. A moment's cool reflection would have convinced the authors of this memorandum that by abstaining from the Peace Committee meeting and submitting this memorandum they were playing into the hands of their opponents. Instead, Muslim leaders belonging to different political parties and all shades of opinion combined to join hands in committing this folly.

The drafting of the memorandum

33.25 On April 15, 1970 a meeting of about 25 to 30 local Muslim leaders was held at the residence of Ayub Punjabi in which it was decided not to attend the Peace Committee meeting on April 19, 1970

but instead to submit to the Peace Committee a memorandum containing the grievances and demands of the Muslims in respect of the forthcoming Shiv Jayanti celebrations. It was also decided to appoint a sub-committee for the purpose of drafting the memorandum and Murtaza Fakhri, though he had not attended that meeting, was appointed a member of that sub-committee. The memorandum was drafted at the house of Murtaza Fakhri on April 16, 1970 in two sittings, the first from 3 p.m. to 6 p.m. and the second from 8-30 p.m. till midnight. It was drafted by Murtaza Fakhri (B.R.W. 1), Sikandar Faqih (B.R.W. 2), Gulam Mahomed Momin (the deponent of affidavit No. 329), Ibrahim Maddu and Haji Miyan Tase (B.R.W. 67). On April 17, 1970 the Muslim leaders again met at the house of Ibrahim Maddu. The memorandum was read out and interpreted in Urdu by Ibrahim Maddu and the signatures of those present taken. Most of the signatories to the memorandum, including Abdul Salam Ansari, were present and signed at that time. The signatures of those who were not present were taken the next day. The said memorandum was signed by 37 Muslim leaders belonging to different walks of life and to different parties including the Congress and to parties with diametrically opposite ideologies (B.R.W. 1/21/1368, 23/1370, 28-29/1372-3 ; C.W. 2/23/1710-1). Amongst the signatories those who have prominently featured in this Inquiry were Murtaza Fakhri, Sikandar Faqih, Ayub Punjabi, Dr. Mukri, Ibrahim Maddu, Jasim Sardar, Gulam Mahomed Momin, Abdul Salam Ansari and Sayyad Abdul Gafoor.

The text of the memorandum

33.26 A copy of the said memorandum handed over to the S.P., Thana, is Ex. P 15. Another copy produced by I.G.P., Rajadhyaksha is Ex. G 63. As much has been made of this memorandum both in the course of the arguments and evidence, it is necessary to reproduce it fully. The memorandum stated :

“ To

The Chairman,
The Peace Committee,
Bhiwandi.

“ Dear Sir,

Bhiwandi has a glorious tradition of communal peace and harmony which has come down from centuries together. The relations between Hindus and Muslims have always been governed by respect for each other's religious feelings. These relations are further strengthened by bonds of trade and commerce. As a matter of fact the majority of people, whether Hindus or Muslims, are keen to preserve this sacred tradition of mutual tolerance and understanding.

“ 2. It is unfortunate to record that a very small section of people, belonging to the Hindu community, does not see eye to eye with the majority in maintaining an atmosphere of peace and amity. It spares no opportunity in creating distrust and antagonism between the two communities.

“3. Taking into consideration the behaviour of Muslims at the time of their festivals, it is note-worthy that they have become more tolerant of the feelings of their Hindu brethren. This was made possible by the concerted efforts of prominent Muslims, who actively participate in such festivals, in order to see that no untoward incident could take place.

“For instance, prior to 1967, the Muharram procession, while passing through Bazar Peth used to take more than 3 hours, with the processionists indulging in intensive drumbeating. After 1967 as a result of the sincere efforts of influential Muslims, the time for passing through Bazar Peth was reduced to 45 minutes.

“It is note-worthy on the part of the Muslims that they have always cherished peace and harmony. This could be seen from the decision of Muslims to cancel Id-Milad procession in June, 1967, when the old route was not granted to them by the Collector. As a gesture of goodwill and mutual understanding, prominent Muslim citizens of the town made themselves conspicuous by their presence on Hindu festivals and processions.

“4. It is sad to note that the behaviour of Hindus on their festivals has deteriorated, possibly as a result of the nefarious intentions of a small group of chauvinist Hindus. It is lamentable that the socially active and saner elements amongst the Hindus have remained, by and large, quite indifferent to the communal situation in the town. As a result of this indifference and isolation of sensible Hindus, the communal situation has been deteriorating day by day, some times reaching to the verge of disaster. This could be gauged from the behaviour of Hindu processionists on Hindu festivals since 1967 and onwards.

“5. The influential and sensible Hindus have kept themselves at a distance from the social and cultural life of the town. This tragic aloofness and isolation has provided an excellent opportunity for the communal-minded Hindus to carry on their vicious campaign of hatred and suspicion against the Muslims.

“6. It is worth noting that most of the miscreants and trouble-shooters, who come to the fore during Hindu festivals, belong to a particular group. This group has become very active and vocal due to the indifference of sensible Hindus. In the course of events, it has been conclusively proved that this particular group is mainly responsible for provocative and abusive slogans and throwing of ‘gula’ in mosque premises.

“7. In 1969 on the occasion of Shiv Jayanti the Peace Committee convened a meeting of prominent citizens belonging to both the communities. In this meeting the previous behaviour of Hindu processionists on Shiv Jayanti came forward for discussion. Muslim members complained of their misbehaviour and rowdism. They wanted an assurance from the Hindu members that no misbehaviour would characterise the coming Shiv Jayanti procession. But they refused to comply with any such assurance. After this certain fanatical Hindus walked out of the meeting. Significantly, the Shiv Jayanti procession,

in the absence of these mischief-mongers, passed very peacefully through the localities of the town.

“Nevertheless, the mischief-makers who had walked out from the Peace Committee meeting, had assembled with their supporters, at certain points where the procession was to pass. They selected Muslims who were in the procession and threw excessive ‘gula’ on them and shouted provocative slogans.

“8. In the same year, on Ganesh Chaturthi, three huge processions were taken out on three different days. It is to be noted that the routes selected by the processionists covered a number of mosques in the town. It is also significant that the group which walked out from the meeting of the Peace Committee, not only participated, but even organized these processions. The processionists indulged in the most provocative activities, by throwing ‘gula’ excessively into mosques and shouting abusive and insulting slogans. A number of Muslims were profusely smeared with ‘gula’, despite their dislike for it.

“9. After their walk out from the Peace Committee meeting, realising that they happened to be in a minority and so unable to dictate their terms, these communalists organized themselves into a group, known as Rashtriya Utsav Mandal under the leadership of Dr. Vyas and Bhaskar Mali. To start a campaign of hatred and mistrust against the Muslims, they began to hold weekly meetings in temples under the guise of prayer meetings (Prarthna). In these meetings they systematically tried to whip up the religious feeling of Hindus to the highest pitch, instigating them to rise up against the Muslims. Leaders of the Hindu Mahasabha and Jana Sangh were also invited from other places. With the passage of time they intensified their anti-Islamic and anti-Muslim activities.

“10. From 1970 they began to hold public meetings. People who were previously barred to enter Thana District came to address public meetings organized by the Mandal. In February alone, three such meetings were held, in which highly inflammatory speeches were made. This created a climate of distrust and suspicion against the Muslims. To add fuel to the communal fire, huge black-boards with abusive and provocative writings on them were displayed at specific places. It is significant to record that the Mandal has extended its campaign of anti-Muslim propaganda to adjoining villages. For the coming Shiv Jayanti festival they have invited a large number of people from these areas to join the procession. Their anti-Islamic propaganda in the neighbouring villages has agitated the minds of Muslims to a considerable extent.

“It should be added that the Mandal has always made it a point to adopt a hostile attitude towards the Muslims. Its hostility and brinkmanship remain unabashed even in Peace Committee meetings, in the presence of responsible Police and administrative officials.

“11. For the festivals of Muharram and Holi, which were to be celebrated on 18th and 21st March respectively, a meeting of the Peace

Committee was called, as is done on every important festival. It was regrettable that most of the right-thinking and sober Hindu members of the Peace Committee chose to be absent. In this meeting it was decided that all the members of the Peace Committee should make it a point to stand near Holi fire-pits when the 'tazia' procession would pass by them, and see to it that no disrespect to Holi is done. On their part, Muslims assured the Hindu members that they would do their best to see that the sanctity of Holi is respected. The Hindu members also assured the Muslims that they would see to it that fire is not enflamed out of all proportions. Thus the meeting came to an end.

"It is surprising to note that immediately after the meeting at about 1-00 a.m. the fire pits dug up at different places were made more spacious. One such wide pit was dug up at Nai Chawl. The following day S.R.P. men reduced the fire-pits. After some time they were broadened again. The Police could not trace the miscreants. It tried to approach the local responsible persons so as to know the mischief-makers, but nobody came forward to help them. Left with no alternative, the Police promulgated the order to arrest those who would lit up the fire pit. As a result of this some people were arrested. On this a morcha of about 300 people was taken to the police station. headed by Dr. Vyas.

"These circumstances created an atmosphere of distrust and tension in the town. In view of this, some prominent Muslims decided to move around Hindu localities, through which Moharram procession customarily passed. They asked local people for co-operation in restoring peace and harmony. They assured them of their fullest co-operation.

"On the night of 18th March Muharram procession started and passed peacefully through all the localities, till it came to Sutar Alli. Here big logs of wood were laid in the middle of the road with an intention to obstruct the way for the procession. The fire was intensively lit up and flames were rising high. It is significant to note that before the arrival of the procession at about 4-30 in the morning the local residents had woken up and enflamed the fire. This was witnessed by the police officials present. Moreover, contrary to earlier practice, Holi was enflamed at different places four days in advance. Apparently, it was done with an intention to create trouble. This can be substantiated by the fact that hardly any fire was enflamed anywhere after 10th of Moharram. Near the Sutar Alli temple some youngsters shouted provocative slogans. They were removed by the Police Inspector, Shri Pradhan.

"12. On the 10th of Moharram, that is, on the 19th of March, the 'tazia' procession started from Dargah Road. It passed very peacefully through different localities. Then it came to Old Wada Stand at about midnight, where a wide fire pit was covered with burning logs of wood and dried cow-dung pieces. The fire was so high that it was impossible for the procession to pass through. It is remarkable that

the arrangements for this were being made since the evening. Strangely enough, the responsible residents of the locality remained indifferent to what was being done.

“In the vicinity of the fire pit a band of 300 to 400 young boys alongwith the respectable persons of the locality had assembled. On the arrival of the procession some of them began shouting provocative slogans. The D.S.P., Shri Bhawe took note of this and issued certain orders to Inspector Pradhan. He ordered S.R.P. men to form a circle around the bonfire. Meanwhile, three Hindus succeeded in getting into the circle and started throwing dried cow-dung pieces into the pit. The D.I.G. and the D.S.P. ordered them to get out of the circle.

“While the procession was passing alongside the fire-pit, Mr. Bali Ram More, who is a responsible member of the Peace Committee, systematically tried to spread the false rumour that slogans of ‘Pakistan Zindabad’ were shouted by the processionists. The Collector, the D.I.G., the D.S.P. and a number of responsible police officers were present on this occasion alongwith prominent Muslims of the town. It was very irresponsible and mean on the part of Mr. More to make communal capital out of this baseless propaganda.

“13. It seems that all this was pre-planned, with certain *mala fide* intentions. The motive behind spreading the mischievous rumour of pro-Pakistan slogan was to malign the entire Muslim community, and make it a pretext for fulfilling their sinister designs. On a certain occasion Mr. More accused a prominent Muslim citizen of the town Mr. A. R. Punjabi, that he had abused the Hindu community and Hindu Dharma. This baseless charge was strongly refuted by the Dy.S.P. and other responsible police officers.

“The circumstances at Wada Stand created a very tense situation, and it was only after tremendous difficulty that the procession could pass off from Wada Stand. A similar situation arose near Jhanda Naka.

“14. In view of the facts enumerated above it becomes quite obvious that the Peace Committee which was meant to maintain communal harmony and peace, has failed its purpose. The Muslim members of the committee strongly feel that instead of creating an atmosphere of goodwill and understanding between Hindus and Muslims, it has become a vested interest in the hands of certain communal minded Hindus.

“We, therefore, are left with no alternative, in the interest of the peace of the town, except to abstain from the proceedings and deliberations of the Peace Committee.

“In view of the fact that usually trouble springs from certain aspects of the procession taken out on Shiv Jayanti, we suggest the following measures, so as to avoid any ugly incident.

1. No ‘gula’ should be used.
2. No provocative and abusive slogans should be shouted.
3. Being a national festival, the procession should have no Bhagwa flags.

4. The route of the procession should be fixed, in order to avoid potential trouble spots.

“ And finally, we reaffirm our commitment to maintain peace and harmony in the town. On our part, we shall try our best to see that no untoward incident takes place. In this respect, we assure you of our fullest co-operation.

Bhiwandi,
18th April 1970.

We remain,
Yours sincerely,

- | | |
|---|---|
| 1. Zubair Abdul Hamid Patel. | 18. Shabir Ahmed Ansari. |
| 2. Gulam Mustafa Fakhir. | 19. Sayad Abdul Aziz. |
| 3. Sikandar Fakhir
(Hon. Magistrate). | 20. Abdul Ahad Khateeb. |
| 4. Mohd. Ayub Panjabi
(Hon. Magistrate). | 21. Kharbe Immamuddin. |
| 5. Dr. H. Mukari. | 22. Momin Abdul Aziz. |
| 6. Ebrahim M. H. Madoo. | 23. Momin Mustak Ahmed. |
| 7. Mohammed Jasim A. Rashid
Sardar. | 24. Momin Ismail Jakhoo. |
| 8. Mohammed Bashir Peer
Mohd. | 25. Momin Ab. Ghafoor. |
| 9. (Smt.) Zaibunnisa Sayyad. | 26. Momin Mohayaddin. |
| 10. Memon Abubakar Musa. | 27. Momin Mohd. Umer. |
| 11. Gulam Mohd. Momin. | 28. Qureishi Mustaque Ahmed. |
| 12. (Smt.) Khairunisa Mohd.
Umar. | 29. Momin Mohd. Yusuf Hasan. |
| 13. Mohamad Siddique Mohd.
Bashir. | 30. Fakhir Mushtaque Ahmed
Badrudin. |
| 14. Mohd. Baquar Abdul Lateef. | 31. Momin Mohd. Ramzan. |
| 15. Mohd. Hanif Tahir. | 32. Sayyad Abdul Gafoor. |
| 16. Ansari Abdul Salem. | 33. Momin Mohd. Haroon Hani
Mohd. |
| 17. Anwar R. Bubere. | 34. Abdul Aziz M. Y. Mastim. |
| | 35. Dastgir Bala Hani. |
| | 36. Hani Tase. |
| | 37. Memon Umar Moosa. |

Forwarded with compliments to :—

1. The Chairman, National Integration Council (State Level), Maharashtra State, Bombay.
2. The Collector and District Magistrate, Thana.
3. D.I.G., Nasik Range (at Camp Thana).
4. D.S.P., Thana.
5. Dy.S.P., Bhiwandi.
6. LP., Bhiwandi Town Police Station, Bhiwandi.”

Whether the Muslim grievances and demands were justified ?

33.27 The said memorandum (Ex. P 15) listed the grievances of the Muslims and contained four demands. The evidence before the Commission clearly establishes that the grievances made by the Muslims in the said memorandum (Ex. P 15) were all of them substantially correct. So far as the four demands made in the said memorandum are concerned, no one can object to or characterize as unreasonable

the demand that provocative or abusive slogans should not be shouted. So far as the demand that no 'gural' should be thrown is concerned, the demand as framed is general in its terms and is not restricted to the throwing of 'gural' on Muslims or at or inside mosques, though the grievance made in the said memorandum was not about the throwing of 'gural' in general but to the excessive throwing of 'gural' on Muslims and into mosques. If the demand was a general one that no 'gural' at all should be thrown, it would be an unreasonable demand. Witness Mustafa Fakhri has stated that the objection to the throwing of 'gural' was only to the excessive throwing of 'gural' and throwing of 'gural' before mosques (B.R.W. 3/18/1422). If the said memorandum were read as a whole, the context supports what Mustafa Fakhri has deposed, but in the atmosphere then prevailing in Bhiwandi and the passions raised by the submission of this memorandum no one was likely to read the said memorandum coolly or dispassionately and it would have been far better had the said demand been phrased more carefully and had it expressly set out what was required by the Muslims instead of being phrased in such general terms. The demand that a procession should have no Bhagwa flag has been explained by Murtaza Fakhri to mean that as Shiv Jayanti was a national festival, the only flags to be carried in the procession should be the National Flags (B.R.W. 1/21/1369). This demand was characterized by the witness Mustafa Fakhri as not being an important objection. Whether important or not, the demand was made and, therefore, it has to be considered whether the said demand was reasonable or not. The Bhagwa flag is associated since time immemorial with Hindu religious festivals and is found hoisted on temples. It was also the flag adopted by Shivaji and the Marathas. Bhausaheb Dhamankar has pointed out two differences between the flag of Shivaji and the ordinary Bhagwa flag, namely, (1) that Shivaji's flag, known as Zari-pataka, had a Zari border and (2) that the outer edge of the Bhagwa flag is the apex of a triangle while the outer edge of the Zari-pataka was a triangle with the apex towards the flag staff (C.W. 2/34/1721). Apart from the fact that the Bhagwa flag is associated with the Hindu religion another objection of the Muslims to the Bhagwa flag appears to be that it has been adopted as their own flag by parties which are either communal Hindu parties or parties with communal leanings. Thus the Bhagwa flag is the flag of the R.S.S. (Ex. G 100). It is also the flag of the Shiv Sena which has also adopted a saffron coloured uniform for its Shiv Sainiks. It is also the flag of the Jan Sangh except that the Jan Sangh flag has a lamp in the centre. The object in adopting the saffron coloured flag or the saffron coloured uniform is not very difficult to understand. It is to take advantage of the religious significance and symbolism attached to the Bhagwa flag and the Bhagwa colour and thereby to lend an air of religious sanctity to the programmes and policies of the party concerned and to make it appear to the people that the party is the champion of the Hindus and Hinduism against all anti-Hindu

elements. It is thus the deliberate importing of a religious element into politics which in the context of the present-day politics in India can only mean a communal element. For example, in several speeches which have been produced before the Commission the Shiv Sena leaders and the R.U.M. leaders have time and again emphasized the Bhagwa flag and have called upon all Hindus to unite under it. According to Mustafa Fakhri, Bhagwa flags used to be carried in the Shiv Jayanti processions even prior to 1970 and had been a cause of friction between the communities and the matter was discussed in the Peace Committee meetings (B.R.W. 1/21/1370). On the other hand, Bhausaheb Dhamankar has deposed that what was carried in the Shiv Jayanti processions in Bhiwandi prior to 1970 were two or four large 'Zaripataka' flags and the Muslim objection was, therefore, to the 'Zaripataka' flag, very few ordinary Bhagwa flags having been carried in processions prior to 1970 (C.W. 2/34/1720-1). It is difficult for many people to distinguish between the plain Bhagwa flag and the 'Zaripataka' flag and in fact, none of the witnesses, except Bhausaheb Dhamankar, has sought to draw this distinction. As deposed by Dhamankar, in all Shiv Jayanti celebrations all over the State of Maharashtra it is the Bhagwa flag which is carried and not the National Flag (C.W. 2/34/1720). The Bhagwa flag is considered the flag of Shivaji and for this reason the demand that no Bhagwa flag should be carried but only the National flag must be considered an unreasonable demand. The last objection that the route of the procession should be so fixed as to avoid all potential trouble spots by and large amounted to saying that the procession should not go past the Nizampura Jumma Mosque. In the then vitiated atmosphere of Bhiwandi if the Shiv Jayanti procession had passed by any such trouble spot, a clash would have been certain to occur. Accordingly, this demand cannot be said to be unreasonable.

33.28 To summarise, in my opinion the grievances made by the Muslims in the said memorandum were correct and were justified. So far as the four demands made in the said memorandum were concerned, the demand that there should be no Bhagwa flag carried in the procession was unreasonable. Similarly, the demand that 'gulal' should not be used was an unreasonable demand and assuming that by this what was really intended was that there should be no excessive throwing of 'gulal' on Muslims or at or inside mosques the manner in which the demand was expressed did not make it at all clear that this was the real demand. The demand was couched in general terms and must therefore, be held to be unreasonable. The remaining two demands were reasonable and there was nothing objectionable about them.

The reasons for submitting the memorandum

33.29 Murtaza Fakhri and Sikandar Faquih have testified to the reasons which prompted the Muslims to decide not to attend the Peace Committee meeting but instead to submit the said memorandum [B.R.W. 1/1(7)/1359(4-5), 21/1368-9; B.R.W. 2/1(16)/1398(7)].

According to them, the attitude of a section of the Hindus created a feeling among the Muslim members of the Peace Committee that their efforts and co-operation were not appreciated and, therefore, any further efforts to take part in the deliberations of the Peace Committee appeared to be futile. The Muslims found that even after attending many Peace Committee meetings no progress was made and the Muslim public was criticizing the Muslim leaders and saying that there was no point in co-operating when what was agreed to in the Peace Committee meetings was not implemented. They also found that during the past two to three years most of the Hindu members of the Peace Committee used its meetings as a platform for ventilating their grievances against the Muslims which created bad feelings. As the Muslim leaders wanted to focus the attention of the Peace Committee on these facts, they decided to set out their grievances and their demands in writing. The memorandum also mentions the reasons which prompted the Muslims to present it. It laments the fact that the socially active and saner elements amongst the Hindus had remained by and large quite indifferent to the communal situation in the town and as a result of this the communal situation had been deteriorating daily, at times almost to breaking point. It also lamented the fact that the influential and sensible Hindu leaders had kept themselves aloof from the social and cultural life of the town, thus giving an opportunity to the communal-minded Hindu fanatics to carry on their campaign of hatred and suspicion against the Muslims. The memorandum accused the R.U.M. of fomenting communal tension and breeding communal hatred in the town.

33.30 There is considerable substance in what the Muslim leaders have deposed. The evidence before the Commission makes it clear that prior to the presentation of the memorandum the activities of the R.U.M had become more virulently and aggressively communal and were even taking a militant turn. This must necessarily have filled the Muslims with alarm, for they must have apprehended that just as it happened at the time of the Ganpati festival in 1969, the complete control of the 1970 Shiv Jayanti procession would pass into the hands of the R.U.M. which would spare no efforts to insult and provoke the Muslims. Though the Muslim leaders could have well listed their grievances and demands in a memorandum and submitted it to the Peace Committee prior to the meeting of April 19, 1970, their decision not to attend the said meeting was, however, an unfortunate one and equally so were their demands that no Bhagwa flag should be carried in the procession and that no 'gula' should be thrown without taking care to specify that what they meant was that there should be no excessive throwing of 'gula' on Muslims or at or inside mosques. By doing so they played into the hands of the R.U.M. and, as deposed by Murtaza Fakhir himself, gave an opportunity to people to interpret the said memorandum as "a mischievous threat", "a price demanded by Muslims for participating in the Shiv Jayanti procession" and as "a laying down of impossible conditions" [B.R.W. 1/1(7)/1359(5)]. The

R.U.M. and the Shiv Sena leaders made much of the two demands that no Bhagwa flag should be carried and no 'gural' should be thrown, with the result that while prior to the 1970 Shiv Jayanti hardly any Bhagwa flags were carried in the Shiv Jayanti processions, at the time of the 1970 Shiv Jayanti procession not only were thousands of Bhagwa flags carried in the procession but every Hindu house along the route of the procession had a Bhagwa flag hoisted on it (C.W. 2/34/1720-1).

The evidence of Hindu witnesses about the memorandum

33.31 The local Jan Sangh President Dr. Vyas has stated in his affidavit that all the allegations made in the said memorandum against the Hindus and the R.U.M. were false [J.S.W. 1/1(20)/2201(7)]. In the light of the evidence that has come on the record of the Commission, this appears to be an astonishing statement. The Shiv Sena Shakhapramukh Baliram More has also made a similar statement in his affidavit and has characterized the demands made in the said memorandum as 'objectionable' [S.S.W. 1/1(21)/2154(13-14)]. He was asked in cross-examination which statements in the said memorandum were false according to him. He replied that there were only two false statements in the said memorandum, namely, (1) the statement that wide Holi pits were dug in Thange Alli at the time of the 1970 Moharram procession, and (2) what was stated in the last subparagraph of paragraph 12 and in paragraph 13 of the said memorandum, that is, (a) that Baliram More spread a false rumour that slogans of "Pakistan Zindabad" were shouted in the 1970 Moharram procession, (b) that he wrongly accused Ayub Punjabi of abusing the Hindu community and the Hindu religion, and (c) that there were difficulties to the Moharram procession passing from Wada Stand and Zenda Naka. He thus accepted that the rest of the statements made in the said memorandum were true. He further stated that the only unreasonable demands in the said memorandum were those relating to the carrying of the Bhagwa flag and the route of the procession (S.S.W. 1/21/2163). These answers were given by him on December 16, 1971. At the conclusion of his evidence, on December 21, 1971 he made a statement that what he had previously stated was not correct and that whatever was stated in paragraphs 2, 3, 4, 5, 6, 8 and 13 of the said memorandum was false and that some of the statements made in paragraphs 9, 10, 11, 12 and 14 thereof were also false and he listed those statements. He further said that in addition to the two demands mentioned by him, the demand relating to the throwing of 'gural' was also unreasonable. In answer to the Commission he first stated that he had not discussed with anyone the evidence which he had given before the Commission. He then changed that statement to say that on the proceeding day he had a talk about it with his advocate and that his advocate had asked him about his evidence with reference to the said memorandum and he had replied that he had deposed only with respect to those things in the said

memorandum which related to him and not generally (S.S.W. 1/94/2198-99). This subsequent attempt by Baliram More to get out of his admission that apart from the statements mentioned by him the other statements in the said memorandum were correct was clearly an afterthought and the result of his realizing that he had by this admission damaged the Hindu case. As mentioned before, Baliram More has no regard for the sanctity of the oath and whenever it has suited him he has not hesitated to utter falsehoods in the witness-box. In sharp contrast to these two witnesses Bhausahab Dhamankar, who was one of the witnesses whose demeanour has impressed this Commission the most, has deposed that he agreed generally with the complaints about the behaviour of the communal-minded Hindus set out in the said memorandum and felt that the apprehensions of the Muslims as expressed therein were justified, but he felt (an opinion shared by the Commission) that instead of setting them out in the said memorandum they ought to have been discussed in the Steering Committee. He has further stated that apart from the demands with respect to the Bhagwa flag and the throwing of 'gula', there was nothing improper in the other demands (C.W. 2/34/1721-2).

33.32 An instance of how the said memorandum has been sought to be misinterpreted by interested parties is to be found in the cross-examination of D.M., Capoor (P.W. 59/22/1012). While he was in the witness-box he was asked the following question by Mr. Pathak, Counsel for the Hindu Mahasabha :

“Do you agree that the attack on the Shiv Jayanti procession on May 7, 1970 would have been averted by resorting to preventive detention of all the 37 signatories of the memorandum Exhibit P 15 ? ”

D.M., Capoor's answer requires to be reproduced *in extenso*. It was as follows :

“ Powers conferred upon a District Magistrate under the Preventive Detention Act are extraordinary powers to be exercised carefully and judicially. On April 19, 1970 the Muslim leaders had seen me and handed over to me a copy of the memorandum Exhibit P 15. When I questioned them, they informed me that their object was to persuade those responsible elder Hindu leaders of Bhiwandi who were not taking an active lead on the past two or three occasions to do so at this time and it was not in order to create a law and order situation. In fact, in the memorandum itself it is stated that their commitment to maintain peace and harmony in the town would remain unaffected and that they would try their best to see that no untoward incident took place and further they gave an assurance of their fullest co-operation in this respect.”

The meeting between S.P., Bhawe and the Muslim leaders

33.33 On April 17, 1970 a meeting took place at about 6 p.m. in S.P., Bhawe's office in Thana between S.P., Bhawe and six Muslim leaders, namely, Murtaza Fakhri, Sikandar Faquih, Dr. H. M. Mukri,

Gulam Mahomed Momin, Ibrahim Maddu and Anwar Bubere. Sudhakar, the Additional S.P., Thana, Dy.S.P., Diwate and P.S.I., G. S. Deshpande of C.I.D. (Int.) were also present. According to S.P., Bhawe, he had sent for these Muslim leaders on learning that the Muslim leaders might boycott the meetings of the Peace Committee to be held in connection with the Shiv Jayanti festival (P.W. 4/7/240). According to Murtaza Fakih, the Muslim leaders had called on the S.P. of their own accord (B.R.W. 1/53/1381). Murtaza Fakih's statement appears to be right because both in the report dated April 23, 1970 made by S.P., Bhawe himself to the D.M., Thana, (Ex. P 14) and in the report dated April 20, 1970 made by the D.I.G. (Int.) to the Home Secretary (Ex. G 321) which would be based on the report made by P.S.I., G. S. Deshpande of the State Intelligence, it is mentioned that a delegation of Muslim leaders had called on S.P. Thana, and neither of the two reports mention that S.P., Bhawe had sent for these Muslim leaders.

33.34 The gist of the discussion which took place at the said meeting is given in S.P., Bhawe's said report Exhibit P 14. From the said report it appears that the delegation informed S.P., Bhawe that the communal situation in Bhiwandi had deteriorated sharply during the preceding months, that the speeches of V. R. Patil, G. M. Puntambekar and Pandit Brijnarayan Brajesh at public meetings organized by the R.U.M. were mainly responsible for this, that a tense communal situation had been built up in Bhiwandi by systematic propaganda and activities of the R.U.M., and that as a result thereof the Muslim members of the Peace Committee had decided to stay away from these meetings and in order to make their viewpoint clear to submit a memorandum to the President of the Peace Committee. When S.P., Bhawe tried to point out to the Muslim leaders that their action was not likely to help in creating an atmosphere of communal harmony, the Muslim leaders countered with the argument that the saner elements amongst the Hindus had remained in the background and almost allowed the leadership to pass into the hands of the fanatic elements and that these fanatics, while they gave various assurances in the Peace Committee meetings, were themselves responsible for committing a breach thereof. The Muslim delegation also stated that it was their desire to precipitate a crisis and thereby jolt the saner elements amongst the Hindus into resuming the leadership of the community. Thereupon S.P., Bhawe pointed out to them that even assuming the leadership of the Hindu community in Bhiwandi had passed into the hands of the extremists, the extremists actually commanded and controlled the Hindu youth in Bhiwandi and as such, whether the Muslim leaders liked it or not, it was necessary for them to talk to the leaders of the R.U.M. and further that as the majority community in the town, it was their responsibility to see that peace was maintained. Bhawe also made it clear to them that their not attending the Peace Committee meeting in connection with the Shiv Jayanti celebrations would hurt the feelings of the Hindus and was likely to be misinterpreted in a manner disadvantageous

to the Muslims. Bhave also pointed out to them that any opposition to the playing of music or throwing of 'gula' in front of mosques would be an infringement of the rights of the Hindus in view of the High Court and the Supreme Court judgments and the Hindus would very strongly resent it. He also pointed out that in Nandurbar the Muslims had started screening their mosques with hessian cloth which was later on removed after a procession passed to prevent 'gula' from falling inside the mosque and that after this was done for a couple of years the Hindus of that place did not bother about their right to throw 'gula' and did not throw any 'gula' at the mosque. S.P., Bhave counselled the Muslim leaders to adopt the same tolerant attitude. The Muslim leaders, however, remained adamant in their decision not to attend the Peace Committee meeting and left after assuring the police officers that they were fully conscious of their responsibility to maintain peace and would take all necessary steps to do so in their localities at the time of the Shiv Jayanti procession.

The meeting between D.M., Capoor and the Muslim leaders

33.35 On April 19, 1970 Muslim leaders Murtaza Fakhri, Ibrahim Maddu, Rauf Punjabi, Zuber Patel and some others met D.M., Capoor at his residence at Thana and handed over to him a copy of the said memorandum. D.M., Capoor told them that the move to boycott the Peace Committee meeting was misconceived because Shiv Jayanti was a national festival and their abstaining from the Peace Committee meetings in connection with these celebrations would invite very adverse publicity against the Muslims of Bhiwandi and it would be better, therefore, if they abandoned the idea. The Muslim leaders were, however, adamant and stated that their object was not to create a law and order situation but to draw the attention of the saner elements in the Hindu leadership which had stayed away during the previous occasions and to awaken them and bring them in the forefront so that they might prevail upon the members of the R.U.M. to adopt a more reasonable attitude [Ex. G 23 (colly.); P.W. 59/1(30)/1000(15), 22/1012].

The handing over of the memorandum to Bhausaheb Dhamankar

33.36 Zuber Patel, the then President of the Bhiwandi-Nizampur Municipal Council, called G. N. Ranade, a clerk in the service of the Municipal Council, at his residence on April 18, 1970 and gave him the said memorandum Ex. P 15 with a letter addressed to Bhausaheb Dhamankar and Vasant Bhaskar Patil, the Vice-President of the Peace Committee. It was stated in the said letter that as Zuber Patel had to go out of Bhiwandi on urgent work he would not be able to attend the Peace Committee meeting and, therefore, Dhamankar and Patil should attend. Ranade handed over this letter and the said memorandum to Bhausaheb Dhamankar at about 1 p.m. on April 19, 1970. On reading the said memorandum Dhamankar tried to contact Murtaza Fakhri but was unable to do so as Murtaza Fakhri had gone out of Bhiwandi (G.W. 7/4/1239; C.W. 2/23/1710).

The Peace Committee meeting of April 19, 1970

33.37 The meeting of the Peace Committee which the Muslim leaders had decided to abstain from attending was held on April 19, 1970 at 10 p.m. in the Municipal Council Hall, D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhawe were present. The Muslim members did not attend the said meeting. Before the meeting commenced Bhausaheb Dhamankar discussed the said memorandum Ex. P 15 with some of the Hindu leaders. He, however, did not remember their names in the witness-box. Bhausaheb Dhamankar presided over the said meeting as the Municipal President Zuber Patel was absent. In the course of the meeting Baliram More took the said memorandum from Bhausaheb Dhamankar and circulated it amongst some of the members who read it (C.W. 2/23/1710). Dhamankar informed the members that he had received a memorandum from some members of the Peace Committee. He stated to the members that they should not allow the signatories to the said memorandum to part from them. Some members, including Sharad Patwardhan, Datta More, Dr. Vyas, Uddhav Teje, Hasमुख Thakkar and Baliram More, wanted the said memorandum to be read out to the meeting, while Bhausaheb Dhamankar and Zumberlal Kalantri were against this being done and Mohanlal Karwa and Balasaheb Joglekar wanted the members to be individually allowed to read the said memorandum after the meeting was over. Ultimately it was decided that the said memorandum should be discussed in the Steering Committee meeting. This meeting has featured in three reports, namely, S.P., Bhawe's report dated April 20, 1970 to the I.G.P. (Ex. G 62), D.M., Capoor's report dated April 20, 1970 to the Home Secretary (part of Ex. G 23 collectively) and the report dated April 23, 1970 from the D.I.G. (Int.) to the Home Secretary (Ex. G 322). A copy of the said memorandum was enclosed with each of the said reports.

The meeting of the Muslim leaders at the residence of Ibrahim Maddu

33.38 While the aforesaid Peace Committee meeting was going on, about 10 to 11 Muslim leaders, including Ibrahim Maddu, Ayub Punjabi, Zuber Patel, Sikander Faquih, Gulam Mahomed Momin, Gafoor Murshad and Imam Kharbe, met at the residence of Ibrahim Maddu. Head Constable Manjrekar (G.W. 9) had kept a watch on Ibrahim Maddu's house and he saw prominent Muslim leaders of Bhiwandi going in. The said Muslim leaders were going openly in their usual dress and not furtively or secretly, Manjrekar did not meet or talk to anyone who had participated in the meeting. He, however, came to learn from one of his confidential sources of information what had transpired at the said meeting and he made a report dated April 20, 1970 (Ex. G 178) in respect thereof to the Police Inspector, Thana Special Branch (G.W. 9/4/1285-6, 47/1311). According to Manjrekar's said report it was discussed at the said meeting that the said memorandum would become known to all the

persons in the town and that there would be discussions for and against it and the Muslim community would be accused of having resorted to a boycott and the Marathi newspapers would publish adverse writings against the Muslims. It was then decided that a press conference should be held either at Bombay or Bhiwandi at which the object of the Muslim leaders in submitting the said memorandum should be made clear. It was also decided at the said meeting that in view of the atmosphere prevailing in Bhiwandi the Shiv Jayanti should be celebrated by the Government chalking out a programme to which all Muslims should agree and even if the Government put any restrictions, the Muslims should accept them and celebrate the Shiv Jayanti. While the discussions were going on, a message was received from the D.M. and it was, therefore, decided that there should be no further discussions nor should there be any talk about the said memorandum nor should any press conference be held.

The R.U.M. meeting at Hanuman Tekdi

33.39 On April 20, 1970 the weekly Monday prayer meeting of the R.U.M. was held at Maruti Temple at Hanuman Tekdi. Inspector Pradhan's report dated April 21, 1970 on the said meeting is Ex. P 84. This report shows that the R.U.M. was becoming more aggressive. Dr. Vyas spoke first. After dwelling on the cultural heritage of India, he said that the country was being insulted and they had to take steps to prevent it. He then informed the meeting that at the time of the Peace Committee meeting on the previous day a memorandum was received, but when they demanded that it should be read out they were told that this could not be done, but the memorandum would be placed before the Steering Committee. Continuing he said that they would discuss the said memorandum at the Steering Committee meeting and rebut the allegations made against the R.U.M. Uddhav Teje speaking next said:

“We shall never tolerate insult to the Bhagwa Flag voiced in the memorandum. *We respect the cow like our mother and the bull like our father.* Because of their toils we get food. *They (Muslims) do not know their mother.* The memorandum was handed over on 19-4-70. In spite of that Shiv Jayanti procession would be taken out.”

Lohagaonkar said that the Hindu religion had taught them tolerance towards other religions, but injustice had been done to the Hindus and, therefore, they should thenceforth forget the teachings of tolerance. Pandu Vastad announced that Hanuman Temple was on a considerable height and, therefore, from the next day he would impart daily physical training at the R.S.S. Sangh Maidan. At that point a Rajasthani Marwadi got up and announced to the meeting that he was donating a sum of Rs. 21 and a kilogram of sweetmeats to the R.U.M. and said that as the Muslims were preparing, the Hindus should also prepare and that stones should be answered with stones.

33.40 Bhaskar Mali then announced that public meetings would

be held at Pimpalas village on April 23, 1970, at Karivali on April 25, 1970 and at Dunga Vadghar village on April 26, 1970, all of which would be addressed by Ramesh Sambhus. Ramesh Sambhus, however, could not come and therefore, these meetings were not held (P.W. 4/169/687).

The withdrawal by Abdul Salam Ansari of his signature on the memorandum

33.41 On April 20, 1970 Abdul Salam Abdul Razak Ansari wrote a letter addressed to the Chairman of the Peace Committee alleging that he had put his signature to the said memorandum (Ex. P 15) because he was told that the said memorandum was only in respect of Peace Committee meetings at which young boys who were not members attended as a result of which there used to be confusion and that, therefore, there should be non-co-operation with the said Peace Committee meeting. In the said letter he further stated that he did not agree with any of the matters mentioned in the said memorandum and, therefore, was sending the said letter by way of explanation. According to the evidence of the municipal clerk, Gopal Ranade (G.W. 7), Abdul Salam who was a Municipal Councillor, came to the municipal office on April 20, 1970 at 10 a.m. and handed over to Ranade a letter. Ranade took the said letter to Zuber Patel who asked Ranade to file it. The next day after 10 a.m. Abdul Salam again came to the Municipal Office and asked Ranade to return to him the said letter as he wanted to make an amendment therein. Ranade, instead of giving him the said letter, first got a copy of the said letter typed out by a typist in the office in the presence of Abdul Salam and then handed over the original letter to Abdul Salam. Abdul Salam took away the original with him and did not return it. On a carbon copy of the said letter there is an endorsement dated April 21, 1970 made by Ranade to the effect that on the said letter being handed over to him he had immediately shown it to the President of the Peace Committee, Zuber Patel, who did not make any endorsement thereon and the said application was at that time read by some other members also. The said endorsement further states that Abdul Salam came to the office at 2-30 p.m. that day and asked for the said letter stating that he would give it back after making some amendment. This endorsement has been signed and dated by Ranade. Below this endorsement there is another endorsement stating that a copy of the said letter had been prepared and kept. This too has been signed by Ranade, but it does not bear any date. The said carbon copy is Ex. G 154. According to Ranade, the only person to whom he had shown the original letter of Abdul Salam was Zuber Patel and he had not informed anyone about Abdul Salam having taken away the original letter or about the copy which he had made or the endorsement made thereon (G.W. 7/5/1239-40). In cross-examination he stated that he got two copies of Abdul Salam's letter typed out because Abdul Salam wanted one copy and

Ranade wanted to keep a copy for his record. He has further deposed that both these said endorsements were made at the same time but could give no explanation why he should have made two separate endorsements. He further stated that he got only two copies of the said letter made (G.W. 7/23/1250). Baliram More has, however, stated in evidence that Ranade gave him two copies of the said letter (S.S.W. 1/61/2183). Both these copies were produced by Baliram More and put in and marked Ex. SS 10. Both these copies were carbon copies. Baliram More had also annexed a copy of the said letter to his affidavit. Similarly a copy of the said letter has been produced from the police record and marked Ex. G 202. Ranade's evidence on a number of points has been found to be unreliable and untrustworthy and in the circumstances I do not accept his statement that only two copies of the said letter were got made by him. It appears that he had several copies of Abdul Salam's said letter made and handed over two of them to Baliram More. In his affidavit Baliram More has alleged that on the evening of the day on which Abdul Salam handed over his letter to Ranade, a meeting was held by the Muslims at which Abdul Salam was reprimanded and next day boards were put up in Bhiwandi on which was written, "Salam Hinduonka Sath Deta Hai" (Salam is supporting the Hindus), "Salam Gaddar Hai" (Salam is a traitor), and "Salam Gajkaran Hai" (Salam is ring-worm) [S.S.W. 1/1(21-22)/2154(14)].

33.42 The cross-examination of Baliram More and the circumstances of the case make it clear that Abdul Salam was made by Baliram More to write the aforesaid letter. Abdul Salam who was a Municipal Councillor had defected in February 1969 to Baliram More's group which thereupon became the majority group in the Municipal Council. Baliram More had promised Abdul Salam the Municipal Presidentship as the price of his defection and he in fact was thereafter elected the Municipal President and was supported by Baliram More's group during his tenure as Municipal President. [P.W. 4/1(14)/236(7-8); S.S.W. 1/50/2173]. Abdul Salam throughout continued to belong to Baliram More's group. Baliram More has admitted that when Abdul Salam had come to the Municipal Office Baliram More had asked him why he had signed the said memorandum telling him that he did not like Abdul Salam to sign a memorandum in which false allegations were made against him, that is, Baliram More. Baliram More has, however, denied that he suggested to Abdul Salam that he should write the said letter. Since the said letter followed almost immediately after the talk between Baliram More and Abdul Salam it is difficult to accept Baliram More's denial. Baliram More has given two versions of how Ranade got copies of the said letter made. The first version given in his affidavit is that on April 21, 1970 he saw in Bhusar Mohalla an Urdu board against Abdul Salam, which Sub-Inspector Chivane, who was there, interpreted for him. He then went to Ranade and told him to take out copies of Abdul Salam's said letter. Accordingly, Ranade took out

copies and gave them to Baliram More. The second version given in cross-examination is that when he saw the said board he went to the Municipal Office and asked Ranade whether Abdul Salam had written a letter to the Municipal President and that on Ranade answering in the affirmative he asked Ranade to give him the said letter to read which Ranade did and that thereafter he asked Ranade to take out a copy and give it to him. He has further deposed that after he left the Municipal Office he met Abdul Salam who told him that the Muslims had held a meeting the previous evening at which they had reprimanded him (that is, Abdul Salam). He has further deposed that when he had gone to see Ranade, Ranade told him that Abdul Salam had taken back the original letter and that it was on this occasion that he got copies made by Ranade. He has further stated that both the aforesaid versions, namely, the one given in his affidavit and the other in his cross-examination, were true and he has sought to reconcile them by stating that after he had told Ranade to take out a copy he left but returned at about 11 or 11-30 a.m. for the copies when Ranade told him that Abdul Salam had taken away the original letter. In his affidavit he had, however, stated that Abdul Salam took away the said letter in the afternoon of April 21, 1970. In cross-examination he stated that the said statement in his affidavit was not correct. He was asked to explain what had made him inquire from Ranade whether Abdul Salam had written a letter to the Municipal President when, according to his evidence, Abdul Salam had neither told him that he had intended to write a letter withdrawing his signature, nor that he had written such a letter, nor had the Municipal President Zuber Patel informed him that Abdul Salam had written such a letter. He sought to explain this away by stating that he had made this inquiry from Ranade because the Urdu board which he saw in Bhusar Mohalla was to the effect that Abdul Salam had written a letter to the Chairman of the Peace Committee against the Muslims (S.S.W. 1/53-54/2174-6). In paragraph 22 of his affidavit he has set out the legends on the boards alleged by him to be put up against Abdul Salam. These legends have been reproduced above in paragraph 33.41. Not one of these legends even remotely suggests that Abdul Salam had written a letter. Baliram More had also written a letter dated April 28, 1970 (Ex. 557) to the Inspector, Bhiwandi Town Police Station, in connection with Abdul Salam's signature on the said memorandum and his said letter withdrawing it. In the said letter also Baliram More has set out the legends on the boards alleged to be put up against Abdul Salam, they being "Salam Gajkarana Hai" and "Salam Gaddar Hai". These are two out of the three legends set out in his affidavit. Further, the said letter makes no mention of any meeting of the Muslim leaders held in the evening of April 20, 1970 at which Abdul Salam was reprimanded. S.P., Bhaye has stated in his evidence that no such boards as alleged by Baliram More were at any time noticed by the Police (P.W. 4/90/610). If, as deposed by Baliram More, Sub-Inspector Chivane had translated for him the

Urdu writing on the board, Chivane would have made a report about the said board to his superiors. The fact that there is no such report shows that no such boards as alleged by Baliram More were put up.

33.43 I have already in the course of this Report expressed my opinion about Baliram More's unreliability as a witness. For the reasons set out above I disbelieve his testimony. The evidence makes it clear that it was under pressure from Baliram More that Abdul Salam wrote the said letter to the Municipal President withdrawing his signature on the said memorandum and that it was Baliram More who made the clerk Ranade take out copies of the said letter so that Baliram More could make such use of them as he thought fit.

The Steering Committee meeting of April 21, 1970

33.44 A meeting of the Steering Committee was held on April 21, 1970 at 9 p.m. It lasted till 4 a.m. the next morning. It was attended by the Muslim leaders. It was also attended by D.M., Capoor, S.P., Bhawe, the Addl. S.P., Thana, and Dy.S.P., Diwate. The report dated April 21, 1970 on this meeting is Exhibit G 65. The minutes of this meeting kept by the municipal clerk Ranade are Exhibit G 155. This meeting also forms one of the subject-matters of the report dated April 25, 1970 from the D.I.G. (Int.) to the Home Secretary (Ex. G 323). At this meeting charges and countercharges were made by leaders of both communities at one another and particularly against the activities of Dr. Vyas, Baliram More and the R.U.M. Old incidents were raked up, Dr. Vyas even referring to a communal riot said to have taken place in Bhiwandi in 1837. Ultimately, the following decisions were arrived at:—

- (1) Shiv Jayanti should be celebrated jointly by the Hindus and the Muslims in a friendly spirit.
- (2) The R.U.M. and the Peace Committee should make organized efforts to see that 'gular' was not thrown on mosques.
- (3) Only those slogans which were approved for the 1969 Shiv Jayanti procession should be shouted in the procession and no slogans should be shouted and no act done which would hurt anyone's religious sentiments.
- (4) There should be no objection to the Bhagwa flag.
- (5) Zumberlal Kalantri and the M.L.A. Bhai Patil should call on April 22, 1970 a joint meeting of five persons from Dr. Vyas' group and five persons, including Anwar Bubere, from Nizampura and decide the question of the route of the procession.

The meeting of the residents of Nizampura

33.45 As a meeting of the five representatives of the Nizampura locality and five of the R.U.M. was to be held at Zumberlal Kalantri's house in the night of April 22, 1970 to decide upon the route of the procession, a meeting of the residents of Nizampura was held in the afternoon of that day at 4 p.m. at the residence of Abdul Satar to obtain the views of the residents of Nizampura about the Shiv

Jayanti procession passing through that locality. This meeting has been reported upon by P.S.I., G. S. Deshpande of the State Intelligence in his report dated April 24, 1970 to the D.I.G. (Int.) (Ex. P 654) and by the D.I.G. (Int.) to the Home Secretary in his report dated April 25, 1970 (Ex. G 323). About 60 persons, including Ibrahim Maddu, were present at the said meeting. The younger persons opposed the idea of the Shiv Jayanti procession passing through Nizampura and even insisted that the leaders should give them a promise that they would adopt this attitude at the meeting that night. The senior leaders pointed out to them that the R.U.M. leaders and the other Hindu leaders had given a promise that the procession would be orderly, that no 'gula' would be thrown on the mosques, that only the approved slogans would be shouted, and that if the Muslim attitude on the question of the route of the procession was to be inflexible, it was no use attending the meeting at Kalantri's residence. They also pointed out that it was the right of the Hindus to take the procession by any route they wanted and this right could not be denied to them any longer, though the leaders had been able to stall such a move for the last two years. Ultimately, the younger section in the meeting was persuaded and it was agreed to allow the leaders to discuss the question of the route bearing in mind the best interest of the residents of the Nizampura locality.

The meeting of the representatives of the R.U.M. and of the Nizampura locality

33.46 As agreed upon at the Steering Committee meeting held on April 21, 1970 a meeting of the five representatives of the R.U.M. and five of the Nizampura locality was held at the residence of Zumberlal Kalantri at 11 p.m. on April 22, 1970. The five representatives of the R.U.M. were Sharad Patwardhan, Shantaram Tavre, Uddhav Teje, Dilip Tamhane and Pandurang Vastad. The five representatives of the Nizampura locality were Haji Miyan Tase (B.R.W. 67), Dastagir Handi, Imam Kharbe, Abdul Gafoor Badrudin and Abdul Aziz. In addition, other Hindu and Muslim leaders were present, namely Bhausaheb Dhamankar, Dr. Vyas, Balasaheb Joglekar, Baliram More, Bhaskar Mali, Anwar Bubere, Sikander Faquih and the M.L.A. Bhai Patil. The officers who were present were Dy.S.P., Diwate, Inspector Pradhan, G. L. Sane, the Tahasildar and Taluka Magistrate, Bhiwandi (P.W. 110) and P.S.I., G. S. Deshpande of the State Intelligence (P.W. 60). The meeting lasted till 1-30 a.m. on April 23, 1970. S.P., Bhave's report dated April 29, 1970 on this meeting is Exhibit G 66, D.M., Capoor's report dated May 5, 1970 on this meeting is part of Exhibit G 24 (collectively). What transpired at this meeting was also reported upon by D.I.G. (Int.) in his report dated April 25, 1970 to the Home Secretary (Ex. G 323). A number of witnesses have also deposed about this meeting, including D.M., Capoor, S.P., Bhave, Inspector Pradhan, Bhausaheb Dhamankar, Zumberlal Kalantri, Sikander Faquih and

Haji Miyan Tase [P.W. 59/1(33)/1000(17); P.W. 4/1(63)/236(36); P.W. 38/1(81)/867(26); C.W. 2/1(25)/1692(20); N.H.W. 42/1(12)/2033(7), 7/2038; B.R.W. 2/1(18)/1398(8-9); and B.R.W. 67/1(10-11)/1630(4-5)]. The attitude of the Muslim leaders at the said meeting was that in view of what had happened in the past, the R.U.M. leaders should not insist on the procession going past the Nizampura Jumma Mosque or through the Nizampura locality but instead conduct the procession in a peaceful manner and thus create confidence amongst the Muslims of Nizampura and allay their apprehension that if the Shiv Jayanti procession passed through Nizampura an untoward incident would take place. No final decision could, however, be arrived at at this meeting. The evidence of the witnesses and the aforesaid detailed reports on this meeting make it clear that this was due to the arrogant and aggressive attitude adopted by the R.U.M. leaders and particularly Uddhav Teje. Zumberial Kalantri did not approve of the tone and the manner in which Uddhav Teje spoke nor of his behaviour and reprimanded him and told him that if he wanted to persist in this behaviour he should leave his house. Some of the R.U.M. leaders, including Uddhav Teje, even threatened to resort to a 'dharna' if the procession was not allowed to pass the Nizampura Jumma Mosque and further threatened that they would not care for the Police or the Government, while Shantaram Tavre threatened that if the route they wanted was not conceded, the Id-e-Milad procession would never be allowed to pass off peacefully. Bhausaheb Dhamankar left the meeting with an apprehension that the crisis had not been averted and that a critical time had come.

33.47 The aforesaid five representatives of the Nizampura locality thereafter sent a memorandum dated April 24, 1970 (Ex. P 528) addressed to the Chairman of the Peace Committee setting out what had transpired at the said meeting held in Kalantri's house. Copies of this memorandum were forwarded to the Chairman of the State National Integration Council, the D.M., Thana, the D.I.G. (B.R.), the S.P., Thana, the Dy.S.P., Thana, and Inspector, Bhiwandi Town.

The Peace Committee meeting of April 24, 1970

33.48 A meeting of the Peace Committee was held on April 24, 1970 at 10 p.m. under the presidentship of Zuber Patel and lasted till 2 a.m. on April 25, 1970. D.M., Capoor, D.I.G. (B.R.) Gokhale (G.W. 4), the Addl.S.P., Thana, Deo and S.P., Bhawe were present. This meeting is the subject-matter of three reports, namely, the report dated April 29, 1970 from S.P., Bhawe to the I.G.P. (Ex. G 67), the report dated April 25, 1970 from Head Constable Manjrekar to the Inspector, Special Branch, Thana (Ex. G 179) and the report dated April 30, 1970 from D.I.G. (Int.) to the Home Secretary (Ex. G 325). At the said meeting Dhamankar read out the said memorandum from the said representatives of the Nizampura locality and informed the Peace Committee about what had happened at the said meeting in Kalantri's house. The meeting started out in a heated atmosphere.

Dr. Vyas, however, took a conciliatory attitude and said that the R.U.M. was making restrictions with respect to the sprinkling of 'gula' and was taking the responsibility that only the permitted slogans would be shouted and that if anyone sprinkled 'gula' or uttered unapproved slogans, the Police should remove him from the procession and the R.U.M. people would help the Police in doing so. He said that this was the undertaking being given by the R.U.M. and in view of that the Muslims should allow the R.U.M. to take the procession past the Nizampura Jumma Mosque. Thereafter about eight or ten Muslim leaders went into a side room for consultation. After some time Ibrahim Maddu came out and said that Bhausaheb Dhamankar, Shantaram Tavre, Dr. Vyas, Balasaheb Joglekar and others should have a discussion for about half an hour with the D.M., the D.I.G. and the S.P. and decide the question of the route of the procession and place it before the meeting. Dattatraya More, however, objected to the Government officers taking part in the discussion. The meeting again threatened to take a heated turn. Dattatraya More insisted that the procession should be allowed to pass the Nizampura Jumma Mosque and said that he was prepared to take full responsibility for seeing that no untoward incident happened while the procession was passing through the Nizampura locality. Thereafter as charges of partiality were made against Dhamankar, Dhamankar refused to take further part in the discussion. Ibrahim Maddu and a few other leaders, however, took Dhamankar into an adjoining room and persuaded him to continue to participate in the discussion. Finally, Dhamankar and a few other Hindu leaders discussed the matter for half an hour with the Muslim leaders and the Government officers privately in an adjoining room. During these discussions complaints were again made about the speech made by Uddhav Teje. Ultimately, Ibrahim Maddu suggested that Uddhav Teje should tender an apology and Dr. Vyas took Uddhav Teje aside and persuaded him to give an apology. Thereupon the Muslim leaders conceded the route demanded by the R.U.M., a demand which was also supported in that meeting by the Hindu members of the Peace Committee belonging to the Congress. Dr. Vyas thanked the Muslims for consenting to this route and said, "By this a great responsibility has been foisted on us and I assure you all that we shall discharge this burden honestly and faithfully". Thereafter members of various committees were appointed. The meeting ended in a happy mood and immediately thereafter the Muslim leaders invited the Government officers and the Hindu leaders to the Urs of the Divanshah Dargah and served them with tea and snacks [P.W. 4/63(30)/595(19) ; P.W. 59/18/1010].

The office-bearers of the Shiv Jayanti Utsav Samiti and other Committees

33.49 At the aforesaid meeting of the Peace Committee held on April 24, 1970 the following six committees were appointed :—

- (1) the Shiv Jayanti Utsav Samiti,

- (2) the Finance Committee,
- (3) the Programme Committee,
- (4) the Decoration Committee,
- (5) the Procession Committee, and
- (6) the Procession Control Committee.

33.50 A list of the office-bearers of these committees is given in Ex. P 549 the office-bearers were :

THE SHIV JAYANTI UTSAV SAMITI

President : President of the Municipal Council, Zuber Patel.

Executive President : (1) Balasaheb Joglekar.

Cashier : Mohanseth Karva.

Secretaries :

- | | |
|----------------------|-------------------|
| (1) Bhaskar Mali, | (3) Baliram More, |
| (2) Shantaram Tavre, | (4) Yusuf Hasan. |

Vice-Presidents :

- | | |
|----------------------|---------------------|
| (1) Anwar Bubere, | (4) Dr. B. P. Vyas, |
| (2) Datta Bhopatrao, | (5) Gafoor Sayad, |
| (3) Parsharam Tavre, | (6) Ibrahim Maddu. |

Members :

- | | |
|--------------------|--------------------|
| (1) Dilip Tamhane, | (3) Rajaram Kodam. |
| (2) Bhai Nagale, | |

THE FINANCE COMMITTEE

- (1) Deoraj Raka

The other members of this Committee were to be co-opted later.

THE PROGRAMME COMMITTEE

Chairman : Dr. B. P. Vyas.

Members :

- | | |
|-----------------------|------------------------|
| (1) Umar Shafak, | (3) Sharad Patwardhan, |
| (2) Hasamukh Thakkar, | (4) Madhu Kunte. |

THE DECORATION COMMITTEE

Chairman : Savalaram Barku Kale.

Members :

- | | |
|------------------------|-----------------------|
| (1) Balchandra Vadgal, | (6) Gafur Murshad, |
| (2) C. C. Bhise, | (7) Yusuf Momin, |
| (3) Parsharam Tavre, | (8) Balkrishna Bhoir, |
| (4) Mustaq Momin. | (9) Suresh Kondlekar, |
| (5) A. B. Sayed, | (10) Bapu Nagle. |

THE PROCESSION COMMITTEE

Chairman : Pandu Vastad

Members :

- | | |
|----------------------|---------------------------|
| (1) Laxman Bura, | (4) Laxman Dhondu Chavan, |
| (2) Haji Tase, | (5) Ramayya Bhummayya, |
| (3) Sikandar Ansari, | (6) Murtaza Fakih, |

Members ·

- | | |
|------------------------|----------------------------|
| (7) C. C. Bhise, | (23) Mustaq Momin, |
| (8) K. L. Durve, | (24) Sharad Patwardhan, |
| (9) Uddhav Teje, | (25) Mustaq Qureshi, |
| (10) A. B. Syed. | (26) Hasmukh Thakkar, |
| (11) Dr. B. P. Vyas, | (27) Dr. D. M. Gandhe, |
| (12) Shantaram Tavre, | (28) Dr. H. M. Mukri, |
| (13) Bagaram Joshi, | (29) Shankar Mundhe, |
| (14) Bhaskar Mali, | (30) Rajaram Kodam, |
| (15) Babushet Pingale, | (31) Ambadas Ballal, |
| (16) Vasanttrao Patil, | (32) Shankar Kolekar, |
| (17) S. M. Sawant | (33) Sakharam Pimpalkhare. |
| (18) Rajaram Phadtare, | (34) Mustaq Fakih, |
| (19) Ibrahim Maddu, | (35) Datta Punyarthi, |
| (20) Savlaram Kale, | (36) S. V. Dhamankar, |
| (21) Anna Mistri, | (37) Dastgir Handi. |
| (22) Jaseem Sardar, | |

THE PROCESSION CONTROL COMMITTEE

- | | |
|------------------------|--------------------------|
| (1) Dr. B. P. Vyas, | (9) Zumberlal Kalantri, |
| (2) S. V. Dhamankar, | (10) Zuber Patel, |
| (3) Mohan Seth Karva, | (11) Shantaram Tavre, |
| (4) A. K. Sayad, | (12) G. M. Momin, |
| (5) Murtaza Fakih, | (13) Baliram More, |
| (6) Ibrahim Maddu, | (14) Balasaheb Joglekar, |
| (7) Jasim Sardar, | (15) Sikandar Fakih. |
| (8) Sharad Patwardhan, | |

The reason for the Procession Control Committee

33.51 It was in 1970 that for the first time a Procession Control Committee for the Shiv Jayanti procession was appointed. The reason for setting up this Committee has appeared in the evidence of Bhausahab Dhamankar. It was that at the meeting of the Muslim and the Hindu representatives held in the house of Zumberlal Kalantri the Muslim leaders wanted an assurance not only from the leaders of the R.U.M. but from the leaders of all sections and also from the Government officers that the procession would be properly controlled and the behaviour of the processionists would be proper. As Bhausahab Dhamankar has stated, "In order to achieve this a Procession Control Committee consisting of both Hindus and Muslims was suggested and formed This was done on account of the prevailing tension and the apprehension in the minds of the people" (C.W. 2/35/1722-3).

The Urs of Divanshah Dargah

33.52 The Urs of Divanshah Dargah which usually lasts for 7 days was celebrated in 1970 from April 22, 1970 to April 29, 1970. A number of Hindus from surrounding villages also attended this Urs

as was customary with them (P.W. 4/284/771). The R.U.M. made a written complaint dated April 21, 1970 to the D.M. (Ex. P 638) that loud speakers were being used in the said Urs throughout the night without taking permission. On the face of it this is a somewhat strange complaint since the Urs had not even commenced on the date of the said complaint. D. M., Capoor referred the complaint to S.P., Bhawe and by his letter dated June 25, 1970 (Ex. P 639) Bhawe intimated to the D. M., that during the Urs a loud speaker was used only till 11 p.m. after obtaining permission and that no loud speaker was used beyond the permitted time or without permission. The said complaint also stated that in most of the mosques in Bhiwandi the 'Bang' (call for prayer) was given daily on loud speakers in breach of the law. This topic has already been dealt with in paragraph 18.7.

33.53 It has been alleged in the Bhiwandi Conspiracy Case and also before the Commission that in the said Urs swords, spears and other weapons were on sale and were purchased by the Muslims in preparation for the disturbances which they had planned to start on May 7, 1970. This topic properly belongs to the Chapter on the Bhiwandi Conspiracy Case and will be dealt with therein.

The visit of Suleman Sikander

33.54 Suleman Sikander, the All-India Organizer of the M.T.M., paid a visit to Bhiwandi on April 24, 1970 and stayed there till April 27, 1970. This visit has been dealt with in the confidential weekly report for the week ending May 7, 1970 made by D.M., Capoor (Ex. P 622). It appears that prior to Suleman Sikander's visit Sardar Zafrullakhan had submitted his resignation from the M.T.M. Suleman Sikander met him and requested him to withdraw his resignation. Suleman Sikander also gave guidance to the workers of the Bhiwandi Branch of the M.T.M. in their organizational work. On April 28, 1970 Suleman Sikander went to Kalyan and after giving guidance to the M.T.M. workers of the Kalyan M.T.M. Branch in organizational matters he returned to Hyderabad on April 29, 1970.

Baliram More receives an anonymous letter

33.55 On April 25, 1970 an anonymous letter was received by Baliram More threatening him that he should not speak anything against Islam in the Peace Committee and that if he did so, he would be murdered and revenge would be taken for Ahmedabad. This topic has been dealt with in paragraphs 19.13 and 19.14.

The meeting between D.M., Capoor and the R.U.M. leaders

33.56 On April 27, 1970 at about 8 p.m. the R.U.M. leaders, Bhaskar Mali, Sharad Patwardhan, Uddhav Teje and some others, met D.M., Capoor at his residence. They appeared to be in a joyous mood and said that they were very happy about the settlement which had taken place in the Peace Committee meeting. At the said Peace

Committee meeting Capoor had told the R.U.M. members that they should improve their behaviour. At the said meeting with D.M., Capoor the R.U.M. leaders referred to Capoor's said statement and asked him what he meant by it. Accordingly, Capoor talked to them about the makings of a true leader and pointed out to them that it was the character of the individual which counted and that what was important was to see that the Shiv Jayanti procession passed off peacefully and that if they thereafter came to him again, he could tell them what pitfalls to avoid. According to D.M. Capoor, the R.U.M. leaders appeared to be conscious of their responsibility to conduct the Shiv Jayanti procession peacefully and expressed this in so many words, but they wanted the administration to clear the Nizampur area of miscreants and missiles, if any, by taking searches of the Nizampur Jumma Mosque. In cross-examination when asked whether it appeared to him that the R.U.M. leaders were pretending that they would share the responsibility of maintaining the peace during the Shiv Jayanti procession, he replied that it did not appear to him to be so and that the said R.U.M. leaders were young and seemed open-hearted and that there was a frank talk between them and him for about an hour or so [P.W. 59/1(40)/1000(21), 77/1042].

The invitation to Mr. Kalyanrao Patil

33.57 During the course of their talk with him on April 27, 1970 the R.U.M. leaders informed D.M., Capoor that Zumberlal Kalantri had extended an invitation to Mr. Kalyanrao Patil, the then Minister of State for Home and Labour, to lead the Shiv Jayanti procession. Kalantri had not consulted Capoor. Thereafter Capoor had a talk with S.P., Bhawe and consulted him whether it was advisable for Mr. Patil to attend a function which had raised so much controversy earlier. Bhawe suggested that the presence of a Minister would hamper the Police as the Police would have to remain with the Minister and thus the energies and attention of the police-officers would be diverted from other bandobast and, therefore, it was better to suggest to Mr. Patil not to accept the invitation. Thereupon Capoor rang up Mr. Patil and asked him if he had been invited for participating in the Shiv Jayanti procession and whether he had accepted the invitation. Mr. Patil said that he was still thinking over the matter and had not yet accepted the invitation. Thereupon Capoor asked his permission to express his opinion and on Mr. Patil agreeing to his doing so, Capoor advised him not to go. Accordingly, Mr. Patil did not accept the said invitation [P.W. 59/1(40)/1000(21), 25/1013-4].

The R.U.M. meeting in the Satyanarayan Temple

33.58 The weekly prayer meeting of the R.U.M. was held on April 27, 1970 at 10-15 p.m. in the Satyanarayan Temple at Dhamankar Naka. Head Constable Manjrekar's report on the said meeting is Exhibit P 85. About 100 persons attended the meeting. Dr. Vyas spoke at the said meeting. He said that the R.U.M. had completed

one year of its existence, that the first phase was over and that it had achieved a victory because it believed in truth and had brought about unity amongst the Hindus, the victory being the securing of permission to take out the Shiv Jayanti procession through the Nizampura locality. He informed the audience that the R.U.M. had accepted certain restrictions in connection with the procession and that the said restrictions were not imposed upon them. He asked the audience to throw 'gula' in such a way that no one's religious feelings would be hurt and that it should not fall on anyone's religious place or anyone's house. He further told the audience that the slogans would be about the Hindu religion and Chhatrapati Shivaji's Hindu religion and apart from that no other slogans such as "Murdaabad" or "Ek. Do, Chhakka," etc., should be shouted. He said "We shall take out the procession unitedly. Show it to your opponents that you are behaving according to your promises. This is the time of test for you". It will be recollected that the approved slogans were those which were approved for the 1969 Shiv Jayanti and the list of approved slogans did not contain any slogans referring to the Hindu religion. Dr. Vyas also told the audience that there was no objection to the carrying of the Bhagwa flag. He then referred to the discussions which had taken place in the Peace Committee meeting over the said memorandum (Ex. 15). He said :

"We have convinced them that all the allegations are false. If we say cow is our mother, they ask what was your relation with the bull. About throwing 'gula' they asked how would you feel if we throw mutton. They are comparing 'gula' with mutton.

We have followed the path of truth and accepted these restrictions. We must continue to follow the path of truth in this organization."

This part of Dr. Vyas's speech can hardly be said to be calculated to promote communal harmony and was such as was likely to incite the feelings of his audience against the muslims. It thus satisfies the test laid down in paragraph 6.8 and, therefore, constituted a communal speech.

33.59 Continuing, Dr. Vyas said that the Shiv Jayanti procession should be a grand affair and should be taken out jointly. He then said that the R.U.M. leaders would move about the villages on bicycles and inform the villagers about the programme and that those who wanted to do this work should give their names to him or to the President of the R.U.M., Bhaskar Mali, and find out what was to be done by them and should do it. He further said that the R.U.M. wanted volunteers who would stitch Bhagwa flags and that those who were willing to do this work should offer their services. He then declared that after Shiv Jayanti was over the R.U.M. would celebrate the Shiv Rajyabhishek Day and the death anniversary of V. D. Savarkar. Just before the meeting was about to get over Bhaskar Mali came there and informed the audience about the programme and further said that propaganda should be made in the villages and called upon the people to enrol themselves for this work.

The incidents of assault in the fortnight preceding Shiv Jayanti

33.60 Between April 23, 1970 and May 1, 1970 some minor incidents of assault took place in respect of which non-cognizable cases were registered. These incidents have been magnified by the Muslim parties as the letting loose of a reign of terror against the Muslims preparatory to the attack on them on the Shiv Jayanti day. The evidence hardly justifies the making of such an allegation. These were minor incidents, but in the surcharged tense atmosphere of Bhiwandi rumours appear to have circulated freely and these incidents created a panic in the minds of the people, particularly the Muslims. A list of the N.C. complaints registered by the Police together with the particulars thereof is Exhibit P 550. Some of these incidents have also been referred to in the evidence of S.P., Bhavne and some other witnesses as also in the report dated May 4, 1970 made by S.P., Bhavne to the D.M., Thana (Ex. P 151). We will now briefly look at these incidents.

33.61 The first incident took place on April 23, 1970. A Hindu who had gone to the Urs of Divanshah Dargah was alleged to have been abused by an unknown Muslim boy. An N.C. complaint was registered.

33.62 The next incident took place on April 25, 1970 at 9 a.m. when a Hindu worker in a sizing factory who had asked his co-workers not to come to work till their demand for increased wages was conceded was alleged to have been threatened with a stick and a knife by the Muslim owner of the factory and manhandled. An N.C. complaint was registered in respect of this incident also. This incident obviously was the result of a labour dispute.

33.63 The third incident took place on April 26, 1970 at 1-30 a.m. when an unknown Muslim is alleged to have hit a Parsi with a stick on his hand and back for inviting Konkani Muslim girls to his house. This was, therefore, not a communal incident of the type with which we are concerned.

33.64 The fourth incident took place on April 27, 1970 at 2 a.m. on the road outside Hindustan Masjid when two Hindus returning from the Urs of Divanshah Dargah were alleged to have been assaulted with a stick by four Konkani Muslims. One of these Hindus, Balkrishna Ambavane, was a member of the Executive Committee of the R.U.M. These two Hindus accompanied by Baliram More came to the Town Police Station at 2.30 a.m. to lodge a complaint (P.W. 4/284/771). According to S.P., Bhavne's report dated May 4, 1970 (Ex. P -151), Baliram More went about saying that the Muslim leaders had advised Muslims to beat up Hindus wherever they were seen in such a way that the assailants could not be identified.

33.65 The fifth incident was an affray which took place on the public road outside the Bhiwandi Talkies on April 29, 1970 between a Muslim, Anwar Ahmed Khan, and a Hindu. A police constable who was present arrested both of them and took them to the Town Police Station. They were both charged under section 160, I.P.C. with

committing an affray and were released on bail and an N.C. complaint was registered against them. Anwar Ahmed Khan has filed an affidavit before the Commission and he was also examined as a witness by the Bhiwandi Relief Committee (B.R.W. 4). According to his affidavit on the day in question he had gone to see the last show at the Bhiwandi Talkies ; he came out during the interval and saw four Hindus beating a Muslim ; he separated them and pacified the Hindus and thereupon the Muslim went away ; when he was about to re-enter the auditorium the four Hindus started beating him from behind ; he saw Baliram More and shouted out to him for help and at the intervention of Baliram More he was saved. Meanwhile, a police constable posted at the Bhiwandi Talkies saw the incident and came up. Seeing him, three of the four Hindus ran away, Anwar asked the constable to take him to the police station for lodging his complaint against the four Hindus. P.S.I., Mane who was present at the police station instead of inquiring about the Hindus who ran away, started abusing Anwar, slapped him four times saying that he was a bad element and pushed him towards a constable who took him in the adjoining room and beat him severely. He was allowed to go after depositing Rs. 25. This witness had subsequently gone to Ibrahim Maddu and on May 5, 1970 Ibrahim Maddu personally handed over to Dy.S.P., Diwate an application typed in English and signed in Urdu by Anwar in which the same allegations as made in his affidavit were made. In cross-examination Anwar said that when he went to separate the Muslim and the four Hindus assaulting him, he did so verbally only and that when he entered the auditorium the four Hindus assaulted him from behind with their fists and there were a number of persons present out of whom he only knew Baliram More. He further said that P.S.I., Mane and thereafter the constable had assaulted him with fists and had slapped him, but he had no swelling or bleeding and only both sides of his face pained him a little, the pain lasting for about 8 days. He admitted that before the Judicial Magistrate, Bhiwandi, he had pleaded guilty and was sentenced to pay a fine of Rs. 5. He claimed that he did so even though he was innocent, his explanation for pleading guilty being that the Police had come to his house and had taken him to the Bhiwandi Town Police Station and had released him on bail and had asked him to attend Court the next day. They told him that the other man was also pleading guilty and if Anwar pleaded not guilty, he would be sentenced to imprisonment for a period of three months (B.R.W. 4/1-7/1433-5 ; P.W. 4/283/773). The evidence of this witness does not inspire any confidence. His demeanour in the witness-box was unsatisfactory. If he had been beaten severely by the Sub-Inspector and the police constable as he alleges, there would have been some bruises or swelling on him. On his own admission, there was no sign of any external injury on him. In the circumstances I disbelieve his testimony.

33.66 The sixth incident took place on April 30, 1970. Two Muslims alleged that they were fisted and also beaten with a cycle chain at

about 12-15 a.m. on April 30, 1970 on the road opposite the Par Naka Mosque while they were coming out after seeing the show at the Nazarana Talkies. They did not know either the names or the community of their assailants. The Police registered an N.C. case in respect of this complaint. One of these Muslims, Jaweed Ahmed Mahomed Husain Momin, has been examined as a witness. In his affidavit he has alleged that he had gone to see the last show at the Nazarana Talkies and while he was returning from the cinema house along with his friend after the show, about 15 Hindu youths accosted them seeing that they were Muslims and assaulted them with fists. One of the Hindus who was carrying a cycle chain hit Jaweed with it on his back, as a result of which blood flowed from the wound and he fell down. From the police station he was sent to the hospital and treated at the Municipal Dispensary. He had brought his medical certificate along with him. The certificate, however, only showed three abraded contusions on the back, a slight abrasion on the left hand and a complaint of pain in the left cheek, abdomen, chest and both shoulders. The cause of these injuries was given in the certificate as contact with a hard and blunt substance. He was unable to explain, when asked by the Commission, how if the blood came out of the wound alleged to be made on his back as a result of being hit with the cycle chain, no such injury was mentioned in his complaint (B.R.W. 6/1-4/1440-2). His affidavit, therefore, obviously exaggerates the whole incident.

33.67 The seventh incident took place on May 1, 1970 and is alleged to have taken place at 10-30 a.m. on Gauripada Road when a Muslim, Mahomed Haroon Momin, alleged that he was hit with a stone by an unknown person. Mahomed Haroon has filed an affidavit (affidavit No. 358) in which he has alleged that a stone was thrown at him which caused an injury to his leg and thereafter five or six persons rushed towards him shouting, "Landiya Bhai Ko Maro" ("Beat the Muslim"). He has given the date of the incident in his affidavit as May 4, 1970. He has not been examined as a witness and it is unnecessary to refer to his affidavit further, except to mention that, as in the case of the earlier incident, his affidavit also appears to have exaggerated the incident.

33.68 The eighth and the last incident took place on May 1, 1970 at 11-30 p.m. on the Panjrapol Road. The complainant, Samiulla Gulam Rasool Momin (the deponent of affidavit No. 211), was passing along the road when a cyclist came from behind and rang the bell. As the complainant did not move away (being engrossed in thought, according to him), the cyclist dashed against him. There was an exchange of words. Meanwhile (according to Samiulla's version) two persons sitting by the side of the road came up, started abusing him, beat him with their fists and threw him down on the ground as a result of which he injured his head. The Police registered a non-cognizable case. In his affidavit he has alleged that he was also assaulted with a knife and fist blows and that he became unconscious and

regained consciousness at about 6 a.m. when he found that he had been thrown near the creek, about three furlongs from the place of incident. The Police complaint makes no mention of such an assault and the said affidavit appears to be full of exaggeration. It appears that Ibrahim Maddu telephoned thereafter to the police station to find out what had actually happened. As a result of this, S.P., Bhawe made a report dated May 5, 1970 to D.M., Capoor (Ex. P 538) in which he referred to this incident and stated that after the decision on the route of the Shiv Jayanti procession was taken, an incident of assault on a Hindu had taken place and that the said incident in which Samiulla was involved must have taken place as a result thereof. There does not appear to be any warrant for drawing such an inference. There was a collision between the cyclist and the complainant as a result of the complainant not giving way to the cyclist and when a quarrel took place the two bystanders who had watched the incident took the side of the cyclist.

33.69 It is possible that other incidents of assault may have also taken place which were not reported to the Police, for, after all, every such incident does not get reported, particularly when it is not of a serious nature.

The Urdu boards

33.70 The incidents of assault on the Muslims referred to above appear to have created a panic amongst the Muslims and it was particularly rumoured that Muslims returning from cinema houses after the last show were assaulted by Hindus. Boards began to appear in Muslim localities, most of them asking the Muslims not to visit cinema houses. There were two cinema houses in Bhiwandi, namely, Bhiwandi Talkies and Nazarana Talukies, the Bhiwandi Talkies, being situated in the Hindu locality of Thange Alli and the Nazarana Talkies in the Hindu area of the Nizampura locality. Muslims returning from cinema shows had thus to pass through the Hindu localities. Both these cinema houses, however, belonged to an Irani (P.W. 4/154/673). The boards, therefore, were not directed against the owner of the cinema houses. Ten boards were taken charge of in the early hours of May 7, 1970 by P.S.I., S. S. Mane (P. W. 46), on learning from Head Constable Jadhav that some boards in Urdu asking Muslims not to visit cinema houses had been displayed in the town [P.W. 46/1 (1)/938(1)]. They were subsequently taken charge of from P.S.I., Mane by D.I., A. G. Lankar (C.W. 44) at the police station on May 7, 1970 under a panchnama Exhibit P 1212, on Mane making a report dated May 9, 1970 (Ex. P 1455) to Lankar. This report mentions the places from where these boards were brought. Three of these boards were at Teen Batti Naka, one near the Jumma Mosque in Nizampura, one near Kasai Wada in Nizampura, one near Marathi School No. 9 at Quarter Gate, one near Chingisha Dargah in Jaitunpura, one in Habsan Alli, one on the road leading from the Old Thana Road to the Old Fish Market and one

in Bengalpura. Some of these were wooden boards and others were made of tin or cardboard. Photographs of the said boards along with translations thereof have been put in as Exhibits P 1213 to P 1222. The writings on the said boards when translated read as follows :

- (1) "On Wednesday the 6th May after 'Isha Prayers' there will be recitation of 'Ayate-Karima'. All the Muslims are requested to attend.

At Saudagar Mohalla-Mukari Shah."

(Ex. P 1213)

- (2) "APPEAL

In an atmosphere which is exciting, evil and which is full of prejudice, lead your life boldly and with liveliness. Otherwise coming generations will never forgive us and history will remember us as cowards.

All the Muslims from Bhiwandi have decided to boycott film-shows in the Nazarana and Bhiwandi Talkies. We appeal with compassion that Purdahnashin ladies and all the Muslims of Bhiwandi should totally boycott films and in future no one should step in and even move about in that area.

Bear this request of ours in mind fully well.

(Beware)

Ali Umran

Teen Batti."

(Ex. P 1214)

- (3) "IMPORTANT ANNOUNCEMENT

To-day after 'Isha Prayers' there will be recitation of 'Ayate-Karima' at Islampura Mosque.

Therefore, all the Muslims are requested to attend in largest possible numbers.

On behalf of
Islampura Committee."

(Ex. P 1215)

- (4) "(Beware)

(Be careful)

FILMWALEKI KHADI KHAT — CINEMA KA BOYCOTT

Muslims, your self-respect demands that you should stop seeing films and boycott films. Remove hatred from your minds. Be united.

Live like full brothers with affection and with one mind and one soul and put an end to all evils. Maintain peace.

Religion does not preach enmity amongst ourselves.

We are Hindi and Hindustan is our Motherland.

Ali Umran."

(Ex. P 1216)

- (5) "APPEAL

It is appealed to all Muslim women and children that they should avoid visiting Nazarana and Bhiwandi Talkies in this period, exciting, evil and full of prejudice. Muslim youths are also requested that they should under no circumstances visit

(the cinema theatres) and should prevent others from visiting. Make every effort to maintain peace in the town.”

(Ex. P 1217)

- (6) “ Ya Allah. $\frac{786}{92}$ Ya Mohamed.

U.P. brothers	Appeal made to Muslims of Bhiwandi with a feeling of sympathy.	to pay special attention.
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It is generally observed that most of the people of Bhiwandi are found of seeing pictures in company of their wives and children and it is astonishing that this undesirable and unbecoming habit is on the increase day by day. This has created a sort of restlessness among the people in the town in general and the youths in particular. Therefore, we respectfully appeal to the Muslims in general and to the youths in particular to stop the habit of seeing films for the present. This will help in raising the moral standard. We hope that all the Muslims will think over our appeal and will act on it strictly.”

(Ex. P 1218)

- (7) “ STRONG APPEAL

It is strongly appealed to the Muslims of Bhiwandi that all of us men, women and children should not visit Nazarana and Bhiwandi Talkies to see pictures. Women should take particular note that they should not step in the compounds of Nazarana and Bhiwandi Talkies. Otherwise

Nawajawan Committee

Nizam

Ex. P 1219)

- (8) “ (Beware). (Be careful).
‘Cinemawaleki Khadi Khat—Filmbinika Mukamil Boycot.’
Muslims ! Your self-respect demands that you should stop seeing pictures and boycott them totally. Remove hatred from your minds.

(Be United)

Be united with one mind and one soul and put an end to all evils.

Maintain peace. Religion does not preach hatred amongst ourselves.

(Beware)

If you do not realise this you will be no more. Oh Muslims ! there will be no mention about you in history.”

(Ex. P 1220)

- (9) “ ‘786’ (In the name of Allah)
APPEAL

In view of the present atmosphere and realising the tension prevailing in the atmosphere, we the Muslims of Bhiwandi appeal to our brothers, sisters, mothers, elders and children

not to go to see pictures in Bhiwandi and Nazarana Talkies and not to go there for recreation.

Tanzim Abdali."
(Ex. P 1221)

(10) " '786 '

U.P. brothers should pay special attention
'Aslam Alekum'

You should bear in mind that as the atmosphere of Bhiwandi is spoiled at present, every Muslim of the Mohalla should note the following things:—

- (1) Should prevent men and women from going to cinema.
- (2) Should prevent women from going out on the Shiv Jayanti day.
- (3) Should not pass by places where 'Kafirs' live.
Try to save yourself in every respect."

(Ex. P 1222)

The photograph of the said board (Ex. P 1222) clearly shows that in the last but one line words have been erased and rewritten. This matter will be dealt with further in the Chapter on the Bhiwandi Conspiracy Case.

33.71 Information about these boards was given by Inspector Pradhan to S.P., Bhave by his report dated May 3, 1970 and May 5, 1970 (Exs. P 93 and P 94) respectively. These boards also feature in the report dated May 8, 1970 (Ex. G 327) made by the D.I.G. (Int.) to the Home Secretary.

33.72 The sitting capacity of Bhiwandi Talkies was 437 and of Nazarana Talkies 969 (P.W. 66/152/1217). As a result of these boards the attendance at the cinema houses fell to about 50 to 60 persons, almost no Muslims going to the night shows [Ex. G 180; B.R.W. 5/1(5)/1436(2)].

The board at Wada Stand

33.73 The Hindus in their turn put up a cardboard board fixed to an electric pole at Wada Stand opposite the Bhiwandi Talkies, requesting Hindus not go to Badshah, Gulzar or Eros Cold-Drink Houses. The board was signed "Hindu brother". The owners of the said cold-drink houses were Konkani Muslims residing in Nizam-pura area. This board has been reported upon by Head Constable Manjrekar in his report dated May 5, 1970 (Ex. G 180) and by Inspector Pradhan in his said report dated May 5, 1970 (Ex. P 94).

The Bhiwandi-Nizampur Municipal College compound incident

33.74 On April 30, 1970 the office-bearers and servants of the Bhiwandi-Nizampur Municipal College put up a board in the College compound declaring that the land belonged to the College. Some Muslims, however, claimed that the land belonged to the Muslim

community since a Dargah existed on it. Thereupon an exchange of words took place and the Principal of the College made a complaint to the Police. After some inquiry 12 Muslims were arrested under section 151, Cr.P.C. This incident has formed the subject-matter of the report dated May 4, 1970 from Inspector Pradhan to S.P., Thana (Ex. P 150) and the report dated May 4, 1970 from S.P., Bhawe to D.M., Thana (Ex. P 151). Proceedings under section 107, Cr.P.C. were instituted against these 12 persons. Seven out of the arrested persons jumped bail and could not be traced and accordingly the proceedings against them were dropped on March 18, 1971. Proceedings against the remaining five persons were fixed for hearing on April 22, 1971, but as P.S.I., L. R. Deshpande (P.W. 42) was not present in Court the proceedings against them were also dropped by the Magistrate. An inquiry was conducted into the failure of the P.S.I. to attend Court (P.W. 66/10/1111).

The removal of the Bhagwa flag in Madarchhalla

33.75 On May 1, 1970 a Hindu, Murlidhar Gopal Pandav, lodged a complaint (Ex. P 551) at the Town Police Station alleging that when he went that afternoon to Madarchhalla with a Hindu friend to purchase pan, three Muslims came there and that one of them pulled down a Bhagwa flag which had been put up on an electric pole by the Shiv Sena. Thereupon the complainant and his friend asked them why they were removing the flag which had been put up by the complainant's people at night. Other Hindus passing by stopped to see what was happening. Meanwhile, the Muslims crumpled the flag and took it away along with the stick to which it was tied. Murlidhar and his friend both appear to have belonged to the Shiv Sena. The Police registered a cognizable case on Murlidhar's complaint (Ex. P 551). The case was thereafter classified as 'A' summary, that is, as "true but undetected" (P.W. 4/324/795).

The May Day Procession of May 1, 1970

33.76 On May 1, 1970 the Bhiwandi Sizing Mazdoor and General Workers' Association as also the P.S.P. Workers' Union took out processions for giving a demonstration of Hindu-Muslim unity. Both Hindu and Muslim workers participated in the procession. Both these processions went past the Nizampura Jumma Mosque. The procession of the Sizing Workers' Association was about 3,000 strong. It was addressed by Bhausahab Dhamankar and slogans such as "Mahatma Gandhi Amar Rahe", "Hindu Muslim Bhai Bhai", "Duniya Ke Mazdoor Ek Hai" were shouted. After the said procession was over, a public meeting was held at which the audience was exhorted to achieve Hindu-Muslim unity [P.W. 4/1(67)/236(38)]. Inspector Pradhan's report dated May 2, 1970 on this procession is Ex. P 91. In an atmosphere darkening with growing communal distrust and suspicion, these processions stand out like a bright ray of sunshine cutting across the gathering storm.

Baliram More's application

33.77 On May 1, 1970 Baliram More sent an application to the Chief Minister with copies to the D.M., Thana, the D.I.G., B.R., and S.P., Bhawe (Ex. P 623). This application was a reply to the said memorandum (Ex. P 15) submitted by the Muslim leaders. It concluded with a prayer that the Chief Minister should take legal steps against those persons who caused obstruction for some reason or the other to the celebration of the Shiv Jayanti festival. Baliram More has sought to make out in the said application that he had been making efforts to maintain peace in Bhiwandi for the last five years and that his motive in sending the said application was to see that there were no disturbances at the time of the 1970 Shiv Jayanti celebrations. However, if one peruses this application, his motive seems to be quite different. The application is confined only to attempting to rebut the charges made against Baliram More in the said memorandum. The I.G.P. called for S.P., Bhawe's remarks on this application and remarks thereon were submitted by Bhawe by his report dated November 14, 1970 (Ex. P 624) in which he pointed out that the version given by Baliram More in his said application about what had transpired at the time of the 1970 Moharram and Holi processions and other incidents was not true. It is not necessary to go into the details of the contents of the said application or of S.P., Bhawe's said report since no publicity was given to the said application.

The R.U.M. meeting of May 4, 1970

33.78 The R.U.M. held its weekly prayer meeting in the Neelkantheshwar Temple at 10 p.m. on May 4, 1970. Inspector Pradhan's report dated May 5, 1970 on this meeting is Exhibit P 87. This meeting has also been referred to in the confidential report of the D.M., Thana, for the week ending May 7, 1970 (Ex. G 43). Hasmukh Thakkar called for volunteers to bring processionists from villages, such as Kamba, Khoni, Borpada, Shelar, Karivali, Kalwar, Rahnal, Gundvali, Poorna, Kalher, Kasheli, Temghar. Dr. Vyas counselled the people to be peaceful and to observe discipline. He said that the restrictions with respect to the procession had been undertaken voluntarily by the R.U.M. and had not been imposed. He exhorted the people to shout only the slogans set out in the printed pamphlet and to throw only a reasonable quantity of 'gula' so that no one's feelings should be hurt and no religious place desecrated and that if anyone indulged in any excess, they should compel the Police to take action against him and should not stand surety to get him released on bail. He then announced the programme of the Shiv Jayanti celebrations. Uddhav Teje said that the R.U.M. volunteers would be responsible for the villagers who would be brought to participate in the procession and everyone should assemble for the procession at 1 p.m. He further said that the volunteers of the R.U.M. in groups of 10 to 15 would remain with the procession to ensure that no untoward act was committed by any of their 'opponents'

and that if any such incident was likely to take place, either the officers or Dr. Vyas or Bhaskar Mali should be informed but the group should not take any action.

The arrest of persons carrying Rampuri knives

33.79 At 2 a.m. on May 5, 1970 a Hindu was arrested in Gauripada carrying a Rampuri knife in breach of the D.M.'s order prohibiting the carrying of lethal weapons. About the same time two Muslims were also arrested on Dargah Road for carrying Rampuri knives (Ex. G 173). At 10-40 a.m. on that day Ibrahim Maddu rang up Inspector Pradhan at the police station and inquired who had arrested the said two Muslims and the reason for their arrests and why they were not released on bail and informed him that the atmosphere in the town was not good and that they (that is, the Muslim leaders) had received complaints to the effect that people were being arrested unnecessarily. Pradhan told Ibrahim Maddu that the two Muslims were arrested in accordance with the law and would be proceeded against according to law. Pradhan recorded this telephonic conversation in the station diary (P.W. 38/62/1264-5 ; Ex. G 174). This incident is an instance of an evil which appears to be on the increase (examples of which appear frequently in this Report), namely, the attempt by local leaders to interfere with the administration of law and order.

Complaints of threats

33.80 Dr. Mahmud Hasan, a medical practitioner of Bhiwandi, practising at As Bibi and Islampura Mohallas has deposed that in the first week of May 1970 a number of Muslim patients came to his dispensary from various localities, such as Islampura, Kasaiwada, Agra Road and hutment colonies, and told him that certain workers of the Shiv Sena and Jan Sangh were giving them threats that at the time of the Shiv Jayanti the Muslims would be first cleared from the area as it had happened in Ahmedabad. These patients gave to Dr. Mahmud Hasan the names of some of the persons who had given them threats and though in the witness-box he could not recollect all the names he remembered the names of some of them. They included one Jawaharlal Gupta and Rambhau Fulwala and his son. Some of his patients also informed him about the incidents of assaults on Muslims and told him that the attendance in the two theatre-houses in Bhiwandi had fallen to about 50 or 60 persons. After receiving these complaints Dr. Mahmud Hasan accompanied by Nasir Ahmed Momin of Islampura went on May 4, 1970 to Bombay and saw Mustafa Fakhri (B.R.W. 3), the M.L.A., G. N. Banatwala, and Mohammed Baig Chughtai [J.U.(M.)W. 1], a member of the Working Committee of the Jamiet-ul-Ulema, Maharashtra State, and a member of the State Council of the Jamiet-ul-Ulema, Maharashtra State, and apprised them of the situation and the tension prevailing in Bhiwandi. They assured him that the Government had taken all preventive steps and that no trouble was likely to arise. They further assured him

that they would discuss the matter with the Chief Minister again (B.R.W. 5/1-2/1436-7, 8/1439 ; B.R.W. 3/28/1427).

Dr. Mahmud Hasan's visit to Bombay and the delegation to Mr. Kalyanrao Patil

33.81 Gulzar Ahmed Azmi, the Secretary of the Jamiet-ul-Ulema, Maharashtra State [J.U.(M.)W. 2] went to the office of that organization at about 8 p.m. in the night of May 4, 1970 when Mohammed Baig Chughtai informed him about the information which he had received from Dr. Mahmud Hasan and Mohomed Nasir Ansari. According to Azmi, he telephoned D.M., Capoor at Thana and told him the information which he had received. Capoor told him, "In-shallah, nothing will happen." Capoor further told him that a Peace Committee had been formed and that if Azmi had questioned the persons who had given him information, he would have come to learn the real situation. Capoor further informed him that he would be camping at Bhiwandi from May 6, 1970 and asked him to come to Bhiwandi and to look around and if he felt the necessity of a bandobast at any place, Capoor would take steps in the matter.

33.82 On May 6, 1970 the General Secretary of Jamiet-ul-Ulema, Maharashtra State, Mirza Saifulla and Chughtai along with Adam Adil, M.L.A., saw Mr. Kalyanrao Patil, the Minister of State for Home and Labour, at 4-00 p.m. and apprised him about the information they had received. Mr. Patil told them that the D.M. was to be in Bhiwandi and they should, therefore, not worry.

33.83 A news report of the delegation from Bhiwandi to the office of the Jamiet-ul-Ulema, Maharashtra State, and of the telephone conversation which Azmi had with D.M., Capoor appeared in the 7th May 1970 issues of the *Urdu Times* and the *Inquilab* (Exs. MTM 1 and MTM 2). The report in the *Urdu Times* also mentioned the interview which the Jamiet-ul-Ulema delegation and M.L.A., Adam Adil, had with Mr. Kalyanrao Patil. The headings of the report in the *Urdu Times* included the headings "Appeal to the public—Don't pay attention to rumours" and "Peace will be maintained—Assurance by the Home Minister". These reports were submitted for publication by Azmi in the evening of May 6, 1970 [B.R.W. 5/1(3-5)/1436(1-2); J.U.(M.)W. 1/1-2/1643-4, 4/1645; J.U.(M.)W. 2/1/6-8) 1647(5-6), 3-4/1648-50; B.R.W. 3/1(11)/1416(4)].

The date of the telephonic conversation between D.M., Capoor and the Secretary of the Jamiet-ul-Ulema

33.84 According to Gulzar Ahmed Azmi, the telephonic conversation between him and D.M., Capoor took place in the night of May 4, 1970. According to D.M., Capoor, it was on May 6, 1970 that he received the telephone call from a person who claimed to be the Secretary of the Jamiet-ul-Ulema-e-Hind. Another point of controversy is the substance of this conversation. We have already seen in paragraph 33.81 above the version of the Jamiet-ul-Ulema

leaders. According to Capoor, the person who rang him up told him that he had learnt that riots had broken out in Bhiwandi and wanted him to confirm the same and indicate the situation. When Capoor asked him the source of his information he did not disclose it. Since Capoor had just returned to Thana by way of Bhiwandi after a night halt at Kalyan on May 5, 1970, he told the caller that according to his information no riots had broken out at Bhiwandi and that he was proceeding to Bhiwandi again in the evening of May 6, 1970 and would reach there on May 7, 1970 for the Shiv Jayanti procession and suggested to the caller that he should personally come to Bhiwandi on the morning of the Shiv Jayanti and see for himself whether riots had broken out or not [P.W. 59/1(42)/1000(22)].

33.85 So far as the date of the telephonic conversation is concerned, the two newspaper reports Exs. MTM 1 and MTM 2 support what Azmi has stated. There does not appear to be any reason why Azmi should send an incorrect report to the newspapers on that day and it would appear that D.M., Capoor is honestly mistaken as to the date. It must be borne in mind that during this period D.M., Capoor must have been under a terrific pressure and it is very likely that he has mixed up the date, for there is no reason whatever why Capoor should himself give an incorrect date of the telephonic conversation which he had. So far as the substance of the conversation is concerned, Dr. Mahmud Hasan and Nasir Ahmed must have given to Chughtai a highly exaggerated version of what was happening in Bhiwandi. In Chughtai's narration of it to Azmi, the story must have got somewhat further magnified and at the time of the telephonic conversation with Capoor, Chughtai and Azmi must have talked in an excited tone conveying an impression to D.M., Capoor that they had learnt that riots had already broken out in Bhiwandi.

The visit of the Jamiet-ul-Ulema leaders to Bhiwandi

33.86 In the evening of May 6, 1970 Chughtai left for Bhiwandi with Mirza Saifulla, another Jamiet-ul-Ulema leader. He saw D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhave in the morning. He also moved about the town and satisfied himself about the situation. While they were still at Bhiwandi, riots broke out [J.U.(M.) W.1/1(5)/1643(2)].

33.87 It was sought to be made out by Mr. Pradhan, Counsel for the Bhiwandi Nagarik Hitarakshak Mandal, that the telephone call of Mohammed Baig Chughtai and Gulzar Ahmed Azmi, and the going round Bhiwandi of Chughtai and Mirza Saifulla to satisfy themselves that no riots had broken out, constituted a species of rumour-mongering (Ex. G 3) for which action in accordance with the Government circular on rumour-mongering ought to have been taken by D.M., Capoor. When a question in that behalf was put to D.M., Capoor, he replied as follows (P.W. 59/36/1021) :—

“Such an action would be most indiscreet and astonishing.

This would prevent persons both from making reports to us and from ascertaining correct facts from us."

Capoor's above reply is a complete answer to the aforesaid suggestion made on behalf of the Nagarik Hitarakshak Mandal and no further comment on it is, therefore, necessary.

The M.T.M. memorandum

33.88 In the morning of May 7, 1970 Kabiruddin Kazi of the Kalyan Branch of the M.T.M., and Abdul Khaliq Momin, the President of the Bhiwandi Branch of the M.T.M., saw D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhawe at the Inspection Bungalow, Bhiwandi, and handed over to him a memorandum dated May 3, 1970 (Ex. P 570). The remarks of Inspector Pradhan on the said memorandum were asked for and accordingly he endorsed his remarks in the margin of the said memorandum. The said memorandum related what, according to the M.T.M. leaders, had happened at the time of the 1969 Shiv Jayanti procession and referred to the various incidents of assault on the Muslims and to the Bhiwandi-Nidampur Municipal College compound incident. Some of the allegations made in the said memorandum were not true, while some of the incidents of assault were grossly exaggerated. Since no publicity was given to this memorandum it is unnecessary to go into its contents.

The R.U.M. propaganda in the villages

33.89 From the nature of things there can be no proper or adequate collection of intelligence in the villages. In a village where there is a police station information is collected through its plain-clothes staff, while in a village in which there is no police station the police patil and the outpost head constable usually tour the area within the jurisdiction of the police station to which they are attached and send reports of various happenings to the officer in charge of that police station (Ex. G 92 ; G.W. 2/7/76). As appears from the evidence of S.P., Bhawe intelligence from the villages is normally collected and reported to senior officers by constables and head constables who perform beat duty. Important developments, mainly relating to crimes, are also reported by the village police patils. Village police patils are required to keep the Police informed about everything material, including crimes, which occur in villages. Villages coming under the jurisdiction of a police station are divided into beats. For each beat a constable or a head constable is appointed, his duty being to visit the villages in his beat at least once a fortnight. Apart from this, if it is felt that some important development was taking place in a village, one of the plain-clothes men posted at the police station as also a person from the D.S.B. would visit the village in question (P.W. 4/123/631).

33.90 For some months prior to May 1970 the R.U.M. had been extending its activities to the villages round about Bhiwandi with a view to gain support and as the Shiv Jayanti approached, it

particularly wanted a large number of villagers to join the procession. This was the first time that propaganda in respect of the Shiv Jayanti procession was carried on in the villages (G.W. 2/68/112). At the meeting which the Muslim leaders had with the S.P., Thana, on April 17, 1970 they, *inter alia*, complained about the propaganda carried on by Ramesh Sambhus and the R.U.M. leaders in the villages (P.W. 60/26/1064). About a week prior to April 17, 1970 P.S.I., G. S. Deshpande of the State Intelligence had learnt about the propaganda carried on by the R.U.M. in villages and had kept a watch on the activities of the R.U.M. leaders in the villages. According to his evidence, he did not notice any particular increase in R.U.M. activities in the villages after April 24, 1970. The record, however, clearly shows that there was considerable increase in these activities in the fortnight preceding the Shiv Jayanti. The information which P.S.I. G. S. Deshpande had received was from his contacts and sources only and he could not depute any constable to the villages for the purpose of obtaining information as at that time his staff was inadequate, consisting only of two other sub-inspectors besides himself and four head constables (P.W. 60/26/1064-5).

33.91 With a view to ensure that a large number of villagers joined the Shiv Jayanti procession of May 7, 1970, the R.U.M. hold a public meeting on April 18, 1970 at Padgha and at its weekly prayer meeting held on April 27, 1970 at the Satyanarayan Temple, Bhiwandi asked for volunteers to tour the villages and carry on propaganda. Apart from the reports of the public meetings held in Kamatghar and Kamba villages on April 11 and 12, 1970 respectively (Exs. P 81 and P 82), the other reports on the record in respect of the propaganda carried on by the R.U.M. in the villages are the two reports dated May 4 and 5, 1970 from Head Constable Manjrekar to the Inspector, D.S.B., Thana (Exs. P 491 and P 86 respectively), and the reports dated May 3, 1970 and May 4, 1970 from P.S.I., G. S. Deshpande to the D.I.G.(Int.) (Exs. P 651 and P 652 respectively) and the report dated May 8, 1970 from the D.I.G.(Int.) to the Home Secretary (Ex. G 327). From these reports it appears that Ramesh Sambhus came to Bhiwandi in the morning of May 3, 1970 and that he along with Dr. Vyas, Pandurang Pátíl, Uddhav Teje and Hasmukh Thakkar (N.H.W. 16) went in Dr. Vyas's car bearing registration No. BYA 6065 to the villages of Kasheli, Kalher, Kariwali and Kalwar and made propaganda about the Hindu religion and requested the people to come to Bhiwandi on May 7, 1970 with decorated bullock carts and cycles and participate in the Shiv Jayanti procession. In Kalwar village a meeting was held in the Wada of one Sidu Natuh Mhatre and Dr. Vyas explained to the audience the role of the R.U.M. and thereafter Ramesh Sambhus explained the role played by the 'Mavlas' during Shivaji's times and exhorted his listeners to come to Bhiwandi like the Mavlas in large numbers on bicycle and on foot and join the procession. We have no detailed report of the speeches made during this R.U.M.

tour. We have, however, several detailed reports of other speeches made by these leaders of the R.U.M. and Ramesh Sambhus. It is not very difficult to imagine the nature of the speeches which they must have made about the Hindu religion nor can the exhortation to the audience to act like Shivaji's Mavlas be an innocent one. There is, therefore, strong reason to believe that the speeches made during this tour by the R.U.M. leaders and by Ramesh Sambhus satisfied the test laid down in paragraph 6.8 and were, therefore, communal speeches.

33.92 A matter of controversy between the Muslim parties and the Police is whether the R.U.M. leaders including Dr. Vyas visited Pundas some time before the Shiv Jayanti of May 7, 1970. While we have the police report on only one public meeting in Pundas addressed by Dr. Vyas, namely, the meeting held on November 19, 1969, the witnesses Alamgir Husain Miyan Bardi (B.R.W. 11) and Alamgir Fakir Mohamed Shaikh (B.R.W. 12) have both deposed that after the said meeting Dr. Vyas came twice to Pundas with some persons from Bhiwandi and that on these occasions he went to the houses of the villagers and talked to them and that he was neither carrying his stethoscope nor his doctor's kit so that he had not come on any medical visit. The evidence of these two witnesses on this point has not been challenged by any party and there is no reason why it should not be accepted, particularly when there is no proper source of intelligence in the villages.

33.93 Another question which arises is whether the tour of the R.U.M. leaders was only of the villages mentioned above. It appears difficult to accept this position. We have direct evidence with respect to the visit of Dr. Vyas and the R.U.M. leaders to Pundas which has been referred to above and which has not featured in any police report. Similarly, the witness Mukhtar Ahmed Papamiyan Shah (B.R.W. 7), a resident of Kamba, has deposed about Dr. Vyas' visit to Kamba. He also learnt from others that Dr. Vyas had visited villages of Joo-Nandurkhi, Lakhivali, Tembhivali and Katai and that villagers from Joo-Nandurkhi, Lakhivali and Tembhivali had participated in the procession which set out from Kamba village to join the Shiv Jayanti procession in Bhiwandi taken out on May 7, 1970. The R.U.M. was particularly anxious to gather support from the nearby villages and it does not stand to reason that it would confine its propaganda only to a few villages and would not seek to extend it to as many villages as possible. Hasmukh Thakkar was one of the R.U.M. leaders who had gone on this propaganda tour of the villages. At the R.U.M. weekly prayer meeting held in Neelkantheshwar Temple on May 4, 1970 he requested for volunteers to bring from the villages those who were going to take part in the Shiv Jayanti procession and the names of the villages he mentioned included Kamba, Khoni, Borpada, Shelar, Karivali, Kalwar, Rahnal, Gundavali, Poorna, Kalher Kasheli and Temghar (Ex. P 87). This clearly shows that the R.U.M. leaders had

visited all these villages and had not visited merely the villages mentioned in the police reports. Even the report dated May 4, 1970 from P.S.I., G. S. Deshpande to the D.I.G.(Int.) (Ex. P 652) mentions that the R.U.M. workers and Ramesh Sambhus had visited various villages by the date of the said report, namely, (1) Kamatghar, (2) Kamba, (3) Karivali, (4) Kalwar, (5) Khoni, (6) Wadunavaghar, (7) Shelar, (8) Gundavali, (9) Temghar, (10) Ranal, (11) Bhadwal, (12) Kasheli and (13) Wadunavaghar. The R.U.M. obtained music passes from the Police for a number of small processions which came from villages to join the main procession. These passes were in respect of the processions from villages (1) Bhadwad, (2) Saravali, (3) Temghar, (4) Pimplas, (5) Nagaon, (6) Karivali, (7) Kalwar, (8) Dunge, (9) Vadghat, (10) Navghat, (11) Kamatghar, (12) Thakurpada, (13) Taralipada, (14) Ovali, (15) Gundavali, (16) Rahanal, (17) Poorna, (18) Malher, (19) Kopar, (20) Shelar, (21) Borpada, (22) Limbavali, (23) Bhinar, (24) Chavidre, (25) Kamba, (26) Katai, (27) Ju, (28) Khadipar and (29) Utarkshar Nagar. Obviously these villagers attended the Shiv Jayanti procession as a result of the propaganda carried on by the R.U.M. in these villages.

33.94 There is, therefore, clear evidence that the R.U.M. leaders and workers carried on extensive propaganda for the Shiv Jayanti procession not only in the villages mentioned in the police reports but in several other villages also and as a result thereof, at least 3,000 to 4,000 villagers participated in the Shiv Jayanti procession of May 7, 1970. The intensity and effectiveness of the R.U.M. propaganda in the villages can be judged from the fact that though this was the first time that propaganda was carried on in the villages, the villagers joined the procession in such large numbers.

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CHAPTER 34

PREVENTIVE MEASURES BY THE DISTRICT AUTHORITIES

CONTENTS

Paragraph

- 34.1 The follow-up action by the D.M., Thana
- 34.7 The follow-up action by the S.P., Thana
- 34.9 Keeping the Government and the I.G.P. in the know
- 34.11 The issue of orders under section 144 Cr.P.C. and section 37(I) of the Bombay Police Act
- 34.12 An appraisal of the measures taken by the District officers
- 34.14 The charge of laissez-faire towards the processionists
- 34.15 The charge of bias in favour of the R.U.M.
- 34.16 The charge of discrimination against the M.T.M.

CHAPTER 34

PREVENTIVE MEASURES BY THE DISTRICT AUTHORITIES

The follow-up action by the D.M., Thana

34.1 D.M., Capoor has filed two statements, Exhibits P 583 and P 584, setting out the action taken by him on the instructions issued from time to time by the Home Department, these instructions being those set out in Exs. G 2 to G 4, G 6 to G 11, G 15 to G 26 and G 33 to G 37. Exhibits G 33 to G 37, however, are instructions issued subsequent to the outbreak of the disturbances in the Thana District. Exhibits P 583 and P 584 show that prompt action was taken by D.M., Capoor on receipt of instructions by him. It is not necessary to refer in detail to the measures taken by the D.M. on all the circulars and instructions received from the Government. No action was called for on some of the circulars and some others only required to be noted. It is, therefore, necessary to refer only to the action taken on the more important of these circulars and instructions.

34.2 On receipt of the Government circular dated July 5, 1968 (Ex. G 2) pointing out that it would be the personal responsibility of all D.Ms., Commissioners of Police and Ss.P. to scrutinize intelligence reports and to take prompt preventive action, D.M., Capoor issued a circular dated July 18, 1968 instructing intelligence agencies to furnish reports on communal aspects to him also and directing Intelligence P.S.Is. to call on the D.M. once a fortnight or earlier, if the situation so demanded, to pass on information on communal trends. Accordingly, the Intelligence P.S.Is. started submitting their weekly reports to the D.M. and calling on him regularly. Normally the P.S.Is. submitted weekly reports personally and the D.M. read and scrutinized them at that very time and discussed with the P.S.Is. the problems arising therefrom.

34.3 On receipt of the Government letter dated August 3, 1968 (Ex. G 3) about rumour-mongering and another letter of the same date (Ex. G 4) about political activities in places of religious worship, D.M., Capoor issued a letter dated August 24, 1968 to all S.D.Ms. and Taluka Magistrates enclosing a copy of Ex. G 4 and calling upon them to gear up the subordinate field staff and ask them to collect advance intelligence of such activities and report all such incidents. In the said letter it was stated with particular reference to Bhiwandi and Kalyan as follows :

“So far as our District is concerned *Kalyan and Bhiwandi* are the two likely trouble spots and as such it is absolutely necessary to be more vigilant in that area during festivals such as Ganpati

festival. The Sub-Divisional Magistrates, Bhiwandi and Thana, have already been directed to be at Bhiwandi and Kalyan respectively during ensuing Ganpati festival (*vide* this office circular No. DC-I-POL-1380/dated 20-8-68). They should see that they are available at the above places for 24 hours during the period of festival to deal with the situation in the area.

“Any untoward incident or apprehension of trouble should be reported to the District Magistrate at once either on phone or by telegram.”

34.4 On receipt of the Home Department's letter dated September 5, 1969 (Ex. G 16) enclosing a copy of the recommendations of the Standing Committee of the State Level Committee on National Integration with respect to the playing of music before mosques, the throwing of 'gulal,' the desecration of idols or 'tabuts' and the causing of injuries to animals considered sacred, copies of these recommendations were circulated by D.M., Capoor to all S.D.Ms. and Taluka Magistrates and by his letter dated January 16/February 20, 1970 (Ex. P 587), D.M., Capoor intimated to the Commissioner, Bombay Division, the action taken by him on Ex. G 16. These recommendations were also read out in the Peace Committee meeting held at Bhiwandi on September 13, 1969.

34.5 On receipt of the wireless messages Exs. G 17 and G 18 requiring stern measures and precautions to be taken in view of the communal disturbances at Ahmedabad, necessary instructions were issued by the Addl. D.M., Thana, to all S.D.Ms. and Taluka Magistrates, by his letter dated September 22, 1969 (Ex. P 588). On receipt of the wireless message from the D.I.G.(Int.) to be on the look out for plans, preparations or collection of material or missiles to mount either attack or retaliatory self-defence by any community on the eve of the Ganpati Immersion festival and to gear up intelligence to the highest pitch for that purpose copies of it were sent to all S.D.Ms. and Taluka Magistrates by the Addl. D.M.'s letter dated September 23, 1970 (Ex. P 589) and they were asked to take precaution on the eve of the Ganpati Immersion. D.M., Capoor also contacted the S.P. personally on the phone and requested him to send police constables in mufti to collect intelligence. On receipt of the letter dated November 7, 1969 (Ex. G 19) requiring a watch to be kept on any planning or scheming by communal organizations with a view to any large-scale looting or killing of members of the minority community once a spark had been set off, the matter was discussed between the D.M. and the S.P. and more detailed information was given on these aspects in the D.M.'s confidential reports as is shown by the weekly reports for the weeks ending November 15, 1969, November 23, 1969, December 7, 1969, January 21, 1970 January 31, 1970 and February 15, 1970 (Exs. P 632 to P 637 respectively).

34.6 Further, whenever the situation so required, orders under section 144 Cr.P.C. were issued banning speeches or entry into Thana District of Hindu and Muslim leaders. On receipt of the copy of the

Home Department Circular (Ex. G 20) drawing attention to the amendment of section 153A Penal Code and enclosing copies of the letter from the Deputy Secretary, Ministry of Home Affairs, Government of India, to the Chief Secretary, Government of Maharashtra, enclosing a copy of the note about the action taken by the Government of India, the D.M. began scrutinizing the weekly reports received by him with a view to consider whether any particular action or speech required sanction for prosecution under section 153A. Further, by the letter dated February 7, 1969 (Ex. P 592) of the Additional D.M., Thana, the District Publicity Officer, Thana, was requested to take out clippings of all news items in respect of the Thana District appearing in dailies, weeklies and other newspapers which were important from the point of view of the Government and to send them to the D.M. every Monday. Unfortunately it appears that the District Publicity Officer, Thana, did not take any action on this letter and had to be reminded to do so by the Additional D.M.'s letter dated March 28, 1969 (Ex. P 593).

The follow-up action by the S.P., Thana

34.7 S.P., Bhawe has filed a statement Exhibit P 384, showing the action taken by him on the instructions issued from time to time by the Home Department, the I.G.P. and the D.I.G.(Int.). The said statement deals with action taken both prior to the outbreak of the disturbances as also thereafter. In the case of a number of circulars and instructions no action was required to be taken by the S.P., Save that the instructions were required to be noted. As Exhibit P 384 shows, whenever particular instructions were received from the Government ; as for example, with respect to the keeping of special watch on rumour-mongering or on political activities in places of religious worship (Exs. G 3 and G 4), or instructions about communal propaganda and communal activities of various organizations, the Ahmedabad disturbances, instructions on the recommendations of the Standing Committee of the State Level Committee on National Intergration, etc., instructions were in turn issued by the S.P., Thana, to the officers concerned. It is not necessary to refer to these circulars in detail.

34.8 A specific action taken by P.W. Bhawe, however, requires to be mentioned. On December 29, 1969 Home Secretary Rajwade rang up S.P., Bhawe and talked to him about the influx into Bhiwandi of persons rendered homeless in the Ahmedabad disturbances and the rumour-mongering carried on by them. Accordingly, Bhawe by his memorandum dated December 29, 1969 (Ex. P 153) to the S.D.P.O., Bhiwandi Sub-Division, stated that though the influx of persons rendered homeless during the Ahmedabad disturbances would neither be illegal nor would it be proper to create obstruction in the way of their rehabilitation in Bhiwandi, if these persons started spreading rumours about the alleged atrocities committed on them, it might have a bad effect on the communal situation in Bhiwandi.

Bhave, therefore, directed the S.D.P.O., Bhiwandi, to keep a close watch on the situation and if attempts were made to spread such rumours, to take necessary action against the rumour-mongers. A copy of the said memorandum was set to the S.D.P.O., Kalyan Division, for taking similar action. A copy of it was also forwarded to the D.M., Thana, stating that the said memorandum was issued in view of the telephonic call from the Home Secretary and further intimating to him that as the D.M. was not at Thana, the Home Secretary had asked the S.P. to request the D.M. to issue similar instructions to the S.D.Ms. According to Bhave, not many persons from Ahmedabad had come down to Thana District and no person was actually found to be rumour-mongering. The Police, however, learnt that a Muslim youth who had shown bravery during the Ahmedabad riots was to be brought down to Kalyan and felicitated. On receiving this information Bhave gave telephonic instructions on December 25, 1969 to the Inspector, Kalyan Town Police Station, to keep a watch and if that youth came to Kalyan, to get the necessary order under section 144 Cr.P.C. issued by the Taluka Magistrate. He also wrote to the DM., Thana, on December 29, 1969 communicating the above information. The Muslim youth, however, did not come to Kalyan (P.W. 4/26/267).

Keeping the Government and the I.G.P. in the know

34.9 The D.M., Thana, used to write or telephone to the Home Secretary on all matters of significance or anxiety relating to Bhiwandi, Thana and Kalyan, these three being the most sensitive spots in the Thana District, as also on the development taking place at the Peace Committee meetings held in Bhiwandi. In the course of the discussions which D.M., Capoor had with the Home Secretary, Rajwade, Rajwade told him that while the shouting of objectionable slogans and the throwing of 'gula' could be avoided it was very difficult to persuade the Hindus not to display the Bhagwa flag and that Capoor should do his utmost to bring about an understanding on this point between the leaders of the two communities. On May 5, 1970 in the afternoon D.M., Capoor had come to Sachivalaya, Bombay, for a discussion in connection with the encroachments on forest lands. At that time he informed Rajwade that an understanding had been reached and that he did not anticipate any trouble at the time of the Shiv Jayanti procession [G.W. 1/1(6)/1(5), 18/14, 20/17].

34.10 I.G.P., Rajadhyaksha has deposed that he also was kept informed from time to time about the developments in Bhiwandi [G.W. 2/1(3)/70(1), 1(5)/70(2), 55-56/105].

The issue of orders under section 144, Cr. P. C. and section 37(1) of the Bombay Police Act

34.11 As and when the situation so required, prohibitory orders both under section 144 Cr.P.C. and section 37(1) of the Bombay Police Act, 1951, were issued either by the D.M. or the Addl. D.M.

or the Taluka Magistrate, Bhiwandi. A list of these orders is given in the statements, Exhibits P 385 and P 579. Copies of some of these orders have also been exhibited and they are Exhibits P 386 to P 412. Out of these, Exhibits P 409 to 412 are orders issued after the outbreak of the disturbances. Some of these orders prohibited the slaughter of animals outside slaughter-houses and the carrying of flesh or meet openly during the Bakri-Id festival. The order banning the carrying of lethal weapons, etc. (Ex. P 394), which was issued on February 12, 1970, was to remain in force for a period of six months from February 14, 1970 and was thus in force at the time the disturbances broke out. Other orders either prohibited the making of inflammatory communal speeches or banned the entry into Thana District or specified localities thereof of persons whose visits were intended for delivering public speeches which the Police expected would be of an inflammatory communal nature. An argument was advanced that in issuing such orders discrimination was shown against leaders of the M.T.M. This point will be considered later.

An appraisal of the measures taken by the District officers

34.12 The evidence shows that on receiving instructions from the Home Department or the I.G.P. or the D.I.G.(Int.) the District authorities concerned took prompt steps in their turn to issue instructions to their subordinates. Further, the officers concerned were prompt in reporting to their superiors every incident of a communal nature. On each important occasion senior officers such as the D.M., Thana, the D.I.G.(B.R.), and the S.P., Thana, the S.D.P.O., Bhiwandi, remained present in Bhiwandi so that top-level decisions could be taken immediately and instructions given in case any trouble took place. Complaints filed at the Bhiwandi Town Police Station were duly investigated, but some complaints were from their nature such that the culprits could not be traced. D.M., Capoor and S.P., Bhawe were aware that in a democracy their role was not only to preserve law and order but that an important part of their functions was to establish public relations and to achieve their objective of preventing a breach of the peace and the continued maintenance of law and order by obtaining co-operation of the people and particularly of the local leaders. This is shown by the fact that much before the State directive to set up Peace Committees for the joint observance of public and religious festivals, a Peace Committee was set up in Bhiwandi. Similarly, when complaints of unauthorized user of loud-speakers in mosques came to the notice of the authorities, instead of launching mass prosecutions and thus inflaming public feelings and exposing the administration to a charge of communal discrimination, the situation was handled tactfully and the trustees of the mosque requested to apply for the necessary permission in order to regularize the position. On coming to learn about the decision of the Muslim leaders to boycott the Peace Committee meeting to be held on April 19,

1970 both the D.M. and the S.P. tried to persuade them not to do so as it would create misunderstanding. Before the Shiv Jayanti procession of May 7, 1970 they contacted leaders of both communities and tried to obtain their assurance of co-operation for ensuring that the occasion would pass off peacefully without any incident. The evidence also shows that where firm action was needed, in many cases the Police did not hesitate to take it. For example, when certain sections of the processionists in the first Shiv Jayanti procession taken out in Bhiwandi in 1964 attempted to change the prescribed route of the procession so as to pass by Muslim mosques with music, they were firmly prevented from doing so. On account of the riot which took place at the time of the 1967 Shiv Jayanti procession, the Id-E-Millad procession was not allowed to go by the route asked for which was the customary route but was instead directed by an order under section 144 Cr.P.C. to proceed by a route which excluded all Hindu localities and though the Muslims resented this change and cancelled the procession altogether, the Magistracy and the Police, with a view to preserve law and order, remained firm and did not alter their decision. In July 1969 when following upon the Rais High School incident several incidents of assault took place and the Police found that the local leaders were flocking to the police station to tutor complainants, they were prevented from doing so.

34.13 Charges have, however, been levelled in the course of the arguments with respect to certain aspects of the preventive measures adopted by the Magistracy and the Police. These charges fall under the following three heads :—

- (1) attitude of *laissez-faire* towards the processionists,
- (2) bias in favour of the R.U.M., and
- (3) discrimination shown against the M.T.M.

These charges will now be considered.

The charge of *laissez-faire* towards the processionists

34.14 It was urged that the Police took no steps to check the misbehaviour of the processionists. The evidence does disclose that no one was arrested at any time nor removed from a procession for shouting unapproved slogans or slogans of a highly objectionable nature. Similarly, Dr. Vyas, Bhaskar Mali, Sharad Patwardhan and others who had boycotted the 1969 Shiv Jayanti procession were not prevented from meeting the procession (which was otherwise passing off peacefully and in an atmosphere of amity and goodwill) and trying to create incidents by shouting slogans some of which were objectionable and throwing 'gular' and particularly excessive 'gular' on the Muslim leaders. It does appear that in some respects the Police have acted leniently and were hesitant to take stern action on occasions of public observance of festivals, lest they should precipitate an incident. As long as no incident or riot took place the Police took it that a situation fraught with danger had been tided over successfully and that their bandobust had proved effective, little realizing the

incalculable harm they were otherwise doing by the adoption of such an attitude. Year after year processions taken out in Bhiwandi were swelling in number and had the same firm action been taken against the misbehaving processionists as was done at the time of the 1964 Shiv Jayanti procession, the 1970 procession would not have been characterized by so much misbehaviour on the part of the processionists.

The charge of bias in favour of the R.U.M.

34.15 Turning now to the charge of bias in favour of the R.U.M. the evidence shows that the authorities failed to judge the real objective and the true nature of the activities of the R.U.M. Even the intelligence reports of speeches made at the first public meeting held by the R.U.M. on May 29, 1969 failed to make any mention of the communal character of the speeches made thereat, particularly by Ramesh Sambhus. When in February 1970 a board containing an inflammatory writing was put up by the R.U.M. about the atrocities committed against the Hindus in Pakistan, the writing was not got erased. Though week after week communal propaganda was carried on and inflammatory communal speeches made in weekly prayer meetings held by the R.U.M. in different temples no steps were taken to warn the leaders of the R.U.M. or to take any action against them for their speeches. After the Ahmedabad riots open systematic and intensive communal propaganda and rumour-mongering was indulged in by the R.U.M. at its public and weekly prayer meetings and yet none of its leaders were warned nor any action taken against them. Perhaps the undue emphasis, placed by the R.U.M. leaders and the other communal personalities whom they invited to speak at their public meetings, on the Hindu religion and the right in law to take out a procession by the Hindus, served to cloud the judgment of the officers concerned as to the real nature of this propaganda and prevented them from realizing that their propagating the Hindu religion was not religious propaganda *per se* but was a cloak under which they carried on anti-Muslim propaganda and their insistence on taking out a procession by any route they desired was really an invitation to the Hindus to oppose by force any move to prevent it. It is true that some of the speeches made at the R.U.M. meetings were referred to the District Government Pleader and Public Prosecutor, Thana, for his opinion. It is equally true that the District Government Pleader opined that these speeches were not actionable on the ground that they were protected by the Explanation to section 153A I.P.C. which Explanation had ceased to be on the statute-book since 1962. Even if the District Government Pleader was unaware of this fact, the District authorities could not have been, and particularly they could not have been unaware of the amendments made in the said section by the Criminal and Election Laws Amendment Act of 1969 to which their attention had been specifically drawn by the Government by its letter dated November 17, 1969 (Ex. G 20 collectively). They should not have, therefore, rested

content with the opinion of the District Government Pleader but should have referred the matter to the Home Department.

The charge of discrimination against the M.T.M.

34.16 It was submitted that in issuing orders under section 144 Cr.P.C. banning the entry into the Thana District or prohibiting the making of inflammatory communal speeches, the district authorities discriminated against the leaders of the M.T.M. Between May 1969 and March 1970 a number of orders were passed against the M.T.M. leaders, namely, the order dated May 21, 1969 (Ex. P 388) banning the entry of Khalilullah Hussani, Suleman Sikander, Gaus Khamoshi and Rashid Salim into the Thana District; the order dated November 1, 1969 (Ex. P 390) banning the entry of Gaus Khamoshi into Bhiwandi; the orders dated February 26, 1970 prohibiting the making of any speech at any public place in Bhiwandi, Kalyan and Thana Talukas by Khalilullah Hussaini, Gaus Khamoshi, Suleman Sikander, Rashid Salim, Meer Laikalli and Maulana Mohamed Allikhan (Exs. P 396 to P 401 respectively); the order dated March 14, 1970 (Ex. P 403) prohibiting the making of any inflammatory communal speech by Mohamed Ali Isakhan at any public place in Bhiwandi; and the orders dated March 14, 1970 prohibiting the making of any speech by Suleman Sikander and Gaus Khamoshi at any public place in Bhiwandi (Exs. P 404 and P 405 respectively).

34.17 D.M., Capoor has explained that on several occasions what weighed heavily with him in banning the entry of M.T.M. leaders was the fact that M.T.M. leaders used to come in groups (P.W. 59/68/1038). That the M.T.M. leaders came in groups is easily apparent from the fact that the entry of four of them was banned on May 21, 1969 and the making of any speech by six of them was banned on February 26, 1970, while prohibitory orders had to be issued against three of them on March 14, 1970. There was also another reason why the orders were issued against the M.T.M. leaders on February 26, 1970. It was just prior thereto that a communal riot had occurred at Kausa in the Thana Taluka. The visit of the M.T.M. leaders was very close in point of time to this incident and it was naturally to be expected that in the course of their speeches they would refer to the said communal riot and incite communal passions. It should be borne in mind that the M.T.M. had passed a resolution advocating self-defence by the Muslims and in their speeches the M.T.M. leaders were advocating this theory and the Government had by its letters dated May 8, 1969 and March 10, 1970 (Ex. G 11) collectively written to the D.M., Thana, to consider the advisability of prohibiting the making of any inflammatory speeches by them.

34.18 The argument advanced on behalf of the M.T.M. sought to suggest that in the matter of the issue of the prohibitory orders the Hindu communalists were favoured for no such orders were issued against them. The evidence does not lend any support to this suggestion. Prohibitory orders were also issued against Hindu leaders

known for making communal speeches. For example, the entry of G. M. Puntambekar of the Jan Sangh into Bhiwandi Town was prohibited by the order dated September 20, 1969 (Ex. P 389); the Hindu Mahasabha M.L.A. V. R. Patil was prohibited from making any inflammatory communal speech at any place in the Thana District by the order dated January 16, 1970 (Ex. P 391); the President of the Hindu Mahasabha, Pandit Brij Narayan Brajesh, was also prohibited by an order dated March 7, 1970 (Ex. P 402) from making any inflammatory communal speech at any public place in Thana, Ulhasnagar and Bhiwandi Talukas; and Ramesh Sambhus was prohibited from making any communal speech at any place in Bhiwandi Taluka by the orders dated March 18, 1970, April 11, 1970 and April 26, 1970 (Exs. P. 406 to P 408 respectively).

34.19 For the reasons stated above. I find that there was no discrimination against the M.T.M. leaders in the matter of the issue of prohibitory orders under section 144 Cr.P.C.

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CHAPTER 35

PREVENTIVE MEASURES FOR THE SHIV JAYANTI PROCESSION

CONTENTS

Paragraph

- 35.1 The strength of Shiv Jayanti procession.
- 35.2 The order under section 37(I) of the Bombay Police Act.
- 35.3 The order under section 36 of the Bombay Police Act.
- 35.4 The information about the removal of old electric bulbs and purchase of acid.
- 35.5 The checking of arms and explosives shop.
- 35.6 The arrest of persons carrying Rampuri knives.
- 35.7 The rounding up of bad characters.
- 35.8 Dy.S.P., Diwate's warning to the R.U.M. and Muslim leaders.
- 35.9 S.P., Bhave's instructions to the Taluka Police Station.
- 35.10 The cutting of telephone wires.
- 35.11 Seizure of boxes containing stones.
- 35.12 The information received by P.S.I., G. S. Deshpande.
- 35.15 The searches taken pursuant to Deshpande's information.
- 35.16 Deshpande's criticism of the searches.
- 35.18 The time of the searches.
- 35.19 Whether Deshpande did not attach any importance to the information ?
- 35.24 Whether the information received by Deshpande was true ?
- 35.25 The subsequent movements of Deshpande.
- 35.26 Installation of wireless sets.
- 35.28 Police reinforcements.
- 35.30 The Control Room Diary.
- 35.31 The Riot Diary.
- 35.32 The Bandobast Scheme for the Shiv Jayanti procession.
- 35.33 Fixed-point bandobast on the route of the procession.
- 35.35 Policemen on house-tops.
- 35.36 Other fixed-point bandobast.
- 35.37 Bandobast at mosques and temples.
- 35.38 Mobile patrolling.
- 35.39 Bandobast with the procession.
- 35.44 Reserves.
- 35.45 Briefing of officers and men and rehearsal of bandobast.
- 35.46 Whether the police bandobast was adequate ?

CHAPTER 35

PREVENTIVE MEASURES FOR THE SHIV JAYANTI PROCESSION

The strength of Shiv Jayanti procession

35.1 The strength of the Shiv Jayanti procession in Bhiwandi in 1965 was about 3,000, in 1966 and in 1967 about 2,000, in 1968 about 5,000 and in 1969 about 4,000. A large number was expected for the 1970 Shiv Jayanti procession and it was also expected that unlike in the previous years people from nearby villages would also be participating and that too in large numbers. The number of persons participating in the different processions taken out in the previous years and earlier in the course of 1970 was much more than before. Thus, in the case of the Moharram processions, the strength in 1968 was about 5,000, in 1969 also about 5,000, but in 1970 it was about 20,000. In the case of the Ganpati processions, the strength in 1968 was about 10,000 but in 1969 it was about 15,000. The strength of the procession taken out on August 29, 1969 to protest against the burning of the Al-Aqsa Mosque was about 10,000 and the attendance at the public meeting which followed it was about 15,000 (G.W. 2/46/110 ; Ex. P 1574). The tendency, therefore, was for the number of persons in the procession to increase. In fact, the Shiv Jayanti procession of 1970 numbered about 10,000 persons. In view of the anticipated large number of processionists, the police authorities began taking measures for averting any trouble and for dealing with it should it arise.

The order under section 37(1) of the Bombay Police Act

35.2 On February 12, 1970 the Addl. D.M., Thana, had issued an order under section 37(1) of the Bombay Police Act, 1951 (Ex. P 394) prohibiting the carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks, lathis or any other article capable of being used for causing physical violence or any corrosive substance or explosives or the carrying of stones or other missiles or instruments or means of casting or impelling missiles within the municipal limits of Kalyan, Bhiwandi, Ulhasnagar and Ambarnath for a period of six months from February 14, 1970. The said order was thus in force on May 7, 1970.

The order under section 36 of the Bombay Police Act

35.3 By an order dated May 4, 1970 (Ex. P 1390) S.P., Bhawe, in pursuance of the powers vested in him under section 36 of the Bombay Police Act, 1951, delegated all his powers under section 36

of the said Act to the Inspector, Bhiwandi Town Police Station, in so far as the Shiv Jayanti procession to be taken out on May 7, 1970 was concerned and directed Inspector Pradhan to give necessary instructions to all persons within his division. Accordingly, Inspector Pradhan issued an order dated May 6, 1970 (Ex. P 41 = Ex. P 1391). By this order he notified the rules relating to the Shiv Jayanti procession. Under this order the procession was to start at 3 p.m. on May 7, 1970 from Shivaji Nagar near the Bhiwandi Town Police Station and was to pass by the route specified in the said order and was to return to the point of commencement at 7 p.m. The said order also directed that the procession must go past the Nizampura Jumma Mosque by 6-30 p.m. The said order further directed that great care should be taken to see that gaps were not left within the procession and that the processionists did not halt at any place for a long time playing music whereby any inconvenience was likely to be caused but should go ahead as instructed by the police officers accompanying the procession and that no one in the procession should indulge in obscene gesticulations or other improper acts and that only the slogans set out in the said order (which slogans had been approved by the Shiv Jayanti Celebrations Committee) should be shouted. These slogans were :

- (1) "Shri Chhatrapati Shivaji Maharajki Jai",
- (2) "Bharatiya Swatantryacha Vijay Aso",
- (3) "Bharatiya Ekata Amar Rahe",
- (4) "Bharat Mataki Jai",
- (5) "Azad Hind Zindabad",
- (6) "Hindu-Muslim Aikyacha Vijay Aso",
- (7) "Hindu-Muslim Ekata Zindabad", and
- (8) "Hindavi Padpatshahi Samsthapak Shri Chhatrapati Maharajki Jai".

The said order further directed that great care should be taken to see that sentiments of persons belonging to other religions were not hurt and that 'gural' should not be sprinkled in excess of a reasonable quantity and if anyone objected, 'gural' should not be applied or sprinkled on his body. The said order also gave publicity to the said order under section 37(I) of the Bombay Police Act (Ex. P 394) promulgated by the Addl. D.M., Thana.

The information about the removal of old electric bulbs and purchase of acid

35.4 On or about May 4, 1970 Dy.S.P., Diwate heard that old electric bulbs had been removed from the store of the Municipal Council. He also heard that somebody had been seen taking away acid from the shop of a Bohri shopkeeper, Asgarali Ismailji (B.R.W. 47), the sole proprietor of Asgarali & Co. at Bazar Peth. Diwate thereupon sent for Zuber Patel who was the Municipal President and also for Baliram More because, according to Diwate, Baliram More was the *de facto* President of the Municipal Council and requested them to check the municipal store to find out whether

any old bulbs had been removed. He sent for both these Councillors separately as he wanted a cross-check. On checking the municipal store it was found that there was no shortage of bulbs. Diwate also made inquiries from Asgarali and found that what he had heard was not true. As a precautionary measure Asgarali was asked to keep a list of persons purchasing acid from him. Asgarali has given evidence before the Commission. He has deposed that he neither store acid nor had he sold any acid and that the only acid his shop sold was hydrochloric acid used for cleaning bathrooms and that it was sold in ready packed bottles and in such diluted form that it could not cause any acid burns [P.W. 66/1(11-12)/1108(5), 52/1133 ; B.R.W. 47/5/1567].

The checking of arms and explosives shop

35.5 One Roshanali had a licence to stock and sell explosives. His shop was checked on May 4, 1970 by P.S.I, L. R. Deshpande of Bhiwandi Town Police Station (P.W. 42). The stock of explosives was found to tally with the stock shown in the register and nothing suspicious was found [P.W. 66/1(13)/1108(5) ; P.W. 42/1(2)/905(1)].

The arrest of persons carrying Rampuri knives

35.6 In view of the incidents of assault which had taken place in the last week of April and beginning of May 1970 and the approaching Shiv Jayanti procession and the growing tension the Police became more vigilant and as mentioned in paragraph 33.79 arrested in the early hours of May 5, 1970 two Muslims at Dargah Road and a Hindu at Gauripada for carrying Rampuri knives in breach of the said order under section 37(I) of the Bombay Police Act, 1951 (Ex. P 394).

The rounding up of bad characters

35.7 As a precautionary measure Inspector Pradhan directed the Sub-Inspectors attached to the Bhiwandi Town Police Station to round up persons of known bad character and arrest them under section 151 Cr.P.C. by the morning of May 7, 1970. Twenty-five such persons, namely 11 Hindus and 14 Muslims were rounded up. Out of them 18 were arrested by P.S.I, Hirve (P.W. 30) and the others by P.S.I, L. R. Deshpande (P.W. 42). On May 8, 1970 Hirve was given the names of 40 to 45 known 'goondas' for the purpose of arresting them. He succeeded in arresting 18, but the rest could not be found either at their residence or at any of the places known to be frequented by them and it was learnt on inquiry that some of them had gone to Vajreshwari to attend the Vajreshwari fair. Out of the names given to him about 15 to 20 names were those of Hindus and the rest were of Muslims [P.W. 38/1(88)/867(29) ; P.W. 42/1(4)/905(1) ; P.W. 30/11/549-50].

Dy.S.P., Diwate's warning to the R.U.M. and Muslim leaders

35.8 Having learnt that a number of villagers were coming to Bhiwandi to participate in the Shiv Jayanti procession, Dy.S.P.,

Diwate sent for Bhaskar Mali, the President of the R.U.M., and warned him to see that the villagers participating in the procession did not misbehave. Bhaskar Mali assured Diwate that the needful would be done. Diwate also went round and contacted the Muslim leaders Gafoor Syed, Haji Miyan Tase, Handi, Nasikkar, Anwar Bubere, Ibrahim Maddu, Jasim Sardar, Murtaza Fakih and others and asked them to see that the young Muslims did not misbehave at the time of the procession. The Muslim leaders also assured Diwate of their co-operation [P.W. 66/1(14)/1108(5-6)].

S.P., Bhave's instructions to the Taluka Police Station

35.9 On receiving the report dated May 5, 1970 (Ex. P 87) from Inspector Pradhan about the R.U.M. prayer meeting held in Neelkantheshwar Temple on May 4, 1970 at which the R.U.M. leaders had asked for volunteers to fetch villagers from the nearby villages to participate in the Shiv Jayanti procession, by his letter dated May 6, 1970 (Ex. P 152) S.P., Bhave intimated to the P.S.I., Bhiwandi Taluka Police Station that the R.U.M. was asking people to attend the procession in large numbers and that villagers from Kamba, Khoni, Borpada, Shelar, Karivali, Kalwar, Gundavali, Poorna, Kalher, Kasheli and Temghar were likely to join the procession and that if and "goondas" or agitators joined the procession, information about them should be collected and supplied to the Inspector, Bhiwandi Town Police Station.

The cutting of telephone wires

35.10 On the night of May 6/7, 1970 between milestones Nos. 36 and 37 on the Bombay-Agra Road, about four miles from Bhiwandi on the Nasik side, telephone wires were found to have been cut and stolen. The culprits could not, however, be traced (P.W. 46/3/940). There does not appear to be any particular significance attaching to this incident, seeing that the wires were cut on the Nasik side of Bhiwandi, and it was in all probability a case of theft.

Seizure of boxes containing stones

35.11 On May 7, 1970 at about noon Rangnath Ramkrishna Kulkarni (N.H.W. 11) and Chintaman Lohagaonkar came to the police station and gave information that two wooden boxes filled with stones were lying in a lane in Bangad Galli which is the northern part of the Old Thana Road. Thereupon P.S.I., S. S. Mane proceeded to the place, took charge of the two boxes and made in respect thereof an entry, being entry No. 16 in the station diary (Ex. P 367). These boxes were lying outside the room of one Idris Mahomed in Tulsidas Chawl. The room of Idris Mahomed was found to be closed and on inquiries made with Shamsuddin Momin staying in the adjoining room. Shamsuddin stated that both the said boxes were lying there for a long time and that no one was seen putting any stones in them. These boxes were used as a footstep to enter the room. [N.H.W. 11/1(1)/1844(1); P.W. 46/1(3)/938(2)].

The information received by P.S.I., G. S. Deshpande

35.12 On the morning of May 6, 1970 certain information was received by P.S.I., G. S. Deshpande of the State Intelligence (P.W. 60). As a controversy has arisen between the State Intelligence and the District Police about the follow-up action taken by the District Police and as the information, if true, would also be of a very important nature, it is necessary to go into this matter in some detail. In his affidavit P.S.I., G. S. Deshpande has stated [P.W. 60/1(28)/1058 (17-8)]:—

“Information showed that the Muslims belonging to the younger age group in the Nizampura locality had not reconciled themselves to their leaders agreeing to the taking of the procession via Nizampura Mosque. The atmosphere was causing anxiety and, therefore, special effort was made to glean information through source. Information was received on the 6th morning that the Muslims of Bhiwandi were apprehending trouble from the Hindus on the Shiv Jayanti Day and were consequently holding themselves in readiness and that preparations in this respect had started on the 6th in every Muslim locality and that an ‘alert caution’ to that effect was also given, from which it was possible to gather that it was not the Nizampura area alone where trouble could arise but the same could arise in some other Muslim locality.”

When he stepped into the witness-box, at the very outset in his examination-in-chief, Deshpande stated to the Commission that he wished to make certain corrections in the aforesaid paragraph of his affidavit; the corrections he wanted to make being that the sentence therein, namely, “Information was received on the 6th morning that the Muslims of Bhiwandi were apprehending trouble from the Hindus on the Shiv Jayanti Day and were consequently holding themselves in readiness and that preparations in this respect had started on the 6th in every Muslim locality and that an ‘alert caution’ to that effect was also given” should read “Information was received on the 6th morning that the Muslims of Bhiwandi were apprehending trouble from the Hindus on the Shiv Jayanti Day and were consequently holding themselves in readiness and that preparations in this respect would be started on the 6th in every Muslim locality and that an ‘alert caution’ to that effect would also be given” (P.W. 60/2/1059).

35.13 The above information received by P.S.I., G. S. Deshpande was in writing. I did not allow the said document to be brought on the record as, in my opinion it was a document which fell within the class of privileged documents which should not be made public nor inspection of it given to parties. The disclosure of such documents would put an end to the effectiveness of these sources of information for the Police and in some cases might even jeopardize the life of the informant. The document was, however, seen by me and I asked for and obtained a photostat copy of it as also its translation in English. In view of the controversy which has arisen, it has now

become necessary to refer briefly to this document. This document is an undated and unsigned note written in Marathi with a sketch showing the different places which the informant visited. According to the informant, he visited, amongst other places, a Muslim hotel where in the course of conversation he came to learn that the Muslims felt that on May 7, 1970 there would be trouble because the Hindus intended to bring about a riot deliberately. He told them that there would be strong bandobast and they replied that if the Hindus started any trouble, they were ready to meet it and that on May 6, 1970 their preparations would be made localitywise and an 'alert' signal would be given. The said note also dealt with Hindu localities and gave a sketch of some of the Hindu localities and mentioned the board put up at Teen Batti Naka making the Hindus to boycott the Muslims cold-drink house and showed some place where the Bhagwa flags were put up.

35.14 The same day information was also received by P.S.I., G. S. Deshpande that (i) a stockpile of explosives was stored in the house of Abdul Majid Ansari of Hamal Wada, (ii) acid bulbs were stored in a Zopadpatti at Nizampura, and (iii) stones, sticks and arms were stored in the mosque near the factory of Abdul Khaliq Momin, the President of the Bhiwandi Branch of the M.T.M. In the evening of May 6, 1970 Deshpande passed on all the information which he had received to D.I.G. (B.R.), Gokhale and S.P., Bhawe who were camping at Bhiwandi, showing them the said note [P.W. 60/1(28)/1058(18), 36/1068].

The searches taken pursuant to Deshpande's information

35.15 On receiving information from P.S.I., G. S. Deshpande, S.P., Bhawe directed S.D.P.O., Diwate to cause searches to be taken of the places to which the information related. Diwate asked P.S.I., L. R. Deshpande (P.W. 42) of the Town Police Station to carry out the searches. Accordingly, L. R. Deshpande carried out searches of the Muslim house and of four Muslim huts in Nizampura, the panch-namas of those searches being Exhibits P 414 and P 415 respectively. In the morning of May 7, 1970 S.P., Bhawe, D.M., Capoor, D.I.G. (B.R.), Gokhale and Inspector Pradhan went round Bhiwandi but did not find indication of any particular tension. They also checked the mosque near Abdul Khaliq Momin's factory, namely, the Shakkar-shah Mosque. Inspector Pradhan, however, did not go inside the mosque as, according to him, he did not want to take off his shoes. He stood outside and looked around but did not see any objectionable or incriminating article in the tank or on its bank. The other mosques checked by them were the Karkah Mosque, the mosque in Madar-chhalla, the Jumma Mosque in Nizampura and Moti Mosque. They, however, did not find anything objectionable. They moved about for almost two hours and also met a number of Muslim leaders. All these searches were carried out under the Bombay Prohibition Act, a stratagem often adopted by the Police to carry out searches without

a warrant in order to obviate delay [P.W. 4/1(72)/236(41), 58/307, 63(36)/595(21-2); G.W. 4/1(16)/1190(9); P.W. 59/1(45)/1000(23); P.W. 38/113/3898].

Deshpande's criticism of the searches

35.16 At the conclusion of the arguments of Mr. Rane, Counsel for the District Magistrates and Police Officers, the Commission put to him that the searches carried out to follow up the information given by P.S.I., G. S. Deshpande could not be said to be effective unless they were simultaneous searches which the searches in question were not. In his written reply to the arguments of other parties Mr. Rane sought to meet his point. As a result thereof P.S.I., G. S. Deshpande asked for leave of the Commission to file a supplemental affidavit setting out his side of the case and on such leave being granted to him he filed his supplemental affidavit to which Mr. Rane filed further written arguments.

35.17 P.S.I., G. S. Deshpande criticized the effectiveness of the searches on the grounds that there was no proper follow-up by the district authorities of the information given by him to them as the element of surprise was lacking in the searches taken by the District Police. The reply of Mr. Rane was that the Police had taken sufficient precautions to see that the information did not leak out and that the information received by Deshpande was unreliable and that Deshpande himself did not place much reliance on it and, therefore, did not care to remain in Bhiwandi on May 7, 1970 and did not even convey the information to the D.I.G. (Int.).

The time of the searches

35.18 The panchamas of the searches of the house of Abdul Majid Ansari and the 'Zopadpattis' in Nizampura (Exs. P 414 and P 415 respectively) show that all these searches were carried out by P.S.I., L. R. Deshpande. The search of the house of Abdul Majid Ansari was taken on May 6, 1970 at 7-30 p.m., while the four Zopadpattis in Nizampura were searched thereafter one after the other, the search of the first Zopadpatti commencing at 8-45 p.m. and of the last ending at 9-30 p.m. the same night; and, as we have seen, the search of the Shakkarsah Mosque was taken only in the morning of May 7, 1970. It was submitted by Mr. Rane that since these searches were taken on the pretext that they were in respect of prohibition offences, no one could have suspected that the Police were looking for missiles or weapons. This argument does not carry any conviction. Persons indulging in criminal and nefarious activities are not so ignorant of police methods as to be taken in by the pretext that the Police are carrying out a search under the Bombay Prohibition Act and if, in fact, in any of the said places missiles or weapons had been stored, its occupant would immediately realized that the Police were out searching for them and word would have immediately been passed round to the occupants of other

places where missiles and weapons, if any, were also stored. The evidence does show that there was no such deliberate and intensive planning and preparation as this information received by P.S.I., G. S. Deshpande might seem to convey, but this is to be wise after the event. At that point of time nobody could have known whether or not there was any substance in the information and, in my opinion, it was the duty of the Police to have carried out simultaneous searches in all the places concerned if the searches were to be in any way effective.

Whether Deshpande did not attach any importance to the information ?

35.19 It was urged that P.S.I., G. S. Deshpande did not attach any importance to the information received by him as he did not even care to stay in Bhiwandi on May 7, 1970 and did not care to communicate it to the D.I.G. (Int.). So far as Deshpande's movements are concerned, he was in Bhiwandi on the night of May 5/6, 1970 from midnight till 2-30 a.m. He was again in Bhiwandi on May 6, 1970 from 11 a.m. till 7 p.m. After giving the information to D.I.G. (B.R.), Gokhale and S.P., Bhawe he went to Kalyan and was in Kalyan from 7-30 p.m. to 9-30 p.m. He returned to Bhiwandi at 10 p.m. and continued to make inquiries in the town till 2-30 a.m. on May 7, 1970. He returned to Kalyan the same morning and throughout the 7th of May 1970 he was in Kalyan. In Kalyan also there was tension as is shown by Deshpande's reports dated May 3 and 4, 1970 (Exs. P 651 and P 652 respectively) as also by S.P., Bhawe's letter dated May 2, 1970 (Ex. G 111) in which Bhawe had requested the I.G.P. to send four companies of the S.R.P. Force for Bhiwandi and three companies of the S.R.P. Force for Kalyan for the Shiv Jayanti bandobast. Because of the tension in Kalyan Addl. S.P., Sudhakar Deo was kept in charge of the bandobast at Kalyan, while Gokhale and Bhawe had also paid a visit to Kalyan and in the evening of May 6, 1970 at the time when the said places were being searched in Bhiwandi they were in Kalyan [P.W. 60/44 (1-5)/3978(1-9)]. As an Intelligence Officer the work of Deshpande was to collect information and place it before the District authorities. It was for the District authorities to work it out as is shown by the Home Department's circular instructions dated July 5, 1968 (Ex. G 2).

35.20 Deshpande has deposed that before going to Kalyan he had established a link between P.S.I., Dalbhide of the State Intelligence who was dealing with communal matters, and his source and had given instructions to Dalbhide to keep a close liaison with the District Police and that Inspector S. S. Naik, who was Deshpande's superior, was specially deputed to Bhiwandi from Bombay on May 7, 1970 and was also maintaining contacts with the local police officers [P.W. 60/44(4)/3798(6)]. The shows that Deshpande did attach importance to the information received by him.

35.21 So far as the argument that Deshpande failed to communicate this information to the D.I.G. (Int.) is concerned, Deshpande has stated in his said supplemental affidavit that after receiving information from his sources in the morning of May 6, 1970, he immediately started moving about the town and contacting people to collect further information and succeeded in getting information above referred to about the storage of arms and missiles in different places. He has stated that [P.W. 60/44(4)/3978(7)] :

“In view of the importance of the information and the immediacy of the events, the need of the hour was the follow-up action by the District Police and not of wastage of time over telephonic communication to Bombay Office on the trunk line. It was common experience that even urgent telephone calls from Bhiwandi to Bombay took hours to materialise; the intelligence agency could not be expected to remain immobile during that period. So, I contacted the highest authority of the local Police present in Bhiwandi, namely, Shri Gokhale, as well as Shri Bhawe and communicated to them the information I had obtained, not sparing to show the source report. Having done this, I did not think it further necessary to communicate it to my office at Bombay and expose this sensitive and important information to the risk of leakage during transmission.”

35.22 The aforesaid explanation given by Deshpande appears to be logical and consistent with common sense and I accept it and do not attach any importance to the fact that this information was not conveyed to the D.I.G. (Int.) by Deshpande. In this connection it may also be mentioned that in the morning of May 7, 1970 V. D. Wagle, Dy.S.P. (Int.), Bombay Unit, had visited Kalyan and according to Deshpande, he had orally communicated the said information to him. He was asked by Mr. Rane whether apart from his bare word there was anything on the record that he had done so and he replied in the negative (P.W. 60/45/3979). Deshpande's demenour has impressed me and though there is no record of his having communicated this information to Dy.S.P., Wagle, I accept his testimony that he had done so. After all, it should be remembered that there is equally no record of his having given this information to D.I.G. (B.R.), Gokhale and S.P., Bhawe, a fact admitted by both these officers. Further, had Deshpande not attached importance to the information received by him, he would not have taken the somewhat unusual step of showing his source report to D.I.G. (B.R.), Gokhale and S.P., Bhawe.

35.23 I thus find on the evidence that P.S.I. G. S. Deshpande did attach importance to the information received by him.

Whether the information received by Deshpande was true ?

35.24 The question whether the information received by P.S.I. G. S. Deshpande was true or not is immaterial to the question before

the Commission at this stage. At the stage when the information was received and communicated and the follow-up action taken, there was no question of judging whether such information was true or not. What was required was to follow up the information properly. The argument of Mr. Rane that the information received by P.S.I., Deshpande was not true is based upon what has come out in evidence before the Commission. This, as said earlier, is being wise after the event and does not carry the matter any further. It is, therefore, unnecessary to consider the question of the truth or otherwise of the said information at this stage and this question will be dealt with when we come to the Bhiwandi Conspiracy Case.

The subsequent movements of Deshpande

35.25 As Deshpande's said information was that an 'alert' signal was to be given on May 6, 1970, after he returned to Bhiwandi at 10 p.m. on May 6, 1970 he contacted another source to find out whether such signal had been given. His source, however, told him that he was not aware whether such signal had been given or not (P.W. 60/46/3980).

Installation of wireless sets

35.26 During the 1969 Ganapati festival a static wireless set had been installed in the Town Police Station and two vehicles were fitted with V.H.F. (Very High Frequency) wireless sets. Further, in view of the situation then prevailing in Bhiwandi the administration had also sanctioned the setting up of a wireless unit to facilitate bandobast. By his letter dated April 22, 1970 Zumberlal Kalantri requested Mr. Kalyanrao Patil, the Minister of State for Home and Labour, to set up a wireless station for the Shiv Jayanti celebrations. The Home Department forwarded this letter to the I.G.P. and asked him to arrange a wireless unit at Bhiwandi. Thereupon the I.G.P. by his letter dated April 28, 1970 instructed the Director of Police Wireless to take necessary action. On May 6, 1970 a V.H.F. static wireless set and an H.F. (High Frequency) static set for sending telegraphic messages were installed in the Bhiwandi Town Police Station. On May 6, 1970 a V.H.F. wireless set was also fitted on the police jeep of the Town Police Station, the code word for this wireless mobile being 'Rose'. The same evening another police jeep and a light van arrived in Bhiwandi and both were fitted with V.H.F. sets, the code names for these two wireless mobiles being "Sugar Peter" and "Apple" respectively [P.W. 4/12/247; Exs. G 47 (colly.) and G 48]. There was already an H.F. set at the Bhiwandi Taluka Police Station (G.W. 3/17/163).

35.27 The range of a V.H.F. set is not as wide as that of an H.F. set. Its range depends upon the height of the mast. These sets are usually installed on a high mast and with the aid of these sets installed at different places, messages can be relayed over very long distances. A V.H.F. set is meant for relaying oral messages and all mobile sets

are, therefore, V.H.F. sets. Though the range of an H.F. set is wider, one cannot speak through it but can only send Morse messages over a long distance (G.W. 3/17/163).

Police reinforcements

35.28 By his letter dated May 2, 1970 (Ex. G 111) S.P., Bhave requested the I.G.P. for four companies of S.R.P. Force for Bhiwandi and three companies of S.R.P. Force for Kalyan with motor vehicles and tents to be sent on May 6, 1970. In the said letter he referred to the Muslim Memorandum (Ex. P 15), the various Peace Committee meetings, some of the incidents which had taken place in the last week of April and the incident in the compound of the Bhiwandi-Nizampur Municipal College. He concluded by stating :

“From this it will be evident that the decision taken to celebrate the Shiv Jayanti festival harmoniously was only a veneer and it does not appear that underneath tension has subsided. So also, it will not be correct to ignore the trend of thinking of the members of the Rashtriya Utsav Mandal. They have expressed their fears that something untoward might happen during the Shiv Jayanti procession. It is, therefore, absolutely necessary to make Police arrangements on a large scale at the time of the Shiv Jayanti procession.”

The I.G.P. sanctioned the request and by the wireless message Ex. G 49 sent on May 5, 1970 *inter alia* directed the Commandants of the concerned S.R.P. Force Groups to send two companies of Group II, Poona, and two companies of Group III, Jalna, to Bhiwandi in unit vehicles equipped with sufficient tentage. By another wireless message sent on the same day (Ex. G 50) he directed the Commandant, S.R.P. Force Group II, Poona, to send one gas squad equipped with munition to report to the S.P., Thana, by the morning of May 6, 1970. By another wireless message sent the same evening (Ex. G 51) he modified his earlier instructions and directed the Commandant, Group I, to send to Bhiwandi one company in unit vehicles with sufficient tentage and directed Commandant, Group II, to send also only one company instead of two companies as previously ordered. The four S.R.P. companies and the gas squad duly reached Bhiwandi.

35.29 On May 7, 1970 the total strength of the Police force in Bhiwandi apart from the senior officers was 7 Inspectors and 29 Sub-Inspectors, including Inspectors and Sub-Inspectors of the S.R.P. Force, and 741 policemen including 24 armed men. The man power employed was one and a half times that employed in 1969, while the fire power was thrice as much. There were 24 armed men carrying 410 muskets and 1 S.P., 1 Dy.S.P., 4 P.Is. and 17 P.S.Is. of the District Police and 3 P.Is. and 12 P.S.Is. of the S.R.P. all carrying revolvers. Thus there were in all 62 officers and men carrying arms for bandobast duty. The S.R.P. Force requisitioned was double that of the previous years [P.W. 4/1(78)/236(44-45)]. S.P., Bhave has given the following table showing the bandobast made for the years 1967, 1968, 1969 and 1970 in respect of the Shiv Jayanti processions :—

Year	Dy. S.P.	P. Is.	P.S.Is.	S.R.P. Men	Policemen			Gas Squad
					District Police	Armed	Total	
1967	.. 1	6	33	200 (2 companies)	288	..	488	1 Gas Squad.
1968	.. 1	4	30	216 (2 companies).	563	8	787	1½ Gas Squad.
1969	.. 1	5	28	200 (2 companies).	309	8	517	1½ Gas Squad.
1970	.. 1	7	29	370 (4 companies).	347	24	741	1 Gas Squad.

The Control Room Diary

35.30 After the wireless sets for receiving and sending messages was installed in the Bhiwandi Town Police Station a Control Room with wireless sets was set up and S.P., Bhave directed a Control Room Diary to be opened at the Bhiwandi Town Police Station from 10 a.m. of May 7, 1970 (P.W. 4/12/247). A copy of the Control Room Diary for May 7, 1970 along with an English translation thereof is Exhibit P 367.

The Riot Diary

35.31 On the Riot Scheme being put into force on the midnight of May 7/8, 1970, the Control Room Diary was called the Riot Diary (G.W. 3/94/207). The Riot Diaries for May 8, 9, 10, 11, 12, 13 and for the period May 14 to May 20, 1970 are Exhibits P 368 to P 374 (collectively). From the midnight of May 20/21, 1970 the Riot Diary again gave place to the Control Room Diary. The Control Room Diary for the period May 21, 1970 to June 9, 1970 is Exhibit P 375 (collectively) and for the period June 10, 1970 to September 3, 1970 is Exhibit P 376 (collectively).

The Bandobast Scheme for the Shiv Jayanti procession

35.32 In the last week of April 1970 Dy.S.P., Diwate and Inspector Pradhan went round the route of the procession and drafted the Bandobast Scheme containing instructions for the police officers and policemen on duty for the Shiv Jayanti procession. The said Scheme was drafted in the first week of May 1970. The draft was submitted to D.I.C. (B.R), Gokhale and he compared it with the Bandobast Schemes of the previous years. He suggested some changes, namely, to raise the strength of the gas squad from half to one and instead of dispersing the policemen throughout the length of the procession, to place them in the procession in six sections. With these changes he found the draft Scheme adequate to meet the situation according to the assessment of the police officers [P.W. 38/1(88)/867(28); P.W. 66/1(11)/1108(5); G.W. 4/16/1198]. The final Bandobast Scheme is Exhibit P 17. It gave the route which the procession

was to take and the time of its commencement and termination, as also detailed instructions about the bandobast to be made on the procession route and at other places in the town. This Bandobast Scheme read along with the statements Exhibits P 27 and P 28 and the map Exhibit P 1, which is in material particulars the same as Appendix H to this Report, and the evidence of S.P., Bhawe [P.W. 4/1(78)/236(44-5)] and Dy.S.P., Diwate [P.W. 66/17/1114) gives a complete picture of the bandobast made by the Police for this procession. This bandobast falls under seven heads, namely, (1) fixed-point bandobast on the route of the procession, (2) posting of policemen on house-tops, (3) other fixed-point bandobast, (4) bandobast at mosques and temples, (5) mobile patrolling, (6) bandobast with the procession and (7) reserves.

Fixed-point bandobast on the route of the procession

35.33 There were 2 P.Is., 10 P.S.Is. and 370 unarmed policemen posted at fixed-points on the route of the procession. Out of this, 2 P.Is., 3 P.S.Is. and 183 policemen were posted in Nizampura. Thus nearly half of the total Police personnel posted at fixed points on the route of the procession was posted in Nizampura area. This was natural considering the opinion of the authorities that this was the area where the trouble, if any, would take place. Only 2 P.S.Is. and 35 policemen were on duty at points falling exclusively in Hindu localities, namely, Thange Ali, Tilak Mandir and Bazar Peth. There were 1 P.I., 4 P.S.Is. and 167 policemen posted in Muslim Mohallas outside Nizampura such as Madar Challa, Soudagar Mohalla, Darga Road, Fish Market, Thana Road and Keshar Baug. Between the Bhiwandi Washing Company in Bhusar Mohalla and Keshar Baug on Old Thana Road in which area the disturbances in fact broke out, there were 1 P.S.I. and 46 policemen posted at 14 different points. According to the said Bandobast Scheme half the number of policemen at all these points were to stand at the mouth of a lane on the route and the remaining half were to stand 15 paces inside the lane and thus ensure that no one was allowed to remain in the space in between. This was done with a view to ensure that the onlookers were kept at a safe distance and no one hurled anything at the processionists or that no one started any quarrel.

35.34 There are a large number of narrow lanes and bylanes opening on to the route of the procession. Some of these bylanes are hardly 3 to 4 feet in width and they open out on other roads after going through in a criss-cross manner. Though most of such lanes and bylanes were covered by bandobast in Nizampura, in other areas only the lanes bordering Hindu and Muslim localities and the more important lanes were covered by bandobast.

Policemen on house-tops

35.35 There were 19 policemen posted on house-tops along the route of the procession. These policemen were instructed to watch

the route of the procession, the streets and the lanes running parallel to the route, and also to watch the movements of the people round about, and in case they noticed anything suspicious, they were to contact the men on fixed-point duty below and alert them by blowing whistles. These policemen on house-tops were also instructed to be vigilant about miscreants indulging in pelting stones from behind the houses, or by seeking shelter in them. Out of 19 such points along the whole route, as many as 9 were in Nizampura. There were, however, only two such points between Bhusar Mohalla and Keshar Baug, that is, in the area where the trouble broke out.

Other fixed-point bandobast

35.36 There were 31 policemen posted at 9 fixed points in localities not covered by the route of the procession. They were asked to be attentive and watch the people passing by the roads for joining the procession or returning by the roads after the procession was over. Those who were posted on the borders of Hindu and Muslim localities were asked to be vigilant to see that no untoward incident took place. They were also asked to be alert in respect of any offences against property being committed when people were away from their houses to watch the procession.

Bandobast at mosques and temples

35.37 There were 2 squads for checking mosques and temples situated mainly on the route of the procession, their strength being 1 P.S.I., 1 Jamadar and 6 policemen. They were instructed that if men gathered in mosques or temples except at prayer time, they should be taken to the Town Police Station for inquiry. There were special instructions to check the mosques, specially those on the route of the procession, to ensure that no stones, sticks, corrosives or explosives were stored in them. Apart from this, 11 policemen were posted at 9 other temples, Dargahs and mosques, not situate on the route of the procession.

Mobile patrolling

35.38 There were 3 mobile vehicular patrols fitted with wireless sets with the code words 'Rose', 'Apple' and 'Sugar Peter', with a strength of 1 P.S.I. and 3 policemen each. They were directed to patrol in the 3 sectors of Bhiwandi Town comprising the whole area. In addition, there were 7 cycle patrols of 3 policemen each. The total strength for patrolling was 4 P.S.Is. and 36 policemen.

Bandobast with the procession

35.39 The total strength of officers and men with the procession was 3 P.Is., 9 P.S.Is. and 130 policemen with canes, 4 armed men and half a gas squad. Out of these 1 P.I., 1 P.S.I. and 10 policemen were kept at the head of the procession behind the striking force and the same number was kept at the tail end of the procession.

For the purposes of bandobast the procession was divided into six groups and in between each group were kept a P.S.I. and a section of 10 policemen. These policemen were also asked to ensure that the processionists did not linger at any point.

35.40 A vehicle with 1 P.S.I. and 7 policemen was kept to patrol the route of the procession one furlong ahead of the procession, and to remove, with the co-operation of the municipal staff, obstructions, if any.

35.41 As the Police expected that there would be 5 trucks carrying tableaux in the procession, 10 constables were detailed for those trucks. Actually, however, there was only one such truck which joined the procession. These constables were directed to note down the names of those in the trucks and to see that the inmates of the trucks did not misbehave. Neither of the two constables detailed in the truck which was actually in the procession took down the name of any person in the truck.

35.42 There were 20 men in plain clothes mixed up in the procession. They were asked to be vigilant about anybody misbehaving, to isolate such persons from the procession, if possible, and send them to the Police Station. In case this was not feasible, they were asked to keep a watch on such person and take suitable action after the procession was over. All the policemen with the procession were instructed to accompany processionists returning to their respective mohallas after the procession was over. The cycle patrol-men were directed to keep in touch with the policemen in the procession and in the event of getting any information, to pass it on to the Control Room and the superior officers.

35.43 A mobile striking force consisting of 1 P.S.I., 15 unarmed constables with lathis, 4 armed constables and half a gas squad was in two vehicles in front of the procession under the command of Dy.S.P., Diwate (P.W. 66/17/1114).

Reserves

35.44 There were 3 police parties of 'reserves' which included some armed men. The first reserve party was kept at the Town Police Station, its strength being 1 P.S.I., 43 policemen with lathis and 12 armed policemen. The second reserve party consisting of 1 P.I., 1 P.S.I., 20 policemen with lathis and 4 armed men was to remain at the mosque in Soudagar Mohalla. After the procession went through the Soudagar Mohalla, this reserve was to move on to the Quater Gate Mosque. The third reserve of 1 P.I., 1 P.S.I., 20 policemen with lathis and 4 armed policemen and half a gas squad was to remain at Nizampura Jumma Mosque. Dy.S.P., Diwate had intended to call out the reserve of 12 armed men at the Town Police Station and deploy it at Teen Batti when the procession entered Nizampura in order to have an armed reserve at each of the three strategic points of the triangles formed by Teen Batti, the Quater Gate Mosque and the Nizampura Jumma Mosque.

Briefing of officers and men and rehearsal of bandobast

35.45 By the evening of May 6, 1970 the four companies of S.R.P. Force and other officers and policemen from Thana District reached Bhiwandi. They were all collected and Dy.S.P., Diwate gave them detailed instructions regarding the duties to be performed by all the groups of policemen posted for bandobast duty. In the morning of May 7, 1970 Diwate took a rehearsal of the bandobast which was to be deployed and again gave them instructions regarding their duties [P.W. 66/1(15)/1108(6)].

Whether the police bandobast was adequate ?

35.46 The police bandobast detailed above was adequate to deal with only minor or localized trouble. It was, however, inadequate to deal with disturbances on such a large scale as actually took place. This has been in substance admitted by I.G.P., Rajadhyaksha who has deposed (C.W. 2/19/83-5) :

“ Had I anticipated disturbances on such a large scale, the nature and extent of the precautions which we took would have been different. I would not have increased the strength because I had already detailed a sufficient force. The deployment of this force would, however, have been different ; for example, I would have made less number of men accompany the procession and detailed more men than were done by the S.P. at different trouble spots. The men stationed at different likely trouble spots would have been armed, but in any event the men accompanying the procession would not have been armed except for a few armed men who would have been posted at the head and the tail of the procession and some other spots along the route of the procession. The men accompanying the procession would not be carrying arms in order to obviate the danger of one or more of them being insolated and their weapons snatched from them as also to obviate the danger of any fire-arm going off accidentally. If the question of using fire-arms arose, the armed men posted at the head and the tail of the procession and on the route would be available for that purpose. I would not have considered it necessary to arm men with .303 rifles instead of the .410 muskets..... .303 standard ammunition has a longer range and greater velocity than .410 standard ammunition. It would, therefore, be dangerous to use .303 rifles in a built-up area as the bullet can travel from 1,000 to 2,000 yards and there is thus a greater danger of innocent persons, being hit. It is, therefore, safer to use .410 muskets in built-up areas.”

* * *

CHAPTER 36
ASSESSMENT OF THE SITUATION ON THE EVE OF
SHIV JAYANTI

CONTENTS

Paragraph

- 36.1 The official assessment
- 36.6 Whether the official assessment was correct ?

CHAPTER 36

ASSESSMENT OF THE SITUATION ON THE EVE OF SHIV JAYANTI

The official assessment

36.1 In his affidavit S.P., Bhave has set out his assessment of the situation prevailing prior to Shiv Jayanti as follows [P.W. 4/1(76)/236(42-3)] :—

“The Executive Committee of the Peace Committee, by a resolution, had adopted a route agreed unanimously by all members of the Committee. Just a month and a half earlier the Moharrum and Holi festivals had passed off peacefully and the members of the Peace Committee had helped us in maintaining peace. Similar co-operation was assured on this occasion also. The Shiv Jayanti procession was to go through the Nizampura area by the Jumma Mosque. In the intervening period, certain incidents had taken place which indicated that the Muslim youth had reservations about the route, and therefore we had to be alert. Accordingly, a large force was requisitioned from the Inspector-General of Police both at Bhiwandi and Kalyan, which are sensitive areas, and a Reserve Force was to be kept at Thana. Four S.R.P. Companies were asked for Bhiwandi and 3 for Kalyan. The available man power of the District was also utilised fully at Kalyan, Bhiwandi and other places. A Reserve Force of 30 men was to be kept at Thana besides utilising one S.R.P. Company already sanctioned there for industrial security. The Dy. Inspector-General of Police and the District Magistrate were kept fully informed. The procession was allowed, without overlooking the likelihood of trouble. While paying extra attention to the Nizampura area, an armed party in a police van remained in front of the procession all along the route with sufficient force along with the procession to forestall trouble at any point. There was also an armed party by the side of the procession in a vehicle.”

36.2. In his supplemental affidavit S.P., Bhave has amplified the above statements and has set out the various factors on which his aforesaid assessment was based, his amplification being a brief resume of the events that had taken place in Bhiwandi since the submitting of the said memorandum (Ex. P 15) by the Muslim leaders. He has *inter alia* stated that though the R.U.M. leaders carried on communal propaganda before the agreement arrived at in the Peace Committee with respect to the route of the procession, in the subsequent meetings of the R.U.M. they had appealed to the people to behave with great

restraint and had declared that the agreement arrived at with respect to the procession should be scrupulously carried out and discipline maintained and that if any person was found misbehaving, he should be handed over to the Police and further that the R.U.M. had also decided to post volunteers who would take charge of the mischief-makers and hand them over to the Police. In this connection Bhawe has referred to the R.U.M. meetings held on April 27, 1970 and May 4, 1970 (Exs. P 85 and P 87 respectively). He has further stated that accompanied by D.I.G. (B.R.) Gokhale he had moved around in the town in the morning of May 7, 1970 and that they did not find the leaders of the two communities showing any signs of agitation. The assessment made by D.I.G. (B.R.) Gokhale, as set out in his affidavit [G.W. 4/1(19)/1190 (10-11)], was in substance the same as made by S.P., Bhawe.

36.3. Bhawe has further stated that in the light of the assessment made by him he did not apprehend riots to take place in Bhiwandi and the bandobast was, therefore, so deployed as to contain and localize any minor trouble that might take place [P.W. 4/1(36)/595(22)]. In cross-examination by Mr. Noorani, Counsel for the Jamiet-ul-Ulema, Maharashtra State, he has deposed (P. W. 4/178/692-3) :

“Had I apprehended large-scale rioting I would have banned the Shiv Jayanti procession. We anticipated that there may be some trouble of such a nature that if it did take place, we with the bandobust we had made would be able to localise and control it. Merely because some incidents were apprehended, I would not have banned the procession. In banning a procession a number of factors have to be taken into account, one of such factors being that had the procession been banned and had people felt that unreasonable restrictions had been imposed, they would have joined the Shiv Jayanti procession in other places in large numbers to show their resentment. This itself would have been a cause for further resentment and further trouble. It is not true that in the last few days preceding May 7, 1970 the communal situation in Bhiwandi had deteriorated. On the contrary, after the decision was arrived at the Peace Committee meeting, the situation had positively improved.”

His answers in cross-examination by Mr. Banatwalla, Counsel for the Maharashtra State Muslim League, also require to be reproduced. That portion of his cross-examination is as follows (P.W. 4/325/796-7) :

“For the 1970 Shiv Jayanti we expected some trouble, but we thought that with the preparations we had made and the understanding arrived at, at the Peace Committee meeting if any trouble did take place, we would be able to contain and localise it.

Q. I put it to you that a few days prior to May 7, 1970 the atmosphere in Bhiwandi was uneasy, explosive and totally anti-Muslim.

A. The situation was uneasy to a certain extent. Prior to the decision reached at the Peace Committee to take the procession

past the Nizampura Mosque, the situation was quite bad, but I would say that after the decision was reached, the situation improved considerably. Though anti-Muslim propaganda was carried on earlier, between April 25, 1970, that is, after the decision reached at the Peace Committee, and May 7, 1970, no anti-Muslim propaganda was carried on except on May 6, 1970 by P. B. Bhave in his speech Exhibit P 95 (Shown report Exhibit P 94).

The boards put up near Bhiwandi Talkies on May 5, 1970 requesting Hindus not to go to Badshah, Gulzar and Eros Hotels were mainly propaganda against the proprietors of these three hotels who were all Muslims. These are three very popular hotels situate at Teen Batti. These boards also have an anti-Muslim slant.

It is not true that even after April 24, 1970 the communal situation in Bhiwandi was deteriorating from day to day and by the morning of May 7, 1970 had reached an alarming peak."

36.4 According to I.G.P., Rajadhyaksha though he did not anticipate each and every event which took place, he did apprehend trouble and took all precautions which were necessary. He has further deposed that he did not anticipate the disturbances to break out on such a large scale (G.W. 2/19/83).

36.5 The assessment made by D.M., Capoor was the same as that made by senior police officers, and when, in the afternoon of May 5, 1970, he met Home Secretary Rajwade in the Sachivalaya, where he had come to attend a discussion in connection with the encroachments on forest lands, he informed Rajwade that an understanding had been reached and that he did not anticipate any trouble at the time of the Shiv Jayanti procession [G.W. 1/1(6)/1(5)]. Rajwade has deposed that he saw no reason to differ from the assessment arrived at by the D.M., Thana, as communicated to him on May 5, 1970 and that he thereafter did not foresee or expect the breaking out of communal disturbances at the time of Shiv Jayanti procession and that he found the police bandobust made for the procession adequate (G.W. 1/98/67, 42/38).

Whether the official assessment was correct ?

36.6 The question which arises is whether the aforesaid assessment made by the senior officers responsible for the law and order situation in Bhiwandi was correct. The assessment of a situation and the possible developments likely to result therefrom has to be in the light of the situation prevailing at a given point of time and the information available about the likely developments at that time. Whether the assessment made by a particular officer was correct or not cannot be decided by reference to any events which happened subsequently, for that would be being wise after the event. If the assessment made by the officers concerned with respect to the forthcoming Shiv Jayanti procession was correct in the light of the circumstances existing on

the eve of Shiv Jayanti, the fact that large-scale serious disturbances took place at the time of the procession cannot make that assessment incorrect.

36.7 The basis of the assessment made by the D.M. and the said senior police officers was according to them twofold, namely (1) the settlement arrived at in the Peace Committee meeting with respect to the procession, including the route thereof, and (2) the change of heart on the part of the R.U.M. leaders as disclosed in the said two public meetings held on April 27, 1970 and May 4, 1970. The circumstances prevailing just prior to Shiv Jayanti, however, show that the assessment made by these officers was faulty and it was an error of judgment on their part to believe that the communal situation in Bhiwandi had improved after the settlement was arrived at with respect to the Shiv Jayanti procession or that there was no likelihood of riots or that if any trouble would take place, it would be minor and localized and the Police would be able to contain it. So far as the said settlement is concerned, the Police themselves did not wholly believe in it as is shown by S.P., Bhave's letter dated May 2, 1970 (Ex. G. 111) asking for reinforcement for Shiv Jayanti in which, after briefly setting out the events which had till then happened, he stated that from these events it would be evident that "the decision taken to celebrate the Shiv Jayanti festival harmoniously was only a veneer and it does not appear that under it tension has subsided." So far as the change of heart on the part of the R.U.M. leaders was concerned, it is debatable whether these officers really believed in it, for it is not possible to believe that they could be so naive. It was true that the Ganapati festival of 1969, of which the control was taken over entirely by the R.U.M., had passed off peacefully, but the background of the Ganpati festival and of the Shiv Jayanti procession were wholly different. Ganpati festivals were not a subject of communal controversy in Bhiwandi, nor had they evoked such strong communal emotions as the Shiv Jayanti processions did. Further, it had been the experience of the Police that the R.U.M. leaders, though they talked one thing in the Peace Committee meetings, did exactly the opposite when the time for action came. In this connection it is pertinent to recollect entry No. 71 made by Inspector Pradhan in the Station Diary of the Bhiwandi Town Police Station for March 16, 1970 (Ex. P 1488) in connection with the incident at Navi Chawl at the time of the Moharram procession in which he had stated, "The experience is that Dr. Vyas speaks one thing in the Peace Committee meeting and instigates the boys on the other hand." The R.U.M. leaders had been consistently indulging in inflammatory communal propaganda which increased in tempo after the Ahmedabad disturbances. The R.U.M. had extended its activities to the nearby villages and had carried on systematic propaganda both in Bhiwandi and in the villages in connection with the Shiv Jayanti procession, exhorting the Hindus to resist and overcome the Muslim opposition to the route of the procession. This propaganda continued right till the Shiv Jayanti and

the mere fact that speeches counselling peace and good behaviour were made at the meetings of April 27, 1970 and May 4, 1970 does not mean that there was a change of heart on the part of the R.U.M. leaders. At this very time the R.U.M. leaders and Ramesh Sambhus were carrying on an intensive propaganda in the villages in connection with the Shiv Jayanti. The reports of their visits to villages, even though sketchy, show that the propaganda they carried on in the villages was about the Hindu religion and for the purpose of exhorting the villagers to come to Bhiwandi in large numbers to participate in the Shiv Jayanti procession just like Shivaji's Mavias. In the light of the several detailed reports of other speeches made on the same theme by the R.U.M. leaders and Ramesh Sambhus which are on the record, it cannot be difficult for anyone nor should it have been difficult for the police officers concerned to judge the nature of the speeches made by these leaders and Ramesh Sambhus in the villages. In his said letter dated May 2, 1970 (Ex. G 111) S.P., Bhave has stated. "So also, it will not be correct to ignore the trend of thinking of the members of the Rashtriya Utsav Mandal. They have expressed their fears that something untoward might happen during this Shiv Jayanti procession." This shows that the R.U.M. leaders had been openly voicing their opinion that the Muslims were out to make trouble at the time of the Shiv Jayanti procession. This conclusion is fortified by the fact that the Shiv Sena Shakha Pramukh Baliram More, who had joined hands with the R.U.M., was, as shown by S.P., Bhave's report dated May 4, 1970 (Ex. P. 151), spreading the story that the Muslim leaders had advised Muslims to beat up Hindus wherever they were seen. These Hindu leaders must have, therefore, counselled their followers to hold themselves in readiness and the manner in which the people, particularly from the nearby villages, came to join the Shiv Jayanti procession clearly bears this out.

36.8 To say that after the settlement was arrived at in the Peace Committee meeting the communal situation in Bhiwandi had improved is contrary to the facts. After the settlement there were incidents of assault on Muslims as also on Hindus at night. Though there were not many of them, these assaults were magnified and spread panic among the Muslims that Muslims returning home from the cinema houses after the last show were being assaulted. Boards were, therefore, put up asking Muslims not to go to the cinema houses. In retaliation, boards were put up at Wada Stand asking Hindus not to attend the three Muslim-owned cold-drink houses, which were three very popular cold-drink shops in Bhiwandi. Baliram More had spread the story that the Hindus were assaulted as a result of the advice given by Muslim leaders to beat up Hindus wherever they were seen. The Police had received information that old fused electric bulbs were missing from the municipal stock and that acid had been purchased from a Bohri shop in Bazar Peth. The Police had further received information about the collection and storage of arms and missiles in some Muslim huts, a Muslim factory and a mosque and had also

received information that the Muslims, apprehending trouble from the Hindus, were preparing to meet it and an alert was to be given on May 6, 1970. Even though on a check made of the municipal stock at the Bohri's shop and of the said huts, fatcory and mosque, the information was not substantiated, the police officers could not, in the light of the circumstances then prevailing, ignore it, presuming that it was false. The information nonetheless ought to have put them on guard and made them much more cautious not to take too rosy a view of the situation. Even as late as May 4, 1970 S.P., Bhavne in his report to the D.M. (Ex. P 151) had stated, "Internally, the situation in Bhiwandi seems to be deteriorating" and P.S.I., G. S. Deshpande has deposed that the atmosphere was causing anxiety [P.W. 60/1(28) 1058(17)]. In the light of the apprehensions felt by both sides, a clash seemed almost inevitable and the officers ought to have anticipated it. They did expect one of the largest processions in Bhiwandi to be taken out on the occasion of Shiv Jayanti. According to I.G.P., Rajadhyaksha, the Police expected a procession of 5,000 to 15,000 (G.W. 2/56/105). In view of the numbers which were likely to collect and participate in the procession, to expect any trouble which would break out to be minor and localized was to grossly underestimate the situation. The correct assessment of the situation was made by Dy.S.P., Diwate in his report dated March 26, 1970 (Ex. P 661) made to S.P., Bhavne on the memorandum (Ex. P. 492) submitted by the P.S.P. leaders to S.P., Bhavne and in the context of the present discussion it is worthwhile repeating what he has said in the concluding portions of the said report :—

"The atmosphere of the town is thus getting tense day by day and unless strong preventive action is taken against the leaders of the Rashtriya Utsav Mandal, I am afraid the Shiv Jayanti procession would not pass peacefully. It is therefore requested that action under the Preventive Detention Act may be considered against the following persons :—

- (1) Dr. B. P. Vyas, Prabhu Ali, Bhiwandi.
- (2) Shri Bhaskar Ganpat Mali, Gauripada, Bhiwandi.
- (3) Shri Uddhav Rajaram Teje, Navi Chawl, Bhiwandi.
- (4) Shri Shantaram Maruti Taware, Bhoiwada, Bhiwandi.
- (5) Shri Sharad Shankar Patwardhan, Brahman Ali, Bhiwandi.
- (6) Shri Bhai Trimbak Nagale, Prabhu Ali, Bhiwandi.

"The activities of Shri Abdul Khaliq Mohmed Ibrahim Momin, President, Tamir-E-Millat, Bhiwandi, are also not above-board. He has been spreading the communal poison among the Muslim youngsters and their defiant attitude was very much noticeable during the Moharram processions. His case may therefore be considered for Preventive Detention."

As mentioned earlier, it was unfortunate that Dy.S.P., Diwate's suggestion to detain under the Preventive Detention Act the leaders of the R.U.M. and of the Bhiwandi Branch of the M.T.M. was not followed.

36.9 It is not as if the officers concerned were not made aware of the dangers which the R.U.M. activities and propaganda were causing to the communal harmony and the maintenance of law and order situation in Bhiwandi. These dangers were pointed out to the S.P., Thana, by the memorandum dated March 16, 1970 (Ex. P 492) submitted to him by the P.S.P. leaders and by Dy.S.P., Diwate in his report dated March 26, 1970 (Ex. P 661) on the said memorandum. The dangers posed by the activities of the R.U.M., including the prayer meetings held by them in Bhiwandi and in surrounding villages and by the activities of the M.T.M. were also pointed out to D.I.G. (B.R.), Gokhale, S.P., Bhawe, Dy.S.P., Diwate and Inspector Pradhan by Bhausaheb Dhamankar, Zumberlal Kalantri and Sikander Faquih. Bhausaheb Dhamankar has deposed that he did not find these officers very enthusiastic to curb the activities of these two organizations and all that they had replied was that reports were made to Government and orders were awaited.

36.10 Bhausaheb Dhamankar did not share the official optimism. Like Dy.S.P., Diwate he also saw the situation clearly and was filled with apprehension and did not expect the procession to pass off peacefully. He has deposed, "In spite of this agreement having been arrived at (that is, the agreement arrived at in the Peace Committee of April 24, 1970) the tension in the town was mounting so much that all the while I felt that the 1970 Shiv Jayanti procession will not pass off peacefully. I did not expect riots of such magnitude" (C.W. 2/7/1967, 50/1735).

36.11 The evidence on the record clearly establishes that the situation prevailing on the eve of the Shiv Jayanti procession was such that, there was every likelihood of serious communal disturbances on a large scale taking place. In my opinion, the officers concerned should have expected this and should have taken precautions and preventive measures accordingly. The bandobast for the Shiv Jayanti procession was made by the Police on the basis of their aforesaid incorrect assessment of the situation. It was, therefore, adequate to deal with only minor or localized trouble but not with the large-scale disturbances which actually took place.

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CHAPTER 37
THE SHIV JAYANTI CELEBRATIONS
CONTENTS

Paragraph

- 37.1 The inaugural function.
- 37.2 The speech of P. B. Bhave.
- 37.6 Police reports on P. B. Bhave's speech.
- 37.9 Sub-Inspector Dalbhide's report.
- 37.10 Head Constable Jadhav's report.
- 37.17 Oral evidence about P. B. Bhave's speech.
- 37.21 The correct version.
- 37.22 The effect of P. B. Bhave's speech.

CHAPTER 37

THE SHIV JAYANTI CELEBRATIONS

The inaugural function

37.1 The inaugural function of the Shiv Jayanti festival was held at 8 p.m. on May 5, 1970. G. D. Madgulkar, M.L.C., a well-known figure in Marathi literature, addressed the gathering. He was introduced by Dr. Vyas and Balasaheb Joglekar. Madgulkar spoke on Shivaji's life. In the course of his speech he said that Shivaji did not hate other religions and exhorted the audience to treat all religions with equal respect. Amongst the Muslim leaders present were the Municipal President Zuber Patel, Sikander Faquih, Gaffoor Suleman, Yusuf Ibrahim, Ismail Jokhu, Ibrahim Maddu and Imam Kharbe. Madgulkar was followed by Vivekanand G. Godbole, the President of the Kalyan Footpath Parliament (the deponent of affidavit No. 60), who spoke on Shivaji's life with special reference to his battles. The audience consisted of about 1,000 to 1,500 persons. This was followed by a play. Head Constable Manjrekar's report on this function is Ex. P 129. No shorthand reporter was kept for this meeting as Madgulkar was a well-known figure in Marathi literature and not known to make inflammatory speeches and was not on the verbatim list of the Police (P.W. 4/129/760). Bhausahab Dhamankar who was present has deposed that he did not find the speech of Madgulkar in any manner provocative. He has also stated that Godbole's speech was marked by restraint but "one could not ultimately assert that there was no reference in the speech which could be objected to by Muslims." [C.W. 2/1(29)/1692(21)].

The speech of P. B. Bhave

37.2 The speaker for the programme held on May 6, 1970 was a well-known Marathi writer, P. B. Bhave (C.W. 45). His name was selected by the Programme Committee of the Shiv Jayanti Utsav Samiti. Dr. Vyas was the Chairman and Umar Shafak, Has Mukh Thakkar, Sharad Patwardhan and Mahadeo Kunte were the members of the Programme Committee. The other names suggested at the said meeting were those of Madhu Dandavate and V. G. Gadbole, the President of the Kalyan Footpath Parliament (the deponent of affidavit No. 60). Dr. Vyas recollected in the witness-box that Bhave's name was suggested by Baliram More and Shantaram Tawre (J.S.W. 1/32/2215-6). It would, however, appear from P. B. Bhave's evidence that he had been invited to speak much earlier than the meeting of the Programme Committee, in fact at least a month prior to May 6,

1970 and amongst the persons who came to invite him for this purpose was Dr. B. P. Vyas himself (C.W. 45/18/3755). Thus, his coming to Bhiwandi to speak had already been pre-arranged.

37.3 As it is alleged that the speech made by Bhave was highly inflammatory and provocative and played a considerable role in heightening communal tension and inflaming communal passions in Bhiwandi on the eve of Shiv Jayanti and as from the report of the said speech the said allegation appeared to the Commission to be *prima facie* true, the Commission issued a notice to P. B. Bhave setting out the allegations made against him and giving him an opportunity to appear before the Commission and give evidence on his own behalf as also to lead evidence to rebut these allegations, if he so desired. In pursuance of the said notice P. B. Bhave appeared before the Commission and gave evidence, he being witness No. C.W. 45. He was represented by Counsel Mr. M. D. Pathak.

37.4 According to the evidence of Dr. Vyas, the speech of P. B. Bhave did not contain anything objectionable (J.S.W. 1/32/2216). The Police, however, found P. B. Bhave's speech to be communally provocative and prosecuted him under section 153A I.P.C. P. B. Bhave was discharged on October 17, 1970 on the ground that the sanction authorizing prosecution was not proper. The case was refiled after obtaining fresh sanction. On April 30, 1973, being the date up to which Exhibit G 394 shows the disposal of cases *inter alia* under section 153A I.P.C., the case was still pending. The Police had not kept any shorthand reporter at this meeting because, according to S.P., Bhave's deposition, P. B. Bhave was a well-known figure in Marathi literature and was not known for making inflammatory speeches and was, therefore, not on the list of speakers whose speeches were required to be taken down verbatim. The Police had also not come across any report or instance of any political activities on the part of P. B. Bhave, but, according to S.P., Bhave it would appear from P. B. Bhave's writings that he had leanings towards the Jan Sangh ideology and Dhamankar has deposed that P. B. Bhave was pro-Hindu Mahasabha and known to be so (C.W. 2/36/1723). S.P., Bhave has further deposed that the Police did not anticipate P. B. Bhave to make the type of speech he made that night (P.W. 4/268/760-1). In his affidavit Dhamankar, referring to Bhave's speech, stated [C.W. 2/1(30)/1692(22)] :

"His speech on the whole could not be said to be improper. He had purported to assert that at the time of Shivaji, having found that there were some persons who were traitors in this very town Shivaji had managed to raze to the ground the mosque where they had taken shelter leaving even no trace of the same thereafter. The suggestion was that in case there were any traitors, administrators should not hesitate to pursue them even if they have taken shelter in a sacred place and should not be deterred in defacing the place miscreants succeeded in taking shelter. He stated that traitors must not be let off under any false sense of secularism. He also asserted

that administrators have obligation to protect the faithful and loyal citizens even if they are Muslims by faith. He purported to assert that faith was not criterion but patriotism was the touch-stone."

In his evidence he thus explained the above statement (C.W. 2,9/1698) :—

"Though on the whole his speech could not be said to be improper as stated in paragraph 30 of my affidavit, his manner of delivering it was provocative; for example, he started by saying that he was quoting from history and that in this very town of Bhiwandi Shivaji had razed to the ground a mosque. He then paused for a few minutes and then added that it was because there were some traitors who had taken shelter inside the mosque. He further said that at present also if there were traitors in Bhiwandi and whether they were Hindus or Muslims the Government should deal firmly with them. His manner of speech was provocative..... When Bhave said in his speech that traitors must not be let off under any false sense of secularism, he was by implication referring to Muslims only as being such traitors."

37.5 P. B. Bhave's own evidence leaves no doubt that the speech was highly inflammatory and that he was in the habit of regularly making such speeches. His own evidence further shows that neither the impression of S.P., Bhave that he was not in the habit of making inflammatory speeches nor the opinion of Dhamankar that what was provocative was only the manner of his speech and not the contents thereof were correct. In fact, Dhamankar himself was apprehensive about what P. B. Bhave was going to say, for he has testified that before the meeting he was introduced to Bhave by Balasaheb Joglekar and that he and Joglekar both had requested Bhave that in view of the tension in the town and the strained relations between the two communities, he should be restrained in his speech and that he had agreed to do so and had said that he would mention historical facts only. Dhamankar then told him not to do so in a provocative manner. After the meeting Bhave met Dhamankar and asked him how he had found his speech. Dhamankar replied that though he had been requested not to be provocative, he had in spite of it done what he wanted to do and had been provocative (C.W. 2/9/1698). According to Bhave, the only talk which he had with Dhamankar before the meeting was that Dhamankar told him that the meeting was a representative one on behalf of the Municipal Council and persons of different castes, creeds and religions were present and he had replied that he was very happy to hear it. He has further deposed with his speech and Dhamankar had replied in the affirmative (C.W. 45/13/3751). Bhave's version of these conversations does not appear to be correct. There was no reason for Dhamankar to tell Bhave that persons of different castes, creeds and religions were present unless he apprehended that Bhave's speech would be communally provocative and, further, unless Dhamankar had asked Bhave to be restrained in

his speech, it would not have been necessary for Bhave to ask Dhamankar after the meeting whether Dhamankar was satisfied with the speech. Realizing this Bhave subsequently sought to change his answer and said that Dhamankar had told him that it was a representative function and persons of all shades of opinion were present and that he had not told him that the audience was a mixed one composed of Hindus and Muslims (C.W. 45/17/3755). This statement is clearly an afterthought, because, as we have seen, P. B. Bhave had earlier categorically deposed that Dhamankar had told him that persons of different castes, creeds and religions were present. This must necessarily imply that Muslims were present in the audience.

Police reports on P. B. Bhave's Speech

37.6 There are two police reports on this meeting, namely, Inspector Pradhan's report dated May 7, 1970 (Ex. P 95) to the S.P., Thana, which was prepared by Head Constable Jadhav who had attended the said meeting to report on it and had taken down notes and had written out the report therefrom the same night (G.W. 10/39/3849), and the report dated May 7, 1970 (Ex. P 1438) from P.S.I., V. M. Dalbhide of the State Intelligence to the D.I.G. (Int.). Head Constable Jadhav's report is a more detailed one, reporting Bhave's speech both in direct and indirect narration. P. B. Bhave was put this report in the witness-box. Since Ex. P 95 was an English translation of the said report, Bhave also read over the original Marathi report. He admitted that the said report contained the substance of his speech except that there were certain inaccuracies and distortions in it, all of which he mentioned in the course of his evidence. He further stated that the Marathi version was a little better than the English version, though it was not a faithful reproduction of the real substance of his speech, his words and sentences being torn out of the context and his thoughts distorted and twisted. According to him, the English translation was a poor specimen of translation into English from a vernacular language. This is a statement with which one must agree for it is a state of affairs applying not only to this piece of translation but to a number of other translations exhibited before the Commission due to the decline in the standard of English in India—a state of affairs which we can only deplore but must of necessity put up with. He further said that so far as P.S.I., Dalbhide's report was concerned, though it was more accurate than Head Constable Jadhav's report, the same mistakes and distortions which he had pointed out in Jadhav's report also occurred in Dalbhide's report. In the course of his evidence, Bhave was also put what various witnesses had stated about different portions of his speech and he has given his own version thereof (C.W. 45/1-10/3747-51, 14/3752, 17-20/3753-57).

37.7 The aforesaid reports and the oral evidence show that the meeting commenced with an entertainment programme. P. B. Bhave, the speaker of the evening, however, arrived late, the reason being that some of the organizers who went in a jeep to fetch him from his

residence at Dombivali did not arrive in time. He at first refused to go to the meeting because of the late hour, but when they pressed him very hard, he agreed and went with them (C.W. 45/12/3751). He reached the place of the meeting a little after midnight. The audience at this meeting was about 700 to 800 persons, and they all waited for Bhave. When Bhave arrived, Balasaheb Joglekar thanked the audience and introduced him. Bhave then spoke. After he finished speaking, Dr. Vyas thanked and garlanded him.

37.8 So far as P. B. Bhave's speech is concerned, it would be convenient first to set out what P.S.I., Dalbhide has stated in his report (Ex. P 1438) and then to take the report with reference to which Bhave has deposed in detail, namely, Head Constable, Jadhav's report (Ex. P 95), setting out below each disputed portion thereof P. B. Bhave's version and then refer to the evidence of other witnesses with P. B. Bhave's comments thereon and then to consider which version should be accepted.

Sub-Inspector Dalbhide's report

37.9 P.S.I., Dalbhide's report (Ex. P 1438) is as follows :

"... In the course of his speech he at the outset expressed that he was late for the speech, that it was the first time that he had to give a speech at 12 O'clock midnight and added that it was only proper, because at that very hour Shivaji Maharaj had attacked Shaistekhan when the latter was asleep and the Marathas started the slaughter.

" Shivaji Maharaj, when only a boy of 15 years of age, saw visions of the establishment of 'Hindvi Swarajya'. The Muslims committed rapes on Hindu women; even now such incidents are taking place; cows were slaughtered, oppression and atrocities were committed. Shivaji Maharaj fought against such tyrannical power. Seven Sultans ruled this country. Quoting the examples of Allauddin Khilji, Aurangzeb, etc., he said that Shivaji Maharaj fought against persons who were not loyal to this country, had loyalty to alien nations and those who were committing atrocities by force, with a view to crushing them. Such persons received no sympathy from Shivaji Maharaj. His Bhagwa flag was the national flag, "Har-Har-Mahadev" was the war-slogan and the policy was one of purification of language and religion which is supported by the examples of Netaji Palkar and Nimbalkar who had embraced Islam but were later reconverted to Hinduism. He rid the language of all foreign words. He demolished those mosques and dargahs where anti-national conspiracies were being hatched. Such mosques were completely demolished. If you ask which mosque it was, history shows that it was at Bhiwandi itself. Similarly, Shivaji Maharaj demolished a dargah at Jalna for financing his administration, he attacked Surat which then belonged to Aurangzeb. He looted Surat and Jalna. During the attack on Surat, Shivaji Maharaj had a close escape when an attempt was made to kill him. The speaker describing

this incident as well as the incident at Agra said that Shivaji Maharaj constantly fought with the enemies. He killed persons like Chandrarao More who opposed him. Such instances were cited. One should kill the enemy but not get killed by them. The speaker further quoted the example of Afzalkhan and Aurangzeb and narrated the life history of Chhatrapati Shivaji Maharaj. Shivaji Maharaj, Rana Pratap, Padmini, Rani of Jhansi, Ranjitsingh were solid rock-like personalities who have passed away but are not yet dead. The features of Shivaji Maharaj would be found amongst you ; as a son resembles his father, images of these persons would be found amongst you. A Muslim residing in Maharashtra does not look like a Muslim residing in Arabia, likewise the Punjabi residing in Punjab does not look like a Maharashtrian. It is related to blood. At present we find cutthroats and black marketeers in the Government but there are no men like Shivaji, Rana Pratap, etc., now. They will be found amongst you. Afterwards he urged that all should visit Shivaji Maharaj's Samadhi at Raigarh, see it since it was like a deity and advise that we should do obeisance to such a mighty personality. Thus he praised Shivaji Maharaj."

Head Constable Jadhav's report

37.10 According to H.C., Jadhav's report (Ex. P 95), Bhave began his speech by saying :

"It is quite late in the night. This has not happened to me before in my life. But today at the time of Shiv Jayanti I was delayed. Shri Shivaji Maharaj had fought all his battles at midnight only. It was at midnight that Shivaji's Marathas started slaughtering and in Shaniwar Wada Shahistekhan's fingers were cut off."

Bhave has stated that there are two inaccuracies in the above passage, (i) that he had said that Shivaji had fought all his battles at midnight only, and (ii) the mention of "Shaniwar Wada". According to him, what he had actually said was that some of Shivaji's raids were carried out at night. He denied that he had used the words "Shaniwar Wada" because Shaniwar Wada was built decades after Shivaji died, in the time of his grandson Shahu Maharaj, and that at the time of the aforesaid incident Shahistekhan was occupying the palace of Lal Mahal in Kasba Peth near the site of Shaniwar Wada. He admitted that he did mention the incident of Shivaji cutting off Shahistekhan's fingers and stated that whenever he made a speech on Shivaji he always mentioned the said incident because it was a landmark in Shivaji's life.

37.11 According to the said report, Bhave further said :

"Since Shivaji Maharaj was 15 years old, he started dreaming of Hindvi Swarajya. Muslims then raped Hindu women. Even today such incidents are taking place. They slaughtered cows. They committed atrocities and oppression. Shivaji Maharaj fought against such tyrannical rule."

Bhave denied that he had stated that Muslims raped Hindu women or that even today such incidents were taking place or that Muslims

slaughtered cows and committed atrocities and oppression. He deposed that at the said meeting he spoke about Shivaji fighting against tyranny, by which he meant the tyranny of the Moguls and the Bijapur Sultanate. He could not remember whether he had mentioned any particular instances of such tyranny and said, "The Marathi audiences, as a rule, know what the tyranny of these rulers consisted of".

37.12 According to Jadhav, Bhave then said that seven Musalmans had ruled this country and cited the examples of Allauddin Khilji, Aurangzeb, etc., and said :

' Shivaji Maharaj fought with these people who owed allegiance to foreigners and those who indulged in oppressing the locals and finished them. Shivaji Maharaj never had any plans for such people. His Bhagwa flag was a national flag. His war slogan was, 'Har Har Mahadeo'. His religious policies were progressive. Netaji Palkar and Nimbalkar were converted to Hindu religion though they had accepted Islam once. He did not use words from foreign languages.'

Bhave denied that he had said that only seven Muslim had ruled the country. According to him, what he had said was that more than sixty Sultans had ruled Maharashtra. He also denied that he had used the word 'Musalman' in his speech. He said that he always used the word 'Mogul' as Moguls were a Turkish clan, and the word 'Moguls' or 'Turks' would mean a race, while 'Musalman' would imply and have reference to religion and that it was always the Moguls *versus* the Marathas and the subject of his speech was the Moguls *versus* the Marathas, that is to say, the wars and battles between the Moguls and the Marathas.

37.13 According to Jadhav, Bhave next said :

" He demolished mosques in which anti-national conspiracies were hatched. He demolished even the foundations of such mosques and Darghas. If you ask which mosque, history says that it was a mosque in Bhiwandi only. Shri Shivaji Maharaj damaged the Dargah in Jalna."

According to Bhave, these words were incorrectly reproduced, his actual words being :

" The great Shivaji was a tolerant king. He had in his employ a few Mahomodans. His Admiral was one Daulat Khan. He respected religious books. He respected and protected copies of the Koran also. Even then, with all his charity and tolerance he had to pull down a few mosques. He pulled down the mosques in Bhiwandi and Kalyan. When a tolerant king like the great Shivaji pulls down a mosque, he must be having a very good reason for it." In support of his statement that Shivaji pulled down mosques in Bhiwandi and Kalyan, Bhave referred in the witness-box to the following passage at page 26 of a booklet entitled *Maharashtra of the Shivashahi Period (17th Century)* by V. S. Bendre, published in 1946, which he had brought with him :

" In his early activities, he exhibited some aggressive spirit against the Muslim faith and pulled down certain mosques at Kalyan

and Bhiwandi and imprisoned Mullas there. This was, of course, prompted not through any destructive element in his policy, but as a retribution for causing disgrace to his father by deceit and imprisonment.”

Asking for the booklet the Commission noted that the heading for the said passage was “Shivaji gives up retaliation against Muslim religion” and that Bhave in citing the passage had omitted the last sentence thereof which immediately followed the above quoted passage, that sentence being “He, however, soon discovered the futility of such a destructive element in his action against his foe”. By citing the above passage without the heading and the concluding sentence Bhave gave a clear indication of the communal mould in which his mind was cast. He further denied that he had said that Shivaji had damaged the Dargah in Jalna. According to him, what he had actually said was, ‘Shri Shivaji Maharaj looted the township of Jalna and the Dargah along with it.’”

37.14 According to Jadhav, Bhave next said :

“With a view to earning money which is necessary for running the State he attacked Surat and looted it. This is history. You can confirm this from Shri Ranjekar. Even in the 1942 Movement from the very commencement for this very reason there was looting. A nation cannot function without money. When he looted Surat, there were no Gujaratis, but Muslim nobles (Sardars) were there. All this blood was spilled for the sake of the nation. Many attempts were made to kill Shivaji Maharaj.”

Bhave disputed the correctness of the aforesaid passage. According to him, what he had actually said was, “when the great Shivaji raided Surat, he did not molest the local populace. His target was Aurangzeb. It was Aurangzeb’s Surat that he looted”. He also denied that he had taken the name of Ranjekar. He stated that he had not heard of any historian by the name of Ranjekar.

37.15 The next passage in Jadhav’s report is :

“He then described the escape from Agra and also how Shivaji fought with enemies and had killed Chandrarao More who had opposed Shivaji. He said, ‘The enemy is to be killed’. He further described the life of Shivaji and gave information about Rana Pratap, Laxmibai the Queen of Jhansi, Ranjeetsingh, etc.”

Bhave did not raise any dispute with respect to the correctness of the above passage.

37.16 The concluding portion of Jadhav’s report on the said speech is :

“He then said, ‘One may come across amongst you persons with features like Shivaji Maharaj’s. A son’s features resemble his father’s. There are persons amongst you whose features are cast in the same mould. Muslims living in Maharashtra would not have features similar to the Muslims in Arabstan. Features of Punjabis are different from the features of Maharashtrians. This is due to blood-relationship. In our State today black-marketing and corruption

are rampant. We will not find today men like the men we used to have earlier.' He then said, 'There is Shivaji's Samadhj on Raigad and we should go to Raigad to offer prayers. I pray that the Almighty should bestow blessings on you.'"

According to Bhave, instead of the sentences "One may come across amongst you persons with features like Shivaji Maharaj's. A son's features resemble his father's. There are persons amongst you whose features are cast in the same mould", what he had actually said was, "Types and people do not perish. They live in their progeny. They live in their children. A child looks either like his father, mother, maternal uncle, aunt or any of his more distant ancestors. The mould and the physical type of Shivaji must be there amongst you somewhere, but where will you find Shivaji's spirit?"

Oral evidence about P. B. Bhave's speech

37.17 S.P., Bhave has stated that some Muslim leaders were present at the said meeting and the names of some of them have been given in Jadhav's report, they being Murtaza Fakhri (B.R.W. 1), Sikander Faquih (B.R.W. 2), Gafoor Sayyad, Jasin Sardar, Imam Kharbe, Ibrahim Maddu, Anwar Bubere and Haji Miyan Tase (B.R.W. 67). Amongst the Hindu leaders who were present were Bhausahab Dhamankar, Sharad Patwardhan, Parasram Taware, Sawalaram Kale, Uddhav Teje, Pandurang Vastad and Bhaskar Mali. P. B. Bhave said that he was not aware whether any Muslims were present at the said meeting and was not sure whether they were present but they might have been because it was night and Hindus and Muslims look very much alike. It was at that stage when he was faced with his earlier admission that before the meeting Dhamankar had told him that persons of different castes, creeds and religions were present, that he turned round and said that Dhamankar had not told him this but had only told him that persons of all shades of opinion were present. I have already rejected this part of his testimony. Realizing that his *volte-face* did not sound very convincing, he went on to say that even if the audience had consisted entirely of Muslims, he would have spoken the same things because he could not tamper with history and he never thought in communal terms and any audience signified to him just an audience to whom he was speaking like a musician giving a sole performance. One can well imagine how the claps with which portions of his speech must have been greeted by certain sections of the audience must have inspired him to rise to greater heights of communal propaganda.

37.18 So far as the evidence of other witnesses about Bhave's speech is concerned, we have already seen in paragraph 37.4 what Dhamankar has said. Bhave denied that he said that traitors must not be let off under any false sense of secularism, as stated in Dhamankar's affidavit. According to him, what he had actually said was that traitors must be punished without any distinction of caste, creed or religion as Shivaji used to do and that by that statement he did not

mean that the Government was not punishing any traitors on the ground of their caste, creed or religion. He had no other quarrel with the substance of his speech as reproduced by Dhamankar.

37.19 Admittedly, amongst the Muslim leaders present was Haji Miyan Tase (B.R.W. 67). This is what he has to say in his affidavit about Bhave's speech [B.R.W. 67/1(15-17)/1630(6-7)] :—

“At 12-30 a.m. he started his speech in a very provocative manner, saying that the time 12-30 a.m. was very auspicious as it was the time when Shivaji had chopped off the fingers of Shahistekhan. He also said that Hindus and Muslims had fought and that Shivaji had taken a vow because ‘Shatru Marayache Sathi Aahe’, i.e. Enemy is meant for killing’. He also referred to the meeting of Shivaji and Afzalkhan, saying that Shivaji dealt with Afzalkhan as the enemy should be dealt with. Shri Bhave also said that if Shivaji was not born, there would be no Hindu in the gathering. Shri Bhave regretted that Shivaji could not reach Delhi, otherwise the whole of India would have been liberated. He then made a very provocative statement saying that Shivaji had demolished a mosque and that mosque was at Bhiwandi. Shri Bhave also made very abusive reference to Aurangzeb calling him ‘Haramkhor’.

“Shri Bhave also made many other provocative statements which received loud and vociferous applauses from the gathering.

“I and Shri Anwar Bubere, who was also present in the meeting, discussed this matter with Mr. Bal Joglekar and Madhu Kunte. We impressed upon them that speeches should not be provocative but constructive and helpful for maintaining peace. This was also discussed with C.I.D. Inspector Shri Deshpande by one of us. It is my view that this highly provocative speech of Shri Bhave was one of the most effective causes which instigated the Hindus and spread poison among them and therefore they indulged in acts of rioting next day.” In cross-examination Tase elaborated what he had stated in his affidavit. He deposed that he had gone to the meeting with Anwar Bubere and Dastagir Hani and that, when after the meeting, they discussed Bhave's speech with Balasaheb Joglekar (N.H.W. 54) and Madhu Kunte, they told them that by reason of such an inflammatory and provocative speech, all the efforts of the Muslim leaders had been wiped out in a minute (B.R.W. 67/4/1632).

37.20 Bhave's reply to what Tase has stated in his affidavit was as follows :—

“It is not true that in the course of my speech I called Aurangzeb ‘Haramkhor’ as alleged by Haji Miyan Tase (B.R.W. 67) in paragraph 15 of his affidavit. I might have called him a fratricide, a man who imprisoned his father and poisoned his nephew Suleman, the son of his brother Dara Shikoh. In the course of my speech I complimented Dara Shikoh as being a tolerant prince. It is not true that in my speech I did not deal with Marathas versus Moguls but dealt with Hindus versus Muslims. I could not have referred to or talked about fights between Hindus and Muslims because a number of

Hindus fought by the side of the Moguls, while a few Muslims were employed by and fought with the Marathas. It was a fight between tyranny on the one hand and power and independence on the other. I did talk about Afzalkhan in the course of my speech. It is true that in the course of my speech I said that Shivaji dealt with Afzalkhan as an enemy should be dealt with. It is not true that in the course of my speech I said that Shivaji had taken a vow that 'Shatru Marayache Sathi Aahe' ('The enemy is meant for killing'). It is very likely and probable that I said in the course of my speech that if Shivaji was not born, there would be no Hindu left in India. In this connection, I must have quoted this line of Poet Bhushan which, so far as I recollect, was as follows : 'Agar Na Hote Shivaji, To Sunnat Hoti Sabki' ('If Shivaji were not there, everyone would have been circumcised'). It is not true that in the course of my speech I did not say that Shivaji was a tolerant ruler. It is not true that in the course of my speech I said that Shivaji could not reach Delhi, otherwise the whole of India would have been liberated as alleged in paragraph 15 of the said affidavit of Haji Miyan Tase (B.R.W. 67). I spoke about Shivaji pulling down mosques in Bhiwandi and Kalyan because these were prominent incidents in his life and had I spoken in any other place outside Bhiwandi or outside Kalyan, I would have referred to these incidents as I have always been doing ; just as in the same way when one talks of Aurangzeb, one invariably refers to his pulling down hundreds of Hindu temples, since this was a way of Aurangzeb's life."

The correct version

37.21 The question that arises is which of the aforesaid versions is the correct one. H.C., Jadhav has deposed that he took down notes while the meeting was going on and made his report (Ex. P 95) the same night and that what he had stated in the report was correct (G.W. 10/39/3849). His report was made contemporaneously and in substance tallies with the report made by P.S.I., Dalbhide (Ex. P 1438). P. B. Bhawe, on the other hand, gave evidence before the Commission on September 29, 1972, that is, more than two years and four months after the date of his speech. His speech lasted for about an hour. He admitted that he had not kept any copy or draft of the notes of his speech. He also said that the speech was an extempore one, in the sense that he had not learnt it by heart, but he stated that it was a set speech because he had been making the same speech about Shivaji for about 20 years and that this was the second time that he had spoken in Bhiwandi, the first time being about 15 years ago and that very probably his speech then was also on Shivaji (C.W. 45/14/3752, 20/3756). The affidavit of Haji Miyan Tase is much nearer the date of the speech for it was affirmed on August 19, 1970 and must have been drafted some time earlier. Though Bhawe has disputed some of the statements made in the said affidavit about his speech, he has accepted the other statements. Similarly, he has accepted, except for one

sentence, what Dhamankar has to say about his speech. If, therefore, it was necessary to decide this point, I would be of the opinion that the said reports of Head Constable, Jadhav and P.S.I., Dalbhide and the aforesaid passages from the affidavits of Bhausaheb Dhamankar and Haji Miyan Tase correctly represent the substance of what P. B. Bhavé spoke for about one hour in preference to what P. B. Bhavé has deposed. For the purposes of this Inquiry it is, however, not necessary to decide this point. Accepting what P. B. Bhavé has said to be correct, even then his speech was from the communal angle bad enough in the circumstances then prevailing and of which Bhavé residing at Dombivali could not be ignorant. In any event, he was made aware before the start of the meeting of the communal tension in Bhiwandi by Bhausaheb Dhamankar and Balasaheb Joglekar. On Bhavé's own evidence, his speech satisfies the test laid down in paragraph 6.8 above and was, therefore, a communal speech.

The effect of P. B. Bhavé's speech

37.22 It stands to reason that Bhavé's speech must have greatly annoyed the Muslims in the audience including those Muslim leaders who had been striving for communal harmony and were endeavouring to see that the Shiv Jayanti procession passed off peacefully without any incident. It must have excited the communal passions of the Hindus in the audience. In no time, what Bhavé has said appears to have spread all over the town. In telling and retelling the story must have been much distorted and magnified. Bhavé's exhortation to kill the enemy, his reference to punishing traitors just as Shivaji had done, his description of Aurangzeb pulling down Hindu temples and Shivaji attaching mosques and Dargahs in Bhiwandi and looting the Muslim nobles in the town of Surat must have made a great impact on certain sections of the audience. Murtaza Fakih who was present at the said meeting left the meeting and returned to his house at about 11-30 p.m. as Bhavé had not till then turned up. Dhamankar accompanied Murtaza Fakih but after some time returned to the meeting while Murtaza Fakih stayed at home. The next morning Murtaza Fakih heard about the speech made by Bhavé and he has deposed that he and the other Muslim leaders felt annoyed at it (B.R.W. 1/40/1376-7). If the speech of P. B. Bhavé filled the sober-minded Muslim leaders with annoyance, on reports of it—and in all probability grossly exaggerated reports of it—reaching the local Muslims, the extremists amongst them must have felt incensed and filled with a determination to meet attack with counter-attack. The result was that the Shiv Jayanti, which was ushered in by P. B. Bhavé with his talk of the unsheathing of swords, ended with the baring of knives.

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CHAPTER 38

THE DISTURBANCES—THE NATURE OF THE EVIDENCE

CONTENTS

Paragraph

- 38.1 The undisputed facts
- 38.2 The rival cases
- 38.6 The three stages of the Bhiwandi disturbances
- 38.7 The general nature of the evidence
- 38.8 The partisan nature of the evidence
- 38.10 The evidence about the procession
- 38.12 The evidence about the outbreak of the disturbances
- 38.13 The evidence about the course of the disturbances
- 38.17 The infirmities in police records
- 38.21 The dubious nature of F.I.Rs., police statements and panchnāmas
- 38.24 The oral evidence about the course of the disturbances
- 38.25 The infirmities in the oral evidence of police witnesses
- 38.28 The evidence of the Hindu and Muslim witnesses
- 38.29 The evidence in respect of certain matters
- 38.30 The evidence in respect of time
- 38.31 The evidence about the strength of the mobs
- 38.32 The evidence about the weapons used by the rioters
- 38.33 The evidence of police firings

CHAPTER 38

THE DISTURBANCES—THE NATURE OF THE EVIDENCE

The undisputed facts

38.1 The following facts with respect to the communal disturbances which took place in Bhiwandi in May 1970 were not disputed—

- (1) A number of persons from the near-by villages came to Bhiwandi to participate in the Shiv Jayanti procession and a large part of the procession consisted of these villagers.
- (2) As the procession started two Hindus shouted unapproved slogans and were arrested by the Police and taken to the Bhiwandi Town Police Station.
- (3) The procession thereupon came to a halt.
- (4) There were talks at the Town Police Station between D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhavé and some Hindu leaders. Ultimately the two Hindus were released after being given a warning.
- (5) After the release of the two Hindus the procession started again.
- (6) While the procession was passing through Saudagar Mohalla the Muslim leaders withdrew from the procession.
- (7) Thereafter there were discussions in Murtaza Fakhir's house between the Muslim leaders on the one hand and D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhavé on the other.
- (8) The Muslim leaders did not rejoin the procession and Capoor, Gokhale and Bhavé left to catch up the procession.
- (9) While the head of the procession had reached Keshar Baug and Old Thana Road and its tail-end was still emerging from Bhoiwada on to Bhusar Mohalla, the disturbances broke out.
- (10) When disturbances started D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhavé were still on their way to rejoin the procession.
- (11) In the disturbances almost every locality in Bhiwandi was affected and the disturbances rapidly spread to a number of places in the Thana District.
- (12) In the course of the disturbances arson, murder, mayhem and looting took place on an extensive scale.
- (13) The Police opened fire on several occasions.
- (14) The Police arrested a large number of persons and prosecuted most of them.

The rival cases

38.2 Three theories with respect to the disturbances were propounded before the Commission.

38.3 The first theory, which was propounded by the Special Investigation Squad, Bhiwandi, and the Hindu parties, was that the Muslims had entered into a criminal conspiracy almost a month prior to Shiv Jayanti to launch at 5.30 p.m. a simultaneous attack on the procession when it entered the Muslim localities of Bhusar Mohalla and Old Thana Road and on the Hindus and their properties in other localities on a pre-arranged signal being given by Ibrahim Maddu, the local Communist Marxist leader. They have further alleged that in pursuance of such conspiracy D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhave, the three seniormost officials on the spot, were lured away into Murtaza Fakhir's house at the crucial moment; the pre-arranged signal was given at 5.30 p.m. and at that time a simultaneous attack was launched upon the procession (which had by then reached Bhusar Mohalla and Old Thana Road and which all throughout was a peaceful, well-behaved and disciplined procession) and on the Hindus and their properties in other localities, killing and maiming the Hindus and setting their properties on fire.

38.4 The second theory, which was propounded by the Executive Magistrates and the District Police Officers, was that the procession was a well-behaved and disciplined one save that a few unapproved but otherwise innocuous slogans were shouted and that it was attacked by the Muslims when it reached Bhusar Mohalla and Old Thana Road in retaliation for the shouting of such unapproved slogans and the disturbances thereupon commenced and rapidly spread to other localities taking the Police completely by surprise.

38.5 The third theory, which was propounded by the Muslim parties, was that with a view to terrorize and crush the Muslims of Bhiwandi the R.U.M. brought to Bhiwandi thousands of villagers armed with lathis to which Bhagwa flags were tied and other weapons, that the behaviour of these villagers as they came to Bhiwandi as also of the processionists right from the very start was highly provocative and aggressive, and that when the procession reached Bhusar Mohalla and Old Thana Road the processionists launched a pre-planned attack on the Muslims and their properties and also fanned out into other localities attacking the Muslims and their properties, and that most of the time the Police turned a blind eye to what the Hindu rioters were doing and even at times actively participated in the attack on the Muslims and their properties, and that the Police favoured the Hindus and showed extreme communal bias and practised gross communal discrimination against the Muslims in dealing with the disturbances and in making arrests and in carrying out the investigation of riot cases.

The three stages of the Bhiwandi disturbances

38.6 The brief outline of the undisputed facts and rival contentions set out above will show that both in point of time and for facility of discussion the disturbances fall into three distinct stages. The first or the preliminary stage is the Shiv Jayanti procession and the events

which took place during its progress culminating in the outbreak of the disturbances ; the second stage is the outbreak of the disturbances ; and the third stage is the actual disturbances and the incidents which took place in the course thereof. There are other matters closely connected with the disturbances which either form the subject-matter of specific terms of reference to the Commission or are matters germane to them; such as measures taken by the authorities to deal with the disturbances, the fire opened by the Police on different occasions, the justification for each of these firings, the measures taken by the authorities to restore confidence in the public and for rehabilitating and giving relief to those who had suffered in the disturbances. Another important question which arises for consideration is whether in any of these matters or in the investigation of riot cases any discrimination or communal bias was shown by any of the officers or policemen concerned.

The general nature of the evidence

38.7 Voluminous evidence was led before the Commission with respect to the Bhiwandi disturbances. The quantity of this evidence is, however, no indication of its quality, for qualitatively the evidence led before the Commission is in inverse ratio to its quantity. The witnesses examined by the Commission, with very few exceptions, fall into three groups: (1) the witnesses who support the case of the Special Investigation Squad, Bhiwandi, and the Hindu parties, (2) the witnesses who support the case of the Executive Magistrates and the Police, and (3) the witnesses who support the case of the Muslim parties. The evidence of the witnesses in each of these groups runs on a pattern, each witness seeking to support the case of the party calling him or the party whose theory he has adopted and is propounding.

The partisan nature of the evidence

38.8 The evidence of almost every witness before the Commission has been partisan evidence. The object of the Executive Magistrates and the Police is to ward off all criticism against them either with respect to the correct assessment of the situation or the checking of any misbehaviour on the part of the processionists or in taking measures to prevent or deal with the disturbances. The witnesses called by the Executive Magistrates and the Police, are therefore, anxious to make out that the procession was by and large a well-behaved and peaceful one and though a few unapproved slogans were shouted, they were otherwise innocuous and in any event not provocative and that the procession was attacked by the Muslims who had collected in Bhusar Mohalla and on Old Thana Road so suddenly and unexpectedly that the Police were taken completely by surprise. The witnesses called by the Hindu parties are anxious to show that the procession was a well-behaved, disciplined and peaceful one and that no unapproved slogans were shouted and that the procession and the Hindus and Hindu properties in other localities

were wantonly attacked by the Muslims without any provocation and as a part of deliberate and well-organized conspiracy. The witnesses called by the Muslim parties, on the other hand, are anxious to show that the behaviour of the villagers who came to Bhiwandi to join the Shiv Jayanti procession was right from the beginning provocative and aggressive, that the procession was completely indisciplined and rowdy, that the processionists were behaving aggressively and in a highly provocative manner, that they launched a pre-planned attack on the Muslims and their properties, and that the Police were partial towards the Hindu rioters and discriminated against the Muslims and arrested innocent Muslims.

38.9 A further infirmity in the evidence of many witnesses is the communal bias shown by them which coloured their evidence. This partisan spirit and communal bias has led many a witness blatantly to perjure himself in the witness-box ; and out of the 253 witnesses examined in the Inquiry relating to the Bhiwandi disturbances only a few have deposed truthfully before the Commission, and even then some of them have exaggerated certain matters or underplayed them. The evidence, therefore, requires to be carefully sifted in order to arrive at the truth.

The evidence about the procession

38.10 So far as the Shiv Jayanti procession is concerned we have on record four versions, namely, (1) the version of the witnesses called by the Executive Magistrates and the Police, (2) the version of the witnesses called by the Hindu parties, (3) the version of the witnesses called by the Muslim parties, and (4) the version of S. V. Dhamankar, popularly known as Bhausaheb Dhamankar (C.W. 2). Accordingly to everybody appearing before the Commission. Dhamankar is one of the most respected citizens of Bhiwandi. In March 1971 he was elected to the Lok Sabha on the Congress (R) ticket. He had independently filed an affidavit before the Commission in which he had dealt with what happened in the afternoon of May 7, 1970. He was, therefore, called in evidence by the Commission.

38.11 Bhausaheb Dhamankar's demeanour impressed the Commission greatly. He was an honest and truthful witness whose evidence the Commission could rely upon. His affidavit consisted of facts, inferences and conclusions. Many of the facts stated by him in his affidavit were from his personal knowledge while the rest were on information received by him from others, his inferences and conclusions being naturally drawn both from facts within his own personal knowledge and the information received by him from others. Reliable evidence before the Commission shows that much of the information received by Dhamankar was not correct. To that extent his inferences and conclusions cannot be relied upon ; but so far as his affidavit and evidence deal with matters within his own personal knowledge, the Commission has no hesitation in accepting his word as against that of other witnesses in any of the three groups

where his evidence conflicts with theirs ; for, in the opinion of the Commission, he has given the most honest and truthful account of what happened that afternoon.

The evidence about the outbreak of the disturbances

38.12 None of the senior officers were present when the disturbances broke out. D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhave were at that time on their way from Murtaza Fakih's house to Bhusar Mohalla. Dy.S.P., Diwate was at Keshar Baug with the head of the procession and did not see the commencement of the disturbances. There are, however, a number of other witnesses who have deposed about what happened at Bhusar Mohalla and Old Thana Road but the evidence of only a few of them relates to any incident which may be characterized as the commencement of the disturbances. By reason of the topography of the locality it is not possible for any one to see the whole length of Bhusar Mohalla and Old Thana Road and, therefore, it was not possible for any witness to see everything that happened in the whole of that locality at any particular point of time. The evidence of what happened during this crucial period is, therefore, fragmentary and kaleidoscopic. Further, the evidence of quite a few witnesses on the point of the outbreak of the disturbances is false and perjured and of some others highly exaggerated and coloured. Here too the evidence requires to be carefully sifted and the true portions pieced together to present a correct, coherent and intelligible picture.

The evidence about the course of the disturbances

38.13 Voluminous evidence, both oral and documentary, was produced before the Commission to show the course of the disturbances which took place in Bhiwandi in May 1970. The documentary evidence consists mainly of the Control Room Diary and the Riot Diaries of the Bhiwandi Town Police Station Control Room, the Control Room Diary of the Thana Control Room, the Operations Room Diary of the State Police Operations Room, the Control Room Diaries of the Ulhasnagar Control Room and the Kalyan Town Police Station, the Station Diaries of the Bhiwandi Taluka Police Station and the Shahad Police Station (Ulhasnagar), first information reports (F.I.Rs.), police statements and panchanamas. The oral evidence consists of the depositions of a number of witnesses who were either the victims of or eye-witnesses to some of the incidents. Maps, prepared under the instructions of Dy.S.P., Diwate, showing the incidents, which took place on each day during the period May 7, 1970 to May 12, 1970, were produced in evidence. These maps are Exhibits P 1 to P 7 respectively.

38.14 S.P., Bhave had filed along with his affidavit a statement setting out communitywise and localitywise for each day for the period May 7, 1970 to May 12, 1970 the incidents which happened in Bhiwandi-Nizampur municipal limits, Khoni and Nagaon with a summary at the end of each day giving certain statistical information.

This statement was compiled from the F.I.R.s. and complaints lodged with the Police, an unsatisfactory source for ascertaining what exactly transpired or when it transpired, particularly in view of the theory formulated by the Special Investigation Squad and the Hindu parties that the disturbances broke out simultaneously in different localities in pursuance of a criminal conspiracy entered into by the Muslims. This statement was marked as Exhibit P 18 and the futility of implicitly relying on it was immediately demonstrated by S.P., Bhawe filing a statement of *addenda* and *corrigenda* to it which was marked as Exhibit P 19. According to him, this statement of *addenda* and *corrigenda* became necessary for the following three reasons (P.W. 4/8/242-3) :—

- (1) as the area of jurisdiction of the Bhiwandi Town Police Station was wider than the Bhiwandi-Nizampur Municipal limits, certain incidents, which fell within the purview of the Inquiry, had not been included in Exhibit P 18 under a wrong impression that they fell outside the area which was the subject-matter of the Inquiry,
- (2) some offences were registered after Exhibit P 18 was prepared, and
- (3) during the course of investigation some of the facts set out in Exhibit P 18 were found to be incorrect on further information coming to light.

38.15 On the same style S.P., Bhawe also filed a statement, which was marked as Exhibit P 658, setting out the incidents which took place from May 13, 1970 to May 31, 1970. Dy.S.P., Diwate also filed a localitywise and communitywise statement showing damage to property which took place during the period May 7, 1970 to May 13, 1970. According to him, he prepared this statement from the evidence on record before the Commission and the papers of the investigation. This statement was marked as Exhibit P 1517 (P.W. 66/183/3910). The evidence before the Commission shows that there are a number of inaccuracies and incorrect recital of facts in all these statements. Other statements were also exhibited giving statistical information about various matters.

38.16 From all the evidence before the Commission sketches have been prepared showing the incidents which took place in Bhiwandi and Khoni and Nagaon Villages during the period May 7, 1970 to May 30, 1970. These sketches are annexed to this Report as Appendices I to M.

The infirmities in police records

38.17 The documentary evidence produced before the Commission by the Police is highly unsatisfactory. The Control Room Diary and the Riot Diaries of the Bhiwandi Town Police Station cannot be taken at their face value. Other evidence before the Commission shows that some entries made therein are false, some incorrect, some contain only half-truths, and the correctness of some others is debatable.

Further, a number of incidents which took place in the course of the disturbances are not to be found in either the Control Room Diary or in the relevant Riot Diary. No Arrest Register was maintained at the Bhiwandi Town Police Station for the most crucial days, namely, for the period May 7, 1970 to May 12, 1970. The Muddemal Registers are not worth the paper they are written on and, strangely enough, there are two Muddemal Registers for the same period. These Muddemal Registers were admittedly not written contemporaneously when the 'muddemal' was taken charge of, but entries were made therein as it suited the purpose of the Special Investigation Squad. The C.R. numbers of the cases in which the property was seized were not entered in the Muddemal Registers under the instructions of the Special Investigation Squad (P.W. 66/121/1178). Thus, the officers of the Special Investigation Squad could subsequently insert in any entry the C.R. number they wanted in order to manipulate the investigation of riot cases. The 'muddemal' in different cases was not kept separate but dumped together anyhow in heaps inside the Town Police Station and outside on the road. The medical register of the Bhiwandi Municipal Dispensary for the relevant days was prepared subsequently and does not show the order in which the patients arrived at the Dispensary or were treated there. These registers will be dealt with in detail later.

38.18 So far as the F.I.Rs., complaints and police statements of police officers, policemen and private individuals are concerned, apart from the fact that they are not substantive evidence unless the persons giving the F.I.R., complaint or police statement were examined, implicit reliance cannot be placed upon them. Some of the F.I.Rs., complaints and police statements have been demonstrated in the course of the evidence to be false, some of the police statements to have been got up wholly by the concerned officers of the Special Investigation Squad, and some others shown to contain statements which the person giving the police statement never made.

38.19 The manner in which offences were registered has added to the difficulties found in ascertaining the correct facts. One out of several complaints was picked up and treated as the F.I.R. and the other complaints were treated as the police statements of witnesses recorded in that case. In some cases where the rioting was on both sides the complaint of a Hindu is made the F.I.R. and the complaints of Muslims made police statements in that case of rioting and arson so registered against the Muslims. These Muslim complaints thus remained uninvestigated.

38.20 The investigation into the riot cases conducted by the Special Investigation Squad was one-sided and biased and motivated by a desire to exculpate Hindus and implicate Muslims.

The dubious nature of F.I.Rs., police statements and panchnamas

38.21 Another reason which restricted the police witnesses from telling the whole truth was the fact that a number of F.I.Rs. and

police statements of police officers and policemen were purpose-oriented to show that the disturbances were started by the Muslims and that the Hindus were the greater sufferers. This position clearly emerges from the evidence of Dy.S.P., Diwate. In his affidavit Diwate had stated that with a view to prevent a conflict between the processionists and the Muslims he formed a cordon of S.R.P. men at Keshar Baug and pushed the processionists through a small lane towards the Hindu localities. In his police statement recorded by D.I., A. G. Lankar of the Special Investigation Squad in C.R. No. 177/70 (the Bhiwandi Conspiracy Case) he had stated, "I made a cordon of the S.R.P. men which lathis and arranged to send the processionists towards Mandai through the neighbouring lane", implying when read with the rest of the said police statement that the said cordon was made in order to prevent the Hindu processionists from being attacked by the Muslims and not with a view to prevent a conflict between the Hindus and the Muslims. When asked about this, Diwate candidly replied that what he had stated in his affidavit was correct and that his affidavit gave a complete picture while his police statement was recorded by the Special Investigation Squad in C.R. No. 177/70 which dealt with the offences committed by the Muslims and the role played by the Hindus was not mentioned in it because he was not asked about it by the officer recording his statement. In his affidavit he had further stated that he "noticed some Muslim houses to have been set on fire by the running crowd", a statement not to be found in his police statement. The same reason was given by him in cross-examination for omitting this fact from his police statement [P.W. 66/1 (16)/1108(9), 56-7/1134-5]. Dy.S.P., Diwate struck me as being an extremely capable and intelligent officer. Before the Commission he has been scrupulously honest and has brought to its notice documents and facts which told not only against the case of the Special Investigation Squad, the Executive Magistrate and the District Police Officers but also against himself. The same, however, can hardly be said about most of the other police officers and policemen who have given evidence before the Commission.

38.22 For an officer of the calibre of Dy.S.P., Diwate it was possible to keep in mind the fact that, unlike in his police statement, in his affidavit to be filed before the Commission he had to give a complete picture and state the truth. But this obviously could not have been possible, as it has not been possible, for every police officer and policeman. Most of them have filed affidavits seeking to make them consistent with their police statements and in cross-examination have sought to stand by the incorrect version, at times with results lamentable for themselves. A matter for reflection is that if the police statement of a Deputy Superintendent of Police could be recorded in this manner, in what fashion must the statements of police personnel of lower rank and of private witnesses have been recorded. Their statements would be manipulated in any way in which the officer recording the statement wanted and he would put into the statement his own

words and not what the maker of the statement had said. Some glaring instances of false police statements and of complaints and F.I.Rs. wrongly recorded would be mentioned in the course of this Report, but at this stage it is sufficient to state that even in the case of a person of such status and importance as Bhausahab Dhamankar D.I., A. G. Lankar of the Special Investigation Squad who recorded his statement has not scrupled to put into Dhamankar's mouth words which he had not spoken. Dhamankar categorically denied in the witness-box that he had stated to Lankar what was mentioned in his police statement dated June 4, 1970, namely. "Here one of the Hindu boys around me showed me that Ibrahim Maddu was also throwing stones from the mob" (C.W. 2/46/1733). If this could happen to the police statement of a person like Bhausahab Dhamankar, one wonders what must have happened to the police statements of ordinary persons. In this connection it is pertinent to note that, except in 17 cases of minor offences which were investigated by the local police, all police statements in cases relating to offences committed during the disturbances were recorded by the Special Investigation Squad (P.W. 66/130/1180).

38.23 Just like the police statements recorded by the Special Investigation Squad, the panchanamas prepared by the Special Investigation Squad do not inspire any confidence. Some are made haphazardly some deliberately record a wrong state of affairs, and some have been got up.

The oral evidence about the course of the disturbances

38.24 The oral evidence about the course of the disturbances suffers from the same infirmities as the evidence about the two preceding stages, namely, the procession and the outbreak of the disturbances. Witnesses have without the least scruple perjured themselves out of partisanship and communal prejudice. The police witnesses were anxious to cover up any default on their part and to repel any charge of inaction or deliberate connivance or active participation with the rioters; the Hindu witnesses were anxious to make out that the Hindus were the innocent victims and that the rioting was all on the part of the Muslims; and the Muslim witnesses were similarly anxious to make out that the Muslims were the innocent victims and that the Hindus alone indulged in rioting. The one thing which most witnesses were not anxious about was to tell the truth, and the truth had to be extracted from them only in cross-examination by Counsel for the other parties or by questions put to them by the Commission.

The infirmities in the oral evidence of police witnesses

38.25 A number of police witnesses have given evidence with respect to the disturbances. In order to evaluate properly their evidence, it is necessary to bear in mind certain important facts. The

most important of these facts is that the police witnesses including some superior officers were hesitant to admit and have tried to conceal the acts committed by the Hindu rioters and in their F.I.Rs. and reports about the fire opened by them, that is, in their firing reports, have omitted to mention the community of the mob when it was a Hindu mob or that a property set on fire was a Muslim property. There are four reasons for this, namely, (1) the release by the D.M. and the police officers of the two Hindus arrested at the start of the procession resulting in the loss of control by the Police over the procession, (2) the wholly disproportionate arrests of Muslims as compared with the number of Hindus arrested, (3) the failure, at times deliberate, on the part of some of the police officers and policemen to prevent the Hindus from rioting and to protect the Muslims and their properties, and (4) in the case of some witnesses, their communal bias against the Muslims. Further, to have admitted that right from the start of the disturbances the Hindus participated in the disturbances would have been tantamount to the police officers and policemen admitting that they failed to exercise control over the procession and allowed it to go out of hand and were thus responsible for what took place later. While dealing with the incidents which took place in the course of the disturbances, the hesitation of the police officers and policemen to admit that offences were committed during the disturbances by the Hindus would be pointed out. This is glaringly apparent even on the affidavits of police witnesses, for in quite a few affidavits, whenever the mob committing the offences was a Hindu mob, in sharp contrast to the cases where it was a Muslim mob, the community of the mob has not been mentioned. In fact, this omission of the community was at times so glaring that it immediately struck one on reading the affidavit. In a few instances it was only in cross-examination that the police officer or the policeman concerned admitted (or rather was forced to admit) that the mob in question was a Hindu mob or that the property looted or set on fire was a Muslim property.

38.26 The oral evidence suffers from the further infirmity that no one person could have seen the entire disturbances and in most cases not even a complete incident or an incident in all its details. Most witnesses naturally deposed about only that part of an incident which immediately concerned them. In many instances the narrative of witnesses was coloured by their communal bias or their zeal to support the case of the party calling them. The evidence of several police officers and policemen was demonstrated to have been coloured by communal bias and to be one-sided and unfair and containing merely half-truths and in some cases deliberate untruths.

38.27 Unfortunately all the incidents that happened on May 8 and 9, 1970 often did not come immediately to the knowledge of the senior officers, the reason being that for the most part of these two days they were busy with several V.I.Ps. who came to Bhiwandi as also in dealing with certain incidents. Further, as Inspector Pradhan, who

was in charge of the Bhiwandi Town Police Station, was injured and taken to the hospital. Dy.S.P., Diwate was the only senior officer who was familiar with Bhiwandi and, therefore, whenever a V.I.P. came to Bhiwandi he had to pilot him (P.W. 66/118/1177). From the statement of visits of Central and State Ministers to Bhiwandi filed before the Commission (Ex. P 1532) it appears that on May 8, 1970 the Chief Minister Mr. V. P. Naik, the Minister for Food and Civil Supplies Mr. H. G. Vartak, and the then Minister of State for Education, Law and Judiciary, Mr. A. R. Antulay visited Bhiwandi while on May 9, 1970 the then Union Home Minister Mr. Y. B. Chavan, the Chief Minister Mr. V. P. Naik, and the Minister for Food and Civil Supplies Mr. H. G. Vartak visited Bhiwandi. Thus, for most part of these two days Dy.S.P., Diwate was busy with the Ministers, and the position was the same with other senior officers who had to remain in attendance or call at the Inspection Bungalow to pay their respects to the Ministers or to confer with them.

The evidence of the Hindu and Muslim witnesses

38.28 Equal caution is required to be exercised in considering the evidence about the disturbances of the Hindu and Muslim witnesses. The witnesses called by the Hindu parties naturally tended to support the Hindu case of a pre-planned attack on the procession without there being any fault or misdemeanour on the part of the processionists and also tried to make out that all the rioting was on the part of the Muslims. The witnesses called by the Muslim parties, knowing that the Police and the Hindu parties were charging them with having started the disturbances, sought to make out that the disturbances were started by the processionists and that the Muslims were the victims of Hindu rioting and police terror. The affidavits filed by both the Hindu and the Muslim parties are so one-sided that if one were to read only the Hindu affidavits, one would get the impression that not a single Muslim property was attacked or burnt or looted in the disturbances and not a single Muslim injured or killed and that the only sufferers were the Hindus. Similarly, if one were to read only the Muslim affidavits, one would get the impression that not a single Hindu property was attacked or burnt or looted in the disturbances and not a single Hindu injured or killed and that the only sufferers were the Muslims. If we were to accept implicitly what is thus conveyed in these affidavits, we would be driven to the startling conclusion that neither the Hindus nor the Muslims rioted and that there were no communal riots in Bhiwandi—which, of course, would leave in the field only the Police as the rioters.

The evidence in respect of certain matters

38.29 A special word is required to be said about the nature of the evidence in respect of four matters. These are—

- (1) the time when different incidents took place,
- (2) the strength of the mobs,

- (3) the weapons carried by the rioters, and
- (4) the police firings.

The evidence in respect of time

38.30 No one caught in the whirl of unexpected precipitous events would normally think of consulting, or even have the time to consult, his watch or a timepiece in the vicinity to ascertain the precise time of the occurrence of an event. Thus, processionists suddenly faced with a hail of stones and acid-bulbs, householders finding a rioting mob surrounding and setting fire to their houses or breaking open doors and bursting into houses to murder and loot, police officers and policemen suddenly findings, instead of a procession, a pandemonium of two clashing mobs, flying stones and acid-bulbs, whirling lathis and flashing knives are not likely at that moment to consult their watch or a timepiece to find out the time. The paramount thought of the processionists and the householders would be to save themselves and of the police officers and policemen would be to bring the situation under control. Yet it is amazing how in affidavit after affidavit the precise time when an event occurred is mentioned, particularly with respect to the outbreak of the disturbances in the Bhusar Mohalla-Old Thana Road locality and in certain other localities where, according to the Hindu parties and the Special Investigation Squad, the disturbances took place simultaneously with the disturbances in the Bhusar Mohalla-Old Thana Road locality. The worthlessness of these affidavits so far as the mention of time in them is concerned can be judged from the fact that quite a few witnesses who deposed before the Commission did not know how to tell the time, others admitted that while giving instructions for drafting their affidavits they had not mentioned any time, and some others said that the time mentioned by them was pure guess-work or based on an estimate of the position of the sun. The mention of the exact time in an affidavit or oral evidence must, therefore, be attributed in most cases to a desire to establish a particular theory and, therefore, requires to be ignored and the time of happening of any particular event determined, approximately and in relation to the happening of other events and then a finding arrived at whether that event occurred at the same time as the other events or prior or subsequent thereto.

The evidence about the strength of the mobs

38.31 Since the witnesses were anxious to advance the case of the party calling them, their evidence about the various incidents which took place in the course of disturbances was coloured by this consideration. Both the Hindu and Muslim parties were anxious to make out that the other community had made systematic preparations for the disturbances and in large organized groups fell upon members of their community and attacked and set fire to their properties. The Executive Magistrates and the Police were anxious to show that they had a situation of almost unprecedented magnitude and difficulty

to cope with and did the best they could in such circumstances and, therefore, any shortcoming or default on their part was really not a dereliction of duty or a case of communal discrimination, but was an error of judgment committed in the heat of the moment in the face of a situation not experienced before by them. This led the Hindu and Muslim witnesses to exaggerate the strength of the mobs of the other community and the Police to inflate the numbers they faced.

The evidence about the weapons used by the rioters

38.32 On a par with the evidence about the strength of the mobs is the evidence with respect to the weapons carried by the rioters. The evidence on this point suffers from the same infirmities and exaggerations as the evidence on other points. A mob indulging only in stone-throwing was at times armed in affidavits and in the witness-box with lethal weapons, and stones were transformed into acid-bulbs, fire-balls, lighted torches, swords, spears and even bombs.

The evidence of police firings

38.33 The Police opened fire in Bhiwandi on 37 occasions. The evidence of police firings consists of the oral evidence of police officers and policemen who had opened fire and the documentary evidence of F.I.R.s. and firing reports made by them. Apart from the same infirmities from which the evidence led by the Executive Magistrates and the District Police Officers on other aspects of the disturbance suffers, the evidence of police witnesses in respect of police firings suffers from a further defect in that out of a desire to eliminate any possibility of it being held that any particular incident of firing was not justified, the police officers and policemen concerned have greatly exaggerated the situation, particularly the strength of the mobs on which they opened fire and the weapons which the rioters were carrying. In the case of fire opened on Hindu mobs an attempt was also made to cover up the community of the mob by not mentioning it in contemporaneous documents such as the F.I.R.s. firing reports and entries in the Control Room Diary and the Riot Diaries and even in some of the affidavits filed before the Commission. In the case of fire opened on mobs whose community was not known, at times an attempt was made to make out by implication that it was a Muslim mob.

38.34 Under section 128 Cr.P.C. if an unlawful assembly or an assembly of five or more persons likely to cause a disturbance to the public peace is conducting itself in such a manner as to show a determination not to disperse, the Police are entitled to disperse it by force, including opening fire, without first commending it to disperse. Thus, if a mob were committing arson or attacking a group of innocent persons or a police party with deadly missiles thereby showing a determination not to disperse but to continue indulging in these acts, the Police would be justified in opening fire without giving any warning. Sometimes from the nature of circumstances there

is no time for the police officer to give any such warning. In some of the incidents of police firings before us the mobs fired upon were at a considerable distance and it is debatable whether any warning, if given, would even be carried to them. Nonetheless out of an apprehension that it may be held that the firing was not justified, every affidavit filed by a police officer or a constable concerned in police firings mentions that before the fire was opened a warning or repeated warnings were given to the mob. The statement of warnings to mobs is in quite a few instances inserted in affidavits as a routine, ritualistic formula irrespective of the fact whether a warning was actually given or not. The evidence of warnings (whether oral or by way of affidavit) need not therefore be taken too literally and the matter must be judged from the gravity of the situation which necessitated the firing.

38.35 An infirmity in the evidence about the police firings is that though police officers and policemen who opened fire have made their reports, none of them have annexed to their reports a sketch giving the disposition of the police party, the location of and distance between the police party and the persons fired upon and other details which would give a clear idea of the incident as required by Rule 60(7)(c) of the Bombay Police Manual, 1959, Vol. III (G.W. 4/376/823).

38.36 A police officer or policeman faced with a situation in which he is compelled to resort to the extreme measure of opening fire is not likely to consult his watch to ascertain the time and then open fire. The time mentioned in any affidavit or in the oral evidence of a witness or in any firing report, F.I.R., or information given to the Control Room must, therefore, be taken to be just an approximation. It is humanly impossible to fix to the minute, except in some rare instances, the precise time when fire was opened. In most cases the opening of fire can only be said to have taken place between two points of time.

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CHAPTER 39
THE DISTURBANCES—AN OUTLINE

CONTENTS

Paragraph

- 39.1 The disturbances in Bhiwandi.
- 39.3 The method adopted by the Commission.
- 39.5 The weapons.
- 39.6 Acid-bulbs.
- 39.7 Fire-balls.
- 39.8 Molotov cocktails.
- 39.9 Country pistol.
- 39.10 Country bombs.
- 39.11 The dead.
- 39.13 The injured.
- 39.23 The raped.
- 39.25 The manner in which damage to property assessed by the authorities.
- 39.27 Loss to industry and trade.
- 39.30 Damage to mosques, temples, houses and other properties.
- 39.33 Loss of property.
- 39.34 The Bhiwandi Relief Committee and the Nagarik Hita-rakshak Mandal.
- 39.38 Disturbances in the Thana District.
- 39.40 Hartals and protest meetings.
- 39.42 The silver lining.

CHAPTER 39

THE DISTURBANCES—AN OUTLINE

The disturbances in Bhiwandi

39.1 As the Shiv Jayanti procession was passing through Bhusar Mohalla and Old Thana Road, its head having reached Keshar Baug and its tail-end still emerging from Bhoiwada, the disturbances broke out. The disturbances rapidly spread from locality to locality, leaving hardly any locality unaffected and reaching a peak of intensity not often seen. Armed, frenzied mobs roamed the streets, burning, looting and killing. A large number of houses, shops and factories were set on fire and before a few hours had passed a thick pall of smoke hung over Bhiwandi which could be seen from miles around. A number of persons were killed in the disturbances and many more injured and some died in police firings. By the evening of May 8, 1970 the fury of the disturbances died out and the disturbances were brought under control. Sporadic incidents, however, continued to take place for a few days thereafter (G.W. 3/6/155).

39.2 Soon after the disturbances broke out in Bhiwandi, they began spreading to other places in the Thana District and even Kolaba and Jalgaon Districts were affected.

The method adopted by the Commission

39.3 A large number of incidents took place in the course of the disturbances. Some of them were not disputed by any party while some others were seriously disputed. It is, therefore, necessary to deal in detail with only such incidents in respect of which there is a controversy and with the incidents of police firing to determine whether they were justified or not. The time when each incident took place is not material except in the case of those incidents which took place immediately following upon the outbreak of the disturbances in order to test the theory that these disturbances were the result of a criminal conspiracy entered into by the Muslims to attack simultaneously the Shiv Jayanti procession and the Hindus and their properties in other localities. This Commission is also not concerned with the identity of the individual rioters.

39.4 The method adopted by the Commission, therefore, is to sketch in this chapter the broad outline of the disturbances and to give the statistical information relating thereto and then to deal

with the first two stages of the disturbances, namely, the procession and the outbreak of the disturbances, and thereafter in order to complete the overall picture to give a summary of the incidents which took place in the course of the disturbances followed by a discussion of the measures adopted to deal with the disturbances. The details will thereafter be filled in by dealing with certain incidents, namely, the incidents of police firings, disputed incidents and certain other incidents which are important for the purpose of deciding the points which arise in this Inquiry. A large number of incidents have also taken place outside Bhiwandi. Some of these incidents will be referred to even though they took place in localities situate outside the area to which this Inquiry relates either for the purpose of completing the narration of events or because these incidents have a bearing on some point which arises for determination. It does not, however, follow that these were the only incidents which took place outside Bhiwandi. Other topics such as the allegations made against the Police, the investigation of riot cases, the question whether there was a conspiracy as alleged by the Special Investigation Squad and the Hindu parties, and the work of relief and rehabilitation done by the authorities, will be dealt with thereafter in separate chapters.

The weapons

39.5 It was alleged that the rioters used stones, brick-bats, soda-water bottles, acid-bulbs, fire-balls, Molotov cocktails, knives, axes, swords, spears, country pistols, fire-arms and country bombs. Stones, brick-bats, soda-water bottles and knives, and in the case of agriculturists and villagers also axes, have been the stock weapons of rioters and acid-bulbs have become so in the past few decades. Whether the rioters used any of the weapons and missiles mentioned above, and if so which, will be considered when we come to the incidents which took place in the course of the disturbances.

Acid-bulbs

39.6 An acid-bulb is an ordinary electric bulb in which a hole is drilled through its metallic cap, the filaments removed, the bulb filled with acid and then sealed with wax. When hurled at a person the bulb breaks on striking him, the glass fragments lacerate the skin and the acid burns the flesh, leaving permanent injuries and scars. From the simplicity of their preparation, for some decades acid-bulbs have been a stock weapon used in riots (G.W. 3/54/184). Few more horrible and excruciatingly painful missiles could have been invented by the fiendish ingenuity of man for the disfigurement of his fellow beings.

Fire-balls

39.7 The dictionary meaning of a fire-ball is "a bag filled with combustibles and used for lighting or causing conflagration" (Wyld

& Partridge's Webster Universal Dictionary). The fire-balls alleged to have been used in the Bhiwandi disturbances are stones sewed or wrapped in Hessian soaked in kerosene, petrol or other inflammable liquid, with a wire or string tied round them. They are ignited and hurled at a person to cause him burns or more often at an object to set it on fire. Fire-balls are easy to make and easy to handle and are thus a handy and convenient instrument of arson.

Molotov cocktails

39.8 A 'Molotov cocktail' is a bottle containing petrol, kerosene or other inflammable liquid and a wick which is lit before throwing. On impact the bottle explodes and the flaming liquid sets fire to the object struck. Molotov cocktails were first used in the Second World War by the Russians against German tanks and thereafter used in other wars and even in street-fighting by soldiers as weapons of offence (G.W. 3/19/165, 54-5/184-5). A 'Molotov cocktail' makes a simple, handy and convenient instrument of arson for rioters.

Country pistol

39.9 A country pistol is generally a pistol made at home out of an old .12-bore gun. Its barrel is a .12-bore barrel and it fires 12-bore cartridges containing pellets (G.W. 3/101/209; P.W. 61/140/3715).

Country bombs

39.10 Like an acid-bulb and a Molotov cocktail a country bomb (also known as a crude bomb) is a home product. The usual method of preparation of a country bomb is to wrap in paper a gelatine cartridge packed in splinters and then wrapped in a piece of coarse cloth with a small wick jutting out for the purpose of igniting. Strings are then tied round the cloth packet (P.W. 61/84/3656).

The dead

39.11 According to the official estimate, 78 persons lost their lives in the Bhiwandi Disturbances. All these deaths took place between May 7, 1970 and May 12, 1970. Some more persons may have been killed of which the authorities were unaware. The break-up of this official figure shows that in Bhiwandi 27 Muslims died as a result of injuries suffered in the disturbances, 11 Muslims in police firings, 17 Muslims as a result of injuries suffered in the disturbances in Rasulabad in Khoni Village and 4 Muslims as a result of injuries suffered in the disturbances in Gaibi Nagar in Nagaon Village. Thus, the total Muslim deaths were 59. In Bhiwandi 17 Hindus and 2 persons whose community could not be ascertained died as a result of injuries suffered in the disturbances. Only Muslims died in police firings and in the disturbances which took place in Khoni and Nagaon (Exs. P 18 & P 19).

39.12 The following table gives an idea of the deaths which took place datewise according to the official estimate:—

Date	Hindus killed in the disturbances	Muslims killed in the disturbances	Muslims killed in the police firings	Persons killed in the disturbances whose community is not known
7th May 1970	.. 15	11 +17 in Khoni.	2	1
8th May 1970	.. 2	8 +6 in Nagaon	7	..
9th May 1970	.. ..	2	..	..
10th May 1970	.. ..	2	..	..
11th May 1970	.. ..	2	..	1
12th May 1970	.. ..	2	..	..
Total	.. 17	50	9	2

Total number of Hindu deaths	..	17
Total number of Muslim deaths	..	59
Total number of deaths of persons whose community could not be ascertained.		2

Total number of deaths	..	<u>78</u>
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The injured

39.13 A number of persons injured in the disturbances were treated at the Bhiwandi Municipal Dispensary. Their names were, however, not entered in any regular register maintained by the Bhiwandi Municipal Dispensary but subsequently the particulars of the persons so treated were entered in a separate register. The entries made in the said register were, however, neither made datewise nor in the order in which the patients were brought to the dispensary or treated there. These entries merely give the names and other particulars of the injured persons taken from the medical case papers. The medical case papers for this period, though they show the date when a patient came to the dispensary and was treated and his medical history, do not show the time when he came to the dispensary or was treated there. From the records of the Bhiwandi Municipal Dispensary Dy.S.P., Diwate prepared statements showing the number of Hindus, Muslims, persons whose community could not be ascertained and police personnel treated at the Bhiwandi Municipal Dispensary from May 7, 1970 to May 12, 1970. These statements are Exhibits P 1494 to P 1497 respectively (P.W. 66/150/1217, 158/3900). These statements and the case papers are important in view of the contention of the Special Investigation Squad and the Hindu parties that the Muslims had entered into a conspiracy to attack simultaneously the Shiv Jayanti procession as also different Hindu localities and that the persons who suffered in the disturbances on May 7, 1970 were only the Hindus and that it was only on the next day that the Hindus started retaliating. These statements are also important for the purpose of understanding the type of weapons used in the disturbances.

39.14 Persons seriously injured were sent to the Thana Civil Hospital, some of them directly but most of them after treatment at the Bhiwandi Municipal Dispensary. At the said Hospital a Police Entry Book was maintained in which entries were made of accident cases and cases in which cognizable offences were suspected to have been committed. The relevant entries for May 7, 1970 were made by Jamadar Hari Fakira Gavade (P.W. 12). These entries were put in and marked as Exhibits P 432 to P 435 (collectively). These entries show that the first two persons injured in the disturbances in Bhiwandi admitted into this hospital were a Muslim and a Hindu brought in an emergency ambulance from Bhiwandi and two dead bodies, one of a Muslim and the other of a person shown both as unknown and as Hindu in the register. Thereafter there is an entry relating to one Ramchandra Keshav Kadam (P.W. 13), a fireman of the Thana Fire Brigade and then follow other entries showing a number of injured Hindus and Muslims admitted in the hospital. In most of these entries no time is mentioned. By May 9, 1970, 108 persons were admitted in the Thana Civil Hospital out of which 47 were Hindus and 61 Muslims. Out of them 4 Hindus and 1 Muslim died (Ex. G 145, entry No. 218). This, however, is not an indication of the number of persons injured in Bhiwandi and treated in the Thana Civil Hospital because from May 8, 1970 onwards, since the disturbances had started spreading to other places in the Thana District, injured persons from those places were also admitted in the Thana Civil Hospital. Further, a number of persons injured were treated by private medical practitioners or taken to other hospitals and in the case of some the injuries were superficial or minor and did not require any treatment except home remedies.

39.15 Since most cases were treated at the Bhiwandi Municipal Dispensary or if they were serious, first treated in Bhiwandi and then sent to Thana Civil Hospital, it will be desirable to give certain break-ups from the said statements Exhibits P 1494 to P 1497.

39.16 The following table prepared from the said statements (Ex. P 1494 to P 1497) shows datewise the number of persons treated at the Bhiwandi Municipal Dispensary between May 7, 1970 and May 12, 1970:—

Date	Hindus	Muslims	Police personnel	Community not known
7th May 1970	48	30	10	4
8th May 1970	36	129	14	1
9th May 1970	17	20	3	..
10th May 1970	5	4	..	..
11th May 1970	2	2	1	1
12th May 1970	2	7	1	..
Total ..	110	192	29	6
<i>Less persons not treated for injuries but for ailments.</i>	1	..	1	..
Total ..	109	192	28	6

Total No. of persons treated ... 335

39.17 The following table will show categorywise the type of injuries treated at the Bhiwandi Municipal Dispensary on May 7, 1970 :—

Type of injury	Hindus	Muslims	Police personnel	Community not known
1. Burns	1	..	..	1
2. Acid-burns	5	..	2	..
3. Cut from broken glass piece	1	..	..	..
4. Punctured wounds	3	..	..	..
5. Incised wounds	1	2	..	2
6. Stab wound in the abdomen	..	2	..	..
7. Fracture of the skull .. .. .	..	..	..	1
8. Contusions, abrasions, contused lacerated wounds, weel marks and fractures.	37	26	8	..
Total	48	30	10	4

39.18 Dy.S.P., Diwate had received acid-burns and other injuries in the evening of May 7, 1970. As, however, he was busy dealing with the disturbances he did not have the time to go for treatment until May 11, 1970 and could not take proper treatment even thereafter with the result that even at the time when he gave evidence there was partial disability in some fingers of one hand and in one shoulder which he showed to the Commission. Since the injuries were in fact received on May 7, 1970 he has been shown in the above table under that date and not under May 11, 1970.

39.19 It is not necessary for the purposes of this Inquiry to give a break-up of the figures for the subsequent days.

39.20 By reason of the contention that a large number of acid-bulbs were used in these disturbances it will be relevant to set out below the number of persons treated for acid-burns at the Bhiwandi Municipal Dispensary between May 7 and May 12, 1970. Some persons treated there had burns and in some cases it was contended that what were shown as burns in the medical certificates or in the said statements (Exs. P 1494 to P 1497) were really acid-burns and in some other cases it was contended that what were shown therein as acid-burns were only burns. Accordingly in the table given below the number of persons with burns treated in the said dispensary are shown in brackets :

Persons treated for acid-burns and burns at the Bhiwandi Municipal Dispensary

Date	Hindus	Muslims	Police personnel	Community not known
7th May 1970	5+(1)	..	3	1
8th May 1970	1+(2)	(3)	..	..
9th May 1970 .. .. .	..	..	..	..
10th May 1970 .. .. .	..	..	..	..
11th May 1970 .. .. .	..	(1)	..	..
12th May 1970	(1)	..	..	..
Total number of persons with acid-burns.	6	..	3	1
Total number of persons with burns.	4	4	..	..

39.21 As in the case of the earlier table and for the same reason, in this table also Dy.S.P., Diwate is shown as having been treated on May 7, 1970.

39.22 The above table shows that even if we take the injuries as acid-burns in the eight cases in which they are shown as burns, the number of persons treated for acid-burns is only 17 out of a total number of 335. Even assuming that there were some more persons with acid-burns who were treated elsewhere, they cannot outnumber or outnumber to any appreciable extent the persons with acid-burns treated in the Bhiwandi Municipal Dispensary. This would show that when witnesses called on behalf of the Executive Magistrates and the District Police Officers and of the Hindu parties have deposed about a hail of acid-bulbs raining down on the procession, they were grossly exaggerating.

The raped

39.23 On the very evening that the disturbances broke out, wild rumours began circulating that Hindu women were molested or raped. A crowd of about 500 Hindus had gathered outside the municipal quarters near the Town Police Station at about 9 p.m. on May 7, 1970 and this was common talk amongst them. Accordingly in the report (Ex. G 196) which he prepared on the disturbances, namely, the report dated May 8, 1970 signed by P.S.I., S. S. Mane (P.W. 46) on behalf of Inspector, Bhiwandi Town Police Station, as Inspector Pradhan had been injured in the disturbances the previous evening. H.C., Shamrao Sakharam Jadhav (G.W. 10) has mentioned, "It was being talked amongst the Hindus that the modesty of some Hindu ladies had been outraged". Jadhav has admitted in evidence that he had himself not seen nor knew of any such incident and that this was the talk amongst the Hindus who had gathered outside the municipal quarters (G.W. 10/8/1322, 34/1335). None of the Control Room Diaries, Riot Diaries or Station Diaries produced before the Commission mention any incident of rape, molestation or outrage on the modesty of a Hindu woman. There is also no complaint or report of any such incident (P.W. 66/185/3910). No such allegation has also been made by any witness or in any affidavit filed before the Commission.

39.24 The evidence before the Commission shows that during the disturbances six Muslim women were raped by Hindus. These were all cases of gang rapes. Banoobai, wife of Nomanbhai Ujjainwalla (C.W. 35), was one of the persons who had taken shelter in the Rasulabad Mosque. When Hindu rioters broke into the mosque and attacked the persons inside, about 15 of them dragged Banoobai out, took her to the public latrine nearby and then raped her. Thereafter they took her into the jungle behind Khoni where she was raped that night by two or three other groups of Hindus who passed by (C.W. 35/2/3465). In the evening of May 7, 1970 three Muslim women, Nuzamabi, Razia and Salambi, fearing for their safety left

Bhiwandi and set out for Kalyan. On the way at about 8 p.m. near Kajoli Village they were attacked and raped by 10 to 12 Hindus (Ex. P 1511, entry No. 13 of May 8, 1970). Two other married Muslim women of Temghar Village, Nigamabai and Rabialli, when their houses were burnt down on May 9, 1970, took shelter in the compound of a factory near Kalyan. At night about 10 to 12 Hindus entered the compound, dragged them out and raped them. The miscreants ran away on seeing a police patrol van (Ex. G 145, entry No. 278 of May 12, 1970).

The manner in which damage to property assessed by the authorities

39.25 With a view to undertake the work of rehabilitation, on May 8, 1970, D.M., Capoor directed a preliminary count of property destroyed and damaged to be carried out. Claims for subsidies and rehabilitation loans were invited and verified. In the case of arson to immovable properties, the loss was verified by deputing overseers of the Buildings and Communications Department and personnel from the Executive Engineer's office. In the case of articles and movables destroyed in the fires, any exact verification would be difficult and in most cases impossible and in the case of property looted in the disturbances, the verification would, of course, be impossible. In most cases, another difficulty would be that many persons who had suffered loss would tend to exaggerate the value thereof with a view to obtain larger amounts by way of subsidies and rehabilitation loans. D.M., Capoor has filed a statement giving the results of such verification. This statement is Exhibit P 611 and it shows the official estimate of the loss suffered community-wise under different heads, such as power-looms, houses, shops, hotels, etc. From the nature of things the figures of loss mentioned in Exhibit P 611 must be taken as an estimate and not as representing the exact amount of loss suffered.

39.26 S.P., Bhave also filed statements (Exs. P 18, P 19 and P 658) giving datewise and communitywise the amount of loss. These figures were those taken from the amounts mentioned in the F.I.Rs., complaints and police statements and being the complainants' own estimates of the loss suffered by them, their reliability is less than of the estimate arrived at by the Collectorate.

Loss to industry and trade

39.27 As the main industry of Bhiwandi was the power-loom industry, power-looms and power-loom factories became the special target of rioters, both Hindu and Muslim. A Separate mention is, therefore, required to be made of the loss and damage caused to the power-loom industry in Bhiwandi during the disturbances.

39.28 In May 1970 there were about 40,000 power-looms in Bhiwandi, out of which about 26,000 were owned by the Muslims and the remaining about 14,000 by the Hindus. The said statement

filed by D.M., Capoor (Ex. P 611) gives the break-up of the loss and damage caused to the power-loom industry.

39.29 The following table has been compiled from the figures given in Exhibit P 611 to convey an idea of the loss suffered by industry and trade in the disturbances:—

		Number of Hindu owned properties or Hindu families affected	Amount of loss in the case of Hindus	Number of Muslim owned properties or Muslim families affected	Amount of loss in the case of Muslims
			Rs.		Rs.
I. Power-looms—					
(a) completely burnt ..		246	7,19,806	218	7,08,604
(b) partially burnt or damaged.		156	4,40,800	212	4,51,174
(c) looted ..		1 family	7,500	8 families	58,428
II. Power-loom sheds—					
(a) completely burnt ..		25	3,72,330	9	1,88,700
(b) partially burnt or damaged.		....	....	12	1,73,350
(c) looted ...		53 families	2,18,450	....	....
III. Sizing machines—					
(a) completely burnt ..		6	3,26,200	2	24,000
(b) partially burnt or damaged.		1	1,28,000	3	1,99,150
(c) looted ..		6 families	3,33,070	1 family	31,750
IV. Beams—					
(a) completely burnt ..		107	1,00,100	84	1,20,220
(b) partially burnt or damaged.		153	2,38,560	98	1,52,850
(c) looted ...		1 family	1,200	2 families	9,300
V. Shops and Hotels (con- tents only)—					
(a) completely burnt .		78	11,36,730	115	10,35,658
(b) partially burnt or damaged.		13	34,825	26	2,42,610
(c) looted ..		56 families	5,55,282	87 families	8,19,255
VI. Godowns—					
(a) completely burnt ..		5	50,800	5	58,500
(b) partially burnt or damaged.		....	....	....	....
(c) looted ..		....	....	....	....

Damage to mosques, temples, houses and other properties

39.30 In May 1970 there were 35 mosques and 11 Darghas in Bhiwandi, including those in Khoni and Nagaon villages. Out of them, one mosque situate in the Muslim locality of Rasulabad in Khoni

village (known as the Rasulabad Mosque) was completely burnt, one situate on the Bombay-Agra Road in Nizampura area (known as the Bag-e-Firdaus Mosque) was partially burnt, and the window panes of three other mosques were broken and the articles inside these mosques damaged. These three mosques were the Thange Alli Bohori Mosque, the Bangad Galli Moti Mosque and the Khutala Mosque in Habsan Alli. The door of another mosque in Thange Alli known as the Thange Alli Mosque, was broken open, its window-panes smashed, the front portion of the mosque and a grave inside the mosque damaged, and the mats and other properties of the mosque destroyed. A stone painted red with 'shendur' (red oxide mixed in oil), a Bhagwa flag and a board with the legend "Shree Danglya Maruti Mandir" ["The Temple of Shree Maruti (God Hanuman) of the Riots"] were placed inside the mosque and on the walls of the mosque pictures of God Hanuman were drawn and the words "Jai Hanuman" written [G.W. 3/18/164, B.R.W. 60/1-2/1603-4; Ex. BR 7 (colly.)].

39.31 In 1970 there were 50 temples, large and small, in Bhiwandi. During the Disturbances, two out of these temples, namely, the Hanuman Temple at Kaneri and the Hanuman Temple at Kumbhar Alli, were burnt, and the Laxminarayan Mandir in Nhavi Pada and some photos and idols in the Buddha Mandir in Nizampura were damaged (G.W. 3/18/164).

39.32 A number of residential and business premises, hutments, dispensaries, hospitals, schools and properties belonging to public trusts and other public institutions were burnt, damaged or looted. The following table prepared from the figures given in Exhibit P 611, as corrected so far as the number of properties affected are concerned from what has been brought out in evidence, will show under different heads the damage caused to these properties:—

	Number of Hindu owned properties or Hindu families affected	Amount of loss in the case of Hindus	Number of Muslim owned properties or Muslim families affected	Amount of loss in the case of Muslims
		Rs.		Rs.
I. Houses (residential and business premises)—				
(a) completely burnt ..	134	15,73,827	170	13,96,165
(b) partially burnt or damaged ..	28	1,05,156	35	1,18,714
(c) looted ..	100	4,64,450	146	1,49,363
	families		families	
II. Hutments—				
(a) completely burnt ..	593	2,65,559	724	3,26,733
(b) partially burnt or damaged ..	5	850	7	1,350
(c) looted ..	62	28,025	168	2,39,867
	families		families	

	Number of Hindu owned properties or Hindu families affected	Amount of loss in the case of Hindus	Number of Muslim owned properties or Muslim families affected	Amount of loss in the case of Muslims
		Rs.		Rs.
III. Mosques, temples, schools and properties of other institutions—				
(a) completely burnt ..	2	6,500	1	2,375
(b) partially burnt or damaged ..	....	....	4	2,400
(c) looted ..	....	....	....	....
IV. Dispensaries & Hospitals—				
(a) completely burnt ..	9	1,23,000	2	55,500
(b) partially burnt ..	1	9,000	1	700
(c) looted ..	3 families	33,200	3	79,586
V. Properties of public trusts and public properties including 22 municipal wooden stalls or cabins—				
(a) completely burnt ..	24	61,750	1	8,520
(b) partially burnt ..	2	21,200	....	....
(c) looted ..	....	....	1	400

Loss of property

39.33 The tables given below, compiled from the figures given by D.M., Capoor as corrected in some instances by what has been brought out in evidence when read with the figures given in paragraphs 39.12, 39.16 and 39.23 in respect of loss of life, injuries and rapes will give an idea of the total cost of these disturbances to the people of Bhiwandi. This is a matter for reflection, not for the actual rioters for they belonged to the underworld and the criminal class or were swept away by mob frenzy and blood-lust and plunder-lust, but for those who incited them and played upon their communal feelings and prejudices so that blinded by communal passions and hatred, from men they turned into beasts. What have those builders and architects of communal hatred achieved? What have they gained? If they succeeded in getting killed some members of the other community and having some of their properties burnt, destroyed or looted, the members of their own community met with the same fate. The only harvest the two communities reaped in Bhiwandi was death, wounds, pain, ruination and misery.

Loss according to assessment made by the Collectorate

	Number of properties completely burnt	Number of properties partially burnt or damaged	Number of families affected in looting
Hindus	1,229	359	282
Muslims	1,331	398	416
Total	2,560	757	698

			Value of properties completely burnt	Value of properties partially burnt or damaged	Value of properties looted
			Rs.	Rs.	Rs.
Hindus	..	..	47,36,638	9,78,391	16,41,177
Muslims	..	..	39,24,975	13,41,728	13,87,949
Total		..	86,61,613	23,20,119	30,29,126

			Loss—arson and other damage		Loss—looting
			Rs.	Rs.	Rs.
Hindus	57,15,029	16,41,177
Muslims	52,66,705	13,87,949
Total		1,09,81,734	30,29,126
Total loss suffered by Hindus			73,56,206
Total loss suffered by Muslims			66,54,654
Total Loss			1,40,10,860
Number of families affected by the disturbances			3,447
Number of the members of the families so affected.			17,422

Loss according to the District Police

	Loss suffered by Hindus—arson and other damage	Loss suffered by Muslims—arson and other damage	Loss suffered by Hindus—looting	Loss suffered by Muslims—looting
	Rs.	Rs.	Rs.	Rs.
Bhiwandi—				
7th May 1970	53,11,579	31,44,333	8,76,175	5,91,886
8th May 1970	3,42,404	24,62,026	51,970	4,27,462
9th May 1970	18,780	42,183	2,100	13,802
10th May 1970	7,500	63,057	52,324	Nil
11th May 1970	Nil	Nil	Nil	369
12th May 1970	44,900	Nil	13,919	1,787
13th May 1970	Nil	1,500	Nil	Nil
25th May 1970	150	10,950	Nil	8,550
26th May 1970	Nil	2,000	Nil	Nil
Khoni—				
From 7th May 1970 to 12th May 1970.	2,22,592	4,29,932	41,880	54,262
Nagaon—				
From 7th May 1970 to 12th May 1970	53,287	10,08,854	Nil	17,650
Total	60,01,192	71,64,835	10,38,368	11,15,768
Total loss suffered by Hindus	..	..	..	70,39,560
Total loss suffered by Muslims	..	..	..	82,80,603
Total loss			..	1,53,20,163

*Comparative table of loss according to the Collectorate
and the District Police*

	According to the Collectorate	According to the District Police
	Rs.	Rs.
Loss suffered by Hindus—arson	57,15,029	60,01,192
Loss suffered by Muslims—arson	52,66,705	71,64,835
Loss suffered by Hindus—looting	16,41,177	10,38,368
Loss suffered by Muslims—looting	13,97,949	11,15,768
Total loss suffered by Hindus	73,56,206	70,39,560
Total loss suffered by Muslims	66,54,654	82,80,603
Total loss ..	1,40,10,860	1,53,20,163

**The Bhiwandi relief Committee and the
Nagarik Hitarakshak Mandal**

39.34 After the disturbances two bodies were set up in Bhiwandi with the dual object of providing relief to those who had suffered in the disturbances and of presenting the respective cases of the two communities before the Commission. These bodies were the Bhiwandi Relief Committee and the Nagrik Hitarakshak Mandal.

39.35 The Bhiwandi Relief Committee, which was a Muslim body, had its office in the house of Murtaza Fakhir. Murtaza Fakhir claimed that the Bhiwandi Relief Committee was formed in order to provide relief to both Muslims and Hindus but admitted that the help given by the Bhiwandi Relief Committee to the Hindus was very meagre because very few Hindus came to the Relief Camp conducted by it and those who came were mostly 'Koshtis', that is, weavers from Andhra Pradesh (B.R.W. 1/5/1361, 91/1397). The Bhiwandi Relief Committee filed 126 affidavits in order to present the case of the Muslim parties before the Commission.

39.36 The Nagarik Hitarakshak Mandal, which was a Hindu body was formed by Mohanlal Karwa (N.H.W. 53), Balasaheb Joglekar (N.H.W. 54), Chandrakant Bhise (N.H.W. 43), Parshram Tavre (N.H.W. 45), Balu Pingale, Mahadeo Kunte, the treasurer of Thana District Jan Sangh (J.S.W. 2), Jaswantrao *alias* Jasubhai Someshwar Trivedi (deponent of affidavit No. 376) and others. Mohanlal Karwa has deposed that this Mandal was formed after the disturbances for the purpose of giving relief to those who had suffered in the disturbances and for conducting the case of the Hindu parties before the Commission and that since there were charges by both communities against each other, it was necessary to form such a Mandal. He has further deposed that in the initial stage informal meetings of the Nagarik Hitarakshak Mandal were held to discuss and decide upon the case to be presented before the Commission. The office of this Mandal was in the office-room of B. K. Patwardhan, a chartered accountant and a member of the Jan Sangh. This office

was on the first floor of a building situate in Brahman Alli ; one room on that floor was partitioned into two separate office-rooms with separate entrances, one used by Patwardhan and the other as the office of the Bhiwandi Branch of the Jan Sangh (M.H.W. 53/10/2106-7). The Nagarik Hitarakshak Mandal filed 121 affidavits in order to present the case of the Hindu parties before the Commission.

39.37 In 1970 Jaswantrai *alias* Jasubhai Someshwar Trivedi, the President of the Nagarik Hitarakshak Mandal, was the Secretary and Mohanlal Karwa was the President of the Rotary Club of Bhiwandi. They permitted the Special Investigation Squad to use the Rotary Club Hall as its office without any payment of charges (N.H.W. 53/19/2110 ; P.W. 66/208/3919).

Disturbances in the Thana District

39.38 From Bhiwandi the disturbances spread to other parts of the Thana District and about 235 other places in that district were affected including Thana, Kalyan, Bhapoli, Urus, Nada, Tansa, Kalwa, Katai, Kudus, Dombivali, Banali, Vasundi, Shilpada, Kawala, Alanda, Kon, Pimplas, Gora, Neliwali, Parel, Purna, Kawad, Chinchghar, Bhinogaon, Vahale, Manmad, Kamba, Chimohipada, Vaitarna, Sapana, Dhamangaon, Marpoli, Vajreshwari, Chavindre, Keshur, Hanuman Tekdi, Charai, Bhiwandi-Parol Road, Pogaon, Bapgaon, Asangaon, Temghar, Washind, Wada, Shahpur, Nandkar, Supegaon, Kawad, Padgha, Atali, Dudhnaka, Rahnal. In the villages of the Thana District with mixed population, the Muslims were in a very small minority, except in one or two villages ; and in the case of villages situate on the Bhiwandi-Thana Road and the Bhiwandi-Kalyan Road the population was entirely Hindu, except in Temghar on the outskirts of Bhiwandi where a number of Muslims resided and a few other villages in which there were only one or two houses of Muslims. The Muslims in the Thana District accordingly suffered much more both in loss of life and property. At some places rioters roamed about in trucks, descending upon a village, surrounding it and setting fire to Muslim houses and killing their inhabitants if they were found inside as for instance at Bhapoli, Urus, Nada and Tansa. In other places, such as Wada, Washind, Kalyan, Shahapur and Kalwa, mosques and Darghas became the special target of attack and were stoned or set on fire (G.W. 1/80/60, 87/62 ; G.W. 3/32/173, 35/174, 3/76/197 ; P.W. 4/69/599 ; 242/740, 387/831 ; Exs. P 367 to 376 collectively & P 1511 ; Ex. G 145).

39.39 In the disturbances which took place in the Thana District (excluding the limits of Bhiwandi-Nizampur Municipal Council and Khoni and Nagaon villages) according to the official estimate, in all 86 persons died out of whom 3 were Hindus and 83 were Muslims, and 189 persons were injured out of whom 35 were Hindus and 154 were Muslims. The Police opened fire at 28 places. In all 8 persons were killed in police firings—all of them Hindus. The Police arrested in all 2,423 Hindus and 115 Muslims. Out of these 1,373 Hindus

and 30 Muslims were arrested in connection with substantive offences while 1,050 Hindus and 85 Muslims were arrested for breach of the curfew order and other prohibitory orders or by way of preventive action. The Muslims also suffered much more than the Hindus in loss of property (G.W. 1/80/60, 87/62; G.W. 3/76/197; P.W. 4/69/599; 242/740, 387/831).

Hartals and protest meetings

39.40 As if enough communal tension and hatred were not rampant in the Thana District and other districts, some political parties called hartals and held meetings and demonstrations to protest against the attack on the Shiv Jayanti procession and the communal disturbances in Bhiwandi. Hartals were observed in Thana, Kalyan, Dombivali, Murbad and Shahapur in the Thana District and Ichalkaranji in the Kolhapur District. Hartal was also observed in Buldhana. A protest meeting was held in Poona on May 9, 1970 followed by a silent mocha the next day. After the said meeting of May 9, 1970 some persons threw burning rags at the doors of the Abbas Peer Mosque. The Jan Sangh gave a call for a protest week with hartals, demonstrations and meetings to be observed from May 10, 1970 to May 17, 1970 to condemn the disturbances in Bhiwandi and to demand a judicial inquiry. The Jan Sangh also caused a hartal to be observed in Kalyan on May 9, 1970 and the Shiv Sena in Shahapur on May 19, 1970 (P.W. 4/285/771; Exs. G 145, G 337 to G 339, G 345, G 357 and G 367). By and large the only result of these hartals and protest meetings was to create further tension and in quite a few of these places where hartals were observed and protest meetings held, communal incidents took place thereafter.

39.41 Hartals were even observed to protest against the arrests of persons charged with having committed offences during the disturbances. Two instances of such hartals observed in the Thana District have come on the record. On May 30, 1970 Baliram More, the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena, was arrested and charged with rioting and looting Muslim houses in Thange Alli and was remanded in magisterial custody till June 7, 1970. Thereupon the R.U.M. and the Bhiwandi Branches of the Shiv Sena, the Jan Sangh and the R.S.S. caused a hartal to be observed in Bhiwandi on May 31, 1970 to protest against his arrest. The hartal was completely successful in Hindu localities and even prominent local Congress leaders such as Zumberlal Kalantri and Mohanlal Karwa also kept their business establishments closed (Ex. G 328). Early in June 1970 some communal incidents took place in Padgha. Two Hindus were arrested and brought to the police station. Thereupon A. G. Nimkar, an advocate and worker of the Jan Sangh and a man who had taken active part in founding the Padgha Branch of the R.U.M., caused a hartal to be observed in Padgha to protest against the arrests. Officials in Padgha did not report these facts to D.M., Capoor. Accordingly, D.M., Capoor issued his circular dated June 26,

1970 (Ex. P 607) pointing out that it was noted that persons committing offences under section 153A or 505 (1)(c) I.P.C. were sometimes in close contact with revenue or police officials and no action was, therefore, taken against them and that such inaction on the part of the revenue or police officials created an adverse effect on the public. The said circular further stated :

“The Sub-Divisional Magistrate/Taluka Magistrate and Police Officers should also try to go deep into the instances which may fall under section 153-A or 505 (c) of I.P.C. For instance whenever there is a ‘Hartal’ intended to create or likely to create communal tension the officers are normally noticed in acquiescing in seeing that it goes through peacefully. This is not enough. The damage is done causing communal disharmony. Hence they should go to the root and find out as to who have organised or started the affair and why. Such persons and some other suitable participants should be proceeded against under section 153-A or 505. Similarly serious notice of utterances in public which may fall under section 153-A or under section 505(c) I.P.C. should be taken.

It is the duty of the Sub-Divisional Magistrate/Taluka Magistrate and Police Officials to confer on all such issues as and when these arise and they must take cognizance of such happenings and take immediate action according to law against them and report the same to their superior. They should not have any feelings of timidity in the discharge of their loyal duty.”

The said circular concluded with a warning that if similar inaction was noticed in future, serious notice would be taken of the matter.

The silver lining

39.42 Every cloud has a silver lining and when we come to the subsequent chapters we will find that the one bright feature of these disturbances was that there were Hindus in Bhiwandi who gave shelter to Muslims and Muslims who gave shelter to Hindus. As we look at the statistics of casualties, loss and damage, it is these incidents which do not make us give up hope or lose faith in the essential goodness of humanity.

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CHAPTER 40

THE SHIV JAYANTI PROCESSION AND THE OUTBREAK OF THE DISTURBANCES

CONTENTS

Paragraph

- 40.1 The Shiv Jayanti processions in the Thana District.
- 40.2 The Shiv Jayanti procession in Bhiwandi—the rival contentions
- 40.6 The questions for determination.
- 40.8 The R.U.M. collects villagers for the procession.
- 40.13 The posting of constables at points of entry.
- 40.14 The behaviour of the villagers—the Muslim evidence.
- 40.24 The behaviour of the villagers—the police evidence.
- 40.29 The behaviour of the villagers—Bhausahab Dhamankar's evidence.
- 40.31 The number of villagers in the procession.
- 40.33 The R.U.M.'s object in bringing villagers to Bhiwandi.
- 40.35 The behaviour of the villagers—conclusions.
- 40.38 The route of the Shiv Jayanti procession.
- 40.40 Deployment for the Shiv Jayanti procession.
- 40.44 The photographer.
- 40.46 Muslims in the procession.
- 40.48 The jeep.
- 40.49 Bullock carts.
- 40.50 The truck.
- 40.55 Whether the processionists were carrying lathis, iron bars, swords and spears ?
- 40.60 The arrest of the two Hindus.
- 40.61 The unapproved slogans shouted by the two Hindus.
- 40.64 The release of the two Hindus.
- 40.68 The start of the procession—conclusions.
- 40.71 The behaviour of the processionists—Dhamankar's evidence.
- 40.76 The behaviour of the processionists—the Muslim evidence.
- 40.82 The behaviour of the processionists—the police evidence.
- 40.88 The behaviour of the processionists—the Hindu evidence.
- 40.94 The throwing of 'gula'.
- 40.95 The behaviour of the processionists—conclusions.
- 40.96 The withdrawal of the Muslim leaders from the procession.

CONTENTS—*contd.*

Paragraph

- 40.97 Whether the D.M. and other senior officers were lured away from the route of the procession ?
- 40.104 The reason for the withdrawal of the Muslim leaders.
- 40.106 Whether it was a blunder on the part of the D.M. and the other officers to go to Murtaza Fakhir's house ?
- 40.108 The talk between Ibrahim Maddu and Zumberlal Kalantri
- 40.109 The alleged attempt to drag Kalantri out of the jeep.
- 40.111 The entry about the withdrawal of the Muslim leaders in the Control Room Diary.
- 40.113 The unapproved slogans — the Muslim evidence.
- 40.116 The unapproved slogans — the police evidence.
- 40.127 The unapproved slogans — the Hindu evidence.
- 40.128 The unapproved slogans — Dhamankar's evidence.
- 40.129 The unapproved slogans — conclusions.
- 40.140 The attitude of the Hindu leaders.
- 40.143 The attitude of the Police.
- 40.146 The start of the disturbances — the locale.
- 40.150 The start of the disturbances — the wireless messages.
- 40.158 The start of the disturbances — the police evidence.
- 40.191 The start of the disturbances — Bhausahab Dhamankar's evidence.
- 40.196 The start of the disturbances — the Hindu evidence.
- 40.210 The start of the disturbances — the Muslim evidence.
- 40.214 The Shakeel Kazi incident.
- 40.223 The rioting at Bhusar Mohalla.
- 40.225 The D.M., the D.I.G.(B.R.) and the S.P. in Bhusar Mohalla.
- 40.225 The attack on Latif Manzil.
- 40.229 The arson to Bhiwandi Washing Company.
- 40.231 The Muslim leaders in Bhusar Mohalla.
- 40.233 The disturbances at Old Thana Road.
- 40.236 The first police firing at Old Thana Road.
- 40.240 The second police firing at Old Thana Road.
- 40.245 The third police firing at Old Thana Road.
- 40.247 The arson to Ishaq Bajewala's house.
- 40.263 How arson on Old Thana Road was committed.
- 40.267 Should tear gas have been used on Old Thana Road ?
- 40.268 The time when the disturbances commenced.
- 40.272 The start of the disturbances — conclusions.

CHAPTER 40

THE SHIV JAYANTI PROCESSION AND THE OUTBREAK OF THE DISTURBANCES

The Shiv Jayanti processions in the Thana District

40.1. Shiv Jayanti processions were taken out on May 7, 1970 in the Thana District in four places, namely, Wada, Thana, Kalyan and Bhiwandi. The strength of the procession in Wada, a taluka town, was about 50 and in Thana, the district headquarters, it was about 90. In Kalyan, also a taluka town, three processions were taken out, the strength being about 200, 250 and 300 respectively. The largest Shiv Jayanti procession in the Thana District was in Bhiwandi, the official estimate of its strength being about 10,000 persons (G.W. 1/65/52). Apart from the official estimate, Bhausahēb Dhamankar also estimated the strength of this procession as 8,000 to 10,000 (C.W. 2/41/1728).

The Shiv Jayanti procession in Bhiwandi—the rival contentions

40.2 As the disturbances broke out when the Shiv Jayanti procession was passing through the Bhusar Mohalla-Old Thana Road locality, what happened at each stage of the procession is of considerable importance, and in arriving at the conclusion on this part of the Inquiry a number of questions fall to be decided. It will, therefore, be convenient first to indicate what the respective contentions of the parties are with respect to each stage of the procession and then to set out the questions which arise for determination.

40.3 As a result of the propaganda carried on by the R.U.M., a number of persons from the nearby villages came to Bhiwandi on May 7, 1970 to participate in the Shiv Jayanti procession, their number has been estimated from about 3,000 to 4,000 by the police witnesses to about 7,000 to 8,000 by the Muslim witnesses. The Muslim parties have alleged that these villagers carried lathis to which Bhagwa flags were tied, indulged in shouting provocative and abusive anti-Muslim slogans and some of them threatened the Muslims and even damaged their properties. This is denied by the other parties. There was a truck with a float in the procession. According to the Muslim parties, weapons for attacking Muslims and kerosene and petrol for setting fire to their properties when the procession entered the Muslim locality of Bhusar Mohalla and Old Thana Road were carried in this truck. This is denied by the other parties. According to the Police, the said truck was searched and no incriminating articles were found in it. This is disputed by the Muslim parties. Further, according to

the Muslim parties, right from the time when the procession was being formed, the processionists were shouting provocative and abusive anti-Muslim slogans. This is denied by the other parties. After the procession started, two Hindus were arrested by the Police for shouting unapproved slogans. What these unapproved slogans were is a disputed question. The two arrested persons were brought to the Town Police Station. The processionists thereupon refused to proceed further, but returned to the Police Station and asked for the release of the two Hindus, stating that otherwise the procession would not move forward. Assurances were given by the Hindu leaders that unapproved slogans would not be shouted and the authorities let the arrested men go. According to the Muslim parties, from that point onwards the Police lost all control over the procession. According to them, the processionists were carrying lathis and other weapons and right from the beginning were indulging in provocative and abusive anti-Muslim slogans and their behaviour became more defiant, aggressive and militant as the procession entered the Muslim locality of Madarchhalla and passed through other Muslim localities. According to the Hindu parties, unapproved slogans were not shouted at any time. According to the Executive Magistrates and the District Police officers, though some unapproved slogans were shouted, these slogans were otherwise innocuous. When the procession came to Saudagar Mohalla Jumma Mosque the Muslim leaders who had participated in the procession withdrew from it. According to them they withdrew because of the provocative and aggressive behaviour of the processionists. According to the Hindu parties, they withdrew as part of a conspiracy under which the procession was to be attacked when it entered the Muslim locality of Bhusar Mohalla and Old Thana Road, simultaneously with attacks on the Hindus and their properties in other localities. A meeting thereafter took place in the house of Murtaza Fakhir (B.R.W. 1) between the Muslim leaders on the one hand and D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhave on the other and after some discussion these officers left to rejoin the procession. Meanwhile the head of the procession had reached Keshar Baug on Old Thana Road while its tail-end was still in Bhoiwada. According to the Hindu parties and the Special Investigation Squad, Bhiwandi, these senior officers were called to Murtaza Fakhir's house for a discussion in order to lure them away from the procession. Within a short time thereafter the disturbances commenced and the procession broke up.

40.4 According to the Special Investigation Squad and the Hindu parties, the disturbances broke out as the procession, when it entered Bhusar Mohalla-Old Thana Road locality, was deliberately attacked by the Muslims at about 5.30 p.m. as it was passing through the Bhusar Mohalla-Old Thana Road locality on a pre-arranged signal given by the local Communist leader, Ibrahim Maddu, in pursuance of a criminal conspiracy entered into by the Muslims about a month earlier to attack the procession and the Hindus and their properties

in other localities simultaneously at an agreed time, namely 5-30 p.m., in an agreed place, namely, the Bhusar Mohalla-Old Thana Road locality on a pre-arranged signal being given. According to the Executive Magistrates and the District police officers, the procession was attacked by the Muslims at 5-30 p.m. near the Old Fish Market in Bhusar Mohalla near the junction of Bhusar Mohalla and Old Thana Road in retaliation for some unapproved slogans shouted by the processionists. According to the Muslim parties, when the procession entered the Muslim localities of Bhusar Mohalla and Old Thana Road, the processionists started attacking Muslims and looting their houses, shops and factories. According to them, the starting-point of the disturbances was either the arson to Ishaq Bajewala's house on Old Thana Road or the assault on Shakeel Kazi on the 'ota' of the nose of Yusuf Chivane situate at the junction of Bhusar Mohalla and the Hindu locality of Bhoiwada. According to the Muslim parties, the disturbances started at 5.15 p.m. and not at 5.30 p.m.

40.5 There is thus a controversy both as to the time when and the place where the disturbances broke out. The importance of this controversy lies in the fact that the Special Investigation Squad and the Hindu parties have alleged that the Muslims started the disturbances simultaneously in different localities at 5-30 p.m. in pursuance of a criminal conspiracy entered into by them to attack the procession and the Hindus and their properties in different localities at the same time on a pre-arranged signal being given.

The questions for determination

40.6 On the rival contentions set out above the following questions arise for determination :—

- (1) Whether the behaviour of the villagers who came to Bhiwandi to join the Shiv Jayanti procession was provocative and aggressive ?
- (2) Whether these villagers shouted on the way provocative and abusive anti-Muslim slogans ?
- (3) Whether these villagers threatened on the way any Muslims or damaged any Muslim properties ?
- (4) Whether these villagers carried any lathis ?
- (5) Whether the truck in the procession was searched by the Police ?
- (6) Whether weapons, petrol or kerosene were carried in the truck ?
- (7) Whether the processionists carried lathis or any other Weapons ?
- (8) What were the slogans shouted by the two Hindus who were arrested ?
- (9) What transpired between the authorities and the Hindu leaders which led to the release of the two Hindus ?
- (10) What were the slogans shouted by the processionists ?
- (11) Whether the behaviour of the processionists was provocative and aggressive ?

- (12) What was the reason for the Muslim leaders withdrawing from the procession ?
- (13) Whether the withdrawal of the Muslim leaders was pre-planned ?
- (14) Whether the discussion held by the Muslim leaders with the D.M., the D.I.G. (B.R.) and the S.P. was a ruse on their part to lure away these officials from the procession ?
- (15) Whether the procession was deliberately attacked by the Muslims when it reached the Bhusar Mohalla-Old Thana Road locality in pursuance of a criminal conspiracy entered into by them some days earlier ?
- (16) Whether the procession was attacked by the Muslims when it reached the Bhusar Mohalla-Old Thana Road locality in retaliation for the unapproved slogans shouted by the processionists ?
- (17) Whether the processionists, when they entered Bhusar Mohalla and Old Thana Road locality, attacked the Hindus and looted and burnt their houses, shops and factories ?
- (18) What was the time when the disturbances broke out— whether it was 5-30 p.m. as alleged by the Special Investigation Squad, the Executive Magistrates, the District Police Officers and the Hindu parties, or 5-15 p.m. as alleged by the Muslim parties ?
- (19) Whether Ibrahim Maddu gave the signal for the start of the disturbances ?
- (20) Whether Hindus and their properties in other localities were attacked simultaneously by the Muslims with the attack on the Shiv Jayanti procession ?
- (21) Whether the arson to Ishaq Bajewala's house on Old Thana Road or the assault on Shakeel Kazi on the 'ota' of the house of Yusuf Chivane situate at the junction of Bhusar Mohalla and Bhoiwada was the starting-point of the disturbances ?

40.7 The allegations which give rise to some of the questions set out above, for instance the signal alleged to be given by Ibrahim Maddu, form part of the allegation that the Muslims had entered into a conspiracy to attack simultaneously the Shiv Jayanti procession and the Hindus and their properties in other localities. It will be, therefore, convenient not to consider these questions in this chapter but to deal with them when we come to the question of the alleged conspiracy.

The R.U.M. collects villagers for the procession

40.8 It was in 1970 that for the first time propaganda was carried on in the villages calling upon the villagers to join the Shiv Jayanti procession in Bhiwandi, this being the only procession in respect of which such propaganda was carried on, for neither in that year nor in any earlier year was any propaganda carried on in any village

exhorting the villagers to join the Shiv Jayanti procession in Bhiwandi or in any other place (G.W. 2/68/112). The 1970 Shiv Jayanti was the first occasion on which the villagers had joined the Shiv Jayanti procession in Bhiwandi, though usually a number of villagers came to Bhiwandi at festival times, such as the Ganpati festival, to watch the procession (P.W. 4/125/638).

40.9 At the prayer meeting of the R.U.M. held in the Nilkantheshwar Temple on May 4, 1970 Hasmukh Thakkar on behalf of the R.U.M. asked for volunteers to bring to Bhiwandi processionists from the villages such as Kamba, Khoni, Borpada, Shelar, Karivali, Kalwar, Rahnal, Gundavali, Poorna, Kalher, Kasheli and Temghar.

40.10 In the morning of May 7, 1970 Bhaskar Mali, the President of the R.U.M., came to the Town Police Station with five applications for music passes for the villagers coming in groups to join the Shiv Jayanti procession, to pass through Bhiwandi playing music on their way to the starting-point of the procession. All these applications (Ex. P 1396 collectively) were dated May 6, 1970 and were signed by Bhaskar Mali and requested for the grant of permission to the branches of the R.U.M. in different villages to play music while going in processions by the routes mentioned in the said applications between 1 p.m. and 2-30 p.m. on May 7, 1970. The first application was in respect of the branches of the R.U.M. in villages Bhadwad, Saravali, Temghar, Pimplas and Nagaon situate on the Bhiwandi-Kalyan Road; the point of entry specified in the said application being Kalyan Naka on the Bombay-Agra Road. The second application was in respect of the branches of the R.U.M. in villages Karivali, Kalwar, Dunge, Vadghat and Navghat situate on the Bhiwandi-Karivali Road; the point of entry specified in the said application being Karivali Road which joins Sutar Alli Naka. The third application was in respect of the branches of the R.U.M. in villages Kamatghar and its two 'padas' (hamlets), namely, Thakurpada and Taralipada, Ovali, Gundavali, Rahnal, Poorna, Kalher and Kopar; the point of entry specified in the said application being Dhamankar Naka. The fourth application was in respect of the branches of the R.U.M. in villages Shelar, Borpada, Limbavali, Bhinar and Chavindre situate on the Bhiwandi-Shelar Road; the point of entry specified in the said application being Vanjarpatti Naka. The fifth application was in respect of the branches of the R.U.M. in villages Kamba, Katai, Ju, Khoni and its two Padas, Khadipar and Utkarsha Nagar situate on the Bhiwandi-Kamba Road; the point of entry specified in the said application being Kamba Bridge (P.W. 4/124-5/635-7; Ex. P. 1396 collectively).

40.11 The number of villages specified in the said applications clearly shows the extent of the propaganda carried on by the R.U.M. The nature of the propaganda carried on by the R.U.M. will be clearly apparent when we come to the behaviour of these processionists from the villages.

40.12 After the morning meal on May 7, 1970 the R.U.M. sent its volunteers to the villages to collect the villagers and bring them to Bhiwandi. For this purpose Hasmukh Thakkar had himself gone to Karivali, Kalwar and Kamatghar (N.H.W. 16/6/1887).

The posting of constables at points of entry

40.13 When Bhaskar Mali made the aforementioned five applications for music passes for groups from villages accompanied by music to pass through Bhiwandi to join the Shiv Jayanti procession, S.P., Bhawe realized that a large number of villagers would be coming in groups to join the procession. Accordingly, instructions were given to post constables from noon till 2-30 p.m. at the points of entry into Bhiwandi. These constables were required to make the villagers wait at each point of entry till about 2-30 p.m. and then escort them to the Town Police Station which was the starting-point of the procession, the object being that these villagers should not create any trouble on the way. Though the instructions were to post the constables from noon onwards, as shown by entry No. 17 of the Control Room Diary (Ex. P 367), the police parties were sent out from the Town Police Station only at 1-30 p.m. Parties of one head constable and three constables each were sent to Kamba Bridge, Kalyan Naka, Dhamankar Naka and Karivali Road. Thus all points of entry into Bhiwandi were covered except Vanjarpatti Naka. Vanjarpatti Naka is the point of entry for those coming to Bhiwandi by the Bhiwandi-Ahmedabad Road and the Bhiwandi-Nasik Road and consequently the point of entry for villagers from Shelar, Borpada, Limbavali, Chavindre and other villages on the Bhiwandi-Shelar Road. The reason given for not posting a constable at Vanjarpatti Naka was that there was always a traffic constable on duty at this point (P.W. 4/124-5/635-7). This constable could not have left his traffic duty and accompanied the villagers who came by these two roads.

The behaviour of the villagers—The Muslim evidence

40.14 The Muslim parties have alleged that the villagers who came in groups to join the Shiv Jayanti procession in Bhiwandi shouted on the way provocative and abusive anti-Muslim slogans, that some of them threatened the Muslims and damaged Muslim properties situate on the Panjrapol Road, that some others threw 'gula' at the Hyderi Mosque at the junction of Dargah Road and Sutar Alli and the Moti Masjid in Bangad Galli, that some of them were drunk, and that a large number of these villagers carried lathis to which Bhagwa flags were tied as a camouflage to circumvent the ban against the carrying of lathis imposed by the order dated February 12, 1970 (Ex. P 394) issued under section 37(I) of the Bombay Police Act, 1951.

40.15 The Bhiwandi Relief Committee examined 14 witnesses in support of the above case of the Muslim parties. Seven Muslim witnesses deposed about the behaviour of the villagers from the

villages of Kamba and other surrounding villages including Ju-Nandurkhi, Lakhivali, Tembivali, Katai and Bagh who came by the Bhiwandi-Kamba Road. Mukhtar Ahmed Papamiyan Shah (B.R.W. 7/1-6/1443-6) and his sister Haseenabanoo Papamiyan Shah (B.R.W. 8/1-6/1448-50) deposed about the behaviour of these villagers as they passed through Kamba. The family of these witnesses was the only Muslim family in Kamba and their people became so afraid at the behaviour of these villagers that nine members of that family including these two witnesses left Kamba for Bhiwandi by an S.T. bus at about 4-15 p.m. Their father and elder brother who stayed behind to look after their house were murdered in the disturbances and their house was completely burnt. Riaz Ahmed Mohamed Hanif (S.J.U.W. 2/1-3/1671-3), Shakeel Ahmed Mohamed Hanif (S.J.U.W. 3/1-4/1674-7), Zohrabai Alihussein Dohadwalla (C.W. 34/1-2/3458-9), all three of them residents of Rasulabad, deposed about the behaviour of these villagers who came by the Bhiwandi-Kamba Road as they passed through Rasulabad in Khoni village. Murtaza Fakhir (B.R.W. 1/1(8)/1359(6), 47/1379, 70-1/1388) and Sikandar Faquih (B.R.W. 2/20-1/1398(10-11)) deposed about the behaviour of these villagers as they passed through Madarchhalla.

40.16 Four Muslim witnesses deposed about the villagers who came by the Bhiwandi-Shelar Road as they passed through the Bombay-Ahmedabad Road and the Panjrapol Road. These witnesses are Rafiq Ahmed Abdul Aziz (B.R.W. 13/1-5/1463-5), Ziauddin Shaikh Lal (B.R.W. 16/1-8/1480-4), Inamul Haque Badal Ansari (B.R.W. 17/1-4/1485-7) and Mohamed Sayeed Abdul Ghani Ansari (B.R.W. 39/1-3/1542-3).

40.17 Three Muslim witnesses namely, Abdul Hamid Abdul Qadir Jairoomi (B.R.W. 38/1-3/1538-40), Akbar Ali Raza Hussein (B.R.W. 61/1(5)/1605(1)) and Sikandar Faquih [B.R.W. 2/1(20)/1398(11)] have deposed about the behaviour of the villagers from Karivali, Karvel, Nurgad, Khargaon, Donga and some other villages who came by the Bhiwandi-Karivali Road as they passed through Bhoiwada, Sutar Ali and Bazar Peth.

40.18 Aslam Gulam Gause (B.R.W. 10/1-3/1453-4) deposed about the behaviour of the processionists from the villages as they passed through Teen Batti and Murtaza Fakhir and Sikandar Faquih deposed about the behaviour of the processionists from the villages and other processionists as they assembled at the Town Police Station.

40.19 According to all these witnesses, the villagers as they passed on the way through villages with a mixed population, and the localities in Bhiwandi in which Muslims resided, and even near the Bhiwandi Town Police Station while the procession was being formed, shouted provocative and abusive anti-Muslim slogans. Some of the witnesses have specified the actual slogans which were shouted according to them. The same slogans were not shouted by every group though several slogans were common to all the groups. It is unnecessary to specify the particular slogans which, according to the witnesses,

were shouted by each group of villagers. It will be sufficient to set out below all the slogans which appear in their evidence taken together :—

- (1) " Galli Galli Me Shor Hai, Sab Musalman Chor Hai ",
- (2) " Musalman Murdabad ",
- (3) " Landiyana Haklun Lawa ",
- (4) " Chala Re Chala, Musalmanana Marayala ",
- (5) " Ala Re Ala Hindu Ala, Gela Re Gela Landiya Gela ",
- (6) " Uthav Lungi, Bajav Pungi ",
- (7) " Shiv Senecha Vijay Aso ",
- (8) " Shiv Sena Zindabad ",
- (9) " Hindu Dharmacha Vijay Aso ",
- (10) " Jo Hamse Takarayega Woh Mitti Me Mil Jayega ",
- (11) " Bal Thackeray Zindabad ",
- (12) " Dr. Vyas Zindabad '.

40.20 Zohrabai Dohadwalla (C.W. 34) refused to speak aloud the slogan " Uthav Lungi Bajav Pungi ". She was thereupon asked to write it out, which she did.

40.21 Murtaza Fakih (B.R.W. 1) further deposed that some of the villagers whom he saw at Madarchhalla were making obscene gestures at the Muslims by pointing at them with the middle finger of their hand and were giving defiant, derisive and contemptuous catcalls. Rafiq Ahmed Abdul Aziz (B.R.W. 13), Ziauddin Shaikh (B.R.W. 16), Inamul Haque (B.R.W. 17), Mukhtar Ahmed Papamiyan (B.R.W. 7), and Haseenabanoo Papamiyan (B.R.W. 8) deposed that they saw amongst the villagers who passed by their houses some who were drunk and whose gait was unsteady.

40.22 All the Muslim witnesses have deposed that most of these villagers were carrying lathis to which Bhagwa flags were tied. Some of these witnesses deposed that some villagers carried banners tied to lathis and Murtaza Fakih deposed that some of these banners mentioned the names of the parties to which the groups belonged, such as the R.U.M., the Jan Sangh or the Shiv Sena.

40.23 Ziauddin Shaikh Lal (B.R.W. 16) and Inamul Haque (B.R.W. 17) were both workers in the power-loom factory of one Usman Seth situate in Mustafa Kuwari's Compound on Panjrapol Road. Their factory was working on May 7, 1970. At about 2-30 p.m. the villagers from Shelar, Borpada, Limbavali, Chavindre and other villages on the Bhiwandi-Shelar Road who passed by in a group, saw that this factory was working and thereupon became incensed. They threw stones at the factory, shouting " Landiyana Mara, Karkhana Chaloo Aahey " (Beat up the Muslims, the factory is working). In this stone-throwing Inamul Haque was injured and the window-panes of the factory smashed. The workers got frightened and closed the factory. The villagers then proceeded ahead shouting " Phir Aakar Batayenge " (we will show you on our return). It appears from the evidence of Rafiq Ahmed Abdul Aziz (B.R.W. 13) that as they went ahead, these villagers stoned some other Muslim factories and houses. Akbar Ali Raza Hussain (B.R.W. 61) was the chief trustee

of the Hyderi Mosque situate at the junction of Dargah Road and Sutar Alli. He deposed that as the villagers from the Bhiwandi-Karivali Road passed by this mosque they threw a large quantity of 'gulal' on it. The same group of villagers as they passed through Bangad Galli threw 'gulal' on Moti Masjid and Abdul Hamid Jairoomi (B.R.W. 38) who had been to this mosque for the Asar (afternoon) prayers between 5 and 5-15 p.m. saw the mosque stained with 'gulal'. Sikandar Faquih deposed that while accompanying the Shiv Jayanti procession he left it at Thange Alli and came to Madarchhalla to wait for it and that he was informed there by two persons that a large quantity of 'gulal' had been thrown on the Hyderi Mosque and the Hindustan Mosque by the group of villagers who came by the Bhiwandi-Karivali Road.

The behaviour of the villagers—The police evidence

40.24 In support of their case that the villagers who came to Bhiwandi to join the Shiv Jayanti procession did not misbehave in any way, the Executive Magistrates and the District Police Officers have relied upon the affidavits of two police witnesses, namely, H.C., Vasant C. Salvi (Buckle No. 783) of the Thana Police Headquarters [P.W. 18/1(1)/448(1)] and P.S.I., Mohamed Abdul Gani [P.W. 43/1(2-3)/917(1-2)] H.C., Salvi was in the police party which was posted at the point of entry for the villagers coming by the Bhiwandi-Kamba Road, namely, Kamba Bridge. The only statement in his affidavit about the villagers coming to join the Shiv Jayanti procession is : "We escorted a small procession of Hindus from Kamba Bridge to Shivaji Nagar near the police station". In his affidavit Salvi has not stated that any of these villagers were carrying lathis or had shouted any objectionable slogans. P.S.I., Gani was posted with a section of S.R.P. men near the Hyderi Mosque from 12 noon on May 7, 1970 and there is no mention in his affidavit that the villagers who passed by the Hyderi Mosque to join the Shiv Jayanti procession threw 'gulal' at the mosque or that any of them were carrying lathis or had shouted objectionable slogans. The Executive Magistrates and the District Police Officers also relied upon the fact that neither H.C., Salvi nor P.S.I., Gani nor any other police officer or policeman who escorted the groups from the villages or were posted on picket duty at different points gave any report to the Control Room about any misbehaviour on the part of the villagers who came to Bhiwandi to join the procession. On the basis of these facts, it was submitted by Mr. Rane, Counsel for the Executive Magistrates and the District Police Officers, that the evidence given by the Muslim witnesses about the misbehaviour, on the part of the villagers who came to join the procession was not true.

40.25 There is no substance in this argument. If the villagers who came by Kamba Bridge or those who passed the Hyderi Mosque had in fact misbehaved in the manner alleged, obviously neither Salvi nor Gani did anything to check them ; they also did not report the matter to the Control Room. They could then hardly be expected to mention

these facts in their affidavits. The fact that none of the other police officers and policemen in escort parties or on picket duty have made any report to the Control Room about any misbehaviour on the part of the villagers also does not carry the matter any further. If the villagers did in fact misbehave as alleged, obviously these police officers and policemen took no steps to check them or to prevent such misbehaviour. They were thereafter not likely to report the matter to the Control Room.

40.26 It was further submitted by Mr. Rane that Salvi and Gani were not cross-examined on these points and this part of the case of the Muslim parties was not put to them in cross-examination. There is equally no substance in this argument. Salvi and Gani were not called in evidence to depose to the behaviour of the villagers who came to Bhiwandi to join the procession. Salvi's affidavit was filed and he was called in evidence because on May 7, 1970 at about 10-30 p.m. he opened fire in Habsan Alli and Gani's affidavit was filed and he was called in evidence because after the disturbances broke out, he opened fire at Hamalwada. They were thus called to prove the justification for these two police firings and they were cross-examined on this point and on other points arising therefrom. Right at the outset, in order to prevent an inordinately long time being taken in the recording of evidence, the Commission had informed the parties appearing before it that it was not necessary to cross-examine every witness on all the points and that their cross-examination should as far as possible be confined to the points which the particular witness was called to depose to and to other points germane thereto. For the same reason the Commission had also informed the parties that it was not necessary for them to put their entire case to every witness who was called and that it was sufficient if they put it to the main witnesses out of each group of witnesses. The Muslim parties have cross-examined S.P., Bhave, who was the Head of the Police in the District, about the misbehaviour on the part of the villagers and have put to him their case on this point. It was, therefore, not necessary for them to cross-examine or put their case on this point to every police officer or policeman who was called in evidence unless he was called for the purpose of deposing about the behaviour of the villagers who came to Bhiwandi. The Executive Magistrate and the District Police Officers did not, however, call any witness to give direct evidence on this point.

40.27 It would also not be correct to say that constables escorted or accompanied every group that came from the villages. Though the said applications for music passes made by Bhaskar Mali asked for permission for these groups to pass through Bhiwandi playing music between 1 p.m. and 2-30 p.m. and though the constables were directed to be at the points of entry by noon, in fact, as shown by entry No. 17 of the Control Room Diary Ex. P 367, the constables did not leave the Town Police Station until 1-30 p.m. and as they left on foot, it must have taken them quite some time to reach each of these points. By this time a number of villagers must have already come to Bhiwandi.

Murtaza Fakih did not see any police officer or policeman with the group of villagers who passed through Madarchhalla. There was no police party posted at Vanjarpatti Naka and accordingly no constable accompanied the villagers from Shelar, Borpada, Limbavali, Chavindre and other villages on the Bhiwandi-Shelar Road. The five points of entry mentioned by S.P., Bhave, namely, Karivali Road, Kamba Bridge, Kalyan Naka, Dhamankar Naka and Vanjarpatti Naka were not the only points of entry into Bhiwandi. The river between Bhiwandi and Khoni could be forded at several places. The constables posted at the four points of entry left at 2-30 p.m. and thereafter there was no constable there to accompany any groups which came from the villages. Further, a number of persons joined the procession as it moved along and though most of the villagers had come on foot, some had come in bullock carts and as the procession moved along, other bullock carts also joined it (P.W. 4/124/635).

40.28 So far as the carrying of lathis is concerned, S.P., Bhave has denied that the processionists carried any lathis to which Bhagwa flags were tied. According to S.P., Bhave and Dy.S.P. Diwate, flags were tied to small sticks and Diwate has estimated that about 10 per cent. of the villagers were carrying Bhagwa flags tied to such sticks. Bhave further stated that an order under section 37 of the Bombay Police Act banning the carrying of weapons was in force and that if they saw any weapons they should seize them and bring them to police station and since no lathis were seized and brought to the police station, it followed that the villagers who came to Bhiwandi were not carrying lathis as alleged. Bhave has, however, admitted that most of the groups that came from the villages had brought with them banners tied to sticks five or six feet in length and about one and a half inches in diameter with banners tied to them and that these banners carried the legend 'Buruj' (bastion or rampart) followed by the name of the village from which the group had come and the words "Rashtriya Utsav Mandal". Bhave did not count the number of banners, but he believed they were about 15 or 20 in number. Bhave stated that he did not remember having seen any banner on which the name of any organization other than the R.U.M. was written. Bhave has admitted that a stick five to six feet in length and about one and a half inches in diameter would be a lathi (P.W. 4/123/634, 125/638-9, 128/643 ; P.W. 66/83/1147).

The behaviour of the villagers—Bhousaheb Dhamankar's evidence

40.29 As mentioned in Chapter 38 (paragraph 38.11), Bhousaheb Dhamankar has given the most honest and truthful account of what happened in the afternoon of May 7, 1970. Let us, therefore, see what Dhamankar has to say about these villagers who came and joined the procession. He has stated in his affidavit [C.W. 2/1(32)/1692(20)] :

"On the 7th, at 2 p.m. when I reached the spot from where the procession was to start I saw that batches of volunteers were coming in an organised procession *carrying flags on lathis*. It was quite

obvious at that time that members of *Rashtriya Utsav Mandal* had organised their groups and induced these batches to come to join the procession, in an organised form and remain in an organised form. These batches were carrying placards indicating that each one of them was a rampart (Buruji) held by *Rashtriya Utsav Mandal* in that village. Carrying of placards and mentioning the word 'Buruji' indicates that they were expected to guard something in case crisis came. It is also indicated that they are expected to be on defensive rather than on offensive. They had resorted to carrying flags because on that day an order had been promulgated prohibiting carrying of lathis. It was assumed that the flags could be carried and hence, these volunteers had come prepared with lathis under the garb of carrying flags. Anybody could have foreseen that by the way they were shouting slogans that an organisation had been set up to meet the contingency and the contingency was awaited."

He has explained in his evidence what he meant by the word 'contingency' in the aforesaid paragraph of his affidavit (C.W. 2/10/1699) :

"For the 1970 Shiv Jayanti procession the processionists had tied the Bhagwa flag to sticks. Some of these sticks were small sticks and some were regular lathis. The processionists expected some attack on the procession and this is the contingency which I have referred to in paragraph 32 of my affidavit. The slogans which the processionists were shouting and the manner in which such slogans were shouted showed not only that they were expecting some trouble but that they were also provoking trouble."

He has further deposed that though prior to 1970 very few Bhagwa flags were carried in processions, in the 1970 Shiv Jayanti procession thousands of Bhagwa flags were carried and every Hindu house along the route of the procession had such a flag hoisted on it (C.W. 2/34 1721).

40.30 The evidence of Bhausaheb Dhamankar referred to above corroborates what the Muslim witnesses have said. No reason is shown or alleged why Dhamankar should not be believed or why on points so material he should tell a falsehood to the Commission.

The number of villagers in the procession

40.31 Witnesses have given different estimates of the number of villagers who came to Bhiwandi to join the Shiv Jayanti procession. Shakeel Ahmed Mohamed Hanif (S.J.U.W. 3) estimated the number of villagers who passed through Rasulabad at 500 while Zohrabai Dohadwalla (C.W. 34) estimated it as between 300 and 400. Rafiq Ahmed Abdul Aziz (B.R.W. 13) estimated the number of villagers who came by the Bombay-Shelar Road as 200 to 250. Murtaza Fakhri (B.R.W. 1) estimated the number of villagers he saw in Madarchhalla going towards the Town Police Station as 200 to 300. Abdul Hamid Jairoomi (B.R.W. 38) estimated the number of villagers coming by the Bhiwandi-Karivali Road whom he saw in Bazar Peth as about 2,000, but, as Abdul Hamid Jairoomi has stated, the residents of Bhoiwad

and Sutar Alli had joined this group as it passed through these two localities.

40.32 According to S.P., Bhave, in all about 3,000 to 4,000 persons must have come from the villages to join the procession, some of them in bullock carts, most on foot, and none in trucks. He, however, admitted that as the procession moved along, more persons and more bullock carts joined it (P.W. 4/123/623, 124/635). According to the Muslim witnesses, the total number of villagers who joined the procession must have been about 7,000 to 8,000. It is difficult to estimate the exact number of villagers who came to Bhiwandi for this purpose. Nobody had kept, as nobody could be expected to keep, a tally of their number and the figures given on both sides are merely approximations. It would be, therefore, safe to assume that there were roughly about 5,000 villagers who had joined the Shiv Jayanti procession ; but even if the number were about 3,000 to 4,000, it would show that persons from many more villages than mentioned above had come to Bhiwandi to join the procession. According to Haji Miyan Tase, there were people also from Thana, Kalyan and even Bombay who had joined the procession. He had gone to the procession with his friend Datsagir Hanif, a rice merchant. They found that the faces of the majority of the processionists were unfamiliar. Dastagir thereupon started making inquiries and told Tase that one group consisting of about 40 persons was from Bombay, another of about 35 persons from Kalyan and four to five groups were from Thana (B.R.W. 67/1(18)/1630(8), 6/1632-3). It is very likely that some people from Thana and Kalyan joined the Bhiwandi procession in view of the importance which this procession had assumed. It is also likely that some persons from Bombay, either connected with or related to some of the Hindu leaders and workers of the R.U.M. and of the Bhiwandi Branches of the Jan Sangh and the Shiv Sena (from whom had come the leaders and workers of the R.U.M.) might have come to Bhiwandi for this purpose.

The R.U.M.'s object in bringing villagers to Bhiwandi

40.33 S.P., Bhave was cross-examined by Mr. Peerbhoy, Counsel for the Bhiwandi Relief Committee, on the object of the R.U.M. leaders in asking villagers to participate in this Shiv Jayanti procession. Bhave at first denied that their object was to make a show of strength and to intimidate the Muslims. He was ultimately compelled to admit that their object was to make a show of strength and thus to admit by implication that it was also to intimidate the Muslims. His answers to questions by Mr. Peerbhoy speak for themselves and require to be reproduced. He deposed (P.W. 4/125/638) :—

“It is not true that the object of R.U.M. leaders in inviting villagers to participate in the May 1970 Shiv Jayanti procession was to make a show of strength and to intimidate the Muslims. In Bhiwandi usually a number of villagers come at festival times, such as Ganpati festival, to watch the procession from different points. They did not however, use to join the procession. It is true,

therefore, that this time when the villagers were invited to join the procession, it was to make a show of strength. This would be to make a show of strength to the people of Bhiwandi. Every organisation which demands public support always tries to make a show that it has a large following. Shiv Jayanti Utsav Samiti was a non-political organisation. The R.U.M. does not have a distinctive separate political colour. It consists of persons who are pro-Jan Sangh as also pro-Shiv Sena and a few others. It is true that by collecting so many villagers for the Shiv Jayanti procession, the constituents of the R.U.M., namely, the Jan Sangh-minded and the Shiv Sena-minded leaders thereof, wanted to show their strength."

40.34 According to Hasmukh Thakkar, the R.U.M. volunteers had gone to villages to tell the inhabitants what the approved slogans were and to shout only those slogans and not to throw 'gula' in excess (N.H.W. 16/6/1887). Hasmukh Thakkar cannot be believed. He is contradicted by his own appeal made at the said R.U.M. meeting held on May 4, 1970 for volunteers to fetch processionists from villages. He is also contradicted by the behaviour of the villagers who came to join the procession. On the contrary, their behaviour as revealed in the evidence discussed above shows that the volunteers, far from telling the villagers to shout only the approved slogans and not to throw 'gula' in excess, must have ensured that the villagers came to Bhiwandi in a militant mood, armed with lathis to which Bhagwa flags were tied and determined to resist and overcome any act of obstruction or defiance on the part of the Muslims and, if possible, to provoke the Muslims so that on the Muslims getting provoked, they could teach them (the Muslims) a lesson. Dhamankar graphically described the behaviour of these villagers when he stated that it showed that an organization had been set up not only to meet the trouble it was expecting but also to provoke trouble.

The behaviour of the villagers—Conclusions

40.35 The evidence of the Muslim witnesses on the point of the behaviour of the villagers who came to Bhiwandi to join the Shiv Jayanti procession is corroborated on almost every material point by what Dhamankar has deposed. The evidence of these witnesses and Dhamankar clearly shows that a large number of villagers carried lathis to which Bhagwa flags were tied. The denial of the police witnesses carries no conviction because, if anyone had reason to underplay this fact, the police officers and the policemen had it. To have admitted that such a large number of villagers carried lathis would have immediately demonstrated the default on their part in not taking the lathis away. These police officers and policemen could not have been so naive as not to have seen through the ruse that Bhagwa flags were tied to lathis in order to circumvent the ban against the carrying of weapons. It is obvious that they did not take away these lathis because Bhagwa flags were tied to most of them and banners to the others—they were either afraid of provoking a riot or of offending religious

sentiments or perhaps, being Hindus themselves, they were riled at the Muslim objection to the Bhagwa flags and were happy to see that this objection was met by thousands of Bhagwa flags fluttering in the breeze. The evidence also leaves no doubt that these lathis were brought by the villagers at the instigation and instance of the R.U.M. At the R.U.M. meetings held on April 13 and 20, 1970 Pandu Vastad openly declared that he would train the people in lathi drill and at the R.U.M. meeting held on April 17, 1970 Dr. Vyas made a request for volunteers to stich Bhagwa flags and in the propaganda carried on by the R.U.M. in the villages, R.U.M. leaders and workers and Ramesh Sambhus must have exhorted the villagers to come and join the Shiv Jayanti procession in large numbers carrying lathis to which Bhagwa flags were tied. The evidence also shows that the majority of the banners showed the name of the R.U.M. and the village from which each particular group of villagers had come and that there were also a few banners with the legend "Jan Sangh" or "Shiv Sena" on them. In this context it is pertinent to bear in mind that amongst the slogans which these villagers shouted on the way were "Shiv Senecha Vijay Aso", "Shiv Sena Zindabad", "Bal Thackeray Zindabad" and "Dr. Vyas Zindabad". Another pertinent fact to note is that on May 7, 1970 there was put up opposite the by-lane which goes from Old Thana Road to Kanheri a board bearing in Marathi the legend "Established 7th May 1970 Shiv Jayanti—Jai Hind—Shiv Sena—Kanheri Telipada Shakha welcome everybody with pleasure—Jai Maharashtra"; and between the words 'Shiv' and 'Sena' there was the picture of a roaring tiger, the symbol of the Shiv Sena (P.W. 4/330/801). Dr. Vyas was not only the guiding spirit of the R.U.M. but was also the President of the Bhiwandi Branch of the Jan Sangh. The fact that out of the local leaders his name alone was selected for being extolled in the slogans shows the hold he had acquired over certain sections of the Hindus who looked up to him as the champion of their cause. In these circumstances, there would be nothing surprising to find some banners with the legends "Shiv Sena" and "Jan Sangh" on them.

40.36 Just as in the case of the lathis carried by the villagers, so also in the case of the provocative and abusive anti-Muslim slogans shouted by them, the police officers and policemen would be interested in making out that no such slogans were shouted. Except to arrest at the start of the procession two out of the slogan-shouters and whom also the Police were compelled to release as the procession refused to move further, there was no attempt made by any police officer or policeman to stop these slogans from being shouted. For them then to have admitted that the villagers were shouting these slogans as they came into Bhiwandi and also when the procession was being formed would be to clearly prove out of their own mouths that they did not discharge their duties properly.

40.37 The evidence led before the Commission about the villagers who came to join the Shiv Jayanti procession in Bhiwandi on May 7,

1970 has clearly established the following facts :—

- (1) At least half the processionists, if not more, in the Shiv Jayanti procession were villagers from villages nearby Bhiwandi.
- (2) These villagers came from a number of villages including Kamba, Katai, Khoni, Borpada, Shelar, Karivali, Kalwar, Rahnal, Gundavali, Temghar, Bhadwad, Saravali, Pimplas, Nagaon, Dunge, Wadghat, Navghat, Kamatghar, Thakurpada, Taralipada, Ovali, Poorna, Kalher, Kasheli, Kopar, Limbavali, Bhinar, Chavindre, Ju-Nandurkhi, Khadipar, Tembhivali, Utkarsha Nagar, Anju, Vinar, Angaon and Kalwad.
- (3) Some persons from Thana, Kalyan and Bombay also came to Bhiwandi and participated in the procession.
- (4) The villagers came to Bhiwandi mostly on foot and in groups and some in bullock carts.
- (5) A large number of villagers carried lathis to which Bhagwa flags were tied.
- (6) Banners tied to lathis were carried by the groups coming from the villages. Most of these banners showed the names of the villages from which the groups had come and the words "Rashtriya Utsav Mandal" and 'Buruj' (bastion or rampart). Some of the banners showed instead the words "Shiv Sena" or "Jan Sangh"
- (7) The villagers carried banners tied to lathis and particularly Bhagwa flags tied to lathis in order to circumvent the ban under section 37(1) of the Bombay Police Act prohibiting the carrying of weapons.
- (8) The villagers carried lathis with Bhagwa flags tied to them and lathis with banners tied to them at the instance and instigation of the R.U.M.
- (9) The villagers shouted abusive and provocative anti-Muslim slogans as they passed through villages with a mixed population and through the mixed localities of Bhiwandi.
- (10) The behaviour of the villagers was aggressive and militant.
- (11) The villagers who came by the Bhiwandi-Shelar Road stoned some Muslim houses and factories on Panjrapol Road.
- (12) The villagers who came by the Bhiwandi-Karivali Road threw 'gulal' on the Moti Masjid in the Bangad Galli and the Hyderi Mosques situate at the junction of Dargah Road and Sutar Alli.
- (13) None of the constables who accompanied the groups from the villages nor any police officer or policeman on fixed-point duty for the Shiv Jayanti bandobast made any attempt to take away these lathis or to prevent the villagers from shouting abusive and provocative anti-Muslim slogans or from throwing 'gulal' on either of the said two mosques.

The route of the Shiv Jayanti procession

40.38 The starting-point of the Shiv Jayanti procession was Shivaji Nagar near the Bhiwandi Town Police Station. From there it was to

proceed to Wada Stand, Thange Alli, Kasar Alli, Tilak Mandir, Zenda Naka, Madarchhalla, Saudagar Mohalla, the Jumma Mosque in Saudagar Mohalla, Sutar Alli, the Hyderi Mosque, Durga Chawl, Bhoiwada, Bhusar Mohalla, Old Fish Market and Old Thana Road. From Old Thana Road it was to take a left turn to pass Keshar Baug and Santosh Lunch Home, then take a right turn to pass Mandai (Vegetable Market), the Municipal Office, Bazar Peth, Par Naka, Navi Chawl, Tanaji Vyayamshala, Nilkantheshwar Temple, Hanuman Bavdi and the Quarter Gate Mosque where it was to take a left turn and enter Nizampura. After going past Nizampura Jumma Mosque it was to take another left turn to enter Nizampur Road, then pass the Gulzar Cold-Drink House and finally return to Shivaji Nagar. The procession was required to start at about 2-30 p.m. and in any event by 3 p.m. and to return to the Town Police Station by 7 p.m. By the order passed under section 36 of the Bombay Police Act, the procession was required to pass by the Nizampura Jumma Mosque by 6-30 p.m. (Exs. P 1, P 17 and P 41).

40.39 Appendix H to this Report is a sketch of Bhiwandi showing the route of the procession. The procession, however, did not go beyond Keshar Baug.

Deployment for the Shiv Jayanti procession

40.40 We have seen in Chapter 35 (paragraphs 35.32 to 35.44) the Bandobast Scheme for the Shiv Jayanti procession (Ex. P 17). In the light of the Bandobast Scheme so framed, the police force available in Bhiwandi was deployed at various points and on different duties as shown in Ex. P 1A. The sketch Appendix H to this Report shows the deployment for the Shiv Jayanti procession.

40.41 For a better understanding of some of the questions which arise for determination, it will be convenient to set out below what the actual deployment for that afternoon was :—

Serial No.	Place of deployment	P.I.	P.S.Is.	Policemen
1	2	3	4	5
PART I				
<i>Points on the route of the procession</i>				
1	Shivaji Nagar .. .. .	..	..	4
2	Wada Stand .. .. .	..	..	3
3	Zenda Naka .. .. .	..	1	10
4	Madarchhalla .. .. .	..	1	10
5	Madarchhalla to Bhiwandi Road	..	..	4
6	Bandar Road .. .. .	..	..	6
7	Ansari Clinic Junction .. .. .	..	..	5
8	Karga Mosque .. .. .	..	..	3
9	Saudagar Mohalla Road, near Babu Shet Faki's House.	..	..	5
10	Kazi Rice Mill, Saudagar Mohalla ..	..	..	3
11	Zuber Patel's House, Saudagar Mohalla	..	..	10

1	2	3	4	5
12	Dokara Masjid Road	..	..	3
13	Saudagar Mohalla Jumma Mosque	..	1	20
14	East of the Saudagar Mohalla Jumma Mosque.	..	..	10
15	Bhoiwada-Sutar Alli Cross Naka	..	..	3
16	On the road from Bhoiwada-Sutar Alli Naka to Bhoiwada.	..	..	3
17	Hyderi Mosque	..	1	10
18	Samaru Sizing	..	..	4
19	Karivali Cross Road	..	..	4
20	Dargah Chawl	..	..	4
21	Near Tamire-E-Millat Office	..	..	4
22	Near Babu Shet's House No. 22, Bhoiwada.	..	..	2
23	Bhiwandi Washing Co., Opposite Bhoiwada Road.	..	..	2
24	Bhiwandi Washing Co., near the junction of three streets.	..	..	7
25	Latif Manjil Street	..	..	2
26	Bhusar Mohalla	..	..	3
27	Maharashtra Club, Bhusar Mohalla	..	..	2
28	Chambar Alli Street	..	..	2
29	Old Fish Market Chowk, Bhusar Mohalla.	..	1	5
30	On Hotel Road opposite Old Fish Market.	..	..	4
31	Old Fish Market Taqia.	..	..	4
32	Thana Road, Latif Cycle Mart	..	..	4
33	Waje Mohalla Cross Road	..	..	4
34	Electric Power House Sub-Station, Kesar Baug.	..	..	2
35	On the Kesar Baug to Kumbhar Alli Road.	..	..	5
36	On the Kesar Baug to Rice Market Road	..	..	4
37	Santosh Lunch Home	..	..	4
38	Bazar Peth Chowki	..	..	4
39	Bohri Masjid Naka	..	..	4
40	Tanaji Vyayam Shala	..	1	10
41	Lendi Bridge	..	..	5
42	V. R. Textile	..	..	4
43	Opposite Sitaladevi Temple	..	1	5
44	Hanuman Bavadi	..	..	7
45	Mamata Oil Depot	..	..	3
46	On the street opposite Apsara Dyeing	..	..	3
47	Near Bhiwandi Mill Store Street	..	..	3
48	Qatar Gate Mosque	..	..	5
49	Kabarastan	..	..	4
50	Kuwari Lathe Works	..	1	5
51	Pak Peer Road	..	..	3
52	Pak Peer	..	..	3
53	Nizampura Jumma Mosque—eastern side.	..	1	20
54	Nizampura Jumma Mosque—northern side.	..	1	20
55	On the road near Bala Handi's House, Nizampura.	..	..	5

1	2	3	4	5
56	Near Nizampura Chowki Road ..	..	..	5
57	Nazir Ahmed Hair Cutting Saloon ..	..	..	4
58	Nizampura Police Chowki ..	..	..	5
				to come from point No. 17.
59	Near Gafoor Sayed's House at the junction of two roads.	..	..	6
60	Vishwa Bharati Mill Store ..	..	..	6
61	New School Ground ..	..	..	5
62	Opposite New School Road ..	..	..	5
63	Near Oil Shop ..	..	..	4
64	Near Central Electric Store ..	..	..	8
65	Ismail Jokhu's Cattle Shed on the opposite side of the Nizampura Road.	..	..	4
66	Maharashtra Gadi Karkhana ..	..	..	4
67	Street near Keki Sheth's House ..	..	..	4
68	Murgi Mohalla Chowki ..	..	..	10
				to come from Point No. 14.
69	Near Dr. Nandi's Hospital ..	..	..	5
70	Teen Batti Naka ..	..	1	5
				S. I. to come from Point No. 29.
71	Khadak Road ..	..	..	4
72	Fish Market opposite the Town Police Station.	..	..	4
	Total ..	2	10	370

PART II

Policemen posted on house-tops, etc.

1	Hussein Bhai Bohari's House, Zenda Naka.	..	..	1
2	Narali Talao School ..	..	..	1
3	Zuber Patel's House ..	..	..	1
4	Mosim Patel's House, Saudagar Mohalla ..	..	..	1
5	Yakub Sheth's House, Shed near the Mango tree.	..	..	1
6	Laxmi Vilas Hindu Hotel ..	..	..	1
7	Hasan Kuwari's House, Bhusar Mohalla ..	..	..	1
8	Giridhar Kanji Building, Kesar Baug ..	..	..	1
9	Guru Nanak Store ..	..	..	1
10	Tayyab Seth's Building ..	..	..	1
11	Sunita Silk Hall ..	..	..	1
12	Nizampura Jumma Mosque ..	..	..	1
13	Rafiq Kharbe's Gallery ..	..	..	1
14	Nizampura New School ..	..	..	1
15	Near Haseem Banarasi Building ..	..	..	1
16	Rear of Keki's House ..	..	..	1
17	Badshah Cold Drink House ..	..	..	1
18	Gulzar Cold Drink House ..	..	..	1
	Total ..	..	..	18

1	2	3	4	5
PART III				
<i>Other fixed-points</i>				
1	Bhiwandi Talkies .. ..	..	..	2
2	Telephone Exchange Building .. ..	..	..	2
3	Near Hindustan Mosque .. ..	..	..	5
4	Samyukt Krida Mandal .. ..	..	..	2
5	S. T. Stand .. ..	..	..	2
6	Nazarana Talkies .. ..	..	..	2
7	Near Amminuddin Kuwari's House .. ..	..	..	10
8	Near Kabir Uddin Kuwari's House .. ..	..	..	4
9	Kumbhar Alli Naka, Dr. Achyarya's Hospital. .. ..	..	..	2
Total ..		..	..	31
PART IV				
<i>Deployment at Mosques and Temples</i>				
1	Hanuman Temple, Thange Alli .. ..	..	..	2
2	Varala Devi Temple .. ..	..	..	1
3	Hanuman Tekadi Temple .. ..	..	..	1
4	Kap Talao Rameshwar Temple .. ..	..	..	1
5	Bohri Masjid Naka .. ..	..	..	1
6	Moti Masjid .. ..	..	..	2
7	Diwansha Darga .. ..	..	..	1
8	Aas Bibi Darga .. ..	..	..	1
9	Panjarapol Darga .. ..	..	..	1
10	Checking of Masjid and Temples .. ..	..	1	7
Total ..		..	1	18
PART V				
<i>Patrolling</i>				
<i>A. Mobile Patrolling</i>				
1	Sections 1, 2 and 3 .. ..	..	1	3
2	Section 4 .. ..	..	1	3
3	Sections 5 and 6 .. ..	..	1	3
Total ..		..	3	9
<i>B. Cycle Patrolling</i>				
1	Quatar Gate Masjid, Jaitunpura, Bengal-pura, Waje Mohalla and Kumbhar Alli. .. ..	..	..	3
2	Nizampura 1st to 5th Mohallas .. ..	..	..	3
3	Madarchalla to Idga Road, Hindustan Masjid, Saudagar Mohalla Jumma Mosque, Durga Road and Bandar Road. .. ..	..	..	3
4	S. T. Stand, Kasaiwada, Islampura .. ..	..	..	3
5	Dhamankar Naka, Juna Thana Road, Gauripada and Kesar Baug. .. ..	..	..	3
6	Ghas Bazar, Nizampura Chowki in front of the Nizampura Jumma Mosque. .. ..	..	..	3
7	Bala Mandai Chakri to Nizampura Chowk. .. ..	..	..	3
Total ..		..	..	21

1	2	3	4	5
<i>C. Wireless Mobile</i>				
1	At the rear of the Procession—Apple Mobile.	..	1	4
2	S. P. Mobile	.. ..	..	1
3	Rose Mobile	.. ..	..	1
Total		..	1	6
Total of Part V		..	4	36

PART VI

With the procession

1	In front of procession	.. ..	1	1	10
2	At the rear of the procession	.. ..	1	1	10
3	In the middle of the procession	.. ..	1	4	50
4	For patrolling the procession route (with jeep)	.. ..	..	1	7
5	Interspersed with the procession	.. ..	..	1	28 (20 in plain clothes).
6	In the truck	.. ..	..	..	2 (only 2 were put in truck).
7	Striking force with procession	.. ..	..	1	15 +4 Armed men. ½ Gas Squad.
Total		..	3	9	122 +4 Armed men. ½ Gas Squad.

PART VII

A. Reserve

1	Police Station Reserve	.. ..	..	1	43 +12 Armed Party.
2	Saudagar Mohalla and Quatar Gate Masjid.	.. ..	1	1	20 +4 Armed Party.
3	Nizampura Jumma Mosque	.. ..	1	1	20 +4 Armed Party. ½ Gas Squad.
Total		..	2	3	83 +20 Armed men Gas Squad.

1	2	3	4	5
<i>B. Reserve</i>				
1 Stand to	25
2 Control Room	2	5
Total		..	2	30
Total of (A) and (B)		..	2	5
				113
				+20
				Armed men.
				½ Gas Squad.

SUMMARY

Serial No.	Heads	Total	P.I.	P.S.I.	Armed	Un-armed
1	2	3	4	5	6	7
1	Points on the route of the procession.	382	2	10	..	370
2	On the house tops etc.	.. 18	..	..	..	18
3	Other fixed points	.. 31	..	..	..	31
4	At mosques and temples	.. 11	..	..	..	11
5	Checking of mosques and temples.	8	..	1	..	7
		(2 Squads)				
6	Mobile patrolling	.. 12	..	3	..	9
7	Cycle patrolling	.. 21	..	..	..	21
8	Wireless Mobile	.. 7	..	1	..	6
		(3 mobiles)				
9	With the procession	.. 3	3	8	..	107
10	Striking force with procession	.. 20	..	1	4	15
					+ ½ Gas Squad.	
11	Reserve	.. 83	2	3	20	83
					+ ½ Gas Squad.	
12	Stand to	.. 25	..	..	..	25
13	Control Room	.. 5	..	2	..	5
Total		.. 593	7	29	24	708
					+ 1 Gas Squad.	

40.42 A constable was also to be posted on the top of Samru Sizing in Hamal Wada which is adjacent to Sutar Alli. On the second floor were the living quarters of Samru Buddu Momin, the owner of Samru Sizing. To go to the top one had to pass through these quarters. Samru objected to any police constable being posted there on the ground that his family members were at home and said that he would talk to Inspector Pradhan about it. No constable was, therefore, posted on this house (P.W. 66/48/1124, 49/1131; Ex. P 367, entry No. 7; Ex. P 569).

40.43 Five trucks were expected to be in the procession, but in fact there was only one truck in the procession.

The photographer

40.44 One of the recommendations made by the Raghubar Dayal Commission was for a photographer to accompany processions (Ex. G 9 collectively). Accordingly, the Police had specially sent

for a photographer from the Office of the C.I.D., Crime Branch, Poona, to accompany the Shiv Jayanti procession. Until the procession passed the Saudagar Mohalla Jumma Mosque he accompanied it, remaining in the front part of the procession. As the Police expected trouble, if any, to take place at the Nizampura Jumma Mosque, some time after the procession passed the Saudagar Mohalla Jumma Mosque, the photographer was sent to the Nizampura Jumma Mosque to remain there, and he was waiting there with his camera while the disturbances broke out in Bhusar Mohalla and Old Thana Road. When he came to learn that the riots had broken out he returned to the Town Police Station. Even subsequently he did not take any photographs because every police officer was too busy to think of taking him around in a police vehicle for this purpose (P.W. 4/309/783-4).

40.45 Even had the photographer been accompanying the procession when the disturbances broke out, one wonders what evidentiary value his photographs would have had since the disturbances did not commence in the front part of the procession. In any event, all that he could have taken would have been photographs of what was happening within the narrow range of the focus of his camera and nobody would have been able to tell whether any photograph taken by him was of the starting-point of the disturbances.

Muslims in the procession

40.46 Some Muslims had also joined the Shiv Jayanti procession. The Hindu parties and the Special Investigation Squad have alleged that except a few Muslim leaders, Muslims did not participate in the Shiv Jayanti procession, the reason given being that the Muslims had entered into a criminal conspiracy to attack the Shiv Jayanti procession when it entered the Muslim localities of Bhusar Mohalla and Old Thana Road, and that it was only for this reason that the Muslim leaders withdrew from the procession as the procession was passing through Saudagar Mohalla. They also sought to support this suggestion from the fact that Mustafa Fakhir who was in Bhiwandi on May 7, 1970 did not join the procession.

40.47 The evidence before the Commission does not bear out the suggestion either that the Muslims kept away from the procession or that no Muslims, except the leaders who withdrew from the procession, had joined the procession. In the procession there was a large group from the Sizing Workers' Union most of whom were Muslims (B.R.W. 1/83/1393) and Dhamankar has deposed that most of the prominent Muslim members of the Peace Committee and the other committees including the Shiv Jayanti Utsav Samiti as also some other Muslims had joined the procession, their number being roughly about 100, they being in different parts of the procession (C.W. 2/24/1711). S.P., Bhave also saw near the Town Police Station Muslim leaders who had come to join the procession sporting the badge of the Shiv Jayanti Utsav Samiti [P.W. 4/1(80)/236(47)]. So

far as Mustafa Fakih is concerned, he has deposed that he did not join this procession as, by reason of his knee-trouble which made it difficult for him to walk, he did not take part in any procession (B.R.W. 3/12/1420). Dhamankar saw Mustafa Fakih in the compound of his house at the time of the procession. He has deposed that he was not surprised that Mustafa Fakih was not in the procession because he did not expect him to be in it as he was not active in Bhiwandi for quite some time (C.W. 2/24/1712). There is no reason to disbelieve the word either of Mustafa Fakih or of Dhamankar on this point.

The jeep

40.48 There was a station-wagon type jeep in the procession. A picture of Shivaji with a tube-light fitted on it was kept on the top of the jeep. The jeep belonged to the Municipal Council. The Shiv Jayanti Utsav Samiti had sanctioned and purchased one bag of 'gulal'. This bag was kept in the jeep and from it 'gulal' was distributed to the processionists near the police station. The jeep was also fitted with a loud-speaker [P.W. 66/133/1182 ; C.W. 2/10/1700 ; P.W. 111/1(4)/3727(2)].

Bullock carts

40.49 There were some bullock carts in the procession in which the villagers had come to join the Shiv Jayanti procession. Three of the bullock carts had joined the procession from the beginning. One of them was decorated with mango leaves and branches and children were sitting in it. In another bullock cart there was a small float consisting of three or four kettle-drummers ('Chaughada') and a 'shehnaï' player and in the third bullock cart there were three boys about 14 to 15 years old dressed as 'Mavlas' and carrying theatrical swords covered with silver foil on the blades. That these were theatrical swords has been admitted by the Muslim witness Abdul Hamid Jairoomi. This cart was at the head of the procession. A cloth banner fixed to two sticks, with the legend "Rashtriya Utsav Mandal, Bhiwandi" on it, was tied to the sides of this cart. Dy.S.P., Diwate has deposed that Inspector Pradhan had personally searched these three bullock carts and that Diwate himself had the branches tied to one of the said bullock carts removed. There is no reason to doubt Diwate's word. As the procession moved along, more bullock carts, however, joined it and there could be no question of searching any of these carts. Though some of the bullock carts were thus not searched, there is no reason to believe that any of the bullock carts carried any weapons or inflammable liquid nor has any witness made any such allegation [P.W. 4/123/632, 124-5/635-7 ; P.W. 55/7/982 ; P.W. 66/92/1156-7 ; B.R.W. 38/1(1)/1538(1), 3/1539].

The truck

40.50 Every year there used to be a truck with a float in the Shiv Jayanti procession. Except for the 1970 procession, Anna Mestri's

truck was used for this purpose. For the 1970 Shiv Jayanti procession, however, the truck bearing registration No. BYY 3171 belonging to one Ratan Heda of Bhiwandi was used. It was not decorated by the Decoration Committee of which Savlaram Barku Kale was the chairman, but by the Procession Committee of which Pandu Vastad was the chairman and Uddhav Teje, Savlaram Kale, Anna Mestri, Sharad Patwardhan, Hasmukh Thakkar and Datta Punyarthi were some of the members. The float in the truck was prepared by Uddhav Teje, Keshav Durve and the boys of the Tanaji Vyayam Shala of which Pandu Vastad was one of the two instructors and Uddhav Teje, the secretary. The float depicted the scene in Shivaji's durbar when the daughter-in-law of Mulla Ahmed Navayat, the Subedar of Kalyan, was offered to him by her Maratha captors—an incident in which Shivaji showed his greatness and nobility when he dispelled her fear of being dishonoured by ranking her with his own mother, saving that had his mother Jijabai possessed her beauty, he too would have looked as handsome and returned her to her people in Bijapur under a military escort after giving her presents of ornaments and dresses. The tableau consisted of a man dressed as Shivaji and six other men dressed as 'Mavlas', three standing on each side of him. There was a girl about 17 or 18 years old dressed in Punjabi clothes taking the part of the Subedar's daughter-in-law and a wooden box to represent the palanquin in which she was brought to Shivaji. Apart from the girl, the procession consisted entirely of men [P.W. 66/92/1158, 133/1182; N.H.W. 20/2/1911; N.H.W. 44/5/2050; J.S.W. 1/20/2210; P.W. 111/1(4)/3727(2); P.W. 4/68/598, 123/624; C.W. 2/49/1735; B.R.W. 38/1(1)/1538(1), 3/1539].

40.51 The Muslim parties have alleged that this truck carried stones, brickbats, broken glass pieces and acid-bulbs and petrol and kerosene bottles. The Bhiwandi Relief Committee examined one witness to show that at Old Thana Road stones, brickbats, broken glass pieces and acid-bulbs were taken out from the truck and thrown on the Muslims and their houses and six other witnesses to show that arson was committed there with petrol and kerosene from bottles taken out of the truck. Dy.S.P., Diwate and Inspector Pradhan have deposed that Diwate searched the truck just as he had searched the bullock carts and did not find any incriminating articles in it. Ever since he became the Inspector in charge of the Town Police Station, Pradhan had been searching the truck for every Shiv Jayanti procession. Pradhan has deposed that he not only searched the truck personally but also looked below the bench on which the man playing the part of Shivaji was sitting and also searched the driver's cabin. He has further deposed that the lid of the said wooden box was open and the box was empty. He has further deposed that the four persons, dressed as Mavlas, were carrying theatrical swords. When it was put to him that he had not mentioned these facts in his affidavit, he rightly pointed out that there were many facts about which he had deposed which did not find place in his affidavit, just as

there were a number of facts deposed to by other witnesses which were also not mentioned in their affidavits (P.W. 66/92/1156 ; P.W. 38/101/3893-4, 112/3898).

40.52 I have not been impressed by the evidence of the Muslim witnesses on this point. On the other hand, Diwate and Pradhan have generally shown themselves to be honest, truthful and reliable witnesses and there is no reason for not accepting their word on this point. In this context an important fact to remember is that if petrol or kerosene bottles were to be taken out from the truck and distributed for setting fire to Muslim properties, the truck would have to be in the thick of the disturbances. There was a young girl in the float who had taken the role of the daughter-in-law of the Subedar of Kalyan. Were there to be a free fight between the processionists and the Muslims, assuming that the processionists had determined to start the disturbances when they reached Old Thana Road, there would always be the possibility of the Muslims retaliating and of a clash taking place between the processionists and the Muslims. It is not likely that those in the truck would have run the risk of the girl getting seriously injured in such a clash.

40.53 I, therefore, hold that Inspector Pradhan had searched the truck thoroughly and had not found any kerosene or petrol bottles or any weapons or missiles or any other incriminating articles in it.

40.54 After Inspector Pradhan had finished searching the truck, he called out to the two constables who had been deputed to accompany the truck, namely, A. A. Sawant (P.W. 111) of the Bhiwandi Town Police Station and G. G. Patil of the Thana Police Headquarters. Pradhan asked them to get inside the truck and told them to sit away from the tableau. Pradhan also instructed Sawant to take down the names of the persons who were in the truck. Sawant, however, failed to carry out these instructions and neither he nor Patil took down the names of any of the persons who were in the said truck. Subsequently, however, H.C., Jadhav (G.W. 10) got the names of the persons who had participated in the tableau from Ramchandra Kondapatri, popularly known as Guruji one of the two Vastads or instructors at the Tanaji Vyayam Shala (P.W. 4/317/789 ; P.W. 38/101/3893-4).

Whether the processionists were carrying lathis, iron bars, swords and spears ?

40.55 The evidence of the witnesses referred to above, particularly of Bhausahab Dhamankar, Murtaza Fakihi and Sikandar Faquih, leaves no doubt that not only most of the villagers who came to Bhiwandi to join the procession but also most of the other processionists were carrying Bhagwa flags tied to lathis. This position emerges even from the evidence of the witnesses called by the Executive Magistrates and the District Police Officers. D.M., Capoor has deposed. "There were hundreds of flags carried in the procession. These flags were tied to sticks of varying dimensions." (P.W. 59/50/1032). Head Constable Manjrekar's evidence on what happened at the start of the

disturbances, however, leaves no doubt that most of these sticks were lathis. He has deposed, "Immediately thereafter both Hindus and Muslims started fighting one another with lathis." (G.W. 9/44/1309). Apart from the Police, the only Hindus on those roads were the processionists. They could not have fought the Muslims with lathis unless they were carrying lathis. The lathis they were carrying were those to which Bhagwa flags were tied. Further, there were, as we have seen, at least 15 to 20 banners tied to lathis.

40.56 The evidence also shows that some Bhagwa flags were tied to iron bars, though their number did not exceed five or six [B.R.W. 2/1(11)/1398(5); B.R.W. 67/1(18)/1630(8); 6/1633].

40.57 The deponents of some of the Muslim affidavits and the witness Mohamed Jafar Ahmed (B.R.W. 30) have alleged that the persons in the tableau were carrying real swords and spears (B.R.W. 30/2/1519). The evidence of S.P., Bhave, Dy.S.P., Diwate and Abdul Hamid Jairoomi (B.R.W. 38), however, makes it clear that the persons in the tableau in the truck were carrying only theatrical swords and were not carrying any spears and that the men in the tableau in the bullock cart were also carrying only theatrical swords (P.W. 4/202/717; P.W. 66/133/1182; B.R.W. 38/3/1539). After the procession started and when its tail-end had reached the Bhiwandi Town Police Station, S.P., Bhave saw four or five persons dressed as Shivaji's 'Sainiks' carrying spears. He stopped them from proceeding further. They informed him that they were taking the part of Shivaji's Sainiks and were going to join the float in the truck. Bhave told them that as the procession had already started, he would not allow them to carry any spears and took the spears away and kept them in the police station. These were also theatrical spears. On November 17, 1970 Pandurang Vastad made a written application for the return of the spears and accordingly they were returned to him (P.W. 4/68/598, 202/717).

40.58 The persons injured in the disturbances were first taken to the Bhiwandi-Nizampur Municipal Dispensary and the more serious cases were thereafter removed to the Thana Civil Hospital. The list of injured Muslims treated at the Bhiwandi-Nizampur Municipal Dispensary on May 7, 1970 (Ex. P 1495) shows that there were only two Muslims who had incised wounds and two other Muslims who had stab wounds in abdomen. The evidence further shows that one more Muslim who was pierced through the chest with a spear was rushed to St. George's Hospital, Bombay. Some more with incised wounds were sent to the Thana Civil Hospital. Nevertheless had real swords and spears been carried in the procession as alleged in some of the Muslim affidavits and by the said witness Mohamed Jafar Ahmed, many more Muslims would have received stab wounds and incised wounds when the disturbances broke out.

40.59 The evidence thus establishes that in the 1970 Shiv Jayanti procession a large number of processionists were carrying lathis, that to most of these lathis Bhagwa flags were tied and to some of them

banners were tied, and that four or five processionists were carrying iron bars to which Bhagwa flags were tied and only a very few were carrying spears and perhaps swords.

The arrest of the two Hindus

40.60 The evidence of Bhausahab Dhamankar and of the Muslim witnesses, particularly of Murtaza Fakhir and Sikandar Fauhi, shows that the processionists, as they gathered at the starting-point, which was near a 'pandal' erected on the Shivaji Nagar Road leading from the Town Police Station to the Nazarana Talkies, were in a boisterous and rowdy mood and quite a few of them showed a militant spirit. They were shouting unapproved slogans, several of which were anti-Muslim or provocative of the Muslims. Dy.S.P., Diwate has also admitted that unapproved slogans were shouted intermittently as the procession was forming near the Town Police Station and while passing by it. When S.P., Bhawe went to the Town Police Station at about 3 p.m., the procession was still being formed. He requested the organizers to brief the processionists about the approved slogans which were to be shouted and the necessary announcement was made on the loud-speaker. At that time D.M., Capoor and D.I.G. (B.R.) Gokhale were at the Inspection Bungalow. Though the procession was to start at 2-30 p.m. and in any event by 3 p.m., it started at about 3-15 p.m. or 3-30 p.m., already late by quarter of an hour to half an hour. The processionists were in such a defiant mood that even while they were going past the side of the Town Police Station, the younger elements in the procession kept on shouting unapproved slogans. Bhausahab Dhamankar, who had gone to the starting-point of the procession at about 2 p.m., asked the processionists several times not to shout slogans which were not authorized, but as they continued to do so Dhamankar apprehended one of them and handed him over to Inspector Pradhan. Dy.S.P., Diwate arrested another Hindu who also persisted in shouting unapproved slogans. The two arrested persons were Anant Bhiku Shigwan, a resident of Kap-Kaneri area, and Kulayya Vyankatesh Gujja, a resident of Kacheripada. They were both taken to the Town Police Station [P.W. 4/1(80)/236(47) 132/647-8; P.W. 66/1(16)/1108(6); P.W. 38/1(92)/867(30), 52/886; C.W. 2/1(33)/1692(23-4); Ex. P 367, entries Nos. 26 to 28].

The unapproved slogans shouted by the two Hindus

40.61 According to S.P., Bhawe, the processionists in the part of the procession from which the two Hindus were arrested were shouting the slogans "Hindu Dharmacha Vijay Aso" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" (P.W. 4/132/647). According to Dy.S.P., Diwate, while he was near the Town Police Station at the start of the procession, he heard some processionists shouting the slogan "Hindu Dharmacha Vijay Aso". He asked them to refrain from doing so, whereupon Datta Punyarthi came up to him and told

him that this particular slogan could be shouted. Diwate pointed out to him that it was not an approved slogan and he would not permit it. At that time Bhaskar Mali came up to Diwate and also insisted that this slogan should be allowed to be shouted. Diwate did not agree to this. Meanwhile Dr. Vyas came up and he told Datta Punyarthi and Bhaskar Mali that as the said slogan was not in the list of approved slogans, it could not be shouted (P.W. 66/81/1147, 85/1150). According to Bhausaheb Dhamankar, the two Hindus who were arrested were shouting the slogans "Galli Galli Me Shor Hai, Sub Musalman Chor Hai", "Shiv Sena Zindabad", "Rashtriya Utsav Mandal Zindabad" and "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega". According to Kalantri, the slogan shouted by these two was "Pakistan Murdabad". In cross-examination he, however, admitted that he himself did not hear this slogan, that he was not present when they were arrested and that when he reached the corner of Thange Alli, he learnt that two or three persons arrested by the Police were shouting unapproved slogans [N.H.W. 42/1(13)/2033(8), 8/2038]. According to Joglekar, when he went to the Town Police Station after the two Hindus were arrested, he learnt that the unauthorized slogan shouted by them was "Pakistan Zindabad". He then corrected himself and said that the slogan was "Pakistan Murdabad" (N.H.W. 54/17/2117). Baliram More went one better and said that when he went to the Town Police Station, D.M., Capoor told him that the two arrested Hindus had shouted the slogan "Pakistan Murdabad" (S.S.W. 1/10/2157). Dr. Vyas was at the head of the procession and left the procession at Kasar Alli and by taking a short cut came to the Post Office to rejoin the procession. He, however, found that the procession was still at Kasar Alli and on making inquiries learnt that some persons were taken into custody by the Police for shouting unauthorized slogans. He went to the Town Police Station. Kalantri, Baliram More and Pandu Vastad were already there. According to his affidavit, "Nobody stated what those unauthorized slogans were." In his cross-examination, however, he tried to improve upon his story and said that he later learnt that the unauthorized slogans shouted by the said youths were "Pakistan Murdabad", "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega" and "Hindu Dharmacha Vijay Aso". He further deposed that he came to learn this fact within five or ten minutes of his going to the place where the two Hindus were arrested and before going to the police station. He was immediately faced with the aforesaid statement in his affidavit and he sought to explain it away by stating that what he meant was that at the police station the Police did not tell him what the unauthorized slogans were [J.S.W. 1/1(22)/2201/8-9, 20/2210]. This is a very unconvincing explanation. The only Muslim witness who mentions the unapproved slogans shouted at the commencement of the procession is Haji Miyan Tase (B.R.W. 67). According to him, when the procession started, mischievous elements in it raised provocative and anti-Muslim slogans including "Jo Hamse Takrayega,

Woh Mitti Me Mil Jayega”, “Aala Re Aala Hindu Aala, Gela Re Gela Landiya Gela” and “Sadak Pe Hindu, Galli Me Hindu, Idhar Se Hindu, Udhar Se Hindu” [B.R.W. 67/1(10)/1630(8)].

40.62 As mentioned in Chapter 38 (paragraphs 38.7 to 38.9), each of the three groups of witnesses, namely, the police witnesses, the Hindu witnesses and the Muslim witnesses, have their own motive for doctoring the version of what actually transpired. The police witnesses are interested in minimizing the misbehaviour of the processionists, so are the Hindu witnesses. On the other hand, the Muslim witnesses tend to exaggerate it. In the circumstances, as mentioned in Chapter 38 (paragraph 38.11) I prefer to accept the evidence of Bhausahab Dhamankar. So far as the alleged shouting of the slogan “Pakistan Murdabad” is concerned, no Hindu witness claims to have heard it himself. All of them say that they learnt from others that this slogan was shouted by the arrested persons. The reason why this slogan is introduced in evidence by these Hindu witnesses is to attempt to make out that Muslims in India have leanings towards Pakistan and, therefore, resent this slogan.

40.63 For the reasons stated above, I hold that the slogans shouted by the two Hindus who were arrested were the slogans deposed to by Bhausahab Dhamankar, namely, the slogans “Galli Galli Me Shor Hai, Sub Musalman Chor Hai”, “Shiv Sena Zindabad”, “Rashtriya Utsav Mandal Znidabad” and “Jo Hamse Takrayega, Woh Mitti Me Mil Jayega”.

The release of the two Hindus

40.64 The news of the arrest of the two Hindus for shouting unapproved slogans immediately went round the procession and the procession came to a halt. A number of processionists, particularly the younger elements, returned to the Town Police Station to demand the release of the two Hindus. They began collecting in groups pushing one another towards the police station and shouting “Chhod Do, Chhod Do” (Release them, release them). A number of Hindu leaders, including Dr. Vyas, Zumberlal Kalantri, Baliram More, Joglekar, Shantaram Tavre and Bhai Patil, also went to the police station to ask for the release of the two Hindus. By this time D.M., Capoor and D.I.G. (B.R.) Gokhale, who had been informed by S.P., Bhawe on the telephone that the procession had started, had arrived at the Town Police Station. Some of these Hindu leaders requested the police officers to let the arrested persons go, while Baliram More, as he himself admitted, openly threatened that if these persons were not released, the processionists would squat on the ground and not proceed further. Ultimately the police officers decided to release the two arrested Hindus after giving them a warning. According to D.M., Capoor, he consulted the D.I.G. (B.R.) and the S.P. and they all felt that the crowd had become restive and if the two arrested persons were not set free, it would become violent and

would have to be dispersed by force and this might lead to riots all over the town. According to the D.M. and the police officers, they were also influenced by the fact that the Hindu leaders gave an assurance that they would prevail upon the processionists to raise only the slogans approved by the Peace Committee and would control the processionists and ensure that objectionable slogans would not be shouted. According to them, these assurances were given by Dr. Vyas, Zumberlal Kalantri, Baliram More, Joglekar, Shantaram Tavare and Bhai Patil [P.W. 4/1(80)/236(47); P.W. 59/1(47)/1000(24), 42/1025; G.W. 4/1(21)/1190(13), 28/1202; P.W. 38/1(92)/867(30); S.S.W. 1/10/2157].

40.65 According to Kalantri, it was he alone who made a request for the release of the two arrested Hindus on the ground that not to release them would be inauspicious and an ill-omen. He further deposed that the other Hindu leaders did not join him in making the request and Baliram More who was present did not say anything (N.H.W. 42/8/2038-9). Kalantri has not shown any regard for truth. His evidence on almost every point has turned out to be untrue and his version of what transpired at the Town Police Station is completely falsified by not only the evidence of the D.M. and the police officers but also by that of Dr. Vyas and Baliram More. Dr. Vyas has said that he and the other leaders told the police officers that they would try their level best to see that the processionists did not shout unauthorized slogans and that for this purpose he requested S.P., Bhave to allow one of the Hindu leaders to use the police jeep which was fitted with a mike so that he could give instructions to the processionists to shout only authorized slogans as also instructions with respect to their behaviour (J.S.W. 1/20/2211-2). Baliram More has himself deposed that he told D.M., Capoor that if it became known that the Police had not allowed the two arrested persons to go, the other processionists would squat on the ground and refuse to move and there would be trouble (S.S.W. 1/10/2157).

40.66 So far as Dhamankar is concerned, he was at Thange Alli when the procession came to a halt. He thereupon went back to the Town Police Station to find out what had happened and saw discussions going on between the police officers and some of the Hindu leaders. He learnt that these discussions were to obtain the release of the two arrested Hindus. He felt that this was wrong and walked back to Tilak Mandir (C.W. 2/37/1724).

40.67 The police officers took statements from the two arrested Hindus in which it was recorded that these persons had committed a mistake and requested that the mistake should be condoned. After taking these statements from them the two Hindus were released and the police officers allowed Zumberlal Kalantri to get into the police jeep fitted with a mike so that he could give instructions to the processionists both about the shouting of approved slogans and with respect to their behaviour. Kalantri got into the jeep and announced on the mike that the arrested persons were released. Thereupon the

procession started moving forward. The time was then about 3-40 p.m. Thus, the procession started about three-fourths of an hour late [P.W. 59/1(47)/1000(25); P.W. 4/1(80)/236(48); J.S.W. 1/1(22)/2201(9); Ex. P 367, entry No. 28].

The start of the procession—conclusions

40.68 The processionists assembled at the starting-point were rowdy and boisterous. Several of them were shouting unapproved slogans, some of which were provocative and anti-Muslim. The procession started at 3-15 p.m. or 3-30 p.m. and even while it was passing by the side of the Town Police Station unapproved slogans were shouted. These unapproved slogans were "Galli Galli Me Shor Hai, Sub Musalman Chor Hai", "Shiv Sena Zindabad", "Rashtriya Utsav Mandal Zindabad", "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega" and "Hindu Dharmacha Vijay Aso". The slogans "Pakistan Murdabad" was not shouted nor were the slogans "Aala Re Aala Hindu Aala, Gela Re Gela Landiya Gela" and "Sadak Pe Hindu, Galli Me Hindu, Idhar Se Hindu, Udhar Se Hindu". Two of the slogan-shouters were arrested and taken to the police station. The news of their arrests spread like wild fire through the procession and a number of processionists returned to the Town Police Station, clamouring for the release of the arrested persons. The Hindu leaders, Kalantri, Dr. Vyas, Jogtekar, Bhai Patil, and Baliram More and Shantaram Tavre, also went to the police station to ask for the release of these two persons. Baliram More threatened the D.M. and the police officers that unless the arrested persons were set free, the procession would not move forward and there would be trouble. Fearing that a riot might break out if the arrested persons were not set free, the police officers accepted the assurances of the Hindu leaders that they would see that only the approved slogans were shouted and that the processionists would behave themselves and set the two Hindus free after administering a warning to them. Zumberlal Kalantri was provided with the police jeep fitted with a mike to give instructions to the processionists about the slogans to be shouted and about their behaviour.

40.69 The behaviour of the processionists delayed the starting of the procession by quarter of an hour to half an hour. Their refusal to move unless the two arrested Hindus were released further delayed the procession and when it started again, it was at least three-fourths of an hour late, if not more. There was no prospect of the time-table specified in the order under section 36 of the Bombay Police Act (Ex. P 41) being adhered to.

40.70 From the time the two arrested Hindus were released, the Police lost all control over the situation. As Bhausaheb Dhamankar has stated, "This step resulted in augmentation of the militancy in an organized group which had come determined to take the procession in a particular manner, namely, shouting slogans which were likely to provoke the members of the Muslim community and use abusive

language towards the other community" (C.W. 2/1(33)/1692(24). It would have been much better had the officers remained firm and not released the two Hindus. They had armed police constables at the Town police station and they could have called them out and posted them near the turbulent section of the processionists who had gathered outside the police station in order to make a show of force and to display to these processionists their determination to maintain law and order at all cost. We can appreciate that the D.M. and the police officers were placed in a very delicate situation. From the behaviour of the processionists it is, however, clear that they could not have possibly believed the assurances of the Hindu leaders that they would be able to ensure that only approved slogans would be shouted and the processionists would behave themselves. They were experienced officers and could have easily gauged that it was not possible to control the behaviour of this particular procession. Faced with the imminent prospect of a riot they preferred to take the chance of the procession passing off without a serious incident, however provocative and undisciplined its behaviour would be. They gambled on this chance against high odds and lost. Unfortunately, the stakes were the lives and properties of innocent citizens

The behaviour of the processionists—Dhamankar's evidence

40.71 Bhausahab Dhamankar was near the Town police station from 2 p.m. onwards. He went ahead with the procession when it started and when he found that the procession had come to a halt, he went back to the police station. There he found the Hindu leaders requesting the police officers to release the arrested Hindus. As he disapproved of it, he went back and when the arrested persons were released, he was at Tilak Mandir. Though he was in the front part of the procession, he stopped at different corners to watch the procession and sometimes walked back the entire length of the procession. Thus, at times he watched the whole procession (C.W. 2/10/1699, 24/1712).

40.72 We have already seen in paragraph 40.70 of this chapter what Dhamankar had said in his affidavit about the effect on the processionists of the release of the two Hindus. The passage in his affidavit in which he has stated that this step resulted in "the augmentation of militancy" in the processionists who had come "in an organized group" determined to shout slogans which were likely to provoke the Muslims and use abusive language towards them has already been quoted in that paragraph. We will now see what he has to say about the behaviour of the processionists as the procession passed through different localities.

40.73 Dhamankar has stated in his affidavit [C.W. 2/1(34)/1692 (24-5)] :

"The procession started again and this militancy so generated resulted in loss of control by the Police over the moving procession Shri Zumberlal Kalantri, M.L.C. from Bhiwandi, was advising the

members of the *procession from desisting to cry the slogans which were prohibited* as a result of understanding. *His efforts to communicate these directions, even on a loud speaker, miserably failed* and the groups of young boys persisted in giving the slogans which were not appropriate. However, the procession moved in this disorderly fashion upto the Jumma Masjid near Hamid Patel's house without any incident. However, one was able to see that the members of the *procession had become quite defiant and unruly.*"

40.74 In the witness-box he has testified (C.W. 2/10/1699-1701), 24/1711-2, 38/1725) :

"Though *abusive and defiant slogans were shouted from all sections of the procession, they were shouted the most in the central section of the procession.* The Shiv Jayanti Utsav Samiti had sanctioned and purchased one bag of 'gulal' and distributed 'gulal' therefrom amongst the processionists. I do not know whether anyone else had also brought 'gulal' with him. '*Gulal' throwing was indulged in by the processionists on a fairly large extent. 'Gulal' was thrown by the processionists in the air, on one another, on the passers-by and on the bystanders.* When so thrown, it also fell on the buildings on the route of the procession. Till Madarchhalla there were a number of bystanders on the route. At Wani Alli, Brahman Alli and Thange Alli ladies came and offered 'Arati' to the picture of Shivaji. There were not so many bystanders present at Madarchhalla. At Saudagar Mohalla people were watching from the windows of their houses. They were mostly men. At Bhoiwada also the ladies offered 'Arati'. The trouble started when the head of the procession reached the Old Fish Market. There were no bystanders at Bhusar Mohalla. I did not notice people in the windows of houses in Bhusar Mohalla. There were people standing in the lanes off Bhusar Mohalla but about 20 feet or so inside the lanes away from Bhusar Mohalla Road. *The shouting of abusive and defiant slogans including the slogans referred to in paragraph 6 of my deposition (set out later in this chapter) became more intense from Madarchhalla onwards and then continued all through. These slogans were shouted all throughout. It is the intensity and the tempo which increased when the procession reached Madarchhalla and continued to become more intense thereafter.* Any one in the procession could see these things and hear these slogans. *I drew the attention of a number of persons including police officers to this state of affairs. When the procession was assembling I drew the attention of Dr. Vyas, Pandu Vastad and other members of the Shiv Jayanti Control Committee to this state of affairs. I had drawn the attention of the police officers at the time when the boys were arrested. After the boys were released and the procession started moving, it was no use drawing the attention of the Police to what was happening because the policemen were walking in the procession by the side of those who were shouting these slogans. The processionists were brandishing*

their fists when shouting certain slogans such as "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega". The processionists were also dancing and jumping and clapping.....

"I saw processionists as also bystanders whose clothes were stained with 'gula'....."

"The processionists had halted at different places on the route. This had been deliberately done. We however, had prepared a schedule which had provided for passing by the mosques either before the prayer time or after the prayer time and reaching the point of destination by a particular time. This schedule was deliberately flouted by the processionists halting at various places. They used to halt to indulge more in abusive and provocative slogans."

40.75 The truth of what Dhamankar has stated can be seen from the fact that some Hindus, for instance Manubhai Narayan Patel, the proprietor of Ganesh Sizing works (N.H.W. 18/5/1905), left the procession at about 4.15 p.m., feeling afraid of being caught in the midst of any trouble that might break out as a result of the provocative and aggressive behaviour of the processionists. Though Manubhai did not admit in so many words that this was the reason why he left the procession, but stated that there was too much of a crush and he did not want to be in it, the real reason is obvious.

The behaviour of the processionists— the Muslim evidence

40.76 We will now turn to the evidence of Muslim witnesses. According to Murtaza Fakhri, most of the processionists were shouting offensive slogans, throwing 'gula' at Muslims and at the Saudagar Mohalla Jumma Mosque when they passed by it. They were brandishing their hands and fists and were giving defiant and contemptuous catcalls to the Muslims and making obscene gestures at them, such as pointing at them with the middle fingers of their hands. He has deposed that there were a number of Muslim bystanders on the roads as also some Muslim women watching the procession from the windows of their houses (B.R.W. 1/1(9)/1359(7), 44/1378, 47/1379. Sikandar Faqih has also deposed that there were Muslim women standing on the balconies and at the windows of the houses (B.R.W. 2/20/1406). Though the police witnesses have attempted to deny the presence of Muslim women, Dhamankar corroborates Murtaza Fakhri and Sikandar Faqih that Muslim women were watching the procession from their houses, for he has deposed that at Saudagar Mohalla people were watching from the windows of their houses and that they were mostly men, which implies that there were some women also watching the procession. Murtaza Fakhri has also deposed that he saw Dhamankar protesting about the shouting of unapproved slogans to Dy.S.P., Diwate and some of the Hindu organizers of the procession such as Dr. Vyas, Uddhav Teje and Pandu Vastad. Dhamankar has corroborated him on this point. Murtaza Fakhri has further deposed that he himself

pointed out to Diwate those persons in the processions who appeared to be drunk (B.R.W. 1/89/1396).

40.77 Sikandar Faquih, who was in the procession until Madarchhalla and then went by a short cut to the Saudagar Mohalla Jumma Mosque and from the steps of the mosque watched the entire procession, corroborates the evidence of Murtaza Fakihi. He has deposed that the processionists were dancing, gesticulating, throwing excessive 'gulaal', shouting objectionable slogans and pointing at Muslim women standing on the balconies and at the windows of houses while shouting the slogan "Uthav Lungi, Bajav Pungi" [B.R.W. 2/1(21)/1398(11-12), 20/1407].

40.78 Mustafa Fakihi also watched the procession for some time standing on the verandah of his house which is the same as Murtaza Fakihi's house. He watched a part of the procession. He noticed in it many processionists carrying Bhagwa flags tied to lathis and heard offensive and anti-Muslim slogans. He also saw 'gulaal' being thrown freely and after the procession had crossed Saudagar Mohalla some Muslims came up to him and complained about the abusive and provocative slogans shouted by the processionists [B.R.W. 3/1(12)/1416(5), 20/1423].

40.79 Yusuf Hasan Momin, Municipal Councillor, has deposed that after the two Hindus were released the processionists were throughout uncontrollable. They threw 'gulaal' in large quantities and shouted provocative slogans and though Keshav Durve and Zumberlal Kalantri continuously gave instructions on the loud speaker from the jeep, it was to no avail and that this behaviour became worse when the procession passed by the Saudagar Mohalla Jumma Mosque [B.R.W. 65/1(19-20)/1616(7-8)].

40.80 Haji Miyan Tase also heard these objectionable slogans and witnessed the throwing of 'gulaal' on the mosque and on the bystanders and he was one of the persons who complained to Mustafa Fakihi about the misbehaviour of the processionists [B.R.W. 67/1(19-20)/1630(9)].

40.81 A number of other Muslim witnesses have also deposed about the misbehaviour of the processionists particularly when the procession passed through Madarchhalla and Saudagar Mohalla. The substance of their evidence is the same as the evidence of the Muslim leaders above referred to and to deal with the evidence of each of the witnesses in detail would be repetitious and carry the matter no further. The evidence of one Muslim witness, Nawab Hussain Ahmed Hussain (B.R.W. 31), however, requires to be noticed. He was a resident of Keshar Baug on Old Thana Road. According to his testimony, at about 5.15 p.m. or 5.30 p.m., the procession passed in front of his house. There was so much commotion in the procession that he went inside the house and watched the procession from behind the curtains of the door. According to him, the processionists who were walking at the head of the procession had unbuttoned their half pants and were shouting filthy and abusive slogans and were

pointing to their genitals and saying that the women of the Mohalla needed what they were pointing at. The procession stopped in front of his house. Suddenly there was a rush from behind. People started whistling and thereafter some people took out a bottle from the truck and sprinkled liquid from it on six shops in front of his house and set them on fire as also set fire to the house of his neighbour Fatmabai. The evidence of this witness does not inspire much confidence. Apart from him, no other witness has deposed about any processionists unbuttoning their pants or pointing to their genitals. In cross-examination Nawab Hussain deposed that his house had a strong wooden front door and that when the stone-throwing started he got frightened and closed the door and watched what was happening from the narrow gap between the two leaves of the door (B.R.W. 31/1-3/1521-3). This clearly shows that the obscene behaviour alleged by him, if it did take place, took place after the disturbances had broken out. This conclusion is fortified by the evidence of Mrs. Hajera Abdul Aziz, a resident of Bhusar Mohalla, who has stated that when stone-throwing and arson by the processionists started in Bhusar Mohalla, the rioters were using filthy language against women and young girls [B.R.W. 32/1(1)/1524(1)].

The behaviour of the processionists—the police evidence

40.82 As was to be expected the witnesses called on behalf of the Executive Magistrates and District Police Officers have tried to underplay the misbehaviour of the processionists, lest it be found against them that they had allowed a turbulent, violent and aggressive procession to carry on until the disturbances broke out. The main controversy between the Muslim witnesses and the police witnesses is on the point of the unapproved and objectionable slogans which were shouted by the processionists. This topic will be dealt with later, but here it is pertinent to note the admissions made by S.P., Bhawe. Bhawe has admitted that the shouting of unauthorized slogans was much more while the procession was passing the Saudagar Mohalla Jumma Mosque. He also admitted that since there was more shouting of slogans, including unapproved slogans, near the said mosque, gesticulations which usually accompany slogan-shouting were also more. He also admitted that as the procession proceeded it became disorderly in that it broke off into groups and the Police had to make the groups join up to form a continuous procession. He also noticed that some processionists while shouting slogans were dancing and jumping up and down. He, however, denied having seen any clenched fists being shown to the residents of the Muslim localities when the procession passed through them (P.W. 4/132/650-1). His denial about the brandishing of fists is not convincing. Some of the slogans such as "Jo Hamse Takrayaga, Woh Mitti Me Mil Jayega" are of a very vulgar nature such that processionists would normally raise their hands and brandish their fists while shouting them, much more so when the processionists are in an aggressive and defiant mood and, leaving

aside the evidence of Muslim witnesses, the Hindu witness, Balasaheb Joglekar (N.H.W. 54), has even admitted that the processionists were jumping about and gesticulating with their fists and hands while shouting slogans (N.H.W. 54/17/2117).

40.83 After the procession started on the two Hindus being released, D.M., Capoor, D.I.G.(B.R.), Gokhale and S.P., Bhawe left the Town Police Station together in a jeep, the S.P. Mobile. They went to Zenda Naka but discovered that the procession had already passed that point. They thereupon went to the Saudagar Mohalla Jumma Mosque and when they reached the said mosque, they found that the head of the procession had just crossed it. They waited there for about three-quarters of an hour to watch the rest of the procession pass by. Capoor has deposed that while they were waiting there they heard unapproved slogans and saw processionists dancing, jumping, shouting unapproved slogans and raising their hands and gesticulating. He asked some Hindu leaders, including Dr. Vyas and Zumberlal Kalantri, to see that such slogans were not shouted and himself shouted in the directions from which slogans were coming that such slogans were not to be shouted. On hearing him, the Hindu leaders who were there also called out to the processionists not to shout unapproved slogans (P.W. 59/43/1027). The gesticulations with hands which D.M., Capoor deposed about would include the brandishing of fists while shouting certain slogans such as "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega" and disprove Bhawe who has denied this fact.

40.84 Dy.S.P., Diwate had decided to remain most of the time at the head of the procession along with the Striking Force. He also waited for some time at the sensitive spots on the route of the procession. When the procession started again after the release of the two Hindus, he heard unapproved slogans being shouted intermittently and as the procession came near the Saudagar Mohalla Jumma Mosque, about 50 to 70 processionists, especially from Sutar Alli, became very vociferous and started lingering and shouting unapproved slogans. He warned Narayan Badlapurkar, the Vice-President of the R.U.M., who was the leader of that group, and pushed that group ahead. He then decided to go ahead and cut through Bhoiwada and reached Bhusar Mohalla. He has deposed that the processionists were walking slowly (P.W. 66/30-31/1121, 66/1140, 88/1151).

40.85 Inspector Pradhan has deposed that as the procession entered the Muslim locality of Madarchhalla it started splitting up into groups and the gaps between the groups widened as the procession moved along (P.W. 38/7/869).

40.86 H.C., Sadashiv Ratanrao Dalvi (Buckle No. 1437), attached to the Bhiwandi Town Police Station, who had been asked to accompany Zumberlal Kalantri in the jeep, has also deposed that the procession had broken up into groups (P.W. 63/4/1084).

40.87 There are thus enough facts established in the evidence of the District Magistrate and the police officers to corroborate what

Dhamankar and the Muslim witnesses have deposed and to show that the procession was indisciplined and rowdy and that there was brandishing of fists and gesticulations of hands which would be directed against the Muslims particularly as admittedly the shouting of unapproved slogans, the gesticulations and the dancing and jumping increased in intensity and tempo as the procession passed through Muslim localities and particularly by the Saudagar Mohalla Jumma Mosque.

The behaviour of the processionists—the Hindu evidence

40.88 In sharp contrast to what Bhausahab Dhamankar, the Muslim witnesses and the police witnesses have deposed, the Hindu witnesses have sought to make out that apart from the shouting of one or two unapproved slogans, none of which were anti-Muslim, the procession was an orderly and disciplined one. Most of them had omitted to refer in their affidavits to the fact that some unapproved slogans were shouted, thus conveying the impression that no unapproved slogans were shouted, and it was only in cross-examination that they admitted that some unapproved slogans were shouted. We will examine the evidence of the more important of these witnesses.

40.89 Baliram More's affidavit, like that of many other Hindu witnesses, does not make any mention of how the processionists behaved, but in his cross-examination he stated that when the procession was passing through Wani Alli to Madarchhalla he heard three unapproved slogans, namely, "Hindu Dharmacha Vijay Aso", "Pakistan Murdabad" and "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega" coming from the rear of the procession. According to him, he heard these unapproved slogans only once, but on further cross-examination he admitted that the procession was not proceeding in a line and that the processionists were raising their hands while shouting slogans. Dr. Vyas has also not stated in his affidavit anything about the behaviour of the processionists except that he has mentioned that two unapproved slogans were shouted. The same is the position with the other Jan Sangh witness Mahadeo Govind Kunte (J.S.W. 2). Mohanlal Karwa has also been significantly silent in his affidavit about the shouting of unapproved slogans or any misbehaviour on the part of the processionists. In cross-examination, however, he admitted that some of the processionists were shouting unapproved slogans and were gesticulating and dancing, but that he did not consider their behaviour disorderly. He also denied that the procession had broken up into groups. He was faced with the fact that in his affidavit he had neither referred to the shouting of any unapproved slogans nor to the arrest of the two Hindus nor to the procession coming to a halt as a result thereof (facts admitted by him in his cross-examination) and he was unable to assign any reason for this omission (N.H.W. 53/5/2104). Chandrakant Bhise's affidavit, though it refers to some unapproved slogans being shouted, did not refer to any misbehaviour on the part of the processionists. He was in the central part of the

procession which according to Dhamankar was the rowdiest. He left the procession half-way and along with Savalaram Kale, Parshuram Tavre (the deponent of affidavit No. 96) and some others went to Savlaram Kale's house for a cup of tea. He has admitted that he was annoyed by the behaviour of the processionists, but according to him, he was annoyed because the processionists were shouting unapproved slogans such as "Pakistan Murdabad" and "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega" (N.H.W. 43/10/2047).

40.90 The only Hindu witness (although his affidavit is silent about any misbehaviour on the part of the processionists or the shouting of unapproved slogans) who has admitted that the procession was an indisciplined one is Balasaheb Joglekar. He has deposed, "The 1970 procession was not a disciplined one. It had broken up in groups and was not one continuous whole. The processionists were gesticulating with their fists and hands while shouting slogans. They were jumping about" (N.H.W. 54/17/2117).

40.91 While the other Hindu witnesses admit to at least some unapproved slogans, Zumberlal Kalantri, the Congress M.L.C., has trespassed all bounds of credibility in stating that at no stage did he hear any person shouting any unapproved slogan. His aforesaid statement is all the more surprising in view of the fact that he was continuously announcing on the mike that only approved slogans were to be shouted. When faced with this fact, he sought to explain it away by stating that he made these announcements because at Saudagar Mohalla Ibrahim Maddu, Sikandar Faquih (B.R.W. 2), Gulam Mohamed Momin, Zuber Patel, Gafoor Syed and some others told him that unapproved slogans, such as "Pakistan Murdabad" and "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega", were being shouted by the processionists. If this was true, one would have expected him to make his announcements from Saudagar Mohalla onwards, but admittedly he had been making these announcements even before he reached Saudagar Mohalla and right from the time the procession started on the two Hindus being released. He was faced with this fact and the only lame explanation he could give was that he did so because the D.M. had asked him to travel by the jeep and make the announcements (N.H.W. 42/8/2039-40).

40.92 The very fact that Kalantri had all the while to keep on announcing on the mike that only approved slogans were to be shouted would show that as deposed by Bhausahab Dhamankar, unapproved slogans were shouted throughout by the processionists.

40.93 It must be borne in mind that the case of the Hindu parties is that the 1970 Shiv Jayanti procession was an orderly one in which though some unapproved slogans were shouted, there was nothing objectionable or anti-Muslim in these slogans and that the Muslims had attacked the procession without any provocation and as a part of a deliberate pre-planned conspiracy. One would, therefore, naturally expect the leaders of these Hindu parties when they came to give evidence to support this case as they have in fact done. But their

attempt is falsified not only by the evidence of the District Magistrate and the police officers and the Muslim witnesses but also by the evidence of Bhausahab Dhamankar. No reliance, therefore, can be placed upon the evidence of the Hindu witnesses when they seek to make out that the procession was not a disorderly one.

The throwing of 'gula'

40.94 A bag of 'gula' had been sanctioned by the Shiv Jayanti Utsav Samiti and distributed amongst the processionists at the start of the procession (C.W. 2/10/1700). So far as the throwing of 'gula' is concerned, Kalantri has stated in his affidavit that only a very small quantity of 'gula' was thrown compared with the quantity thrown during the previous two or three years [N.H.W. 42/1(13)/2033(9)]. Kalantri has not proved himself to be a witness of truth and no statement made by him could *per se* be accepted without reliable corroboration, but in this instance Kalantri stands falsified by the other evidence on the record. Murtaza Fakih has deposed that some groups which came from the villages had also brought 'gula' with them. He has further deposed that there was excessive throwing of 'gula' at Muslims and at the Saudagar Mohalla Jumma Mosque to injure their feelings [B.R.W. 1/1(9)/1359(7), 47/1379, 84/1393]. Mustafa Fakih, who watched the procession from the verandah of Murtaza Fakih's house, has also averred about the free use of 'gula' [B.R.W. 3/1(12)/1416(5)] and so have Sikandar Faquih (B.R.W. 2/20/1406) and Yusuf Hasan Momin [B.R.W. 65/1(19)/1616(7)]. The other Muslim witnesses who have specifically deposed about the excessive throwing of 'gula' in Muslim localities in front of the Saudagar Mohalla Jumma Mosque and at Muslim leaders and bystanders are Abdul Asiz Mastim [B.R.W. 40/1(2)/1544(1)] and Mohamed Saeed Patel [B.R.W. 42/1(1)/1548(1)]. The evidence of these Muslim witnesses is corroborated by Bhausahab Dhamankar who has deposed that 'gula' throwing was indulged in by the processionists on a fairly large scale and that 'gula' was thrown by them in the air, on one another, on passers-by and on bystanders, and when so thrown it also fell on the buildings on the route of the procession. He has further deposed that there were several bystanders, amongst other places, at Madarchhalla and in Saudagar Mohalla and that he saw processionists as well as bystanders whose clothes were stained with 'gula' (C.W. 2/10/1700, 24/1711-2). The bystanders at Madarchhalla and Saudagar Mohalla would naturally be Muslims.

The behaviour of the processionists—conclusions

40.95 The evidence referred to above clearly establishes the following facts about the behaviour of the processionists as the procession passed through various localities on the route :—

- (1) From the time when the two Hindus who were arrested near the Town Police Station for shouting unapproved slogans were released, the Police lost all control over the procession and the

- processionists felt that the Police were either powerless to stop them or were on their side and, therefore, they could behave as they pleased with impunity.
- (2) When it started again after the release of the two Hindus, the procession was rowdy and indisciplined and the processionists behaved in a provocative, defiant, aggressive and militant manner.
 - (3) Unapproved slogans, several of them provocative and abusive of the Muslims, were continuously shouted during the course of the procession. The unapproved slogans shouted by the processionists will be set out in a subsequent paragraph of this chapter.
 - (4) There were a number of Muslim bystanders on the roads as also some Muslim women watching the procession from the balconies and windows of their houses.
 - (5) The processionists were dancing, jumping, shouting and clapping their hands.
 - (6) The processionists were brandishing their fists at the Muslims while shouting certain slogans such as "Jo Hamse Takrayega, Woh Mitti Me Mil Jayega".
 - (7) The processionists were giving defiant and contemptuous cat-calls to the Muslims and were making obscene gestures at them such as pointing at them with the middle finger of their hands.
 - (8) There was excessive throwing of 'gulal' by the processionists.
 - (9) 'Gulal' so thrown fell on the processionists which included the Muslim leaders. It also fell on passers-by and bystanders who in Muslim localities were the Muslims and on buildings including the Saudagar Mohalla Jumma Mosque.
 - (10) The behaviour of the processionists described above and the shouting of provocative and abusive anti-Muslim slogans increased both in intensity and tempo as the procession passed through Madarchhalla and other Muslim localities.
 - (11) The central part of the procession was the rowdiest.
 - (12) None of the processionists had opened out the buttons of their pants or pointed to their genitals or said that the Muslim women needed what they were pointing at.
 - (13) As the procession entered the Muslim locality of Madarchhalla it started breaking up into groups and the gaps between the groups widened as the procession moved along.
 - (14) The processionists deliberately halted at different places on the route to indulge in the shouting of provocative and abusive anti-Muslim slogans and deliberately flouted the time-table fixed by the Shiv Jayanti Utsav Samiti and prescribed by the order under section 36 of the Bombay Police Act so as to pass by mosques during prayer time. The progress of the procession was, therefore, delayed every now and then and the entire time schedule was thus thrown out of gear.

The withdrawal of the Muslim leaders from the procession

40.96 At Saudagar Mohalla some Muslim leaders, including Murtaza Fakh (B.R.W. 1), Sikandar Faquih (B.R.W. 2), Zuber Patel, Rauf Punjabi, Ibrahim Maddu and Gulam Mohamed Momin, stopped on the steps of the Saudagar Mohalla Jumma Mosque and watched the procession pass by. For about five minutes they discussed the situation created by the behaviour of the processionists and decided to withdraw from the procession. As they were going from the Saudagar Mohalla Jumma Mosque to Murtaza Fakh's house, which is about 100 meters away, they met on the way the D.M., the D.I.G. (B.R.) and the S.P. travelling in a jeep. They stopped them and asked them to come to Murtaza Fakh's house. According to Murtaza Fakh, the reason for calling these officers inside his house was that a number of persons had gathered on the road outside his house and as they wanted to tell these officers about how the processionists were misbehaving and convey to them their grave concern, they did not want others to overhear what they were telling these officers. On seeing the officials go into Murtaza Fakh's house, some other Muslim leaders, including the Municipal Councillor Mohiuddin Mohamed Umar Baradari (B.R.W. 45), also went into the house. The Muslim leaders complained to the said officers about the misbehaviour of the processionists and the slogans shouted by them. During the course of the conversation D.M., Capoor asked the Muslim leaders whether they wanted the procession to be banned and they replied that they did not want the procession to be banned as that would create difficulties, especially when a number of persons had come from outside Bhiwandi. The D.M. then told some of the Muslim leaders, such as Mushtaq B. Fakh, Haji Miyan Tase (B.R.W. 67) and Dastagir Hani, to proceed to Nizampura and wait there near the Nizampura Jumma Mosque for the procession [B.R.W. 1/1(9)/1359(8), 6/1362-3, 51/1380]. S.P., Bhav has deposed that D.M., Capoor, who had joined the Hyderabad Administrative Service in 1950, knew Urdu and had talked to the Muslim leaders in Urdu and he, therefore, talked more to them than either D.I.G., Gakhale or S.P., Bhav (P.W. 4/141/660). Sikandar Faquih in substance supports what Murtaza Fakh has stated. He corroborates Murtaza about the decision to withdraw from the procession and the conversation which took place with the D.M. [B.R.W. 2/1(22-3)/1398(12-3)]. From the evidence of these two witnesses it appears that the persons present at the said meeting were Murtaza Fakh, Sikandar Faquih, Mustafa Fakh, Ibrahim Maddu, Ayub Punjabi, Zuber Patel, the M.L.A. Bhai Patil, Abdul Aziz Sayed, Haji Miyan Tase, Anwar Bubere, Dastagir Hani, Akbar Fakh, Mushtaq B. Fakh and some others.

Whether the D.M. and other senior officers were lured away from the route of the procession ?

40.97 It was alleged by the Hindu parties and the Special Investigation Squad, Bhiwandi, that just before the pre-planned attack on the procession the Muslim leaders quietly left the procession and on

a false pretext lured away the three senior officers on the scene, namely, the D.M., the D.I.G. (B.R.) and the S.P., from the route of the procession into Murtaza Fakih's house, so that these officers would not be available to take charge of the police operations when the attack on the procession took place. On the other hand, the Muslim parties have alleged that on learning about the withdrawal of the Muslim leaders from the procession, these three officers were, of their own accord, proceeding to meet the Muslim leaders in order to persuade them not to withdraw when they met some of the Muslim leaders on the way. The evidence does not bear out the allegations made by the Hindu parties and the Special Investigation Squad.

40.98 Baliram More has alleged in his affidavit that when the procession reached the strategic spot, the Muslims who had joined the procession "slipped away" just before the attack on the procession. In cross-examination he admitted that he did not see any Muslim "slip away", but he learnt while he was in Sutar Alli that the Muslim leaders had walked out of the procession. He also deposed that he did not inquire why the Muslims had left the procession nor did anyone tell him the reason [S.S.W. 1/1(35)/2154(22), 24/2164-5]. Normally one would have expected him to make such an inquiry, but since on his own showing he did not make this inquiry, it could only be because the reason for the withdrawal stared him in the face, namely, the misbehaviour of the processionists.

40.99 Far from quietly "slipping away" as alleged, the Muslim leaders did not keep their decision private. According to Sikandar Faquih, Gulam Mohamed Momin informed Dhamankar that as the assurances given to the Muslims had been broken, the Muslims were withdrawing from the procession and Dhamankar agreed with what Gulam Mohamed Momin said [B.R.W. 2/1(22)/1398(12)]. Dhamankar has corroborated Sikandar Faquih. He has stated that at the Saudagar Mohalla Jumma Mosque Muslim leaders, most of whom were members of the Shiv Jayanti Utsav Samiti, came up to him and informed him that the assurances not to provoke the feelings of the Muslims were not being honoured and that they had been let down and wanted to leave the procession. Dhamankar told them that they were free to do so because their charge was justified, on which they left the procession [C.W. 2/1(35)/1692(25)].

40.100 Inspector Pradhan has deposed that the Muslim leaders also informed Zumberlal Kalantri that they were withdrawing from the procession because of the behaviour of the processionists and that Pradhan overheard this and went to the spot where the D.M., the D.I.G. (B.R.) and the S.P. were standing and informed the S.P. what had happened and then left to follow the procession [P.W. 38/1(92)/867(30-31)]. Capoor has also admitted that while he and the other two officers were at a corner of the Saudagar Mohalla Jumma Mosque (where they had stopped to watch the procession pass by), Inspector Pradhan informed them that the Muslim leaders were withdrawing

from the procession and they thought that they would be able to persuade the Muslim leaders not to do so (P.W. 59/32/1018).

40.101 Thus, what happened was that while on the one hand the Muslim leaders decided to apprise the D.M., the D.I.G. (B.R.) and the S.P. about their decision to withdraw, the information about their having withdrawn had already reached these officers. As Capoor has deposed, the officers thought they would be able to persuade the Muslim leaders not to withdraw from the procession. With this object in view they started going up to the Muslim leaders, but on the way they met the Muslim leaders themselves who requested them to come into Murtaza Fakih's house.

40.102 The evidence of D.M., Capoor about what transpired in Murtaza Fakih's house also negatives the allegation that these officers were decoyed into Murtaza Fakih's house. Capoor has deposed that as they were going to the Muslim leaders to persuade them not to withdraw from the procession, some Muslim leaders, including Gulam Mohamed Momin, Ibrahim Maddu, Sikandar Faquih, Murtaza Fakih and Jasim Sardar, met them on the way and told them that they wanted to talk to them and asked them to come inside Murtaza Fakih's house. As we have seen, the Muslim leaders asked these officers to come inside the house as a number of persons had gathered outside on the road and they did not want these persons to overhear what they were talking with the officers. Capoor has further deposed that when they all went inside Murtaza Fakih's house the Muslim leaders informed them that they were withdrawing from the procession as some of the processionists were shouting the slogan "Galli Galli Me Shor Hai, Musalman Chor Hai". The officers told them that they had already asked the Hindu leaders to go to the head of the procession to announce on the loud-speaker that approved slogans only should be shouted and that Zumberlal Kalantri (N.H.W. 42) was doing so on the mike fitted to the police jeep. Capoor then further asked the Muslim leaders whether they would like the procession to be banned and declared an unlawful assembly. The Muslim leaders replied that it was neither necessary nor advisable to ban the procession, but they insisted that no unapproved slogans should be allowed to be shouted. Capoor thereupon requested the Muslim leaders to remain in their respective Mohallas and help in maintaining peace and not to further detain the officers. They thereafter left the place. He has deposed that the Muslim leaders did not look angry but looked annoyed. It was sought to be made out in his cross-examination by Mr. Jaisinghani, Counsel for the Maharashtra Pradesh Bharatiya Jan Sangh, that Capoor told the Muslim leaders not to detain them because he had got a feeling from what had transpired that there was an attempt to take him away from the procession and Capoor replied that he asked the Muslim leaders not to detain them because, as the Muslim leaders had informed them of their decision to withdraw from the procession, he wanted to hurry back to see to the shouting of unapproved slogans and to check it without any loss of

time. A specific question was put to him as to whether in retrospect he did not feel that calling them to Murtaza Fakhir's house was a ruse to lure them away and detain them. The said question and Capoor's answer thereto require to be reproduced [P.W. 59/1(48)/1000(25), 28/1015, 31/1016-7]. The said question and answer were :—

“Q. In retrospect do you feel that calling you to Murtaza Fakhir's house was a ruse to take all three of you away from the procession and to detain you ?

A. I do not agree. The Muslim leaders seemed very agitated and upset about what had happened and they were, therefore, wanting to talk about it with us. In fact, when I had suggested that we should talk about it where we were, that is, on the road, they had replied that it would be better to talk in private lest others on the road may overhear the conversation.”

In this connection it may also be mentioned that D.M., Capoor, D.I.G., Gokhale and S.P., Bhave had intended to station themselves at three different places for this procession, namely, at the Control Room, the Saudagar Mohalla Jumma Mosque and the Nizampura Jumma Mosque and Capoor has testified that had they not gone to Murtaza Fakhir's house they would have proceeded from the Saudagar Mohalla Jumma Mosque to the Nizampura Jumma Mosque by a route other than the one which the procession was taking and would not have gone to Bhusar Mohalla as they did after leaving Murtaza Fakhir's house (P.W. 59/107/1056).

40.103 Thus, the result of the meeting of these three officers with the Muslim leaders in Murtaza Fakhir's house was that instead of being lured away from the route of the procession, these officers went to Bhusar Mohalla in order to bring about, if possible, some sort of control in the procession, which they otherwise would not have done, for they would have proceeded straight to the Nizampura Jumma Mosque.

The reason for the withdrawal of the Muslim leaders

40.104 There is no evidence to support the charge that the Muslim leaders withdrew deliberately just before the attack on the procession in pursuance of a pre-planned conspiracy entered into some days prior to the procession. On the contrary, the evidence is clear on the point that they withdrew because of the misbehaviour of the processionists. Their agreeing to the procession going past the Nizampura Jumma Mosque does not appear to have been very popular with certain sections of the Muslims, particularly the younger elements in Nizampura, and, as we have seen, Mohalla meetings were held, particularly by Ibrahim Maddu in Nizampura, to explain the position to the Muslims and to persuade them to agree to this route. The Muslim leaders, as they informed Bhausahab Dhamankar, felt let down because of the fact that none of the assurances, which had been

given to them and which they in turn had communicated to the residents of different Muslim localities, were honoured. They had thus lost face with their people, and for them to have kept on walking with the procession which was indulging in such rowdyism and the shouting of provocative and abusive anti-Muslim slogans and the making of indecent gestures and noises would have been most humiliating. Perhaps they also felt that such behaviour would not only continue, but would become worse as the procession passed through the heart of the Muslim localities and that this was bound to lead to a clash. They, therefore, thought it safer and more prudent to withdraw from the procession.

40.105 Dy.S.P., Diwate's evidence also makes clear the reason why the Muslim leaders withdrew from the procession. After the major portion of the procession had passed the Saudagar Mohalla Jumma Mosque Diwate decided to go ahead and after overtaking the procession he went through Bhoiwada to Bhusar Mohalla and stood at the mouth of the lane near the Bhiwandi Washing Company. He was at this spot when the head of the procession passed by. At that time someone touched him from behind and said, "We have walked out". To quote Diwate, "For a moment I did not understand what it meant and looking back I saw Shri Ibrahim Maddu walking away from me. I then realized that the Muslim leaders had decided to walk out of the procession because of the unapproved slogans given by the processionists. I then went ahead" [P.W. 66/1(16)/1108(7)]. The evidence shows that Diwate did not know about the withdrawal of the Muslim leaders from the procession. He learnt about it for the first time from Ibrahim Maddu. Ibrahim Maddu, however, did not tell Diwate the reason why the Muslim leaders had withdrawn. The only reason which occurred to Diwate was that the Muslim leaders had decided to withdraw from the procession because of the unapproved slogans given by the processionists. This clearly shows that the unapproved slogans shouted by the processionists were so objectionable that except the shouting of these slogans no other reason for the withdrawal of the Muslim leaders from the procession could occur to Dy.S.P., Diwate.

Whether it was a blunder on the part of the D.M. and the other officers to go to Murtaza Fakhir's house ?

40.106 It was put to D.M., Capoor in cross-examination by Mr. Jaisinghani, Counsel for the Maharashtra Pradesh Jan Sangh, that it was a blunder on the part of himself, the D.I.G. (B.R.) and the S.P. to go to Murtaza Fakhir's house or, in any event, for all three of them to go there together. Capoor has denied this and has explained that the three of them were right from the beginning travelling in the same jeep fitted with a wireless set and that they had to deal with each situation as and when it arose ; a situation which arose was the receipt of information by them from Inspector Pradhan that the Muslim leaders were withdrawing from the procession ; they thereupon

thought that they would be able to persuade the Muslim leaders not to do so and as they were all three travelling together, they thought that they should all deal with the situation and come back soon, as three persons would be better than one or two for persuading a group of people (P.W. 59/32/1018-9).

40.107 I find Capoor's explanation logical and convincing. The allegation that these three officers committed a blunder in going to Murtaza Fakhri's house or in one of them at least not staying behind is a part of the allegation that these officers were lured away from the route of the procession. We have seen that these officers were not lured away and that but for this meeting in Murtaza Fakhri's house, they would have proceeded straight from the Saudagar Mohalla Jumma Mosque to Nizampura and not gone towards Bhusar Mohalla at all.

The talk between Ibrahim Maddu and Zumberlal Kalantri

40.108 According to Inspector Pradhan, the procession, while passing by the Saudagar Mohalla Jumma Mosque, raised unapproved slogans which were resented by the Muslim leaders. After the procession passed by the mosque, Ibrahim Maddu, Gulam Mohamed Momin and Jasim Sardar came from the 'ota' of the house opposite which Inspector Pradhan was standing and inquired from him where the D.M., the D.I.G. (B.R.) and the S.P. were. He informed them that they were at the next corner of the mosque. In the meantime a jeep carrying Kalantri came up and the Muslim leaders surrounded it and Sikandar Faquih informed him that they were withdrawing. Ibrahim Maddu further told Kalantri that all the groups in the procession were shouting slogans which were intolerable and hence they were withdrawing from the procession and that Kalantri should manage his own affairs and see what happens ("Tum Tumhara Sambhalo Aur Kya Hota Hai Dekho") and that on hearing this Pradhan at once went to the D.M., the D.I.G. and the S.P. and informed them what had happened (P.W. 38/1(92)/867(30-1). In this connection it is pertinent to bear in mind that according to the Special Investigation Squad, Bhiwandi, Ibrahim Maddu was the chief amongst the Muslim conspirators. The evidence of Inspector Pradhan on this point cannot, however, be accepted. Had he really heard what he claims to have done, he would certainly have informed the S.P. about it because the alleged utterances would then show that a clash was imminent. Pradhan obviously did not inform the S.P. about it because none of the three officers has deposed to any such information having been given to them. Further, there is other evidence on the record which makes improbable that Ibrahim Maddu uttered these words to Kalantri. H.C., Sadashiv Ratanrao Dalvi of the Bhiwandi Town Police Station (P.W. 63) was asked by Inspector Pradhan to accompany Kalantri in the jeep. In his affidavit and evidence Dalvi has sought to make out that no unapproved slogans were shouted and that the only unapproved slogans he heard were "Pakistan Murdabad" and "Galli Galli Me Shor Hai, Musalman Chor Hai" He is, therefore, a witness

whose evidence is in favour of the Hindu parties. If, therefore, Ibrahim Maddu had in fact uttered the words attributed to him by Inspector Pradhan, we would have expected H.C., Dalvi to have mentioned them. However, all that Head Constable Dalvi has stated about the meeting between Ibrahim Maddu and Kalantri is as follows (P.W. 63/1(2)/1082(1)) :

“As the procession was going through Saudagar Mohalla, Muslim leaders (1) Gafoor Sayyad, (2) Gulam Mohamed, (3) Sikandar Faquih and (4) Ibrahim Maddu came to our jeep and informed that they were leaving as the processionists were giving unapproved slogans and that they were not responsible if anything untoward happened. The Muslim leaders then went away.”

He has also stated that in May 1970 he knew Ibrahim Maddu by name as well as by sight since he used to come to the police station very often with complaints and applications (P.W. 63/12/1089). It is strange that Inspector Pradhan who was on the road should clearly hear the words spoken by Ibrahim Maddu but not H.C., Dalvi who was with Kalantri in the jeep. According to Kalantri, the Muslim leaders withdrew from the procession in pursuance of the plan hatched by them beforehand according to which the procession was to be attacked in Bhusar Mohalla. He has averred in his affidavit [N.H.W. 42/1(13)/2033(12)] :

“I am of clear opinion that all that was certainly pre-planned.

The reasons therefor are as follows :—

- (1) Threat to withdraw angrily from the procession on a trivial cause and to commence stone-throwing after a gap of 10-15 minutes within a distance of one furlong.
- (2) At the same time within 5-10 minutes acid, bombs, sticks and spears were being hurled at everywhere

Had Ibrahim Maddu uttered to Kalantri the words alleged by Inspector Pradhan, Kalantri would have certainly taken them, at least in retrospect, as an indication of the plan alleged by him and would not have forgotten to mention them in his affidavit. In fact, his narration about his meeting with the Muslim leaders clearly shows that no such words were spoken to him. All that he has stated is [N.H.W. 42/1(13)/2033(9)] :

“When the procession was passing by the side of the house of Shri Murtaza Fakhir, I found Shri Mustafa Fakhir at his house. His non-participation in the procession struck me. Then while the procession was passing by the side of Jumma Masjid and when my jeep came near the Jumma Masjid, Shri Ibrahim Maddu, Shri Gulam Nabi Momin, Shri Gafoor Sayed, Shri Sikander Faquih, Shri Zuber Patel and 4-5 other persons who were standing there told me rather angrily that slogans other than those agreed upon were being shouted in the procession. They further stated that they would withdraw from the procession.”

Kalantri considered the non-participation of Mustafa Fakhir in the procession to be significant. Would he not have considered even more

significant the words attributed to Ibrahim Maddu by Inspector Pradhan had these words in fact been spoken and would he then have omitted to mention them? The very fact that he has neither referred to nor deposed about them, particularly when he is so much of a partisan witness, clearly shows that these words were not spoken by Ibrahim Maddu.

The alleged attempt to drag Kalantri out of the jeep

40.109 Kalantri has further alleged in his affidavit that at the time when the Muslim leaders were talking with him a middle-aged person tried to drag him out of the jeep in the presence of everybody and by announcing on the mike he brought this to the notice of Dr. Vyas and Madhu Kunte and requested them to take care and similarly Balasaheb Joglekar (N.H.W. 54) also brought this to the notice of Dr. Vyas and Madhu Kunte and requested them to take care [N.H.W. 42/1(13)/2033(9)]. Prior to Kalantri stepping into the witness-box, H.C., Dalvi, who was with Kalantri in the jeep, had been examined as a witness. He denied that anyone had tried to drag Kalantri out of the jeep or that Kalantri had made any such announcement on the mike as alleged by him (P.W. 63/13/1089). Perhaps being made aware of Dalvi's evidence, Kalantri, while under cross-examination, tried to change his story. He stated that what he had brought to the notice of Dr. Vyas and others was not that a man had tried to drag him out of the jeep but that the Muslim leaders had stated that unapproved slogans were being shouted and that they were withdrawing from the procession and that, therefore, Dr. Vyas and others should take care that such slogans were not shouted. He also stated that he did not draw the attention of H.C., Dalvi or of the constable who was driving the jeep to the attempt to drag him out of the jeep, the reason he gave for this being that they themselves saw this incident (N.H.W. 42/8/2040-1). Apart from Kalantri, neither Joglekar nor Dr. Vyas nor Mohanlal Karwa nor any other witness has deposed about this incident. Strangely enough, not only did Kalantri not tell the constables in the jeep about it, but he also did not inform the D.M. or the D.I.G. (B.R.) or the S.P. about it when after coming out of Murtaza Fakhir's house they met him and told him to proceed to the Old Fish Market. In fact, he has deposed that all that he told these officers was that the Muslim leaders had complained to him about unapproved slogans being shouted and that they were, therefore, withdrawing from the procession (N.H.W. 42/8/2040).

40.110 In view of the evidence referred to above, I have no hesitation in holding that the aforesaid incident alleged by Kalantri in his affidavit did not take place.

The entry about the withdrawal of the Muslim leaders in the Control Room Diary

40.111 The entry in the Control Room Diary (Ex. P 367) about the withdrawal of the Muslim leaders from the procession is entry No. 30.

It was made at 5-1 p.m. by P.S.I., L. R. Deshpande (P.W. 42). The entry requires to be reproduced as it shows this sub-Inspector's communal bent of mind. The said entry is as follows :

“ ‘Apple’ Mobile informed from Jumma Masjid that slogans not approved by the Committee were given near the house of Zuber Patel. Muslim leaders were displeased and showed their unwillingness to give co-operation. Hindu leaders are trying to convince them. Inform Superintendent of Police.”

40.112 The evidence is clear on the point that none of the Hindu leaders made any attempt to persuade the Muslim leaders not to withdraw from the procession. The only attempt in that behalf which was made was by D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhawe. So far as Dhamankar is concerned, he has deposed that he found the complaints of the Muslim leaders against the behaviour of the processionists to be justified and told them that they were free to leave the procession if they wanted to [C.W. 2/1(35)/1692(25)]. Though Zumberlal Kalantri has deposed about the Muslim leaders complaining to him about the misbehaviour of the processionists and telling him that they were for this reason withdrawing from the procession, there is not one word in his deposition about any attempt by him to persuade them not to do so. Nonetheless, P.S.I., L. R. Deshpande has mentioned in the said entry that Hindu leaders were trying to convince the Muslim leaders to co-operate with them. The whole object of P.S.I., L. R. Deshpande in making such an incorrect entry obviously seems to be to make out that the Muslim leaders were refusing to co-operate with the Hindu leaders and were persisting unreasonably in their refusal to do so in spite of the efforts made by the Hindu leaders to persuade them.

Unapproved slogans—the Muslim evidence

40.113 There is a controversy amongst the parties as to what were the unapproved slogans shouted by the processionists. The witnesses as usual fall into four distinct groups, namely, the Muslim witnesses, the witnesses called by the Executive Magistrates' and the District Police Officers, the Hindu witnesses and Bhausahab Dhamankar.

40.114 We will turn first to the evidence of the Muslim witnesses. Every Muslim witness who saw the procession has deposed that the processionists were shouting provocative and abusive anti-Muslim slogans. Some of them have specified what those slogans were. The only unapproved slogans which Murtaza Fakih remembered in the witness-box were “Jo Hamse Takarayega, Woh Mitti Me Mil Jayega” and “Hindu Dharmacha Vijay Aso” and one referring to Ayubkhan's bullock, the exact words of which he did not remember (B.R.W. 1/48/1380). The unapproved slogans which Sikandar Faquih remembered were “Shiv Sena Zindabad”, “Dr. Vyas Zindabad”, “Galli Galli Me Shor Hai, Sab Musalman Chor Hai”, “Uthav Lungi, Bajav Pungi” and “Hamse Jo Puchhega, Uski Ma Ko Chodega”. The

witness refused to speak aloud the last slogan but with the Commission's permission wrote it out on a piece of paper. He also stated that there was another filthy slogan which he did not recollect (B.R.W. 2/14/1404, 20/1406). From the verandah of his house Mustafa Fakhri came out and watched a part of the procession for some time. The abusive and provocative slogans which he remembered were "Musalman Murdabad" and "Galli Galli Me Shor Hai, Musalman Chor Hai". He deposed that other unapproved slogans were also shouted, but they could not be described as being either provocative or abusive (B.R.W. 3/36/1431). Rafiq Ahmed Abdul Aziz has deposed to the slogans "Galli Galli Me Shor Hai, Sab Musalman Chor Hai", "Musalman Murdabad" and "Landiya Na Haklun Lawa" [B.R.W. 13/1(1)/1463(1)]. Yusuf Chivane has deposed to the slogans "Sab Musalman Chor Hain", "Aala Re Aala, Hindu Aala, Gela Re Gela Landiya Gela", "Utav Lungi, Bajav Pungi" and "Jo Hamse Puchhega, Uski Ma Ko Chodega" [B.R.W. 15/1(1)/1471(1)]. Sharif Ismail Hamdule, the proprietor of Asmat Hotel situate in Bhusar Mohalla near the Old Fish Market, has deposed to the slogans "Shiv Sena Zindabad", "Jan Sangh Zindabad", "Musalman Murdabad" "Jalao" and "Maro" [B.R.W. 18/1(1)/1488(1)]. The two last-mentioned slogans, if shouted, would, however, be shouted at the start of or after the disturbances broke out and do not concern us at this stage. Mohamed Idris Peer Mohamed has deposed to the slogans "Bajao Pungi Uthao Lungi", "Gela Re Gela Landiya Gela" and "Jo Hamse Puchhega, Uski Ma Ko Chodega" [B.R.W. 24/1(1)/1502(1)]. Abdul Gafar Adam has deposed to the slogans "Jo Hamse Takarayega Mitti Me Mil Jayega", "Aala Re Aala Hindu Aala" and "Hatao Lungi, Bajao Pungi" [B.R.W. 28/1(1)/1512(1-2)]. Mohamed Tahir Abdul Gafoor has deposed to the slogans "Hamse Jo Takarayega, Mitti Me Mil Jayega" and "Hatao Lungi Bajao Pungi" [B.R.W. 29/1(1)/1515(1)]. Mohamed Saeed Shaikh Saheb Patel has deposed to the slogans "Galli Galli Me Shor Hai, Sab Musalman Chor Hai", "Jo Hamse Takarayega Woh Mitti Me Mil Jayega", "Hatao Lungi, Bajao Pungi", "Aala Re Aala Hindu Aala, Gela Re Gela Landiya Gela" and "Sadak Pe Hindu, Gali Me Hindu, Idhar Se Hindu, Udhar Se Hindu" [B.R.W. 41/1(1)/1548(1)]. Akbar Ali Raza Hussain has deposed to the slogans "Lungi Uthav, Pungi Bajao", "Ali Re Ali Shiv Sena Ali", "Galli Galli Me Shor Hai, Musalman Chor Hai" [B.R.W. 61/1(5)/1605(1)]. Yusuf Hasan Momin has deposed to the processionists from Kaneri shouting the slogan "Shiv Sena Zindabad" [B.R.W. 65/1(18)/1616(7)]. Haji Miyan Tase has deposed to the slogans "Hamse Jo Takarayega Woh Mitti Me Mil Jayega", "Aala Re Aala Hindu Aala, Gela Re Gela Landiya Gela" and "Sadak Pe Hindu, Gali Me Hindu, Idhar Se Hindu, Udhar Se Hindu." There is no cross-examination of most of these witnesses on the point of the abusive, provocative and offensive slogans they heard.

40.115 Thus, according to the Muslim witnesses, the following

unapproved slogans (at times with slight variations) were shouted by the processionists :—

- (1) "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega",
- (2) "Hindu Dharmacha Vijay Aso"
- (3) "Shiv Sena Zindabad",
- (4) "Dr. Vyas Zindabad",
- (5) "Galli Galli Me Shor Hai, Sab Musalman Chor Hai",
- (6) "Uthav Lungi, Bajav Pungi",
- (7) "Hamse Jo Puchhega, Uski Ma Ko Chodega",
- (8) "Musalman Murdabad",
- (9) "Landiya Na Haklun Lawa",
- (10) "Aala Re Aala, Hindu Aala, Gela Re Gela Landiya Gela",
- (11) "Jan Sangh Zindabad",
- (12) "Sadak Pe Hindu, Galli Me Hindu, Idhar Se Hindu, Udhar Se Hindu", and
- (13) "Ali Re Ali Shiv Sena Ali".

The unapproved slogans—the police evidence

40.116 We will now turn to the version of the witnesses called by the Executive Magistrates and the Police Officers about the unapproved slogans. In the very first wireless message written out by him at 9-35 p.m. on May 7, 1970 (Ex. G 27) D.M., Capoor has stated that the procession was stoned by the Muslims because the processionists shouted the slogans "Muslim Chor Hai" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" near the Saudagar Mohalla Jumma Mosque. Thus so far as the contemporaneous written record is concerned, according to Capoor the two objectionable slogans shouted near the Saudagar Mohalla Jumma Mosque were "Musalman Chor Hai", that is, "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega". In the course of his evidence, however, Capoor stated that he himself did not hear these slogans and that the only unapproved slogans he had heard were "Hindu Dharmacha Vijay Aso" and "Dr. Vyas Zindabad". He further deposed that the Muslim leaders had complained to him about the slogans "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Rashtriya Utsav Mandal Zindabad" (P.W. 59/43/1026-9). What Capoor states does not stand to reason. He along with D.I.G. (B.R.), Gokhale and S.P., Bhave had waited near the Saudagar Mohalla Jumma Mosque for about 45 minutes, watching the procession pass by. If during this entire period the only unapproved slogans which he heard were "Hindu Dharmacha Vijay Aso" and "Dr. Vyas Zindabad", it is strange that he should not have told the Muslim leaders when they complained to him about the slogans "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Rashtriya Utsav Mandal Zindabad", that what they were saying was not true and that they were making a mountain out of a molehill and their withdrawal was wholly unjustified. Instead, he asked them whether he should not ban the procession and ask it to disperse. This he would not have

done had he himself not heard really offensive and objectionable slogans shouted by the processionists and had the behaviour of the processionists not been such as to make it abundantly clear that they were totally out of control. Further, had he in fact not heard the slogans mentioned in his said wireless message (Ex. G 27), he would not have mentioned them in it as if they had in fact been shouted, but would have mentioned about them differently. If, apart from the slogan "Galli Galli Me Shor Hai, Musalman Chor Hai", the only other slogan complained of by the Muslim leaders was "Rashtriya Utsav Mandal Zindabad", he would not have omitted to mention it in Exhibit G 27 instead of mentioning the slogan "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega".

40.117 According to S.P., Bhave, he also did not hear the slogans "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" and the only slogans which he heard were "Shiv Sena Zindabad", "Dr. Vyas Zindabad" and "Hindu Dharmacha Vijay Aso". He, however, stated that C.P.I., Ghosalkar (P.W. 40) had reported to him that some of the processionists were shouting "Galli Galli Me Shor Hai, Musalman Chor Hai" and that some police personnel had reported to him about the slogan "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" being shouted (P.W. 4/126/140). It is equally not possible to accept Bhave's evidence on this point. Bhave had even stated in his first affidavit, "Apart from the occasional shouting of objectionable slogans, no other misbehaviour on the part of the processionists was either noticed by the Police or was complained against by the Muslim leaders" [P.W. 4/1(81)/236(50)]. The facts elicited from Bhave in cross-examination which have been referred to above while discussing the behaviour of the processionists completely disproves the said statement in his affidavit as does the question put by the D.M. to the Muslim leaders whether he should ban the procession and make it disperse.

40.118 D.I.G.(B.R.), Gokhale had also stated in his affidavit, "All this time (that is, from the start of the procession till the procession reached the Old Fish Market at Bhusar Mohalla) the procession had moved peacefully and there was no untoward incident so far except occasional shouting of unapproved slogans about which Muslim leaders had complained to us." In cross-examination, however, he stated that he himself did not hear the slogan "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" at any time but the Muslim leaders had complained about the slogan "Galli Galli Me Shor Hai, Musalman Chor Hai". He has further stated that the only unapproved slogans which he had heard were "Hindu Dharmacha Vijay Aso" and "Dr. Vyas Zindabad" [G.W. 4/1(22)/1190(15), 30/1203-4].

40.119 All this makes strange reading. Here were three seniormost officers in charge of law and order in the District present and yet for almost one full hour they did not hear the slogans complained of by the Muslim leaders and nonetheless they accepted the complaint of the Muslim leaders as true without any demur or protest and inquired

from them whether the procession should be banned, instead of immediately pointing out the correct facts to the Muslim leaders and asking them to rejoin the procession and not create a crisis. If the evidence given by these three officers on this point was true, D.M., Capoor would not have written in the said wireless message (Ex.G 27), "It (The procession) was stoned by Muslims because the processionists shouted 'Musalman Chor Hai' and 'Jo Hamse Takarayega, Who Mitti Me Mil Jayega' near Jumma Mosque Saudagar Mohalla."

40.120 In this connection we must remember that one of the terms of reference to the Commission is "The adequacy of the administrative measures taken to prevent or deal with the disturbances". To report on this term a thorough inquiry into what was done by the officers responsible for the law and order situation is necessary. Since neither the officers nor the policemen made any attempt to prevent the shouting of objectionable slogans or to check the misbehaviour on the part of the processionists, for them to admit that slogans other than those deposed to by them had been shouted (those slogans not being anti-Muslim in their character) would be tantamount to admitting that they took no steps to control the procession, however indisciplined, rowdy, turbulent and aggressive it had become.

40.121 C.P.I., Shantaram Shivram Ghosalkar (P.W. 40) was posted with the Emergency Reserve at the Saudagar Mohalla Jumma Mosque. He has deposed that he heard the slogans "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Pakistan Murdabad" being shouted [P.W. 40/1(2)/896(2)]. It is inconceivable that if Ghosalkar heard the slogan "Galli Galli Me Shor Hai, Musalman Chor Hai", Capoor, Gokhale and Bhawe who were standing in the same confined area did not hear it. The unapproved slogans which Inspector Pradhan could remember in the witness-box as being shouted by the processionists were "Hindu Dharmacha Vijay Aso", "Galli Galli Me Shor Hai, Musalman Chor Hai" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" (P.W. 38/7/869). The other police officer who admitted to hearing objectionable slogans is P.S.I., Benjamin Anandrao Kale (P.W. 48). He was standing at the entrance of the lane by the side of the Old Fish Market and he heard the processionists shout "Hindu Dharma Ki Jai", "Chhatrapati Shivaji Maharaj Ki Jai" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" (P. W. 48/3/951).

40.122 There are two police reports on the Shiv Jayanti procession and the outbreak of the disturbances which require to be noticed. The first is the report dated May 8, 1970 (Ex. G 181) by H.C., Sakharam Laxman Manjrekar (G.W. 9) and the other is the report also dated May 8, 1970 (Ex. G 196) prepared by H.C., Shamrao Sakharam Jadhav and signed by P.S.I., S. S. Mane (P.W. 46) on behalf of Inspector Pradhan since Inspector Pradhan was injured in the disturbances on May 7, 1970. Paragraphs 1 to 5 of Manjrekar's report (Ex. G 181) relate to the procession. They are as follows :

"As scheduled, the Shiv Jayanti Utsav Procession started at 15 hrs. from the front of the Police Station at Bhiwandi. First

there was the board of the Utsav Samiti and behind that were the boards of the different villages and the people who had joined the procession by holding in their hands banners which had been tied to sticks. First there were the people of all the villages viz. Khoni, Kamba, Katai, Nagaon, Nagaonpada, Padunavghar, Karavali, Ranal, Purna, Bhadvad, Shelar, Borpada, Junandurkhi, Karwal, Temghar and Kamatghar. There was one bullock-cart from Khoni village decorated with the scene of a fort. The procession consisted of (blank left in the original) thousand persons. The scene depicted the the incident regarding the Subhedar's daughter-in-law. *The procession was moving on with slogans mentioned in the leaflet being shouted* (i.e. the approved slogans). In the procession, a garlanded image of Shivaji was carried in a municipal jeep. The workers viz. (1) Shri K. L. Durve and Shri Rajaram Angal were therein. Shri Durve was giving slogans on the loud-speaker.

“ Out of the Hindus, *Shri Z. M. Kalantri was there in the procession in a jeep to give slogans and he too was giving directions.* Shri Bhausahab Dhamankar and Shri More were present.

“ Out of the Muslims, Shri Yusuf Ibrahim Presswalla, Shri Sikan-dar Ansari, Shri Ibrahim Maddu, Shri Mateulla Bismilla, Communist and Shri Zuber Patel, President were present.

“ *The procession proceeded from Thange Alli, Kasar Alli. Tilak Mandir to Zenda Naka to Madarchhalla to Saudagar Mohalla to Jumma Masjid and near there they were giving the abovementioned slogans peacefully at 4-15 p.m.* Part of the procession came near the Jumma Masjid at 4-30 O'clock.

“ *At that very time, the 'Bang' (call) for the Namaz (prayers) in the Jumma Masjid was given. Then about 20/25 Muslims offered 'Namaz' prayers at that place. No untoward incident took place at that time.* The procession moved on to Sutar Alli Naka past Hyderi Mosque along the Bhoiwada road past Bhusar Mohalla to a point near the house of Shri Chivne.”

40.123 It will be noticed that Manjrekar's report is silent about the arrest of the two Hindus near the Town Police Station for shouting unapproved slogans and it also conveys a wrong impression that Kalantri was in the jeep right from the beginning for leading the slogans and does not contain even the faintest hint or suggestion that he was asked by the D.M. and the senior police officers to get into the jeep in order to ask the processionists not to shout unapproved slogans but to shout only the approved slogans. The said report also does not make any mention of the Muslim leaders withdrawing from the procession or the reason for their withdrawal or that objectionable slogans were shouted by the processionists. In his evidence also Manjrekar insisted that he did not hear any unapproved slogans and that even in Bhusar Mohalla—the place where the disturbances broke out—the only slogans which he heard were “Shivaji Maharaj Ki Jai”, “Shree Chhatrapati Ki Jai”. “Bharatacha Vijay Aso” and other slogans to the same effect (G.W. 9/44/1309).

40.124 One significant fact, however, emerges from Manjrekar's said report. It is that at the very time the procession was passing by the Saudagar Mohalla Jumma Mosque the 'bang' or call for prayer was given and the Muslims offered prayers in the said mosque. This bears out what Dhamankar has deposed, namely, that the processionists deliberately lingered at different places and flaunted the time-table in order to pass by mosques during prayer time.

40.125 H.C., Jadhav's report (Ex. G 196) is no better. His report states that the procession started at 3-15 p.m. and that villagers from Shelar, Minar, Pimplas, Kamatghar, Poorna, Kaver, Narpoli, Karivali, Kharbhav and Kamba had joined the procession. According to his report, the procession consisted of about 2,500 to 3,000 persons when it started but by the time it had reached Kasar Alli and Zenda Naka the number had swollen to 5,000 to 6,000. The said report further states that the slogans shouted in the procession were "Hindu Muslim Ekta Amar Rahe", "Bharat Mata Ki Jai", "Shri Chhatrapati Shivaji Maharaj Ki Jai", "Hindu Dharmacha Vijay Aso", "Rashtriya Utsav Mandalacha Vijay Aso" and "Dr. Vyas Zindabad". This report equally makes no mention of the arrest of the two Hindus for shouting unapproved slogans, or of the D.M. and other police officers asking Kalantri to get into the jeep to ask the processionists not to shout unapproved slogans but only the approved slogans or of the withdrawal of the Muslim leaders from the procession or their reason for doing so. In his evidence Jadhav reiterated that the only unapproved slogans which he heard were "Hindu Dharmacha Vijay Aso", "Rashtriya Utsav Mandalacha Vijay Aso" and "Dr. Vyas Zindabad" (G.W. 10/9/1322).

40.126 In May 1970 Manjrekar was Head Constable in the Special Branch, Thana, posted at Bhiwandi, while Jadhav was a Head Constable attached to the Bhiwandi Town Police Station and doing plain clothes duty. On May 7, 1970 both of them were assigned the duty of moving about with the procession and to report thereon. In the light of the conclusive evidence that has come on the record about what transpired during the course of the procession, these two reports can only be characterized as classic examples of "*suppressio veri, suggestio falsi*" and they leave us wondering about the veracity of other reports made by the Police and Intelligence agencies. Had there been no Commission of Inquiry, these two reports would have gone on the files as correct contemporaneous records of what happened at the time of the 1970 Shiv Jayanti procession and if on some future occasion, someone had stated that this procession was rowdy or indisciplined or that objectionable or abusive or provocative slogans were shouted, he would have been faced with these two reports and probably disbelieved.

The unapproved slogans — the Hindu evidence

40.127 The affidavit of almost every Hindu witness is silent on the point of the arrest of the two Hindus or the shouting of unapproved

slogans by the processionists. Some of these witnesses have, however, mentioned in the course of their cross-examination the unapproved slogans which, according to them, the processionists had shouted. Dr. Vyas and Chandrakant Bhise deposed that the unapproved slogans which they heard were "Pakistan Murdabad" and "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" [J.S.W. 1/1(23)/2201(9); N.H.W. 43/10/2047]. Mohanlal Karwa also deposed to hearing these two slogans and has added a third one, namely, "Hindu Dharmacha Vijay Aso" (N.H.W. 53/5/2103). Baliram More deposed to the same three slogans as Mohanlal Karwa (S.S.W. 1/24/2164). The other Jan Sangh witness Mahadeo Govind Kunte deposed to hearing the slogans "Chhatrapati Shivaji Maharaj Ki Jai" and "Bharatmata Ki Jai". The only unapproved slogan which he admitted to having heard was "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" (J.S.W. 2/4/2226). Kamlakar Sawlaram Naravane deposed not only to hearing, but also to shouting the slogans "Hamse Jo Takarayega, Woh Mitti Me Mil Jayega" and "Galli Galli Me Shor Hai, *Pakistani* Chor Hai" (N.H.W. 26/4/1939). According to the P.S.P. leader Sawlaram Barku Kale the unapproved slogans which were shouted were "Pakistani Murdabad", "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" and "Hindu Dharmacha Vijay Aso" (N.H.W. 44/7/2050).

The unapproved slogans — Dhamankar's evidence

40.128 Bhausaheb Dhamankar was asked about the unapproved slogans shouted by the processionists. He expressed his inability to speak them aloud. He was then shown a list of the following eight slogans which Gullam Mohamed Momin had alleged in the affidavit (affidavit No. 329) were shouted by the processionists :—

- (1) "Galli Galli Me Shor Hai, Sub Musalman Chor Hai",
- (2) "Shiv Sena Zindabad",
- (3) "Rashtriya Utsav Mandal Zindabad",
- (4) "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega",
- (5) "Aala Re Aala, Hindu Aala; Gela Re Gela, Landiya Gela",
- (6) "Bal Thackeray Zindabad",
- (7) "Hamse Jo Koi Poochhega, Uski Ma Ko Chodega" and
- (8) "Musalman Murdabad",

He testified that he had heard all the above slogans being shouted except the last one. He further deposed that he had also heard another slogan and requested the Commission that he should not be made to speak out the said slogan aloud but should be permitted to write it out. This permission was given to him and accordingly he wrote out the slogan "Lande Sare Chor Hai". This part of Dhamankar's evidence was recorded before the lunch recess. After the recess he stated that in the seventh slogan mentioned above, namely, "Hamse Jo Koi Poochhega, Uski Ma Ko Chodega", he did not hear the second half of the slogan, namely, the words "Uski Ma Ko Chodega", but the slogan he had heard was "Hamse Jo Koi Poochhega, Woh Mitti Me Mil Jayega" (C.W. 2/6/1695-6, 10/1699).

The unapproved slogans—conclusions

40.129 No implicit reliance can be placed on the evidence of the witnesses called by the Executive Magistrates and the District Police Officers or by the Hindu parties on the point of the slogans shouted by the processionists as also on the behaviour of the processionists. For the Executive Magistrates and the Police Officers to admit that the slogans shouted by the processionists were as objectionable as stated by the Muslim witnesses and Bhausahab Dhamankar would be to expose their own failure to control the procession. The Hindu witnesses would equally be unwilling to admit that provocative or objectionable slogans were shouted when it is their case that the procession was a disciplined and orderly one and was attacked without any provocation and in pursuance of a conspiracy entered into by the Muslims. There are, however, certain salient facts which have come on the record which completely negative what these witnesses have sought to make out. These facts are :—

- (1) The continuous announcements by Zumberlal Kalantri on the mike calling upon the processionists not to shout unapproved slogans but to shout only the approved slogans and not to behave in an improper manner.
- (2) D.M., Capoor asking the Muslim leaders whether they wanted him to ban the procession.
- (3) Manubhai Narayan Patel (N.H.W. 18), the proprietor of Ganesh Sizing Works, leaving the procession at about 4-15 p.m. because he did not like to be in it.
- (4) The P.S.P. workers Chandrakant Chintaman Bhise (N.H.W. 43) Savlaram Barku Kale (N.H.W. 44), Parshram Dhondu Tavre (N.H.W. 45), Ranganath Komalwar, Balkrishna Amrut Bhoi, Shantaram Mestri and two others, who were in the central part of the procession, feeling annoyed by the behaviour of the processionists and the unapproved slogans shouted by them and leaving the procession and going away to Savlaram Kale's house.

40.130 Had only a few processionists here and there and that too only on a few occasions indulged in shouting some unapproved slogans which were not offensive, abusive or provocative, as sought to be made out by these police and Hindu witnesses, there would have been no need for Kalantri to keep on announcing continuously on the mike that only the approved slogans should be shouted and that the processionists should behave themselves. Even Prabhakar Dattatraya Joshi, a witness called by the Nagarik Hitarakshak Mandal (N.H.W. 12), has admitted that Kalantri kept on announcing on the mike to the processionists, "Keep peaceful" and "Remain orderly".

40.131 Had the behaviour of the processionists been such as is sought to be made out by the Executive Magistrates and the District Police Officers and the Hindu parties, one would not have expected the D.M. to ask the Muslim leaders whether he should ban the procession and ask it to disperse. Instead, he, the D.I.G. (B.R.) and

the S.P., who were both with him, would have firmly told the Muslim leaders when they complained to them about the behaviour of the processionists that there was no substance in their complaint and that as responsible leaders of their community they should not withdraw from the procession on such a trifling ground and unnecessarily create a crisis.

40.132 The very fact that the D.M. considered the question of banning the procession and making it disperse would show that he himself felt that matters had gone beyond control.

40.133 The fact that Kalantri had to keep on announcing to the processionists "Keep peaceful" and "Remain orderly" as deposed to by Prabhakar Dattatraya Joshi (N.H.W. 12/5/1857) shows that the processionists were misbehaving.

40.134 The fact that these P.S.P. workers' and others felt annoyed at the behaviour of the processionists in the central part of the procession shows, and the unapproved slogans shouted by them bears out what Dhamankar has stated, namely, that this was the rowdiest part of the procession. Their only reason for leaving the procession, therefore, could be that they did not want to be in it in case any trouble broke out.

40.135 The next question is what were the unapproved slogans which were shouted. There is no dispute that the unapproved slogans deposed to by the D.M., the police witnesses and the Hindu witnesses, with two exceptions referred to later, were shouted. So far as the other slogans are concerned, Dhamankar has substantially corroborated what the Muslim witnesses have said. The reliability of Dhamankar's evidence has already been mentioned earlier and it must be held that the slogans deposed to by him were shouted. There are, however, some other slogans deposed to by the Muslim witnesses which Dhamankar has not mentioned. It does not, however, follow that these slogans were not shouted. The procession was about two to three furlongs long. There was considerable hubbub and tumult. It would be humanly impossible for any one person to have heard from any spot at any given point of time all the slogans which were shouted throughout the length of the procession. Thus, there would be some slogans which Dhamankar did not hear. For instance, one of the slogans which Mustafa Fakhri heard and Dhamankar stated that he personally did not hear was "Musalman Murdabad". I do not see any reason to doubt Mustafa Fakhri's word and his evidence on this point is corroborated by other Muslim witnesses. There is another slogan which Dhamankar at first admitted to having heard, namely, "Hamse Jo Koi Poochhega, Uski Ma Ko Chodega", and which after the lunch recess he stated he did not hear but what he actually heard was "Hamse Jo koi Poochhega, Woh Mitti Me Mil Jayega". Perhaps reflecting over the matter or going through the typed notes of his evidence recorded in the morning session he felt doubtful whether he had actually heard the filthy and obscene slogan "Hamse Jo Koi Poochhega, Uski Ma Ko Chodega". The said slogan, however,

has been deposed to by some Muslim witnesses including respectable Muslim witnesses like Sikandar Faquih (B.R.W. 2) who would not speak aloud the said slogan but requested the Commission's permission to write it out. There is no reason to doubt their word on this point. In this connection it must be remembered that some of the processionists were drunk and could have in their intoxicated state at times thrown all decency and restraint to the winds and shouted this slogan.

40.136 Two other slogans require a special discussion, namely, the slogans "Pakistan Murdabad" deposed to by C.P.I., Ghosalkar (P.W. 40) and all the Hindu witnesses above referred to, except Mahadeo Kunte (J.S.W. 2) and Kamlakar Sawlaram Naravane (N.H.W. 26), and "Galli Galli Me Shor Hai, Pakistani Chor Hai" deposed to by Kamlakar Sawlaram Naravane. The slogan "Pakistan Murdabad" cannot be said to be anti-Muslim but, as pointed out in Chapter 7 (paragraph 7.12), if shouted in Muslim localities or before a group of Muslims or outside the houses of Muslim leaders, however staunch nationalists they may be, the impression conveyed is that the persons against whom this slogan is shouted are pro-Pakistanis and, in these circumstances, it would become anti-Muslim. The object of these witnesses in stating that the only anti-Muslim slogan which was shouted was "Pakistan Murdabad" is clear. It was to make out before the Commission that the Muslims of India are anti-national and that their secret sympathies and loyalties are to Pakistan and that what these Muslims really objected to was a slogan directed against Pakistan. On a par with this slogan is the other slogan "Galli Galli Me Shor Hai" with the novel twist given to it by Kamalakar Sawlaram Naravane, namely, "Galli Galli Me Shor Hai, Pakistani Chor Hai". Kamlakar has deposed that he himself shouted this slogan, but it has been proved in cross-examination that he has not spoken the truth on any point. If these two slogans were shouted as often or as frequently as the above witnesses seek to make out, it would have been heard by Dhamankar. Dhamankar has, however, not deposed to these slogans. The evidence of these witnesses on the point of these two slogans does not inspire any confidence and, therefore, cannot be accepted.

40.137 I, therefore, find from the evidence that the following slogans (at times with slight variations) were shouted by the processionists :—

- (1) "Galli Galli Me Shor Hai, Sab Musalman Chor Hai",
- (2) "Shiv Sena Zindabad",
- (3) "Rashtriya Utsav Mandal Zindabad",
- (4) "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega",
- (5) "Aala Re Aala, Hindu Aala, Gela Re Gela, Landiya Gela",
- (6) "Bal Thackeray Zindabad",
- (7) "Hamse Jo Koi Poochhega, Uski Ma Ko Chodega",
- (8) "Lande Sare Chor Hai",
- (9) "Dr. Vyas Zindabad",

- (10) "Uthav Lungi, Bajao Pungi",
- (11) "Musalman Murdabad",
- (12) "Jan Sangh Zindabad",
- (13) "Sadak Pe Hindu, Gali Me Hindu. Idhar Se Hindu, Udhar Se Hindu",
- (14) "Aali Re Aali, Shiv Sena Aali",
- (15) "Landiyana Haklun Lawa",
- (16) "Hindu Dharmacha Vijay Aso" and
- (17) "Hindu Dharma Ki Jai".

40.138 The fact that slogans such as "Shiv Sena Zindabad", "Bal Thackeray Zindabad", "Dr. Vyas Zindabad", "Rashtriya Utsav Mandal Zindabad" and "Jan Sangh Zindabad" were shouted shows that a large number of processionists were workers or followers or sympathizers of the Shiv Sena, the Jan Sangh and the R.U.M. The influence gained by the Shiv Sena in the few months preceding the 1970 Shiv Jayanti can be seen from the fact that on May 7, 1970 a board bearing in Marathi the legend "Established 7th May 1970 Shiv Jayanti—Jai Hind—Shiv Sena—Khanheri Telipada Shakhha welcomes everybody with pleasure—Jai Maharashtra" was put up opposite the by-lane which goes from the Old Thana Road to Khanheri, the group from Khanheri being one of the groups which was shouting the slogan "Shiv Sena Zindabad".

40.139 The evidence has further established that most of the above slogans were shouted throughout and that the shouting of these slogans was accompanied by the brandishing of fists and by jumping, dancing and clapping of hands and at times by indecent gestures and the throwing of excessive 'gulas' and giving of defiant catcalls to Muslims and that the tempo and intensity of slogan-shouting, gesticulations and throwing of 'gulas' increased as the procession entered Madarchhalla and passed through Muslim localities, reaching a climax as it passed by the Saudagar Mohalla Jumma Mosque and a second climax when it reached Bhusar Mohalla and Old Thana Road. The evidence has further established that the processionists lingered near the Saudagar Mohalla Jumma Mosque and it took them almost an hour to pass by that mosque, during which period the call for prayers was given and the prayers said in the said mosque. The processionists lingered near this mosque deliberately as they did when passing by other mosques and also threw 'gulas' at this mosque as they did at the mosques they passed on the way.

The attitude of the Hindu leaders

40.140 At the R.U.M. meeting held on May 4, 1970 in the Neelkantheshwar Temple Dr. Vyas told the audience that if anyone misbehaved, they should compel the Police to take action against him and should not stand surety to get him released on bail. At the said meeting Uddhav Teje announced that R.U.M. volunteers would be responsible for the behaviour of the villagers who would be brought to participate in the procession (Exs. P 87 and G 43). There were some

volunteers wearing R.U.M. badges in the Shiv Jayanti procession (P.W. 4/171/688, 342/810). In spite of what he had himself said at the said meeting on May 4, 1970, Dr. Vyas was one of the Hindu leaders who went to the Town Police Station to ask for the release of the two Hindus who were arrested at the start of the procession for shouting unapproved slogans. In order to obtain the release of these two Hindus, Hindu leaders, including Dr. Vyas, Zumberlal Kalantri, Baliram More, Balasaheb Joglekar, Shantaram Tavre and Bhai Patil gave assurances to the D.M. and the police officers that they would prevail upon the processionists to shout only the approved slogans and would control the processionists and ensure that no objectionable slogans were shouted. In spite of these public declarations and assurances, none of the R.U.M. leaders or other Hindu leaders, except Bhasusaheb Dhamankar, handed over or pointed out to the Police any processionist who was misbehaving or shouting objectionable slogans or gave any information to the Police about the misbehaviour on the part of any processionist (P.W. 4/342/810). The only attempt made by some of the Hindu leaders to control the processionists was the show made by them near the Saudagar Mohalla Jumma Mosque when, on hearing the D.M. shout in the directions from which unapproved slogans were coming that such slogans were not to be shouted, these leaders also shouted out to the processionists not to shout unapproved slogans (P.W. 59/43/1027). In fact, the behaviour of the R.U.M. leaders and some other Hindu leaders was such as to encourage the processionists in their misbehaviour. Three instances will suffice to illustrate this. Narayan Badlapurkar, the Vice-President of the R.U.M., was the leader of the group from Sutar Alli which shouted vociferously and lingered near the Saudagar Mohalla Jumma Mosque until warned and pushed ahead by Dy.S.P., Diwate (P.W. 65/31/1121, 66/1140, 87/1151). Dr. Vyas was in the midst of the group which was shouting "Jan Sangh Zindabad", "Dr. Vyas Zindabad", "Shiv Sena Zindabad" and "Baliram More Zindabad" (B.R.W. 2/20/1406). In Bhusar Mohalla Baliram More was standing next to a group of processionists from Thange Alli (which was part of his municipal constituency) who were squatting on the road and shouting objectionable slogans and paying no heed to Inspector Pradhan. This group was from the central part of the procession which according to Dhamankar was the rowdiest [P.W. 38/1(92)/867(31), 7/869, 49/885, 52/886].

40.141 Dhamankar has deposed that when the procession was assembling near the Town Police Station, he drew the attention of Dr. Vyas, Pandu Vastad and other members of the Shiv Jayanti Control Committee to the shouting of objectionable slogans and the misbehaviour on the part of the processionists and the sticks and lathis carried by them, but they paid no heed to him (C.W. 2/10/1701, 37/1724).

40.142 These facts clearly show that Dhamankar was right when he deposed that the R.U.M. had organised their groups and induced them to join the procession in an organised form carrying lathis and to remain in an organised form not only to meet any trouble which might

take place but in order to provoke trouble [C.W. 2/1(32)/1692(23), 10/1699].

The attitude of the Police

40.143 Dy. S.P., Diwate has deposed that a copy of the order under section 36 of the Bombay Police Act (Ex. P 41) which *inter alia* contained the list of approved slogans, was given to every police officer and the contents of this order, including the approved slogans, were orally explained to all the policemen (P. W. 66/140/1185).

40.144 As we have seen in paragraph 40.40 of this chapter, police parties consisting of police-officers and policemen were posted at different points on the route of the procession and some constables were posted on the tops of houses and there were police officers and policemen walking with the procession. Nonetheless, only two persons were arrested for shouting unapproved slogans, and that too at the start of the procession, one of them was by Dy.S.P., Diwate and the other not by the Police, but by Bhausahab Dhamankar who apprehended him and handed him over to Inspector Pradhan who arrested him. Apart from these two arrests, no policeman or police-officer made the slightest attempt to apprehend any processionist who was shouting unapproved slogans, however abusive, offensive or provocative they might be, or was misbehaving, however provocative, offensive or indecent his behaviour was.

40.145 Dhamankar has deposed with reference to the shouting of objectionable slogans by the processionists and their misbehaviour (C.W. 2/10/1701) :

“Any one in the procession could see these things and hear these slogans. I drew the attention of a number of persons including police officers to this state of affairs.....I had drawn the attention of the police officers at the time when the boys were arrested. After the boys were released and the procession started moving, it was no use drawing the attention of the Police to what was happening because the policemen were walking in the procession by the side of those who were shouting these slogans.”

The above-quoted passage from Dhamankar's evidence speaks volumes.

The start of the disturbances — the locale

40.146 From Saudagar Mohalla the procession continued by the prescribed route. It passed through Sutar Alli by the Hyderi Mosque. It then entered the Hindu locality of Bhoiwada. At Bhoiwada some women performed ‘arati’ to Shivaji's picture. The procession then entered Bhusar Mohalla and proceeded to Old Thana Road, both Muslim localities (P.W. 66/88/1151 ; C.W. 2/10/1700). It was while the procession was in the Bhusar Mohalla-Old Thana Road locality that the disturbances broke out.

40.147 Exhibit P 656 is a sketch of the Saudagar Mohalla, Bhusar Mohalla and Old Thana Road localities. Exhibit P 1523 is a sketch of Keshar Baug, Bangad Galli (by which name the northern part of

Old Thana Road is known) and Zenda Naka. The house of Ibrahim Madhu is situate in the lane which connects Saudagar Mohalla Jumma Mosque with the junction of Bhusar Mohalla and Bhoiwada. This junction is the dividing line between the Hindu locality of Bhoiwada and the Muslim locality of Bhusar Mohalla which lies to its east. There are small lanes and by-lanes on both sides of Bhusar Mohalla. As one enters Bhusar Mohalla from Bhoiwada the first landmark, so far as this Inquiry is concerned, to which one comes is the Bhoiwada Washing Company. Then comes a small lane which goes to the Bhusar Mohalla Mosque and then the house of Yusuf Chivane (B.R.W. 15). Opposite Yusuf Chivane's house is another small lane which leads to Latif Manzil. At Latif Manzil one lane branches off westwards to join the lane which connects the Saudagar Mohalla Jumma Mosque with Bhusar Mohalla and another lane branches off eastwards to join Old Market Road which is a road radiating north from Bhusar Mohalla. Proceeding further along Bhusar Mohalla one crosses the house of Hasan Kuwari which is in the same line as Yusuf Chivane's house, Asmat Hotel belonging to Sharif Ismail Hamadule on the opposite side, and after passing the junction of Bhusar Mohalla and Old Market Road on which the U.P. Sweetmeat Mart is situate one comes to the Old Fish Market. The Old Fish Market is on the same side of the road as Yusuf Chivane's house. At the junction of Bhusar Mohalla and Old Thana Road there is an open platform or "chabutara" and behind it is the house of Latif Jairoomi. Bhusar Mohalla is not a straight road but takes a curve at two or three places and from the house of Yusuf Chivane it is not possible to see what is happening near the Old Fish Market (C.W. 2/38/1725). Old Thana Road starts at Dhamankar Naka and proceeding north terminates at Zenda Naka, which is the eastern end of the Bazar Peth Road. Bhusar Mohalla is a road radiating westward from Old Thana Road. Amongst some of the important landmarks on the Old Thana Road proceeding south to north which have featured in this Inquiry are Hidayatulla Manzil owned by Gulam Rasul Hidayatulla on the eastern side of the road and in the same line at the junction of Old Thana Road with the lane which leads to the Hindu locality of Kumbhar Alli is the house of Ishaq Bajewala. Diagonally opposite Hidayatulla Manzil is situate the electric power sub-station. Proceeding north from Ishaq Bajewala's house we come to Keshar Baug from which point the northern part of Old Thana Road is known as Bangad Galli. Half-way on Bangad Galli is a road which radiates to the east to go to the Vegetable Market (Mandai), namely the Vegetable Market Road or the Mandai Road. At the junction of this road and Bangad Galli is situate the Santosh Lunch Home belonging to Jagannath Pujari.

40.148 To the west of Bhusar Mohalla is Bhoiwada, a Hindu locality. The lanes and by-lanes radiating from Bhusar Mohalla Road and Old Thana Road from the lane to the west of Bhiwandi Washing Company and that connecting Saudagar Mohalla Jumma Mosque and

Bhusar Mohalla upto the road going towards Kumbhar Alli lead to Muslim localities. At Keshar Baug the roads and lanes which run eastwards lead to Hindu localities, while those which run westwards lead to Muslim localities. To the north of Keshar Baug on the western side is a Muslim locality, while on the eastern side are buildings belonging to Muslims with all the shops tenanted by Hindus (P.W. 66/5/1110).

40.149 In one of the communal incidents which took place in Bhiwandi in July 1969, referred to in Chapter 16 (paragraphs 16.21 and 16.22), four Muslims, including Shakeel Kazi, were prosecuted and committed to the sessions. All of them were residing in the vicinity of Yusuf Chivane's house and on the night of the said incident there was a considerable commotion and tension in the said area. The area round about Yusuf Chivane's house was, therefore, a likely trouble spot at the time of the Shiv Jayanti procession.

The start of the disturbances — The wireless messages

40.150 Before turning to the oral evidence on the start of the disturbances it will be convenient to look at what may be described as the contemporaneous documentary evidence in respect thereof. This evidence consists of wireless messages sent from the police wireless jeep to the Control Room, the wireless message sent by D.M., Capoor on the night of May 7, 1970 and the wireless messages sent by Addl. I.G.P., E. S. Modak that night and in the early hours of May 8, 1970.

40.151 The police wireless jeep, Apple Mobile was directed to be at the rear of the procession. The messages sent by it to the Control Room after the procession crossed Saudagar Mohalla till the outbreak of the disturbances are reproduced in entries Nos. 31 to 37 of the Control Room Diary (Ex. P 367). These entries are as follows:—

- “ 31. 17-05 hrs. Procession passing Lohar Alli Naka.
32. 17-18 hrs. Apple Mobile is on Dargah Naka Road.
33. 17-31 hrs. Apple Mobile informed that there is heavy stone-throwing on Old Thana Road. Send help. Men sent accordingly.
34. 17-35 hrs. Heavy stone-throwing going on in Bhoiwada Chowk. Solicited instructions. Police vehicle has been dispatched.
35. 17-35 hrs. Apple Mobile informed that stone-throwing is going on in Saraf Bazar. Vehicle has been sent.
36. 17-37 hrs. Zumberlal Kalantri through Rose Mobile informed that police vehicles should be dispatched to Keshar Baug as the procession has been obstructed.
37. 17-43 hrs. Rose Mobile informed, that the store near Mandai is being looted. Apple arrived there. Send armed party. Informed that there is no armed party in the Mobile Van.”

40.152 These entries were made by P.S.I., L. R. Deshpande (P.W. 42). With reference to entry No. 35, he has deposed that there is no locality in Bhoiwada known as Saraf Bazar and that he inquired from Apple Mobile which locality was meant, but Apple Mobile did not give him any answer and, therefore, he sent the police vehicle to the Vegetable Market which was near Old Thana Road (P.W. 42/11/915).

40.153 The first wireless message about the disturbances sent to Bombay was the crash wireless message sent by D.M., Capoor at 9-35 p.m. on May 7, 1970 to the Home Secretary with a copy to the Personal Secretary to the Chief Minister (Ex. G 27). It was received in Bombay at 12-44 a.m. on May 8, 1970. Its text was as follows:—

“Regret to inform riot and arson broke at Bhiwandi at about 1715 hrs. while Shivajayanti procession was passing through Bhusar Mohalla. It was stoned by Muslims because the processionists shouted “Musalman Chor Hai” and “Jo Hamse Takrayega, Woh Mitti Me Mil Jayega” near Jumma Mosque Saudagar Mohalla. The processionists retaliated while throwing back stones and also burning shops and houses heavy fire still raising at 5 points. Atmosphere very tense. CRPC 144 promulgated. Curfew being imposed after adequate pickets placed in position. Request alert army. Awaiting arrival of fire brigade from Bombay and Thana who have been requested at 1900 hrs. Police resorted to cane charge and opened fire at number of points. Rioters rounded up in numbers. Numbers of person injured in riot quite heavy. One SRPF coy out of two requested has already arrived.”

40.154 The following four points require to be noted about what is stated in the said wireless message:—

- (1) the disturbances commenced at about 5-15 p.m.,
- (2) the Muslims stoned the procession,
- (3) the processionists in return threw stones at the Muslims and burnt Muslims shops and houses, and
- (4) no weapons other than stones are mentioned as having been used either by the Muslims or the processionists.

40.155 When the news of the disturbances reached Bombay in the evening of May 7, 1970, Addl. I.G.P., E. S. Modak was asked to go to Bhiwandi. He reached Bhiwandi at about 10-15 p.m. and that very night he sent a crash wireless message at about 10-30 p.m. to the I.G.P. with copies to the Chief Minister, the Chief Secretary and the Home Secretary. This message was drafted by Modak on information obtained by him from the officers present in Bhiwandi (G.W. 3/19/164). The said message was received in Bombay at 1-3 a.m. on May 8, 1970. The copy of the said message as transmitted is Exhibit G 28 and its text was as follows:—

“Shivajayanti procession of 10,000 started in the afternoon. Several members shouted objectionable slogans when they passed through fixed locality. Muslims threw acid bulbs and stones. This resulted in large-scale arson, rioting and looting from both the

sides. Not possible to estimate exact extent of damage. Two persons died in Thana Hospital. One dead person in Bhiwandi reported. One person died due to bullet firing. Exact No. of dead and injured not known as yet. About 15 rounds revolver fire. Firing by muskets etc. Not known. Authorities proposing curfew. Send loud-speaker van to Bhiwandi as soon as available. Further report will follow."

This wireless message as also the second crash wireless message (Ex. G 29) sent by Modak were dictated by him to P.S.I., Rale who had accompanied him from Bombay. Rale took down both these wireless messages in his notebook, copied them out on a loose sheet of paper, signed them and gave them to the Control Room for being transmitted (G.W. 3/93/206). The original of both these wireless messages as handed in for transmission were produced and are Exhibits G 122 and G 123 respectively. In Exhibit G 122 instead of the words "fixed locality" the words are "mixed locality" which appear to be the correct words, the word 'fixed' in Exhibit G 28 being an obvious typographical error.

40.156 The second wireless message referred to above was sent by Modak at 3-45 a.m. on May 8, 1970 to the I.G.P. with copies to the Chief Minister, the Chief Secretary and the Home Secretary. It was received in Bombay at 4-30 a.m. The said wireless message as transmitted is Exhibit G 29 and its text was as follows:—

"Reference Message of 7-5-70. 5 dead of which 4 dead due to stabbing and 1 due to bullet injury. Death by bullet is of Muslims. 87 persons injured at Hospital of which 2 officers and 4 constables. Of two dead bodies in Hospital 1 Gujarati, 12 Hindus are injured by acid bulbs. Of total injured at Hospital 10 Muslims rest Hindus. Very extensive looting of shops of both communities. large No. of houses and wood depot burnt. In retaliation Muslims used stones, acid bulbs and Molotov cocktails. District Magistrate has imposed curfew for 36 hours commencing from Midnight of 7th and 8th. For collection of statistical details suggest send team of C.I.D. Crime Branch Officers."

the message as handed in for transmission is Exhibit G 123. The difference between the message as handed in for transmission and the message as transmitted is that while the message as transmitted (Ex. G 29) speaks of "wood depot burnt", the message as handed in for transmission (Ex. G 123) speaks of "wood depots burnt". There were in fact more than one timber-depot which were burnt that evening, for instance the timber-depot of Anna Mestri, that of Mustafa Kuvvari diagonally opposit to it and that of Sawant on the Bombay-Agra Road. Modak has deposed that the 'retaliation' which he referred to in his second wireless message was not the retaliation by the Muslims for the extensive looting of shops and the burning of a large number of houses and timber-depots by the Hindus, but was the retaliation for the shouting of objectionable slogans by the processionists and he has supported this by pointing out that the earlier

sentence speaks of the looting of shops not of Muslims only, but of both communities (G.W. 3/53/182). This explanation stands to reason and is consistent with the text of this said message.

40.157 The important point to be noted the second wireless message sent by Addl. I.G.P., Modak is that the reference to "Molotov cocktails" for the first time appears in it and does not appear in the said message sent by D.M., Capoor or in the first wireless message sent by Modak.

The start of the disturbances — the police evidence

40.158 None of the senior police officers were present when the disturbances broke out. At that time D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhave were on their way from Murtaza Fakhri's house to Bhusar Mohalla, while Dy.S.P., Diwate was at Keshar Baug on Old Thana Road. Seven police witnesses, however, claim to have been eye-witnesses to the start of the disturbances. They are Inspector Pradhan (P.W. 38), P.S.I., Benjamin Anandrao Kale (P.W. 48), H.Cs., Sakharam Laxman Manjrekar (G.W. 9), Shamrao Sakharam Jadhav (G.W. 10), Sadashiv Ratanrao Dalvi (P.W. 63) and Jagannath Bandu Patil (P.W. 64) and P.C., Vithal Bandu Bhakare (P.W. 65).

40.159 Inspector Pradhan has deposed that after informing the D.M., the D.I.G. (B.R.) and the S.P. about the withdrawal of the Muslim leaders from the procession, he went by a short cut to Bhusar Mohalla in order to rejoin the procession. When he reached Bhusar Mohalla he found a group of processionists from Thange Alli between 18 and 25 years old squatting on the road and shouting unapproved slogans opposite the house of Yusuf Chivane. In his affidavit he has stated, "With the help of Shri Baliram More I persuaded them not to shout unapproved slogans and to proceed and join the procession. I followed the procession." In his affidavit he has further stated that those persons were from the tail-end of the procession, but in his examination-in-chief he corrected himself and said that though at that time he thought so, when he asked them to stop shouting unapproved slogans and rejoin the procession they replied that they would join up with those who were lagging behind and were coming up. Thereupon Inspector Pradhan went ahead. He did not arrest any of them for shouting unapproved slogans and the reasons he gave for this was that firstly, had he done so, their arrest might have provoked a crisis and secondly, because the Bandobast Scheme (Ex. P 17) *inter alia* provided that if any one of the processionists was found misbehaving, he should either be isolated and sent to the police station or should be watched and proceeded against after the procession was over and that as he knew these persons and the locality from which they came, he thought that it would be better to prosecute them after the procesison was over. It may be mentioned that none of these squatting processionists were ever prosecuted nor were the names of any of them mentioned in any complaint or police record [P.W. 38/1(92)/867(31), 7/869, 49/885, 52/886].

40.160 If we read between the lines of Pradhan's evidence, it is clear that these processionists, who were from Thange Alli which was one of the strongholds of the Shiv Sena in Bhiwandi and a part of the constituency from which Baliram More was elected the Municipal Councillor, had squatted on the road at the place where the Hindu locality of Bhoiwada ended and the Muslim localities began and were shouting objectionable slogans ; that they paid no heed to Inspector Pradhan when he asked them to join up with the part of the procession which had gone ahead ; and that Baliram More was near this group. From the circumstances of the case a logical inference to draw would be that these processionists were either instigated or encouraged in behaving as they did by Baliram More, and the evidence of two of these processionists, namely Prabhakar Dattatraya Joshi (N.H.W. 12) and Jaswankumar Kundanlal Mannan (N.H.W. 15) which we will see later when we come to the evidence of the Hindu witnesses on the start of the disturbances, shows that these processionists had been asked to wait on the road outside Yusuf Chivane's house by the volunteers of the R.U.M. It is also clear that finding that he could not make them obey him, Inspector Pradhan went ahead leaving them squatting on the road and indulging in the shouting of unapproved slogans.

40.161 Pradhan's affidavit then states, " At about 17-30 hrs. when the tail-end of the procession was passing by the Old Fish Market, stone-throwing suddenly commenced from behind the open place opposite to the Fish Market which is known as 'Takiya' and from the houses on both sides of the lane." As mentioned above, the statement that this was the tail-end of the procession was a wrong impression on his part, for at that time the tail-end had not yet emerged from Bhoiwada. On seeing the stone-throwing, Inspector Pradhan went into the lane adjoining the open place opposite the Old Fish Market. On the way he was hit by a large stone on the right side of the chest. He heard somebody, shouting " Run away, Pradhan Sahib has come ". When he returned from the lane to the main road somebody told him that some people had collected in the Old Fish Market and had pulled down its rolling shutters. He found stones being thrown again from the open space and he rushed towards it, but the stone-throwing soon stopped. When he returned he saw three Muslim youths running towards Hasan Kuvari's house. They, however, turned back on seeing the D.I.G. (B.R.), who had come up in the meanwhile, standing there. Two of them ran into a nearby house. Pradhan chased them but some Muslims tripped him up. He fell on his right hand and sustained a severe dislocation of his right elbow. He was removed to the Bhiwandi Municipal Dispensary and given treatment and allowed to go home at about 10-15 p.m. The next day he went to Bombay for further treatment. On the way someone from a group of Hindus near Poorna Village on the Bombay-Agra Road threw a stone at him which hit him on his chin fracturing his jaw. He then proceeded on leave and after living in Bhiwandi for about a fortnight went to Nasik.

He rejoined duty on August 1, 1970 [P.W. 38/1(93)/867(31-2), 22/876, 53/886].

40.162 Thus, the following facts emerge from Inspector Pradhan's evidence :—

- (1) A part of the central section of the procession (which according to Dhamankar was the rowdiest section) had deliberately squatted on the road near Yusuf Chivane's house shouting objectionable slogans.
- (2) These processionists were either encouraged or instigated in their behaviour by Baliram More.
- (3) They refused to obey Inspector Pradhan when he asked them to get up and join the part of the procession which had gone ahead.
- (4) Pradhan did not arrest any one of them nor did he at any time report any of them to the Town Police Station.
- (5) As Pradhan walked ahead, he saw stone-throwing commence at the Old Fish Market.
- (6) The time was then about 5-30 p.m.

40.163 P.S.I., Benjamin Anandrao Kale, a Sub-Inspector in the S.R.P. Group III, Jalna, was deputed for bandobast duty to Bhiwandi along with his Company on May 6, 1970. For the Shiv Jayanti procession he was assigned fixed-point duty at the Old Fish Market. When the procession arrived at Bhusar Mohalla he was standing at the entrance of the lane by the side of the Old Fish Market at a distance of about 50 paces from the Bhiwandi Washing Company. He has stated in his affidavit [P.W. 48/1(2)/950(1-2)] :

" Procession started going past Old Fish Market at about 17-00 hrs. At 17-30 hrs. when the end of the procession was going past Old Fish Market, the procession was suddenly attacked by Muslims who started throwing stones and brick-bats, at the processionists, from lanes and by-lanes. With the help of the policemen I tried to disperse the Muslims who had assembled in the lanes and by-lanes but some other Muslims were throwing stones, etc., at the processionists from other lanes and houses. I thought it necessary to ask for additional help so as to effectively disperse the mob. I, therefore, went towards Haidari Mosque where P.S.I. Gani of S.R.P. was on duty.

Kale has filed the F.I.R. in Bhiwandi Town C.R. No. 178/70 (Ex. P 175). In it he has stated :

" No sooner did the Shiv Jayanti procession, carrying the image of Shivaji Maharaj, arrived at the Machali Market than some Muslims started pelting stones at it from the back. As a result of this, riot broke out suddenly. I did not know where the Policemen accompanying me had gone during the riots. I was alone trying to quell the riots but I sustained a stone injury. I, therefore, could not do anything and went to the rear side through the crowd, where a section of my Group was detailed for duty, for securing assistance."

In cross-examination he stated that Shivaji's picture was carried in the front of the procession. There is a serious discrepancy between Kale's F.I.R. and affidavit. According to his F.I.R., it was when the head of

the procession was passing by the Old Fish Market that the disturbances broke out, the time when the head of the procession went past the Old Fish Market according to his affidavit being 5 p.m. According to his affidavit, however, it was when the tail-end of the procession was going past the Old Fish Market at about 5-30 p.m. that the disturbances broke out. When faced with this discrepancy, the only reply he could give was that the aforesaid statement in his F.I.R. was not correct (P.W. 48/6/953).

40.164 Kale was cross-examined about what had happened when the procession reached the Old Fish Market. His cross-examination makes interesting reading. In it he has deposed (P.W. 48/3/951-2) :

“The processionists, as the procession was passing the Old Fish Market, were shouting “Hindu Dharmaki Jai”, “Chhatrapati Shivaji Maharaj Ki Jai” and “Jo Hamse Takrayega, Woh Mittime Mil Jayega”, While shouting slogans the processionists were raising their clenched fists and banners. Some of them were dancing. They were throwing “Gulal” at one another and dancing. While shouting slogans the processionists were looking around them. They were also while shouting slogans looking at people who were standing on both sides of the road. They were not directing their slogans at the people standing on the road. I did not see anyone asking the processionists not to shout these slogans. At that time a number of persons had collected on both sides of the road and in the lane by the side of the Fish Market. On the opposite side of the Fish Market there is a small Maidan and some hutments and a large crowd had collected there. All these persons were Muslims. I was, therefore, very busy looking to the “Bandobust” and trying to push them away about 20 paces from the procession. I, therefore, could not make out any individual shouting the slogans. Some parts of the procession had become disorderly. The procession had broken into groups. All of a sudden stones were thrown at the procession from the top of the Fish Market. There was also heavy stone-throwing on the procession from the opposite side and from the lane by the side of the Fish Market... While I was at the Old Fish Market I did not see any processionists retaliating by throwing stones or otherwise. Instead I saw the processionists running helter-skelter. I had gone in the lane by the side of the Fish Market to push back the mob which had collected there. There was heavy stone-throwing at us. Myself and the constables with me received minor injuries in this stone-throwing. This fact is mentioned by me in my F.I.R. Exhibit P 171.”

40.165 One really does not know what to make of this evidence. This witness states that while shouting the slogan, “Jo Hamse Takarayega Woh Mitti Me Mil Jayega” the processionists were raising their clenched fists and banners and were looking at the Muslims who were standing on both sides of the road and yet he claims that the processionists were not directing this slogan at the Muslims who had collected on the road. He deposes that he could not make out anyone shouting unapproved slogans because he was “very busy looking to the

bandobust", the bandobust being that he was trying to push away the Muslims twenty paces from the procession. Admittedly he did nothing to stop the shouting of these slogans and all that he did was to try to push back the Muslims so that the processionists could go through the rest of the Muslim locality in the same rowdy, turbulent and aggressive manner. Ultimately, he had to admit that some parts of the procession had become disorderly and the procession had broken up into groups. His affidavit does not make any mention of any injury to him or any of the constables in the stone-throwing by the Muslims, but in his cross-examination he has sought to make out that he and his party had gone into the lane by the side of the Old Fish Market to push back the Muslims who had collected there and that heavy stone-throwing took place there in which he and the constables with him received minor injuries. He has claimed that he had mentioned this fact in his F.I.R. The F.I.R., however, states, "I did not know where the policemen accompanying me had gone during the riots. I was alone trying to quell the riots but I sustained a stone injury." Thus there is no mention in his F.I.R. of entering the lane by the side of the Old Fish Market along with his party or of he and his party being stoned or of any constable sustaining an injury, and according to his F.I.R. the only person who was trying to quell the riots was himself and he was the only person who sustained a stone injury. The evidence of this witness obviously cannot inspire any confidence. This evidence, however, does establish that the procession had become disorderly and had broken up into groups, and that the processionists while shouting hostile slogans were dancing and brandishing their banners and clenched fists at the Muslims who were standing on both sides of the road.

40.166 The report dated May 8, 1970 (Ex. G 181) made by H.C., Sakharam Laxman Manjrekar (G.W. 9) on the Shiv Jayanti procession and the outbreak of the disturbances had already been referred to in this chapter. The paragraphs from his report which deal with the progress of the procession have been quoted in paragraph 40.122 and commented upon in paragraphs 40.123, 40.124 and 40.126. As mentioned therein, according to his report no unapproved slogans at all were shouted at any time by the processionists and his report is significantly silent about the arrest of the two Hindus near the Town Police Station for shouting unapproved slogans and the withdrawal of the Muslim leaders from the procession and the reason for their withdrawal and conveys a wrong impression that Kalantri was in the jeep right from the beginning for leading the slogans and suppresses the fact that he was asked by the D.M. and the senior police officers to get into the jeep in order to ask the processionists not to shout unapproved slogans.

40.167 This is what his report has to state about the start of the disturbances :

"Then when the procession came in front of the Fish Market, about 50 to 60 Muslims youngsters were standing on both sides, viz.,

the Northern and the Southern Sides of the procession. In the hotel opposite and on the 'ota' (raised platform) of the house on the Southern side, there were 15 to 20 persons including Shet Bakar. Similarly, there were 30 to 40 Muslims at the next Market Naka on the Dargah side.

"While the procession was moving on with the processionists shouting slogans as per the leaflet mentioned above and sprinkling 'gual' on a small scale, there started an altercation between the Muslims and Hindus in the procession for 1 or 2 minutes. Even then the procession was moving on.

"At that very time, persons on the road on the Northern side started throwing stones on the procession and Muslim youths started shouting the religious slogans 'Allah Ho Akbar' loudly and Muslims collected and started throwing stones and bricks.

"At that time, persons from the procession had not gone out leaving the procession. Stone-throwing continued at a distance of 20 or 25 paces further on.

"At that time, there was a lot of confusion and the procession broke up and on the contrary, stone-throwing and fights with sticks started. Muslim youths started throwing stones and bricks by hiding behind buildings. At that time, the entire procession was disrupted and people started running helter-skelter. The procession broke into two and half of it carrying the image of Shivaji moved ahead along with Thana Road and half of it remained behind. Persons belonging to both the communities started injuring one another by throwing whatever they could get hold of.

"At that time, on the road of the procession the Hindu worker Shri Bhausahab Dhamankar and Shri Gulam Mohamed Momin were trying to pacify the people. The mob became unruly. The people were striking with whatever they could get hold of. There was arson and damage.

"At that very time, Shri Ibrahim Maddu was there on the road to the Southern side of the procession in the Fish Market lane with a big mob and was instigating them and stones were being thrown from that side.

"In this way, Muslim youths started throwing stones and soda water bottles and stabbing with knives from the Thana Road from the Kesharbaug side and from the Vaje Mohalla side.

"At that time, Bhausahab Dhamankar and Shri G. M. Momin were disuading both the communities. But nothing stopped. Then, both the abovementioned leaders took shelter behind some young boys near the Fish Market.

"In this way, disturbances broke out in the town at 18 to 18-15 hrs. The entire communication in the town became disorderly. Then, arson was started in the town. Hindu houses in Sutar Alli had started burning. About 500 people were blocked up in Bhoiwada. In particular, efforts were being made to set fire to the houses of the carpenters from the Northern side of the Sutar Alli.

40.168 The following points require to be noted in Manjrekar's version of the start of the disturbances as set out in his said report :—

- (1) Even as the procession was passing by the Old Fish Market the only slogans which the processionists were shouting were the approved slogans.
- (2) The processionists were sprinkling 'gula' on a small scale.
- (3) There were about 50 or 60 Muslim youths standing on both sides of the road near the Old Fish Market. There were also 15 or 20 Muslims standing in the hotel opposite to it and on the 'ota' (raised platform) of a house on the southern side of the road and about 30 or 40 Muslims at the corner of the lane by the side of the Old Fish Market in which the Dargah referred to in the said report is situate.
- (4) An altercation took place near the Old Fish Market between the Muslims on the road and the Hindu processionists. The Muslims on the northern side of the road started throwing stones on the processionists. They were shouting the slogan "Allah Ho Akbar" and other Muslims collected and started throwing stones and brickbats at the processionists. The procession broke up into two parts; the part carrying the picture of Shivaji moved on to Old Thana Road and the other part remained behind.
- (5) A fight started between the Hindus and the Muslims and the members of each community threw on the other whatever they could get hold of.
- (6) Bhausaheb Dhamankar and Gulam Mohamed Momin were trying to pacify the people.
- (7) Ibrahim Maddu was in the lane by the side of the Old Fish Market. There was a big mob with him and he was instigating the mob and stones were being thrown from that side.
- (8) Arson and damage to property took place in that locality.
- (9) The disturbances started at 6 or 6-15 p.m.
- (10) Hindu houses in Sutar Alli were set on fire.

40.169 The report, is however, significantly silent on the point whether the properties in Bhusar Mohalla and on Old Thana Road, which were the subject-matter of arson and damage, were Hindu properties or Muslim properties. It is pertinent to note that this was a purely Muslim locality and these properties could only be and were Muslim properties. The report is also significantly silent on the point that Muslim properties in Sutar Alli were also set on fire.

40.170 In his evidence Manjrekar has thus described the start of the disturbances (G.W. 9/5/1286) :

"I went to Bhusar Mohalla from Old Market Road and at about 5-30 p.m. was near the Old Fish Market. The procession was passing by Bhusar Mohalla and Muslims were standing on the sides of the road. I went ahead a little when *there was exchange of words between Hindu processionists and Muslim bystanders. I could not hear the exact words.* I went ahead a little further and some stones

were thrown by Muslims at the procession from near the Old Fish Market. Then stone-throwing started also on the rear of the procession in Bhusar Mohalla. At that time in Bhusar Mohalla I saw two local leaders, namely, Bhausahab Dhamankar and Gulam Mohamed Momin."

40.171 The next morning when he came to give evidence the witness volunteered as follows (G.W. 9/18/1292) :

"When I came near the Old Fish Market I found stone-throwing going on from the northern and the southern sides. In the lane to the south of the Old Fish Market I saw Ibrahim Maddu and a mob of Muslims indulging in stone-throwing and *Ibrahim Maddu instigating the mob*. Further, when I went towards Old Thana Road I found stone-throwing going on and some clashes between Hindus and Muslims. I saw *Bhausahab Dhamankar and Gulam Mohamed Momin near Old Thana Road.*"

Thereupon to questions by the Commission he answered as follows (G.W. 9/20/1292-3) :

"*Bhausahab Dhamankar and Gulam Mohamed Momin were not taking part in the clashes between Hindus and Muslims*. I did not remember yesterday the fact relating to Ibrahim Maddu volunteered by me today in paragraph 18 of my notes of evidence because I am ill. While going to bed last night I thought over my evidence which I had given yesterday in Court and remembered a report relating to the Shiv Jayanti procession which I had made. I produce the office copy of my report."

Exhibit G 181 is the said office copy of Manjrekar's report. In cross-examination Manjrekar has given further details. He has deposed (G.W. 9/44/1309-10) :

"*I was hardly five paces away from the Hindus and the Muslims between whom there was an exchange of words*. At that time the processionists were shouting slogans. The slogans they were shouting were 'Shivaji Maharaj Ki Jai', 'Shiv Chhatrapati Ki Jai', 'Bharatacha Vijay Aso', etc. I did not hear the processionists shouting 'Galli Galli Me Shor Hai, Musalman Chor Hai'. I did not go upto the place where the exchange of words was taking place between the processionists and the Muslim bystanders. There was no scuffle taking place at that time. *There was a lot of exchange of words and lot of noise. I could not hear what the words were*. The procession was also simultaneously proceeding ahead. Slogans were also being shouted. No crowd had collected near the place where the exchange of words was taking place. The exchange of words was between 20 to 25 Muslims and the processionists. No fists were being shown nor any gestures made. *Only Ibrahim Maddu was muttering something*. This was, however, not at the place where the words were being exchanged but when I saw him afterwards in the lane going to Chamarwada. *I did not hear what words Ibrahim Maddu was muttering, I saw his lips moving. This exchange of words was taking place in Bhusar Mohalla in front of the entrance door of the Old Fish Market.*

I did not intervene in this exchange of words..... *It is not true that this exchange of words started by reason of shouting of abusive slogans by the processionists.* I do not know the reason why this exchange of words took place or why it started. It is not true that the riots started as a result of this exchange of words. It is not true that this exchange of words led to a free fight between the processionists and the Muslims. *Within a minute or two of this exchange of words stone-throwing started from the north and the south from where this exchange of words had taken place.* Stones were thrown at the spot where this exchange of words had taken place as also on other spots. *Immediately thereafter both Hindus and Muslims started fighting with each other with lathis. I myself did not see any acid bulbs or 'Molotov cocktails' being thrown or knives used.* I came to learn only on May 8, 1970 that acid bulbs and 'Molotov cocktails' were thrown and knives also used. *The only missiles that I personally saw being used were stones and lathis. The procession broke up. Thereafter fighting and rioting took place both on the side of the Hindu processionists and the Muslims."*

40.172 It will be noticed that both in the report as also in his evidence Manjrekar has stated that only approved slogans were shouted. In his evidence he has gone to the absurd length of stating that the exchange of words did not start by reason of the shouting of abusive slogans by the processionists and that the disturbances were not the result of this exchange of words. Though he had deposed in his examination-in-chief that he could not hear this exchange of words and he did not know the reason why it took place, he persisted in saying that there was no connection between the exchange of words and shouting of slogans or the start of the disturbances. Ultimately, however, he was forced to admit that within a minute or two of this exchange of words stones were thrown at the place where this exchange of words had taken place and that immediately thereafter both Hindus and Muslims started fighting one another with lathis.

40.173 The sequence of events as ultimately transpiring from Manjrekar's evidence is that the processionists went past the Old Fish Market shouting slogans and an exchange of words took place between them and the Muslims. This was followed by the throwing of stones on the processionists who had taken part in this exchange of words and immediately thereafter a free fight took place between the processionists and the Muslims. Even P.S.I., Kale, who was standing near the entrance of the lane by the side of the Old Fish Market, has deposed that the processionists as they passed by the Old Fish Market were shouting the slogan "Jo Hamse Takarayega, Woh Mitti Me Mil Jayega" while brandishing their fists and banners at the Muslims on the road and throwing 'gulaal'. We have already seen that the unapproved slogans actually shouted were very different from those which the police witnesses allege. The evidence leaves no doubt that the exchange of words was the result of the shouting of these objectionable

slogans by the processionists and it was this exchange of words which led to stone-throwing followed by a clash between the processionists and the Muslims.

40.174 Manjrekar's police statement is alleged to have been recorded by D.I., Lankar on May 22, 1970. Manjrekar has, however, denied that his police statement was ever recorded. According to him, he was called by D.I., Lankar and Lankar and P.S.I., Salvi had questioned him, but he did not know that these questions were for the purpose of recording his statement. Lankar took some notes and when asked what these notes were for, Lankar informed him that they referred to the activities of the political parties in Bhiwandi. When Manjrekar came to learn about his alleged police statement and that its contents differed from what he had stated, he communicated these facts to Mr. Rane, Counsel for the Executive Magistrates and the District police officers, as well as to his superior officers and since it would have been difficult to take out papers immediately from the file at the time of giving evidence, he kept the office copies of his reports relating to the incidents mentioned in the said alleged police statement ready to show that the said alleged police statement could not be his and that many statements contained therein were false. He also wrote out para-wise comments on the said alleged police statement. These para-wise comments are Exhibit G 183 (collectively), while his alleged police statement along with an English translation thereof is Exhibit G 184. Copies of his other reports which he produced before the Commission, some of which have been exhibited, as also the other evidence on the record clearly show that many of the statements contained in his alleged police statement are false and Manjrekar could never have made statements so contradictory of his previous reports. The question of his alleged police statement will be further dealt with when we come to the role played by the Special Investigation Squad. This is not the only witness who has denied that his police statement was at any time recorded. There are other witnesses who have also denied this fact as also witnesses, some of them of unimpeachable respectability and integrity such as Bhausahab Dhamankar, who have denied that they ever stated to D.I., Lankar what Lankar has purported to record in their police statements. In the light of this, I have no hesitation in holding that this alleged police statement was not given by Manjrekar to D.I., Lankar and that it was got up by D.I., Lankar for the purposes of the Bhiwandi Conspiracy Case.

40.175 At this stage it is only necessary to show the statements about the start of the disturbances which have been put into the said alleged police statement. According to the said alleged police statement, Manjrekar told Lankar that when he came to the by-lane leading to the Old Fish Market he saw Ibrahim Maddu standing at the mouth of the said lane in front of Baqr Seth's Store and that he was signalling with a green cloth. In the witness-box he denied that he at any time stated so to Lankar or that he at any time saw Ibrahim Maddu standing at the entrance of the lane of Baqr Seth's Store and

giving a signal by waving a green cloth (G.W. 9/8/1287, 11/1288). Had in fact Manjrekar seen Ibrahim Maddu give a signal with a green cloth, as is sought to be made out in his said alleged police statement, he would not have failed to mention it in his said report Exhibit G 181 which is so one-sided and anti-Muslim and in which, just because he saw some persons who were throwing stones standing near Ibrahim Maddu, he had stated that Ibrahim Maddu was instigating them. According to the said alleged police statement, the processionists were pelted by the Muslims with stones, soda-water bottles and acid-bulbs. Manjrekar has, however, categorically stated that the only missiles which he saw used to attack the processionists were stones, soda-water bottles and some knives (G.W. 9/38/1303).

40.176 The report dated May 8, 1970 (Ex. G 196 made by H.C., Shamrao Sakharam Jadhav (G.W. 10) has also been earlier referred to and commented upon in paragraphs 40.125 and 40.126 of this Chapter. Just like Manjrekar's report, this report is also silent about the arrest of the two Hindus for shouting unapproved slogans and makes no mention of the D.M. or any other officer asking Kalantri to get into the jeep to ask the processionists not to shout unapproved slogans, but only the approved slogans nor does it make any mention of the withdrawal of the Muslim leaders from the procession or their reason for doing so. Though his report mentions some unapproved slogans, the slogans mentioned therein cannot be described as provocative or abusive or anti-Muslim. After describing the procession and referring to its start, Jadhav's report proceeds as follows :

"From Zenda Naka the procession passed by the Madarchhalla, Saudagar Mohalla, Jumma Masjid, Sutar Alli, Hyderi Masjid, Dargah Road Chawl, Bhoiwada, Bhusar Mohalla and came on Old Fish Market Road. The Muslims started throwing stones on the Shiv Jayanti procession from the lane by the side of the Market leading to the Chambhar Wada. Half of the procession had started proceeding towards Mandai side on Old Thana Road. At that time, there was volley of stone-throwing on the procession from every lane. Soda-water bottles and acid were thrown at the procession from the upper floor of the house of Hidayatullah. The processionists started running away. Some persons turned back. At that time, stones and bricks were started to be thrown from every house. Some groups started to break open the shops. The procession became disorderly. It was 17-30 hours.

"Thereafter houses in Gauripada, Sutar Alli, Bazar Peth, Teen Batti Naka, Khadak and Nizampur areas were set on fire. A chawl opposite Hanuman Temple in Habsan Alli was set on fire. The acts of arson and looting started. The estimate of loss has not become known. However, there must have been a loss to the tune of Rs. 20 to 22 lakhs.

"It was being talked among the Hindus that the modesty of some Hindu ladies had been outraged. At some places, firing has

been made. Many persons are injured. The Police and officers have been injured.

“At some places noises similar to an explosion of atom bomb were being heard. It is learnt that Hindus talk to the effect that the Muslims were throwing atom bombs from Nizampura, Bengalpura, from the house of Rauf Punjabi and also from Kumbhar Wada and from big buildings.

“The Muslims used acid and soda water bottles. Likewise fires were caused at 15 to 16 places. People got frightened. They left their houses and started looking for shelter in order to save their lives. Curfew was imposed by the Collector in Bhiwandi town from 12 O'clock in the night.”

40.177 In evidence he has stated that apart from the arson at Teen Batti and Khadak, the arson and looting in other areas mentioned in his report Exhibit G 196 were based on information given to him. He has admitted that he himself did not see the modesty of any Hindu woman being outraged nor knew of any such incident, but it was being talked about amongst the Hindus that the modesty of some Hindu women had been outraged, the persons who talked about it being a crowd of about 500 Hindus which had gathered outside the municipal quarters near the Town Police Station at about 9 p.m. on May 7, 1970 (G.W. 10/7-8/1321-2, 34/1335). In fact as mentioned in Chapter 39 (paragraphs 39.23) not a single instance of rape or outrage of the modesty of a Hindu woman has come on the record of the Commission and the only instances of rape which have come on the record are those of Muslim women. Just as in the case of H.C., Manjrekar, a report so one-sided about what transpired in the procession until it reached Bhusar Mohalla can inspire no confidence. In his examination-in-chief Jadhav has deposed (G.W. 10/4/1318-9) :

“The procession reached Old Fish Market at about 5-15 p.m. At that time *I was on Old Thana Road at the entrance of the lane leading to Vaje Mohalla. There was no one else in that lane except four lady members from the family of Dr. Acharya. I waited there till about 5-35 p.m. At that time I saw stones thrown from above on the procession near the Old Fish Market. Thereafter stones, soda-water bottles and bulbs were thrown from Hidayatullah Manzil on the bullock cart and the truck in the procession. I do not know whether these bulbs were acid-bulbs or not. Thereafter stone-throwing started from houses on both sides of Old Thana Road. I started going towards Keshar Baug. On the way I met Dy.S.P., Diwate (P.W. 66) and Sub-Inspector Nimbalkar (P.W. 55) and informed them that stone-throwing was going on from the lane by the side of Hidayatullah Manzil. I then went to Keshar Baug Naka and saw that from the side of Santosh Lunch Bhavan stones were being thrown at the processionists who were running away. The processionists who were running north turned back and started to break open shops. I thereafter went to Town Police Station via Vegetable Market. I reached the police station at about 6-15 p.m.*”

40.178 It will be noticed that Jadhav's report is significantly silent as to the persons whose shops were broken open on Old Thana Road. In fact, the shops in that part of Old Thana Road were all Muslim shops and Jadhav had to admit in cross-examination that the shops which had been broken open were Muslim shops. He sought to explain this away by stating that in the confusion it remained to be mentioned in the report that these were Muslim shops. He has deposed in cross-examination that at the Dargah Road Naka from where the procession turned into Bhoiwada he saw about 50 to 60 Muslims including Abdul Khaliq Momin, an accused in the Bhiwandi Conspiracy Case and the President of the Bhiwandi Branch of the M.T.M., and that near the Old Fish Market he saw Ibrahim Maddu standing at the entrance of the lane leading towards Khajurpura and Chamarwada and that after some time he saw him standing on the plank of a barber's shop at the corner of the lane. He also saw 25 to 30 Muslims standing on a raised platform ('chabutara') at the corner of Old Thana Road and Bhusar Mohalla near the Lucky Cycle Mart. As there was a gutter running by the Bhusar Mohalla side of the 'chabutara' he asked a constable to stand there to see that no one from the 'chabutara' fell into the gutter and he also asked the people on the 'chabutara' to take care lest they fell into the gutter. He also saw 25 to 30 Muslims standing at the corner of Bhusar Mohalla and Old Thana Road. According to him, it was at about 5-15 p.m. when he was going from the Old Fish Market to the Old Thana Road that he saw Ibrahim Maddu near the Old Fish Market. He has further deposed that it must have taken him five to seven minutes to go to the Old Fish Market from the lane which goes to Vaje Mohalla. He was standing at the entrance of the lane leading to Vaje Mohalla when he saw the procession being stoned near the Old Fish Market and as there were a number of processionists on the road blocking his view, he could not see what the persons on the 'chabutara' were doing—whether they were taking part in the attack on the procession or not (G.W. 10/11/1323-4, 34/1336). Jadhav's evidence thus shows that he was not an eye-witness to the start of the disturbances, but was on Old Thana Road at the mouth of the lane which leads to Vaje Mohalla when the disturbances started. His evidence, therefore, does not directly bear on the question of how the disturbances actually commenced, but it shows that the disturbances did not commence on Old Thana Road but commenced in Bhusar Mohalla.

40.179 D.I. Lankar alleged that he had recorded Jadhav's police statement on May 22, 1970 in the Bhiwandi Conspiracy Case. This police statement along with an English translation thereof is Exhibit G 201. Jadhav has denied that his police statement was at any time recorded. In Jadhav's alleged police statement it is recorded that Jadhav saw Ibrahim Maddu giving a signal with a green handkerchief by waving it up and down and thereupon stones, brick-bats, iron pieces and bottles from all directions were thrown on the procession, that the Muslims were armed with lathis and spears, and

that Abdul Khaliq Momin, Babu Patel, Zafrullakhan and Ibrahim Maddu (all of them accused in the Bhiwandi Conspiracy Case) were loudly shouting and instigating the Muslim mobs. He has denied in evidence that he saw Ibrahim Maddu giving any signal or that it was as a result of any such alleged signal that the procession was attacked with stones and other missiles or that he saw any Muslim leaders, namely, Abdul Khaliq Momin, Babu Patel, Ibrahim Maddu or Zafrullakhan, either instigating or taking part in the riots or carrying swords or spears and throwing brick-bats or that he saw Khalil Khushal throwing stones and he has stated that he had not made these statements to Lankar at any time. He has also denied that the Muslims who were attacking the procession either at Bhusar Mohalla or at the junction of Bhusar Mohalla and Old Thana Road shouted any slogans or that he heard the slogan "Allah Ho Akbar" being shouted (G.W. 10/25/1331, 27/1332, 37-8/1337).

40.180 Jadhav's said report Exhibit G 196 does not contain the said allegations set out in his alleged police statement. His report can hardly be said to be pro-Muslim. It is a one-sided document seeking to make out that the processionists were not at fault. Had the alleged happenings recorded in his so-called police statement actually taken place, Jadhav would not have failed to mention them in his report. The very fact that he has not done so corroborates his evidence that he did not give any police statement to Lankar.

40.181 The police statements alleged by D.I., Lankar to have been recorded will be dealt with later when we come to the Special Investigation Squad and the Bhiwandi Conspiracy Case. Suffice it to say here that I find that H.C., Jadhav's police statement was not at any time recorded and that it has been got up for the purposes of the Bhiwandi Conspiracy Case.

40.182 H.C., Sadashiv Ratanrao Dalvi, Buckle No. 1437 (P. W. 63/1-14/1082-9), as directed by Inspector Pradhan, was accompanying Kalantri in the police jeep. According to his affidavit, as the procession was passing through Bhusar Mohalla, at about 5-30 p.m. the Muslims started throwing stones at it. Dalvi thereupon got down from the jeep which was at that time on Old Thana Road and as he has stated in his affidavit, "started doing bandobast". At that time he noticed Ibrahim Maddu and Kallu Daruwalla instigating the Muslims. He has further stated in his affidavit, "The Hindus were running helter-skelter. Some processionists were injured. Stone-throwing and arson were going on." This witness has been proved to be a complete liar in cross-examination. He has deposed in cross-examination that the stone-throwing and arson referred to in his affidavit was to houses and shops by the Muslims. The arson would, therefore, be to Hindu houses and shops. This witness was attached to the Bhiwandi Town Police Station since November 1969 and could surely not be unaware that this was a purely Muslim locality and the arson to houses and shops in that locality could only be, and was, to Muslim houses and shops. He admitted that he did not see any

Muslims collected at the place where this stone-throwing and arson was going on. He then could not explain how, if no Muslims had collected there, he had deposed earlier that this stone-throwing and arson was by Muslims. According to his police statement, the only place where the Muslims committed arson was Habsan Alli, while in the other localities they had indulged only in stone-throwing. He could not explain why he did not state in his police statement that the Muslims had committed arson in Bhusar Mohalla or on Old Thana Road. He also admitted that the first time that he mentioned the fact that he had seen Ibrahim Maddu and Kallu Daruwalla instigating the Muslims was when D.I., Lankar recorded his police statement on May 22, 1970. According to him, the only slogans he heard at Latif Manzil and on Old Thana Road were "Shivaji Maharaj Ki Jai", "Bharat Mata Ki Jai" and "Hindu-Muslim Ekata Aso", all approved slogans.

40.183 Dalvi has purported to give a detailed chronology of the movements of the jeep. According to this chronology, the jeep left Latif Manzil at 5-20 p.m. and went to the Lucky Cycle Mart at the junction of Bhusar Mohalla and Old Thana Road. It took them about five minutes to reach the Lucky Cycle Mart. He then makes some damaging admissions. He has stated that the procession had broken up in groups and, therefore, they could reach Old Thana Road by crossing the intervening space between two groups. At the Lucky Cycle Mart Kalantri repeated the announcement which he had made at Latif Manzil, namely, that the processionists should give approved slogans only and not unapproved slogans, and that they stayed there in the jeep and Kalantri kept on repeating this announcement until the stone-throwing commenced. It is obvious that Kalantri had to park the jeep near the Lucky Cycle Mart and keep on making this announcement as the processionists must have been giving unapproved and objectional slogans. So far as the timings given by this witness are concerned, he sought to support them by stating that he was wearing a wrist watch and was constantly looking at it. On the day he gave evidence, however, he was not wearing a wrist watch. When faced with this, he replied that he had given it for repairs. From the evidence of this witness it appears that there were three policemen posted at the junction of Bhusar Mohalla and Old Thana Road, namely, P.Cs., Dhamane, Shelar and M. S. Pawar, and this witness himself claims to have remained at this spot "doing bandobast" till 6-15 p.m. It is obvious that neither any of these policemen nor Dalvi made any attempt to prevent the arson and damage to Muslim properties. The evidence of this witness is untrustworthy and not deserving of any credence and cannot be relied upon in order to arrive at a finding unless it is corroborated by other reliable evidence.

40.184 Another witness who belongs to the same category as H.C., Dalvi is H.C., Jagannath Bandu Patil, Buckle No. 1919 (P.W. 64/1-4/1091-4). For the Shiv Jayanti procession he and P.C., Gaikwad were posted on bandobast duty near a lane about 20 or 25

paces from the Old Fish Market since 10 a.m. on May 7, 1970. Opposite where they were posted one sub-Inspector and five men of the S.R.P. Force were detailed on bandobast duty at the Old Fish Market chowk. Patil was in this locality till about 6 p.m. In contradistinction to what most police witnesses have deposed. Patil has stated that the procession had not broken up into groups but was a continuous procession and the reason he gave for this was that there was proper police bandobast in different parts of the procession. Naturally he could hear no slogans other than "Shivaji Maharaj Ki Jai" and "Shivajika Jaijaikar", though he admits that he heard Kalantri announcing on the mike that the processionists should not shout unapproved slogans but only the approved slogans. He has further deposed that some persons were watching the procession from the windows of houses and some others from lanes and by-lanes and that the processionists were dancing and looking at those who were standing at the windows watching the procession. He has further deposed that it took about ten or fifteen minutes for half the procession to pass him and that after half the procession had passed by he saw Muslims collecting in the lanes and by-lanes near the Old Fish Market. These Muslims were not carrying any arms but were shouting "Allah Ho Akbar". They started throwing stones and bottles at the processionists who were passing by the Old Fish Market. Since this witness heard only the two slogans mentioned above and saw the procession as a continuous whole, he naturally did not see any processionists throw stones or loot any shops nor did he see any house on fire near the junction of Bhusar Mohalla and Old Thana Road. Being out on duty in the heat of the summer from 10 O'clock in the morning appears to have played strange tricks with this Head Constable's sense of hearing and vision.

40.185 According to his affidavit, he was injured on the fingers of his right hand when he tried to snatch away a spear from a Muslim, the injury suffered by him being a bone deep contused incised wound $1" \times \frac{1}{2}"$ on the index and middle fingers of his right hand, which incapacitated him from bending or curling the said fingers. He has alleged that some constables who were there arrested the said Muslim with a spear and his associate who was carrying a stick and that he wrote out their names on a piece of paper. He disclosed these names for the first time when P.S.I., Sali of the Special Investigation Squad recorded his police statement on May 20, 1970. He has alleged that he read out the names from the said piece of paper to Sali and thereafter threw the piece of paper as Sali did not take charge of it. The evidence of this witness stands on the same footing as that of H.C., Dalvi and cannot be relied upon unless corroborated by other reliable evidence.

40.186 A police constable who has deposed about the start of the disturbances at Bhusar Mohalla is P.C., Vithal Bandu Bhakare (P.W. 65). He has proved an equally satisfactory witness unwilling to speak the truth and his evidence need not be gone into in detail at

this stage, but will be referred to when we come to the Shakeel Kazi incident and the incident at Latif Manzil.

40.187 Apart from the above witnesses there are three other police officers and two Executive Magistrates, whose evidence, though not an eye-witness account of how the disturbances started, establishes that the first incident of the disturbances was not the arson to Ishaq Bajewalla's house. These police officers and Executive Magistrates are Dy.S.P., Diwate [P.W. 66/1(16)/1108(7-8), 39/1125-6, 117/1114, 136-7/1183-4, 181/3909], C.P.I., Vidyadhar Shankar Tikale [P.W. 36/1(1-2)/844(1-2)], P.S.I., Jaysingh Sadashivrao Nimbalkar [P.W. 55/1(1-3)/977(1-2)] S.D.M., Vinayak Kashinath Date [P.W. 62/1(5)/1073(3), 2/1074] and Taluka Magistrate Gangadhar Laxman Sane [P.W. 110/1(8)/3724(3)].

40.188 C.P.I., Tikale and P.S.I., Nimbalkar were asked to remain along with a section of 10 S.R.P. men armed with lathis in front of the procession behind the Striking Force. Dy.S.P., Diwate was in command of the Striking Force which consisted of P.S.I., K. N. Patel (P.W. 35), 15 constables armed with lathis, 4 constables armed with muskets and half a Gas Squad. The Striking Force was travelling in two police vehicles. Diwate had decided to remain most of the time with the Striking Force, but to wait for some time at sensitive spots on the route of the procession. After leaving the Saudagar Mohalla Jumma Mosque Diwate decided to go ahead by himself. He overtook the procession, crossed Bhoiwada and stood at the entrance of the lane near the Bhiwandi Washing Company, the dividing line between the Hindu locality of Bhoiwada and the Muslim locality of Bhusar Mohalla. As mentioned earlier in this Chapter in paragraph 40.105, while Diwate was waiting at this spot Ibrahim Maddu came upto him and informed him that the Muslim leaders had decided to withdraw from the procession. On receiving this information Diwate walked ahead to the junction of Bhusar Mohalla and Old Thana Road and pushed back the Muslim bystanders who had collected there. He asked the policemen posted at this junction to keep the bystanders sufficiently away from the procession, instructed the Striking Force to proceed ahead and wait on Vegetable Market Road and himself walked down Old Thana Road, stopped near the Santosh Lunch Home at the junction of Old Thana Road and Vegetable Market Road waiting for the head of the procession to arrive there so that he could ensure that the procession followed the prescribed route and turned into Vegetable Market Road. He has deposed that he saw about 100 to 120 Muslim bystanders in Bhusar Mohalla on the part of the road between Asmat Hotel near the corner of Old Market Road and the junction of Bhusar Mohalla and in the lanes which branch off from this part of the road. He also saw some Muslim bystanders on Old Thana Road but they were very few. There were also some Muslims standing on the balconies and at the windows of some houses on Old Thana Road, particularly on the balcony of Hidayatullah Manzil. There were, however, no women amongst them. He has categorically

deposed that none of the Muslim bystanders, either in Bhusar Mohalla or in the lanes which branch off from it or on Old Thana Road, were carrying any weapons or missiles. He has further deposed that as he walked down to the Santosh Lunch Home on Old Thana Road to station himself there waiting for the head of the procession to arrive, he did not see any commotion on the way and did not see any building on fire. Diwate did not see any Muslims collected at or near Keshar Baug or Ishaq Bajewalla's house. Diwate has deposed that he reached the Santosh Lunch Home at 5-30 p.m. and that at that time the head of the procession was at the junction of Bhusar Mohalla and Old Thana Road. Thereafter a part of the head of the procession consisting of about 200 processionists came up. There was a large gap between them and the processionists behind them. Noticing this, C.P.I., Tikale asked P.S.I., Nimbalkar to walk back and ascertain the reason for the gap. Meanwhile some processionists came running, shouting that the Muslims were attacking the procession with stones and acid-bulbs. As Diwate along with P.S.I. Patil and the armed party from the Striking Force and Tikale rushed back along Old Thana Road they saw Muslims throwing stones and acid-bulbs at the processionists from houses and by-lanes.

40.189 S.D.M., Date and Taluka Magistrate Sane were travelling in the same jeep. Both of them have stated in their affidavits that they waited first at Madarchhalla, then at the Saudagar Mohalla Jumma Mosque and from there proceeded to Bangad Galli, that is, the stretch of the Old Thana Road between Santosh Lunch Home and Zenda Naka, and that at 5-15 p.m. a part of the procession came there. As they observed a gap behind these processionists they walked down Old Thana Road and found processionists running helter-skelter and shouting that stones had been thrown on the procession. They tried to pacify the people and came upto the junction of Bhusar Mohalla and Old Thana Road at about 5-35 p.m. or 5-40 p.m. and saw processionists looting Muslim shops at that place.

40.190 Certain facts important for arriving at the conclusions on this part of the Inquiry into the Bhiwandi disturbances have been established in the evidence of the above police officers, police constables and Executive Magistrates in spite of the attempts made at suppression of truth and twisting of facts and the biased and one-sided version deposed to by some of these witnesses. These facts are—

- (1) When the procession reached the Bhusar Mohalla-Old Thana Road locality the gaps between the groups of processionists had widened and even the head of the procession had split up into two groups.
- (2) The procession was at its rowdiest when it reached the said locality.
- (3) A part of the central section of the procession had deliberately squatted in Bhusar Mohalla near Yusuf Chivane's house shouting objectionable and provocative anti-Muslim slogans.

- (4) These processionists were either encouraged or instigated in their aforesaid behaviour by Baliram More.
- (5) They refused to obey Inspector Pradhan when he asked them to get up and join the part of the procession which had gone ahead.
- (6) The mood of these processionists was such that Inspector Pradhan did not dare to arrest any of them.
- (7) There were some Muslim bystanders in Bhusar Mohalla on the stretch of the road between Asmat Hotel and the junction of Bhusar Mohalla and Old Thana Road and in the lanes and by-lanes which branch off from the said part of Bhusar Mohalla Road.
- (8) When a part of the central section of the procession passed by the Old Fish Market an exchange of words took place between these processionists and the Muslim bystanders as a result of the shouting of objectionable slogans by these processionists. The Muslims threw some stones at these processionists. The processionists immediately retaliated and a fight took place between them and the Muslims and it spread to other parts of Bhusar Mohalla and Old Thana Road.
- (9) Neither the Shakel Kazi incident nor the arson to Ishaq Bajewala's house was the first incident of the disturbances.
- (10) There is no unanimity amongst these witnesses as to the time when the disturbances started at the Old Fish Market. According to S.D.M., Date and Taluka Magistrate Sane, the disturbances commenced at about 5-15 p.m., this being the same time as mentioned in D.M., Capoor's said wireless message Exhibit G 27. According to the report of Head Constable Manjrekar, the disturbances commenced at 6 p.m. or 6-30 p.m., while according to the other witnesses they commenced at 5-30 p.m.

The start of the disturbances—Bhauasaheb Dhamankar's evidence

40.191 We will now turn to the evidence of Bhauasaheb Dhamankar [C.W. 2/1(37-41)/1692(26-8). 10/1702, 25/1713, 38-9/1725-7, 46-7/1732-4]. After his meeting with the Muslim leaders near the Saudagar Mohalla Jumma Mosque when he told them that their complaint about the behaviour of the processionists was justified and they were, therefore, free to leave the procession, Dhamankar proceeded to Bhusar Mohalla and stood for some time opposite the house of Yusuf Chivane as he considered that place a trouble spot. He saw some persons standing on the 'ota' of Chivane's house. There were also some policemen standing at the corner of the road. He saw a part of the procession pass by without any incident. He found that the procession had broken up into groups. A number of processionists stopped near Chivane's house and started shouting objectionable slogans. Dhamankar asked them not to misbehave and not to stop at one spot, but to move forward. Dhamankar has stated that these processionists had stopped

deliberately at that spot as they had been doing at other places on the route. On Dhamankar asking them not to shout unapproved slogans but to move on, some of the processionists abused him for being pro-Muslim and some of them called him the son of a Muslim. At that time he heard some commotion and shouts coming from the side of the Old Fish Market. He therefore went through the lane to Latif Manzil, turned east at Latif Manzil into the lane which comes out on Old Market Road and then went down Old Market Road to Bhusar Mohalla and came out near the Old Fish Market. At that time he did not see any Muslims either in the lane which goes to Latif Manzil or in the lane which goes from Latif Manzil to Old Market Road or on Old Market Road. When he reached the Old Fish Market he saw stones being thrown at the procession from the direction of the Old Fish Market by groups of Muslims who had gathered there. He also saw some young Hindus in the procession attacking and damaging Muslim houses, some Muslim shops being forced open and articles in the shops being damaged. He also found some Hindus attempting to force their way into the Muslim houses and the inmates of the houses resisting them. He tried to dissuade the Hindus and then went forward and reached the junction of Bhusar Mohalla and Old Thana Road where he saw that a number of Muslims had gathered in groups. He has deposed that most of these Muslims were carrying lathis and that some of them had spears and iron bars. They started assaulting the members of the procession. Dhamankar attempted to intervene. At the corner of Bhusar Mohalla Dhamankar saw processionists trying to set fire to a Muslim house by setting a piece of cloth and throwing it inside the house. They, however, did not succeed in setting fire to the house because Dhamankar went upto the house and threw out the burning rag. The processionists again tried to set fire to the house. Then the Muslims who had gathered at that junction started attacking these processionists and the processionists started running away. Dhamankar tried to intervene between them and the Muslims who were attacking them. Meanwhile Gulam Mohamed Momin came there and told him, "Bhau, don't go ahead. The people have gone mad". He then heard shouts and police whistles and some people shouting that the Police had opened fire. The processionists thereupon took to their heels and commenced running away in all directions. While Dhamankar was escorting two or three Hindus who had suffered injuries, a group of Muslims came up to him and requested him to get into a house in the vicinity as otherwise his life would be in danger. They further assured him that the injured persons with him would be taken care of. Thereupon Dhamankar went and took shelter in the house of Mohamed Amin Rais. The residents of that house washed the wounds of the injured persons and dressed them and gave them water. Meanwhile Dhamankar saw some Hindu women passing by and requested the residents of the house to give them shelter which they did. Meanwhile Mustafa Fakhir had come to learn that Dhamankar was in the midst of the

disturbances and he came there with a view to see him safely out. Thereafter Mustafa Fakhir and he went towards Bhoiwada.

40.192 While Dhamankar was at the Old Fish Market an acid-bulb was thrown from one of the buildings. It hit the wall of a house and acid drops were scattered. Dhamankar did not realize it then, but the next morning he saw that there was a hole in his shirt caused by the acid and some skin irritation at that spot. Dhamankar has deposed that he saw acid-bulbs being thrown only from one place, namely, the terrace of the Old Fish Market and not from any other house. The acid-bulbs so thrown were few in number and were not on a large scale.

40.193 The only Muslim leaders Dhamankar saw in Bhusar Mohalla and on Old Thana Road were Gulam Mohamed Momin and Ibrahim Maddu. We have already seen what transpired between him and Gulam Mohamed Momin. So far as Ibrahim Maddu is concerned while Dhamankar was at the junction of the lane near the Old Fish Market which goes towards Khajurpura and Bhusar Mohalla Road he saw Ibrahim Maddu standing at the other end of that lane. There was a Muslim mob in the lane and this mob was pelting stones. Dhamankar has testified :

" Ibrahim Maddu was just standing there not doing anything. I did not see him throwing stones or inciting the Muslim mob. I have not stated to the police what is purported to be recorded by D.I., Lankar in my police statement dated June 1970 which is now shown to me, namely, ' Here, one of the Hindu boys around me showed me that Ibrahim Maddu was also throwing stones from the mob ". I saw Ibrahim Maddu with a big Muslim mob with him and they were pelting stones."

He has also deposed that he had seen Bhaskar Mali at several places, walking in the procession near the jeep in which Shivaji's picture was kept.

40.194 So far as the first overt act of the disturbances is concerned Dhamankar has deposed that from the spot where he was standing opposite Chivane's house he could not see what was happening and, therefore, he did not know what the first overt act of the disturbances was or how the disturbances actually broke out. According to Dhamankar, the disturbances commenced at about 5-45 p.m. he, however, frankly stated that he was not sure of this time as he did not look at his watch to see what the time was.

40.195 Dhamankar's evidence establishes the following facts :—

- (1) The locality in which Yusuf Chivane's house was situate was a trouble spot because of the fact that the Muslims concerned in the communal disturbances which had taken place in July 1969 were residents of this locality.
- (2) The procession had broken up in groups and a part of the procession stopped near Yusuf Chivane's house and began shouting objectionable slogans and did not stop when Dhamankar asked them to do so, but one of them abused him. At that

time there were some persons standing on the 'ota' of Yusuf Chivane's house.

- (3) While he was near Yusuf Chivane's house Dhamankar heard some commotion and shouts coming from the side of the Old Fish Market. This must have been the exchange of words between the processionists and the Muslim bystanders followed by the throwing of stones at these processionists and the fight between the Musiims and the processionists mentioned by H.C. Manjrekar.
- (4) No incident took place at or near the house of Yusuf Chivane before the disturbances started near the Old Fish Market. The Shakeel Kazi incident, therefore, if it took place, took place after the disturbances in Bhusar Mohalla broke out near the Old Fish Market.
- (5) Muslims had not collected in every lane and by-lane which branches off from Bhusar Mohalla, though Muslims had gathered near the Old Fish Market.
- (6) There were no Muslims collected or gathered in the lane which leads from Bhusar Mohalla to Latif Manzil or from Latif Manzil to the Old Market Road or from the Old Market Road to the Old Fish Market.
- (7) Dhamankar did not see the actual start of the disturbances and was not sure of the time when the disturbances commenced, though he has put it approximately as 5-45 p.m.
- (8) The weapons used by the Muslim rioters were stones, lathis, iron bars, some spears and acid-bulbs, though the acid-bulbs were few in number and were thrown only from the terrace of the Old Fish Market.
- (9) The processionists attacked Muslim houses and shops, broke open Muslim shops and damaged the articles inside. They also tried to break into Muslim houses and the residents of these houses fought back to prevent them from doing so.

The start of the disturbances—the Hindu evidence

40.196 In order to show how the disturbances started, the Hindu parties examined a large number of witnesses including Baliram More, the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena, and Dr. Vyas, the President of the Bhiwandi Branch of the Jan Sangh. The evidence of all these witnesses, by and large, runs on a pattern. According to them, the processionists were carrying Bhagwa flags tied to small thin sticks about 2 to 3 feet in length and were shouting only approved slogans. When the procession entered Bhusar Mohalla at about 5-30 p.m., without any provocation on the part of the processionists, the Muslims who had collected on both sides of the road, and in the lanes and by-lanes, and at the windows and on galleries of houses, attacked the processionists with various weapons and missiles, including lathis, stones, soda-water bottles, acid-bulbs and even bombs. It is unnecessary to refer to the evidence of each of these witnesses in

detail. Nearly every one of them has been unable to give any satisfactory answer in cross-examination. Further, according to nearly every one of them, no Muslim property was at any time damaged and no Muslim injured in the disturbances, though some of them had ultimately to admit these facts. It is unnecessary to refer to the elaborate cross-examination by which these admissions were extracted from them. It will be sufficient to refer to only such portions of their evidence as lends assistance to the Commission in arriving at a conclusion of this part of the Inquiry and to the special features in the evidence of some of these witnesses.

40.197 The evidence of Prabhakar Dattatraya Joshi [N.H.W. 12/1(1)/1855(1), 4/1856] and Jaswantkumar Kundanlal Mannan [N.H.W. 15/1(1)/1875(1), 4/1878] throws some interesting light on the behaviour of the section of the central part of the procession which had squatted in Bhusar Mohalla opposite Yusuf Chivane's house. Prabhakar Joshi has stated in his affidavit :—

“The procession went from Madarchhalla, Saudagar Mohalla, Sutar Wada, Bhoiwada and came near Fish Market. Before that near the house of Latif, Inspector of Police Shri Pradhan asked the persons in the procession to proceed further speedily. Therefore the persons who were in the front in the procession proceeded further speedily and the persons who were behind in the procession lagged behind as they were proceeding slowly. As such there was some gap in the procession. Myself and Jaswantkumar were at the place where there was a gap. The members of Muslim community started to throw from the building of Fish Market and from the surrounding houses big stones and soda-water bottles.”

In cross-examination Joshi stated that the procession had split up into three parts and he was in the middle part and that his part of the procession did not go ahead though asked by Inspector Pradhan to do so because they were waiting for the groups which were behind to come up. They thus waited for about five or ten minutes in Bhusar Mohalla near the lane which leads to Latif Manzil, that is, outside Yusuf Chivane's house. The group behind them did not catch up with them. He admitted that it was a Muslim locality and could not assign any reason why they chose a Muslim locality to wait for five or ten minutes for the other groups in the procession to join up. He has admitted that while waiting there, they were shouting slogans. Jaswantkumar Mannan, though his evidence is to the same effect, has, however, stated that they continued waiting in Bhusar Mohalla because the volunteers had asked them to do so. Since the only volunteers in the procession were the volunteers of the R.U.M., the volunteers who asked this section of the procession to wait at Bhusar Mohalla near Chivane's house and Latif Manzil could only be the volunteers of the R.U.M.

40.198 Jaswant Narayandas Gandhi (N.H.W. 7/1-6/1817-23) is a witness whose police statement (Ex. NH 4) recorded by the Special Investigation Squad is an example of the manner in which

the Squad has proceeded in the investigation of riot cases. He was in the central part of the procession which, as we have seen, was the rowdiest. According to him, the only slogans the processionists in the central part of the procession were shouting were "Bharatmata Ki Jai" and "Shivaji Maharaj Ki Jai". Though he and a few others were not carrying anything in their hands, the other processionists were carrying Bhagwa flags tied to sticks which, according to him, were about two to three feet in length and not very thick. His police statement was recorded on June 24, 1970 by a Detective Inspector of the Special Investigation Squad. According to his said police statement, the procession was attacked in Bhusar Mohalla and thereafter while seeking to escape, on the way to Madarchhalla in a lane in Patel Mohalla 10 to 12 Muslims attacked him with sticks and iron bars. He had not mentioned the names of any of these localities in his affidavit and in cross-examination he admitted that he did not know the name of any Muslim locality in Bhiwandi. Ultimately it emerged in cross-examination how the names of these localities came to be incorporated in his police statement. While recording his police statement the police officer asked him whether he knew the name of the locality in which the procession was attacked and on his replying in the negative, the police officer informed him that it was Bhusar Mohalla. Similarly, when questioned where he had been attacked, he had replied that it was in a locality at a little distance from Wani Ali and the police officer told him that the said place must be Madarchhalla. It is obvious that the names of these localities were supplied by the officer of the Squad who recorded his police statement. How his police statement came to be recorded makes equally interesting reading. He had gone to the office of the Nagarik Hitarakshak Mandal to give instructions in writing for drafting his affidavit to Mr. G. R. Kunte, advocate. Mr. Kunte thereupon told him to go to the office of the Squad and give his police statement and he accordingly went there and did so. A comparison of his police statement and affidavit is equally interesting and shows how some of the affidavits filed before the Commission have been drafted and what transformation the instructions given by the deponent have undergone.

40.199 It is stated in Gandhi's affidavit that the procession was attacked with stones and acid-bulbs. In his police statement, however, it is only stated that stones were thrown at the processionists and there is no mention of any acid-bulbs. The only explanation he could give for this omission was that he had mentioned to the officer recording his statement that acid-bulbs were also thrown on the procession. We have on record several instances of police officers trying to implicate falsely Muslims or trying to make out a much stronger case or paint a much darker picture against them by putting words into the mouth of witnesses. There is no instance of the converse case which has come on the record. The case of the Special Investigation Squad is that the Muslims attacked the procession with various missiles including acid-bulbs. It is, therefore, unbelievable that an officer of the Squad to

whom a Hindu witness had stated that the procession was attacked with stones and acid-bulbs would have only written down that it was attacked with stones and would not have mentioned acid-bulbs.

40.200 The next Hindu witness on this point is Rangnath Ramkrishna Kulkarni (N.H.W. 11/1-9/1844-53). According to his affidavit, he joined the procession near Madarchhalla and when it came to Bhusar Mohalla in front of Hasan Kuvari's house, Muslims in the vicinity started throwing stones on the procession. Then a Muslim from an adjoining house attacked the processionists with a Rampuri knife. This Muslim was immediately arrested by the Police. By that time the procession had become disrupted and while going towards Old Thana Road he saw four Muslims throwing stones from a one-storeyed house of a butcher and some Muslims on the road from behind threw soda-water bottles, stones and bombs on the processionists. He has stated that he intervened when some persons tried to attack Bhausahab Dhamankar and got injured in the process. This witness's police statement was recorded by an Inspector in the Special Investigation Squad on May 27, 1970. According to this witness, he had gone one evening at about 5-30 or 6 p.m. to a cafe in the Nazarana Talkies where he usually used to go and while he was returning home he was called inside the office of the Special Investigation Squad and asked whether he had joined the procession and, if so, at what spot and on his answering in the affirmative that he was in the procession, his police statement was recorded. A translation of his police statement is Exhibit P 680. There are a number of contradictions between his evidence and his police statement and they have all been put to him in cross-examination. According to his police statement, he had joined the procession not at Madarchhalla, but right from the beginning and was walking alongside the truck with the float. In his cross-examination he stated that he had not at any time seen the truck. The incident of his rescue of Bhausahab Dhamankar is conspicuously absent from his police statement, though according to him he had informed the police officer who recorded his statement about it. The rest of his cross-examination on his police statement can best be reproduced in his own words :

"I did not tell the Police what is recorded in my police statement, namely, 'The procession passed through Kasar Alli, Brahman Alli, Zenda Naka.' When I was not in the procession prior to Madarchhalla, how could I state to the Police the names of the localities which the procession had traversed before reaching Madarchhalla? I cannot explain why the incident of the attack on the procession by a Muslim with a Rampuri knife and the throwing of bombs on the procession by the Muslims is not mentioned in my police statement. I did not tell the Police what is recorded in my police statement that a stone hit me on the head and I was injured. I cannot explain why instead of writing that I saved Bhausahab Dhanmankar and in the process I got injured by a stick blow, the Police should have recorded that I was hit by a stone."

This witness was on Old Thana Road for a considerable time. Yet, according to him, he only saw one house on fire at Old Thana Road, namely, the house at the entrance to Bangad Galli, and he refused to admit that this house belonged to a Muslim. In his affidavit he had stated that while returning from the Municipal Dispensary he saw acid, bombs, burning rags and glass pieces being thrown from the terrace of Rashid Punjabi's house. In cross-examination he admitted that he had never seen or heard a bomb burst at any time and that he had only heard a noise and thought it was of bombs being thrown. He further admitted that he had only mentioned Rashid Punjabi's house because the noise came from that direction. He also admitted that there were other houses adjoining Rashid Punjabi's house, some of them being Hindu houses and others Muslim houses.

40.201 The evidence of this witness does not inspire any confidence.

40.202 The evidence of Bhau Govind Gole (N.H.W. 14/1-8/1871-4) is instructive and does not reflect any credit either on the person who drafted his affidavit or on the police officer who recorded his statement. Bhau was a resident of Ju Village. According to his affidavit, along with the other persons from his village, he had come to Bhiwandi to participate in the Shiv Jayanti procession. He was in the middle section of the procession. He has stated in his affidavit that the procession was attacked with stones when it came near the Old Fish Market and that thereupon some processionists ran towards Bhoiwada and some along Old Thana Road towards the Vegetable Market ("Mandai"), Bhau being one of them. He has further stated in his affidavit that near the Power House on Old Thana Road, he saw a Muslim mob armed with swords, axes and "farshis" (small axes with curved blades). He took shelter in a small lane adjoining the Power House, but after some time, thinking this place unsafe, he started running towards the Vegetable Market when a Muslim mob which came out from the lanes by the side of Hidayatullah Manzil surrounded him and one of the person in the mob gave him a blow with a sword on his right hand. He was also injured on his head. After some treatment at the Bhiwandi Municipal Dispensary, he was removed that very night to the Thana Civil Hospitals where his right arm was amputated. His case papers show the history of the injury as assault by sword. He was given a sum of Rs. 250 as relief by the Government.

40.203 He has deposed that his police statement was recorded in the Thana Civil Hospital, but at that time he was not in his senses. In cross-examination he deposed that he had gone alone to Bhiwandi to make some purchases but had on the way met some persons from his village who were carrying flags and that though he knew the names of some of the localities in Bhiwandi he did not know the names of Mohallas and lanes and he did not know Bhusar Mohalla. He has further deposed that he did not know Hidayatulla Manzil nor where it was situate and had not mentioned the name of this building while giving instructions for his affidavit and has stated that if

the name of the said building was mentioned in his affidavit, it was done so on his own by the draftsman of the affidavit. He did not remember who prepared his affidavit or when it was prepared and all that he remembered was that he had put his thumb impression on his affidavit and that Bhaskar Mali took him to the Mamlatdar's office for affirming his affidavit.

40.204 Tukaram Harischandra Pimple (N.H.W. 32/1-6/1967-69) was in the front part of the procession. In Sutar Alli he went home for a drink and rejoined the procession and was thereafter in the middle portion and when the disturbances started, he was near Hasan Kuvari's house. In his affidavit he stated, "At about 5-15 O'clock immediately after the Muslims started to throw incessantly acid-bulbs, bombs, stones and bricks on the procession the persons in the procession started to run hither and thither. I ran to my house. Five to six Konkani Muslims stopped me near our Murlidhar Temple. The brothers of Babu Bubere and Sattar Najle were among those persons. I escaped from their hands and went to the house. The aforesaid five to six Muslims had spears, axes and battle-axes in their hands." In his police statement he gave the time of the attack on the procession as 5-30 p.m. The explanation which he gave in the witness-box for this discrepancy was that he had mentioned in his affidavit the time as 5-15 p.m. and in his police statement as 5-30 p.m. from an estimate based on the position of the sun. Further, according to his police statement, the only missiles which the Muslims threw at the procession were stones. His police statement makes no mention of any acid-bulbs, bombs or bricks nor is there any mention in it of his adventure with the armed Konkani Muslims or of any brother or relative of Babu Bubere or Sattar Najle. Pimple deposed that he had stated these facts to the police officer who recorded his statement. For the reasons mentioned while commenting upon the police statement of Jaswant Narayandas Gandhi (N.H.W. 7) it is not possible to believe that had Pimple actually mentioned these facts to the officer recording his statement, they would not have been mentioned in his police statement. This is further borne out by the fact that the time of attack on the procession is mentioned in his police statement as 5-30 p.m., which is the time according to the theory evolved by the Special Investigation Squad, and not 5-15 p.m., the time mentioned in his affidavit.

40.205 According to the affidavit of Zumberlal Kalantri, as he had been asked to be at the head of the procession he took the jeep from by-lane to by-lane, waiting at the corner of each by-lane announcing on the mike that only approved slogans should be shouted. He waited near the Old Fish Market when a part of the processionists came up shouting only the approved slogans. Kalantri then proceeded to the corner of Old Thana Road and Bhusar Mohalla, made his announcement and waited there. Half the procession passed by. As the rest of the procession did not come up, he started inquiring what had happened. He was informed that the procession had been attacked with sticks and stones. As soon as this news reached the corner of Bhusar Mohalla and Old

Thana Road the Muslims who had collected there attacked the procession with a volley of stones, acid-bulbs, sticks, spears and bombs and the procession dispersed. Thereupon the jeep in which he was went ahead at full speed. He has stated that at that time stones, acid-bulbs, bombs, sticks, spears, etc. were thrown on the processionists from near the house of Gulam Rasool Hidayatullah. In the facts which he has set out at the end of his affidavit to show that the riots were pre-planned he has stated that bombs, acid-bulbs, sticks and spears were hurled everywhere and that Molotov cocktails were thrown on the processionists from 5-30 p.m. onwards.

40.206 The Commission has occasion more than once to point out how unsatisfactory the evidence of this witness is. His affidavit was affirmed on June 29, 1970 and in that very month, but before he prepared his affidavit, his police statement had been recorded by Sub-Inspector Salvi of the Special Investigation Squad. The only missiles mentioned in that police statement are stones, acid and acid-bulbs. There is no mention in the police statement of any missiles being thrown from near the house of Gulam Rasool Hidayatullah. All that the police statement mentions is that when Kalantri reached the Power House he saw stones, brick-bats and acid-bulbs being thrown from the upper floor of the building belonging to a Muslim of that locality and does not mention the location of the said building. He has admitted that he had not seen any Molotov cocktail being thrown on the processionists and that the statement to that effect in his affidavit was merely on information received by him. He is one of the witnesses who has claimed that the processionists only shouted approved slogans and that no Muslim property on Old Thana Road was at any time damaged [N.H.W. 42/1(11)/2033(5-6), 1(13)/2033(12-3), 9-12/2057-9].

40.207 As we have seen while discussing Inspector Pradhan's evidence, Baliram More was standing next to the group of processionists who had squatted in Bhusar Mohalla opposite Yusuf Chivane's house. shouting objectionable slogans, and was encouraging and instigating them. He has sought in his affidavit to implicate some Muslim leaders, particularly Ibrahim Maddu, and has alleged that the disturbances started when Ibrahim Maddu gave a signal with his handkerchief. The part of his evidence which relates to the signal alleged to be given by Ibrahim Maddu will be dealt with when we come to discuss the conspiracy alleged to have been entered into by the Muslims. Baliram More has further alleged in his affidavit that the disturbances started on Old Thana Road at 5-30 p.m. and that the procession was attacked with stones, acid-bulbs, soda-water bottles, knives and Molotov cocktails and that on seeing this he ran towards the municipal jeep and got into it and asked it to be taken to the Town Police Station. His police statement was recorded in the last week of May 1970 by D.L. Lankar. According to his police statement, while the procession was passing at about 5-15 p.m. through Bhusar Mohalla and Old Thana Road a large group of Muslims who had gathered on both sides of these two roads suddenly started throwing stones, brick-bats, bottles

and acid-bulbs on the processionists. His police statement thus does not make any mention of knives or of Molotov cocktails. The extraordinary explanation given by Baliram More for this omission was that at the time when his police statement was recorded he did not remember these facts [S.S.W. 1/1(30)/2154(19-20), 55/2177, 57/2178].

40.208 The evidence of two other witnesses called by the Nagrik Hitarakshak Mandal is also material. They are Kamlakar Sawlaram Naravane (N.H.W. 26) and Vilas Purushottam Chonkar (N.H.W. 30) Chonkar was specially called as a witness in order to implicate Ibrahim Maddu, and Naravane in order to implicate both Ibrahim Maddu and Gulam Mohammed Momin. It will be, therefore, convenient to discuss their evidence when we come to the conspiracy alleged to have been entered into by the Muslims.

40.209 The evidence of the Hindu witnesses, ignoring what they have stated about the behaviour of the processionists or the slogans shouted by them or the size and dimension of the sticks to which the Bhagwa flags were tied, shows that the disturbances commenced in Bhusar Mohalla near the Old Fish Market. According to all of them, except Tukaram Harischandra Pimple (N.H.W. 32) and Baliram More the disturbances commenced at 5-30 p.m. Pimpale's affidavit and Baliram More's police statement, however, give the time of the start of the disturbances as 5-15 p.m.

The start of the disturbances—the Muslim evidence

40.210 The evidence of five Muslim witnesses who have deposed on the point of the start of the disturbances in Bhusar Mohalla requires to be noticed. They are Mukhtar Ahmed Phandole (B.R.W. 14/1-5/1466-70), Yusuf Chivane (B.R.W. 15/1-10/1471-9), Sharif Ismail Hamdule (B.R.W. 18/1-5/1488-91), Mohamed Amin Ibrahim Rais (B.R.W. 19/1-4/1492-3) and Hajera Abdul Aziz (B.R.W. 32/1-5/1524-6). The evidence of Phandole and Chivane deals with the assault on Shakeel Kazi on the 'ota' of Chivane's house and will be discussed separately. The evidence of the other three witnesses shows that the disturbances did not start near Chivane's house, but started near the Old Fish Market and will be discussed here.

40.211 Sharif Ismail Hamdule (B.R.W. 18) was the proprietor of Asmat Hotel at the junction of Old Market Road and Bhusar Mohalla. He has stated in his affidavit that at 5-15 p.m. on May 7, 1970 he was in his hotel when he heard shouts and slogans as 'Jalao', 'Maro', "Shiv Sena Zindabad", "Jan Sangh Zindabad", "Muslim Murdabad", etc. He closed the collapsible door of his hotel. As soon as he had closed the door he heard a loud report and some people shouted from outside that the roof of his hotel was on fire. There were some power-looms behind this hotel which had also been set on fire. He found the processionists pelting stones and his tube light, his show case, a part of his door and some benches and chairs lying outside his hotel damaged. He also saw the processionists setting fire to a cycle shop opposite

his hotel, the Mukhatyar Cycle Mart of Abdul Samad Mehmood (B.R.W. 37), and smashing the cycles. Hamdule has alleged that he could see part of Bhusar Mohalla from his hotel and that he did not see any bystanders on that road. He has further alleged that he was wearing a wrist watch, implying that by consulting his wrist watch he saw that the time was 5-15 p.m. The evidence of Hamdule on this point is as one-sided and untrue as the evidence of the Hindu witnesses on the point of the behaviour of the processionists and equally deserves to be rejected.

40.212 Mohamed Amin Ibrahim Rais (B.R.W. 19/1-4/1492-3), the owner of a power-loom factory situate behind Asmat Hotel, was the person who gave shelter to Bhausahab Dhamankar and the injured Hindus and treated them and also took the Hindu women passers-by into the safety of his house. During the disturbances his power-looms were burnt and his residence next to his factory stoned and the doors and windows of his house damaged. He has deposed that "The procession came near my house at about 5-15 p.m. I watched the procession for about 15 to 20 minutes. About 15 to 20 minutes after the procession came up to my house the trouble started".

40.213 Hajera Abdul Aziz (B.R.W. 32) owned power-looms and resided in the lane which leads to Latif Manzil. She has stated in her affidavit that she saw the greater part of the procession pass through Bhusar Mohalla between 5 p.m. and 5-15 p.m., that there was commotion, loud shouting and whistling near the house of Yusuf Chivane, and that within a few minutes thereof about 100 Hindus from Bhoiwada came to the locality filthily abusing women and young girls and started throwing stones at houses and setting fire to them. The door of her house was also set on fire. In cross-examination she has deposed that the time mentioned by her in her affidavit, namely, between 5 p.m. and 5-15 p.m., was an approximate time and that the trouble first started near the Old Fish Market and then spread to the part of Bhusar Mohalla where her house was situate.

The Shakeel Kazi incident

40.214 Shakeel Kazi along with three other Muslims was prosecuted for rioting and for causing grievous hurt to two Hindus near the Hindustani Mosque at 12-30 p.m. on July 9, 1969. All the accused persons were residing near the house of Yusuf Chivane (B.R.W. 15) which is situate at the junction of Bhusar Mohalla and Bhoiwada. The first fortnight of July 1969 was a period of considerable communal tension. This incident added to the communal tension and led to considerable excitement in Bhusar Mohalla. All the accused were committed to the sessions and were released on bail. After the communal disturbances of May 7, 1970 the whereabouts of Shakeel were not known and it was reported to the Sessions Court that he had either died in the communal disturbances or was missing. The trial against him was accordingly separated and the case proceeded against the remaining accused who were convicted on November 30,

1970 of offences under sections 147, 323 and 325 read with section 149 I.P.C. (Ex. P 494).

40.215 It is the case of the Muslim parties that at the time of the Shiv Jayanti procession Shakeel Kazi was one of the bystanders standing on the 'ota' of Yusuf Chivane's house ; that when the procession reached Chivane's house at about 5 p.m., eight or nine processionists dragged him down from the 'ota' on to the road and assaulted him with sticks and one of them stabbed him with a knife ; that Shakeel was then lifted up by some processionists and taken away toward's Bhoiwada ; that Majid Dhuru, also a bystander on the 'ota', jumped down on to the road to save Shakeel but was not successful and he too disappeared in the crowd ; that at that time the processionists started stoning Muslim houses including Chivane's house and Latif Manzil in the lane opposite his house and the disturbances started. Two witnesses have been examined by the Bhiwandi Relief Committee in support of this case. They are Mukhtar Ahmed Phandole (G.R.W. 14/1-5/1466-70) and Yusuf Chivane (B.R.W. 15/1-10/1471-9). Phandole was Chivane's neighbour. He went to the 'ota' of Chivane's house about a quarter of an hour before the arrival of the procession. He had stated in his affidavit that the procession arrived at Chivane's house at about 5 p.m., but when questioned by the Commission he replied that he did not know the exact time when he went to the 'ota' or when the incident took place as he did not look at the time. He admitted having known Shakeel Kazi's father and brother and he was cross-examined whether he had given information to Shakeel's father about what had happened. His explanation was that he could not do so after May 7, 1970 as the curfew order was in force and that even after the curfew was relaxed he did not do so because it was known to everyone that Shakeel had been murdered by the processionists. In his affidavit he had mentioned the name of Ashok Patil as the person who had murdered Shakeel Kazi. He admitted that prior to mentioning the said name in his affidavit he had not disclosed it to anyone. He had gone to Murtaza Fakhir's house to give instructions for his affidavit to the lawyers who had come from Bombay for the purpose of drafting affidavits. Since he has admitted that he did not know the time when the procession entered Bhusar Mohalla or when the incident relating to Shakeel Kazi took place, the time of 5-00 p.m. given in his affidavit as being the time when the procession reached near Chivane's house must have been supplied by the draftman of the affidavit in order to support to the Muslim case that the disturbances commenced much earlier than 5-30 p.m. The evidence of this witness, however, shows that when this incident took place a part of the procession had proceeded towards Old Fish Market.

40.216 Chivane's son was a co-accused along with Shakeel and two others and was convicted. Chivane, whose evidence is to the same effect as Phandole's, also admitted that he did not give information to Shakeel's father or brother about the alleged incident even though the relations between them and himself as well as their

respective families were good and they used to call on one another and though he had met Shakeel's father and brother on the road about a month or so after the incident, the explanation which he gave for this being that he was under the impression that they must have known about it. In his examination-in-chief he alleged that on May 17 or 18, 1970 he had gone to the Town Police Station to give information about Shakeel Kazi and that when he mentioned that the information related to Bhusar Mohalla he was directed to a particular table out of the several tables which were kept outside the Police Station. He took his place in the queue and when his turn came he told the police officer that he had come to complain about the murder of Shakeel by the processionists. He was asked to go back to his house and told that someone would come to record his statement. His statement was recorded on December 3, 1970 and, according to him, it correctly recorded what he had stated to the police officer except that the statement mentioned the time as 5-30 p.m. while, according to him, he had stated that the time was 5 or 5-15 p.m. and that though he had stated that he could not see properly with his left eye it was recorded in his statement that his eye-sight was weak and that though he had stated that he saw Shakeel being stabbed this part was omitted from the statement. He alleged that he watched the procession from the first floor window of his house. He has admitted that the 'ota' did not jut out beyond the first floor and that from the window he could not see the persons standing on the 'ota'. According to both these witnesses, there was a thick rush and considerable din and confusion. It is, therefore, very debatable whether Yusuf Chivane could have seen what he claims to have done. The evidence of neither of these witnesses inspires much confidence and cannot be accepted in the absence of other reliable corroborative evidence.

40.217 There is, however, other evidence on the record which shows that some incident did take place outside Chivane's house. We have seen that Bhausaheb Dhamankar stood opposite to that house for some time because he considered this a trouble spot. It was a trouble spot not only because the Muslims involved in the communal incident which took place on July 9, 1969 were Chivane's son and other Muslims from the same locality, but also because Chivane's house had an 'ota' on which persons could gather and there was thus a likelihood of a clash between them and the processionists, particularly, in view of the rowdy, aggressive and provocative behaviour of the processionists. The two Hindu witnesses who have deposed about what happened outside Chivane's house, Prabhakar Dattatraya Joshi (N.H.W. 12) and Jaswantkumar Kundanlal Mannan (N.H.W. 15), have not made any mention of this incident, but they were two of those processionists who had squatted on the road shouting objectionable slogans and who refused to get up and join up with the procession when asked to do so by Inspector Pradhan. As will be seen when we come to the attack on Latif Manzil, there is strong reason to believe that both of them were amongst the

processionists who rioted in Bhusar Mohalla and were amongst those who attacked Latif Manzil. The evidence of both Joshi and Mannan is replete with contradictions and neither of them has shown any regard for truth. Their evidence, therefore, cannot be relied upon to show what really happened near Chivane's house, except that it is clear from what they have deposed that the group of processionists squatting on the road outside Chivane's house was probably the rowdiest and most aggressive and that the situation created thereby was fraught with the possibilities of an incident taking place.

40.218 The Executive Magistrates and the District Police Officers have relied upon the evidence of P.C., Vithal Bandu Bhakare, Buckle No. 2165 (P.W. 65/1-7/1095-1101). He was posted to Bhiwandi for duty in connection with the Shiv Jayanti bandobast and on May 7, 1970 along with P.C., B. K. Mane and H.C., D. I. Chavan, he was posted at the junction of Bhusar Mohalla and the lane which leads from Bhusar Mohalla to the Bhusar Mohalla Mosque opposite the lane which leads to Latif Manzil. He has stated in his affidavit :

"On that day at about 5-15 or 5-30 p.m. the procession was proceeding through the above junction (that is, the junction of Bhusar Mohalla and the lane leading to the Bhusar Mohalla Mosque) towards Thana Road by the Fish Market. The processionists were all Hindus. The procession was about two to three furlongs in length.

The processionists at the head might have reached Thana Road and the processionists towards the rear side were still in Bhoiwada. At that time I heard cries that stone-throwing at the procession had started near the Fish Market. The processionists started running back. Musliims were pelting stones at the processionists from their houses and from lanes. We warned them not to pelt stones. At that time I noticed at a distance of ten paces Abdul Majid Dhuru, a Muslim dealer in fish, attacking the processionists with a knife. There was a scuffle between the processionists and Abdul Majid and I caught hold of his hand and snatched the knife from his hand. I was trying to catch him but 4 to 5 Muslims rushed at me, rescued Abdul Majid and took him away. Due to the pelting of stones, we were not able to catch Abdul Majid and other assailants. I noticed that at the time of the scuffle Abdul Majid caused injuries to Sakharam Pawar Panwala and Prajapati Laundriwala on their left hands with the knife and the injuries were bleeding. I asked them to run away with the processionists. The knife which I had snatched from Abdul Majid was blood stained; it was a Rampuri knife. I kept that knife with me. I was dispersing the Muslims who were armed with spears and sticks, all were pelting stones at the processionists at that junction. I noticed one Muslim, who resides at Bhusar Mohalla, rushing to assault with an axe. I caught him and snatched the axe from him. At that time two Hindu processionists assisted me. But the said Muslim had a scuffle with me and ran away. I had in my one hand the axe which I had snatched from him. No sooner I was free from scuffle I was hit on the head by a stone."

40.219 This constable has no regard for truth. He has deposed that none of the processionists shouted any unapproved slogans and that the only slogans he had heard was "Shivaji Maharajki Jai". He admitted that Kalantri came to Bhusar Mohalla and announced on the mike that only approved slogans were to be shouted, but, according to him, this was as a precautionary measure lest the processionists shout any unapproved slogans. Contrary to what most witnesses have stated he has alleged that it was a continuous procession and was proceeding smoothly and peacefully. While the evidence of Dhamankar makes it clear that there were bystanders standing on the 'ota' of Chivane's house he states that there was no one standing on the 'ota' of that house or any other house and that the windows of all the houses in Bhusar Mohalla including those of Chivane's house were closed and that no one was looking out of any window and that there were no Muslims on the road watching the procession. According to him, he produced the knife and axe at the Control Room on the night of May 7, 1970 and though he has alleged that he saw Abdul Majid wound two Hindu processionists with the said knife, he did not lodge any complaint against Abdul Majid. According to him, his police statement was recorded for the first time on May 22, 1970. That was by an officer of the Special Investigation Squad. According to Dy.S.P., Saraf, however, his statement was recorded for the first time only on May 4, 1971, that is, almost a year after the disturbances (P.W. 61/97/3667). In cross-examination he has attempted to go back on the statement in his affidavit that a scuffle had taken place between the processionists and Abdul Majid. According to the version given by him in his cross-examination when the processionists were running helter-skelter Abdul Majid all of a sudden attacked two processionists with a knife and injured them and the two processionists did nothing and he (that is, Bhakare) immediately rushed up and snatched away the knife. He tried to explain away the scuffle between the processionists and Abdul Majid mentioned in his affidavit by saying that by "scuffle" what he meant was that Abdul Majid had attacked the processionists with a knife and that the processionists did not do anything but merely put out their hands to ward off the blow. He and the other two constables, who were along with him, were obviously on the scene when the Muslim houses in Bhusar Mohalla were attacked, the Bhiwandi Washing Company broken into and the clothes therefrom dragged out on the road and set on fire and Latif Manzil stoned and attempted to be broken into which attempt was frustrated by S.P., Bhave and P.S.I., Chougule (P.W. 37). While S.P., Bhave has deposed that he dispersed the Hindu rioters who were stoning and trying to break into Latif Manzil by taking out his revolver and is corroborated in this by P.S.I., Chougule (P.W. 37), Bhakare has gone to the length of stating that the stones which fell on Latif Manzil were those thrown by Muslims which missed the processionists and instead hit Latif Manzil and that Bhave took out his revolver in order to make these Muslims desist. Bhakare was cross-examined on what the other

constables with him were doing. The questions and answers and the note taken by the Commission at that time show how this witness has prevaricated. This part of his evidence reads as follows :—

“ Q. Were constable B. K. Mane and head constable D. I. Chavan, who were posted for duty along with you, present there when Abdul Majid attacked the procession with a knife and you rushed up and snatched away the knife ?

A. The processionists were running helter-skelter. There was stone-throwing by the Muslims. The other constables were busy dispersing them. I saw this incident and rushed up.

(Question repeated twice)

A. Constable B. K. Mane and head constable D. I. Chavan were present at the point they were posted when Abdul Majid attacked the procession with a knife, but they were busy pacifying the processionists.

Q. Did constable Mane and head constable Chavan help you in arresting Abdul Majid ?

A. They were not present there at that time.

(Note.—This answer has been given after some hesitation and after taking time to think over.)”

40.220 The strange thing is that while according to this witness, the two constables posted along with him at the mouth of the lane were P.C., Mane and H.C., Chavan, according to the Special Investigation Squad, who recorded the statements of these three policemen, the two constables posted along with Bhakare were Vasudeo Shankar Magdum and Zipru Dashrath Bhavsar. While this witness claimed that his statement was recorded by the Special Investigation Squad on May 22, 1970, according to Dy.S.P., Saraf, his statement and that of Bhavsar were recorded on May 4, 1971 and that of Magdum on May 5, 1971 (P.W. 61/97/3667), that is, almost a year after the disturbances. It is obvious that this witness is a got up witness.

40.221 Nonetheless his evidence establishes that a scuffle did take place between the processionists and Abdul Majid. The fact that the scuffle did take place between Abdul Majid and the processionists lends corroboration to the evidence of Phandole that Abdul Majid was standing on the ‘ota’ of Chivane’s house. We have in Dhamankar’s evidence that there were some persons, and not just one, standing on that ‘ota’. The scuffle, therefore, must have been between some of the persons standing on the said ‘ota’ and the processionists, a scuffle very likely provoked by the behaviour of the processionists. It is, therefore, reasonable to believe that Shakeel was one of the bystanders on the said ‘ota’ and that he was one of those who had a scuffle with the processionists and was probably killed in the scuffle. The evidence of Dhamankar makes it clear that Dhamankar was not present when the said incident took place. The incident, therefore, took place after Dhamankar, on hearing shouts coming from the direction of the Old Fish Market, proceeded towards that place. The incident at Chivane’s house was, therefore, not the first incident of the disturbances. This

is also clear from the evidence of Hajera Abdul Aziz (B.R.W. 32).

40.222 That Shakeel Kazi is missing since the disturbances has not been denied. On May 25, 1970 his brother Amir lodged a complaint with the Police that Shakeel, who had left the house on May 7, 1970 to watch the Shiv Jayanti procession, was missing. The incident of Shakeel Kazi has been mentioned in the affidavits not only of Phandole and Chivane but also of one Mohamed Abbas Abdul Aziz Momin (deponent of affidavit No. 190). In the affidavits of Mohamed Abbas and Phandole the name of Ashok Patil was mentioned as the assailant of Shakeel. On reading Mohamed Abbas's affidavit, both S.P., Bhawe and Dy.S.P., Diwate passed orders on November 11, 1970 in pursuance of which P.S.I., S. S. Mane filed a complaint (Ex. P 339) on November 12, 1970 charging Ashok Patil and two or three other unknown persons with the murder of Shakeel Kazi by pulling him down from the verandah of Chivane's house and murdering him. The police statement of Shakeel's father was then recorded on November 12, 1970 (Ex. P 487). It shows that he had looked for Shakeel in various hospitals at Thana, Bhiwandi and Bombay and also had made inquiries in the jails at Thana, Yeravada and Nasik, but could not trace Shakeel. The case against Ashok Patil and others was classified as 'A' Summary, that is, as being "true but undetected".

The rioting at Bhusar Mohalla

40.223 From the Old Fish Market the disturbances rapidly spread to the rest of Bhusar Mohalla. Immediately stones were thrown at the processionists near the Old Fish Market, the processionists, who were armed with lathis to which Bhagwa flags were tied, started attacking the Muslims and their houses. There were stones lying about on Bhusar Mohalla and Old Thana Road and in the lanes and by-lanes branching off from both these roads (P.W. 66/137/1184). The processionists and the Muslims both began picking up these stones and started hurling them at each other. The processionists also began stoning Muslim houses. A number of Muslim properties were attacked, some of them broken into and looted and some set on fire. These properties included Latif Manzil which was stoned and attempted to be broken open and its window-panes broken; the Bhiwandi Washing Company which was broken open and the clothes therefrom taken out on the road and made a bonfire of; the Bhusar Mohalla Masjid Chawl adjoining Bhusar Mohalla to the rear of Bhusar Mohalla Masjid which was set on fire [B.R.W. 1/1(9)/1359(9); B.R.W. 28/1(3)/1512(2)]; Yusuf Chivane's house which was stoned and its window-panes smashed [B.R.W. 15/1(2)/1471(1)]; the Asmat Hotel, at the junction of Old Market Road and Bhusar Mohalla, the roof of which was set on fire [B.R.W. 18/1(1)/1488(1)]; the house of Mohamed Amin Ibrahim Rais which was stoned and its doors and windows damaged, and his powerloom factory situate behind his house which was set on fire [B.R.W. 19/1(1)/1492(1)]; the house of Abdul Rahman Mohamed Yusuf which was set on fire and burnt down [B.R.W. 20/1(1)/1494(1)]; the house

of Imtiaz Ahmed Abdul Qadir Madu, situate at the corner of Old Market Road and Bhusar Mohalla, which was stoned, its window-panes smashed, the tiles of its roof damaged, the house looted and all the articles and furniture inside broken and damaged [B.R.W. 21/1(1)/1496(1)]; the Azmi Sweetmeat Mart which was broken open and looted as also the house of Hasan Ali Rozan, its proprietor, which was stoned and its door set on fire [B.R.W. 22/1(1)/1498(1)]; the house of Hajera Abdul Aziz, of which the door was set on fire [B.R.W. 32/1(1)/1524(1-2)]; and the Mukhatyar Cycle Mart of Abdul Samad Mehmood which was broken open, attempted to be set on fire, and the cycles and other articles inside smashed [B.R.W. 37/1(1)/1536(1)].

40.224 As shown by the key to Exhibit P 1 (Ex. P 1A) and the sketch annexed as Appendix 'H' to this Report, there were police pickets posted at nine points at Bhusar Mohalla and in the lanes and by-lanes, namely, at points Nos. 23 to 30 of the fixed-point bandobast set out in paragraph 40.41 of this chapter. The aggregate strength of these pickets was one P.S.I. and 27 policemen. There were other policemen walking along with the procession. Though some of them chased Muslim rioters and sought to arrest them, not one of them made any attempt to intervene in order to prevent damage or arson to any Muslim property. The only persons who did so, as we will see later, were S.P., Bhavé and, on seeing him trying to drive away Hindu rioters, P.S.I., Madhav Sambhaji Chougule (P.W. 37).

The D.M., the D.I.G.(B.R.) and the S.P. in Bhusar Mohalla

40.225 After leaving the Muslim leaders, D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhavé went in their jeep and reached a by-lane which joins Bhusar Mohalla. According to them the time then was about 5-30 p.m. When they reached the by-lane they saw two or three young Muslims throwing stones at the procession. They got down and tried to catch hold of some of them, but the Muslims ran away on seeing the officers. At that time they saw Inspector Pradhan, who had been injured, being carried away. They then tried to clear the lanes and by-lanes and to push the processionists into Old Thana Road and to clear Bhusar Mohalla. In the process S.P., Bhavé got separated from the other two [P.W. 4/1(82)/236(50), 132/651].

The attack on Latif Manzil

40.226 After he got separated from D.M., Capoor and D.I.G.(B.R.), Gokhale, S.P., Bhavé went to the lane which goes past Latif Manzil (a Muslim building) to Bhusar Mohalla. There he found a mob of about 40 Hindus trying to break open the door of Latif Manzil which was closed. Bhavé climbed up on the verandah and made the Hindu rioters get down. As the rioters started getting down from the verandah they commenced pelting stones at the building as also at Bhavé. Bhavé has deposed that the time then was about 5-40 p.m. While these events were taking place at Latif Manzil P.S.I., Madhav

Sambhaji Chougule, who was asked to remain at the rear of the procession, was in Bhoiwada behind the tail-end of the procession which was crossing the arch erected in Bhoiwada. At that time some processionists came running back from Bhusar Mohalla and informed him that the Muslims had thrown stones and acid-bulbs at the processionists and that they would show him some Muslim houses from where the Muslims were throwing these missiles. When he, however, reached Latif Manzil what he noticed was about 20 to 25 processionists throwing stones at Latif Manzil and that as a result of this stone-throwing the window-panes of the building were broken. He also saw S.P., Bhavé trying to disperse the mob collected on the verandah of the building. Chougule also tried to disperse these rioting processionists by pushing them with his hands back to the route of the procession. Ultimately Bhavé took out his revolver and at the point of the revolver drove them away and dispersed them. Bhavé and Chougule then drove away about 15 Muslims who had collected in a side lane. Meanwhile two Muslims came and informed Bhavé that a Muslim had been assaulted and injured. Bhavé saw the the injured Muslim and asked them to take him at once to the hospital. Bhavé and Chougule noticed some Muslims throwinig stones at the processionists and at the Police from lanes and by-lanes and some S.R.P. men dispersing them. Bhavé and Chougule assisted them in dispersing the Muslims. Chougule received an injury on his head in this stone-throwing. He then went to Old Thana Road and from there to the Bhiwandi Municipal Dispensary and got his injury dressed. Bhavé proceeded to Bhusar Mohalla [P.W. 4/1(82)/236(51); P.W. 37/1(1)/9865].

40.227 The evidence of S.P., Bhavé and P.S.I., Chougule on the point of this attack on Latif Manzil was not challenged in cross-examination and there is no reason to doubt the testimony of either of these officers. In spite of this clear, straightforward and unchallenged evidence a case was sought to be made out by a police constable, and two Hindu witnesses that the stoning of Latif Manzil was by the Muslims. The police constable is P.C., Vithal Bander Bhakare (P.W. 65). According to him, the stones which fell on Latif Manzil were the stones thrown by the Muslims at the processionists which missed them and instead fell on Latif Manzil. The evidence of this witness has already been discussed in paragraphs 40.218 to 40.220 while dealing with the incident near Chivane's house and it is unnecessary to repeat the discussion here except to state that this witness has shown no regard whatever for truth. The other two witnesses on this point are Prabhakar Dattatraya Joshi (N.H.W. 12) and Jaswantkumar Kundanlal Mannan (N.H.W. 15). As mentioned in paragraph 40.197 these two were in the group of processionists who had squatted on the road opposite Chivane's house. Their evidence with respect to the attack on Latif Manzil makes amusing reading. When the stone-throwing started everyone in their group, except Mannan and Joshi, ran away. These two went up to Latif Manzil

because they saw its door slightly ajar, intending to take shelter inside the house. They tried to push open the door with their hands but found that the door was closed from inside. They, therefore, got down and took shelter against the wall of the Old Fish Market. Finding stone-throwing still going on they started backing towards Bhoiwada when they saw Ibrahim Maddu. They beckoned to him to come to them but Ibrahim Maddu, however, backed away, took out a green handkerchief and waved it. The moment he waved his handkerchief, the throwing of stones and soda-water bottles commenced vigorously, including at the spot where they were. They also saw stones being thrown from the top of Latif Manzil. Even though stone-throwing was going on, they continued waiting near Latif Manzil and did not run away like the other processionists because they saw Gulam Mohamed Momin approaching and thought he would put an end to the riots. Though Gulam Mohamed Momin did not put an end to the riots, they continued waiting because while they were talking with him they saw Ibrahim Maddu in the lane opposite to them. They waited thus for 15 minutes to half an hour. In spite of the fact that throughout this period they were exposed to the stones and soda-water bottles being thrown, neither of them received any injury. Thereafter they ran away.

40.228 The evidence of these two witnesses is replete with contradictions, discrepancies and falsehoods. These were two of the rioters who created a commotion outside Yusuf Chivane's house in Bhusar Mohalla and tried to break into Latif Manzil and were driven away by S.P., Bhawe at the point of the revolver. No reliance can be placed upon their word.

The arson to Bhiwandi Washing Company

40.229 After dispersing the rioters from the 'ota' of Latif Manzil, Bhawe proceeded towards the route of the procession. He found some S.R.P. men on the road and took them along with him. On the way he met the P.S.P. workers, Chandrakant Bhise (N.H.W. 43) and Parshram Tavre (N.H.W. 45), with a large Hindu crowd behind them. With the help of these P.S.P. workers he persuaded the Hindus to go and sit in the open space in Bhoiwada. These Hindus complained to him that acid-bulbs were being thrown from the first floor of a small building. He therefore climbed the staircase and checked the premises. There were only Muslim women and children in the building and Bhawe did not find any missiles or corrosive substance there. He then came down and proceeded along the route of the procession. He found that the Bhiwandi Washing Company on Bhusar Mohalla had been broken open and the clothes inside taken out, piled on the road and made a bonfire of. He put out the fire with the help of the S.R.P. men [P.W. 4/1(82)/236(51-2), 79/605, 144/664].

40.230 As we have seen, two pickets, one of 2 P.Cs. and the other of 7 P.Cs., were posted near the Bhiwandi Washing Company. Two other pikets, one of 3 P.Cs., namely, P.C., Vithal Bander Bhakare

(P.W. 65) and two other constables, and the other of two P.Cs. were posted to the right of Yusuf Chivane's house and a picket of 2 P.Cs. was posted in the Latif Manzil Lane. S.P., Bhave's evidence also shows that there were S.R.P. men on the road. Yet it is significant that not one of these policemen or S.R.P. men made any attempts to stop the Hindu processionists from attacking Latif Manzil or from breaking open the Bhiwandi Washing Company or taking out the clothes from it, piling them on the road and setting them on fire.

The Muslim leaders in Bhusar Mohalla

40.231 After leaving Murtaza Fakih's house Sikandar Faquih and some other Muslim leaders started going towards Nizampura as asked by the D.M. According to Sikandar Faquih, hardly had they proceeded 300 feet towards Madarchhalla when they were informed at about 5-15 p.m. that trouble had started at Bhusar Mohalla. He thereupon returned to Murtaza Fakih's house and from there he and Murtaza Fakih hurriedly proceeded towards Bhusar Mohalla. By that time it was nearly 5-30 p.m. On the way they found stone-throwing going on near Hindustan Mosque and they had to take shelter in a lane near Latif Manzil. They found this building being heavily stoned. After some time they came out on the open road and saw some processionists running helter-skelter. They tried to guide and help them to proceed towards Bangad Galli and Sutar Alli. They saw the processionists throwing stones on Muslim houses from both sides of Bhusar Mohalla right upto the Old Thana Road. Sikandar Faquih has candidly stated that he saw both Hindus and Muslims indulging in stone-throwing and that in the disturbances which took place in Bhiwandi Hindu houses were set on fire and burnt and Hindus also injured [B.R.W. 1/1/(9)/1359(8-9); B.R.W. 2/1(23)/1398(13), 31-2/1415].

40.232 After the D.M., the D.I.G.(B.R.) and the S.P. had left, Mustafa Fakih asked some of the Muslim leaders to go back to the procession and asked some others who were from the Nizampura area to go to the Nizampura Jumma Mosque and the Quarter Gate Mosque and do their utmost to see that the procession passed off peacefully without any incident. He also wanted to go himself to Nizampura and, therefore, requested Haji Miyan Tase (B.R.W. 67) and Ibrahim Maddu to come with him. As they were about to leave the house they saw at the Hamid Patel Naka a few Hindus running towards the west. Some one informed them that disturbances were taking place in the Old Fish Market area. They thereupon went towards the Old Fish Market. When they reached the house of one Munshi, they found him standing on the 'ota'. He informed them that disturbances had taken place near the Old Fish Market and that the Policemen posted at the Hindustan Mosque were not allowing people to go beyond that mosque. Mustafa Fakih then sat in Munshi's house, while Ibrahim Maddu and Haji Miyan Tase went further. After a few minutes Ibrahim Maddu came back running and told Mustafa

Fakih that Bhausahab Dnamankar was near the Old Fish Market looking very agitated and that Mustafa Fakih should immediately go to him. They both thereupon left to look for Dhamankar whom they found out of breath on the 'ota' of the house of Mohamed Amin Ibrahim Rais (B.R.W. 19). After a few minutes Dhamankar, Mustafa Fakih and Gulam Mohamed Momin went towards Bhoiwada. On the way they found that the Bhiwandi Washing Company had been broken open and the clothes taken out from it and strewn on the road; some of these clothes were smouldering and smoke emanating from them [B.R.W. 3/1(13-4)/1416(5-6)]. Haji Miyan Tase's evidence corroborates Mustafa Fakih that Ibrahim Maddu was present in the house of Mustafa Fakih and accompanied Mustafa Fakih and Haji Miyan Tase towards Bhusar Mohalla [B.R.W. 67/1(21)/1630(10)]. Neither Mustafa Fakih nor Haji Miyan Tase have been cross-examined on the point of Ibrahim Maddu's presence with them.

The disturbances at Old Thana Road

40.233 From Bhusar Mohalla the disturbances spread to Old Thana Road. There were stones lying about on Old Thana Road as they were on Bhusar Mohalla and other roads and lanes of Bhiwandi. The Muslims attacked the processionists with stones, brick-bats, soda-water bottles and some acid-bulbs. The processionists attacked the Muslims with lathis, hurled stones at the Muslims and their houses, attacked Muslim houses, shops and factories and looted and set fire to a number of them. These properties included the house of Ishaq Bajewala in which the factory of Mohamed Idris Peer Mohamed (B.R.W. 24) was situate and five shops in front of it and some shops opposite to it, all of which were set on fire; the tonga belonging to Mehmood Abdul Rehman (B.R.W. 25) which was overthrown and set on fire, the two horses of the said tonga tethered to an open space on the road receiving such severe injuries in the stoning that one of them died immediately and the other a few days later; the bangle shop of Abdul Gaffoor which was set on fire; the car of Gulam Rasul Hidayatullah which was set on fire; Hidayatullah Manzil which was attempted to be broken into and its window-panes smashed; the power-loom factory of Mohamed Tahir Abdul Gafoor (B.R.W. 29) which was set on fire; the house of Mohamed Jafar Ahmed (B.R.W. 30) which was set on fire; the house of Mohamed Yaqub Bakshu Quraishi (B.R.W. 34) which was broken into and the articles and furniture lying in the front room smashed; the house of Mushtaq Gulam Mohamed Madu (B.R.W. 35) which was stoned, broken into and the furniture and articles smashed and looted; a bhajia-samosa shop near the house of Mohamed Ali Akbar Madu (B.R.W. 36) which was damaged and the articles inside smashed; the house of Fatmabi Abdul Latif (B.R.W. 54) some articles from which were set on fire; and the house of Gulam Bolinjar which was set on fire and burnt down. A number of properties at the junction of Bhusar Mohalla and Old Thana Road

were also attacked. They included the Lucky Restaurant and a pan-shop which was broken open and looted; the power-loom factory and the house of Abdul Latif Jairoomi which was set on fire and completely burnt down; the Lucky Cycle Mart which was broken open and the cycles and furniture inside damaged and partly burnt; and the Science Power Laundry which was broken open and damaged.

40.234 S.D.M., Date and Taluka Magistrate Sane have deposed that when they came to the junction of Bhusar Mohalla and Old Thana Road at about 5-35 p.m. or 5-40 p.m. they saw some Muslims who were injured and some Muslim shops which had been broken open and looted by a Hindu mob. This mob was dispersed by D.M., Capoor and D.I.G.(B.R.), Gokhale when, after getting separated from S.P., Bhawe, they reached the junction of Bhusar Mohalla and Old Thana Road. After they dispersed this mob they learnt that arson had commenced in Sutar Alli and accordingly they set out for Sutar Alli. According to Gokhale, the time when they received this information was about 5-45 p.m. [P.W. 4/1(82)/236(50); P.W. 59/1(48-9)/1000(26-7), 54/1034; G.W. 4/1(22)/1190(15), 2/1191; P.W. 62/1(9)/1073(3), 2/1074, 9/1077].

40.235 The Police opened fire thrice on Old Thana Road and arrested 26 Muslims. Dy.S.P., Diwate formed a cordon of S.R.P. men at Keshar Baug to prevent a clash between the processionists and the Muslims and thus diverted the Muslims towards the Hindu locality of the Vegetable Market. Some of the processionists ran back into Bhoiwada and some others dispersed to other localities. Ultimately order was restored in the Bhusar Mohalla-Old Thana Road area.

The first police firing at Old Thana Road

40.236 When the disturbances broke out, Dy.S.P., Diwate, who was waiting at the corner of Santosh Lunch Home in order to direct the procession towards the Vegetable Market ('Mandai'), rushed down Old Thana Road along with C.P.I., Tikale (P.W. 36), asking P.S.I., K. N. Patil, who was in charge of the Striking Force, to follow him with an armed party. He noticed that stones, soda-water bottles and acid-bulbs were being thrown at the processionists by the Muslims collected on the road and in the lanes and from the balcony of Hidayatullah Manzil. On seeing the Police the Muslim rioters started throwing stones, soda-water bottles and acid-bulbs at them also. As the Muslim rioters did not pay any heed to the warning given by Diwate, Diwate fired two rounds from his .38 revolver at the mob collected in the lane to the north of Hidayatullah Manzil and ordered Tikale to open fire at the mob collected in the lane to the south of Hidayatullah Manzil. Tikale after giving a warning to the mob, which went unheeded, fired three rounds from his .38 revolver, the first two of which misfired. According to these officers, the time was then about 5-40 p.m. The opening of fire had some effect and the Muslim rioters started running back. The police officers chased them into the lanes upto the corner of the building,

but the rioters threw stones and acid-bulbs at them and then ran back into the lane behind the building and disappeared. This opening of fire gave time to a number of processionists, some of whom were injured, to escape from this area. It also gave time to the Police to chase the Hindu processionists who were stoning the Muslims gathered in the Shakarsha Mosque Lane. These processionists ran away down the lane which leads to Mandai [P.W. 66/1(16)/1108(8); P.W. 35/1(2)/834(1-2); P.W. 36/1(2)/844(2-3), 22-3/853-4].

40.237 It was at this time that Diwate received acid-burns on the fingers of both his hands, a bleeding injury on his right shin and other injuries to his left leg, right arm and shoulder. As a result of the said injuries to his right shoulder and right arm three muscles of his arm were paralysed and his right arm became weak and shrunken. He was also examined by a neurologist, Dr. N. H. Wadia, on June 3, 1970. Dr. Wadia has certified that Diwate had a right root paralysis of muscles Nos. 5, 6 and 7 and that he required thorough rest and treatment in hospital and advised him to get the necessary leave. As Diwate was, however, busy with the bandobast in respect of the communal disturbances, he did not take even a single day's leave with the result that a permanent partial disability was left in his right arm (P.W. 66/12/1112).

40.238 This firing was resorted to at the time when the disturbances broke out. The outbreak of the disturbances was of fierce intensity. There were thousands of Hindu processionists in this locality which was a purely Muslim locality. Thus, thousands of persons of the two communities were in that area and an open clash between them could have led to a murderous carnage. In these circumstances, the Police would be justified in resorting to any measure in an attempt to put down the disturbances. This firing was, therefore, justified and, as a matter of fact, as mentioned above, it gave time to a number of processionists to effect their escape from this area.

40.239 The F.I.R. (Ex. P 174) in respect of the rioting at Old Thana Road was lodged by P.S.I., J. S. Nimbalkar (P.W. 55). This F.I.R. was registered as C. R. No. 177/70 of Bhiwandi Town Police Station and was the main F.I.R. in the Bhiwandi Conspiracy Case. This F.I.R. also mentioned that stones, acid-bulbs and soda-water bottles were thrown on the processionists from the first floor of Hidayatullah Manzil. It was submitted by the Muslim parties that if it was true that any missiles were thrown on the police party from Hidayatullah Manzil, the most effective course for the Police to stop the rioting at Old Thana Road was for a police party to go into that house, arrest the miscreants who were throwing these missiles and take charge of their stock of missiles. This argument, if taken divorced from the circumstances then existing, would be logical and convincing. It, however, ignores the situation then prevailing. The first and the paramount task before the Police then was to try to restore order on Old Thana Road. Had the police party at the spot been depleted by sending a part of it into Hidayatullah Manzil, the likelihood of

a clash between thousands of Hindu processionists and the Muslims who had collected on the roads and in the lanes would have greatly increased and had such a clash taken place, a number of lives would have been lost and a greater number injured. It was therefore, not a practicable thing to have sent a police party at that time into Hidayatullah Manzil or any other house from which missiles were thrown at the police party.

The second police firing at Old Thana Road

40.240 As Dy.S.P., Diwate and C.P.I., Tikale were coming out of the lane near Hidayatullah Manzil after chasing the Muslim rioters they learnt that another Muslim mob was attacking the processionists from a lane near Shakarsha Mosque to the west of the Old Thana Road. They, therefore, ran towards Keshar Baug. On the way they took the Striking Force under P.S.I., K. N. Patil (P.W. 35) along with them. They noticed a Muslim mob attacking the processionists with stones and acid-bulbs from the by-lanes near Shakarsha Mosque and some of the processionists throwing stones at the Muslims gathered in the Shakarsha Mosque Lane and then running away Diwate directed Tikale to disperse the Muslim mob collected in the lane. Tikale accordingly took with him A.P.C., Shetye and proceeded towards the lane where the Muslim mob was. He noticed a large Muslim mob whose strength was estimated by him at about 600, some of them armed with .12 bore guns and spears and throwing stones, acid-bulbs and brick-bats. After giving a warning Tikale fired one round from his .38 revolver at the mob. Thereupon the mob retreated slightly behind the Shakarsha Mosque but continued to attack the police party. Tikale thereupon fired two more rounds one of which misfired. As this fire had no effect Tikale ordered A.P.C., Shetye to open fire. Shetye accordingly fired 10 rounds from the .410 musket. This had the desired effect and the mob finally dispersed and disappeared in the lanes behind the Hindustan Mosque. According to Tikale, the time was then about 5-45 p.m. [P. W. 66/1(16)/1108-9 ; P.W. 36/1(3)/844(3-4), 21/852].

40.241 Though according to C.P.I., Tikale some of the Muslim rioters collected in the lane near Shakarsha Mosque were carrying .12 bore guns and spears, this fact is not mentioned in his firing report. The only explanation which he could give for this serious omission was that the said firing report was confined to the fire opened by him and the said constable under his instructions, a not very convincing explanation. He also admitted that he did not see anyone fire a .12 bore gun (P.W. 36/21/852).

40.242 The evidence of C.P.I., Tikle on some of the incidents which took place in the course of the disturbances and which will be discussed later shows such a shocking communal bent of mind that it is not possible to place any reliance upon his oral testimony taken by itself.

40.243 It is not possible to accept Tikale's evidence that the mob was as large as sought to be made out by him nor that anyone in the

mob in the lanes near Shakarsha Mosque was carrying a gun or spear. The local inspection has revealed that the lanes and by-lanes near the Shakarsha Mosque are so narrow that it would be extremely difficult for a mob of 600 to collect there and throw missiles on Old Thana Road as alleged and that if 600 people did succeed in collecting there, there would be no freedom of movement left for them.

40.244 This firing was part of the firing resorted to by the Police at Old Thana Road in an attempt to bring the situation under control when the disturbances broke out. This firing was, therefore, justified.

The third police firing at Old Thana Road

40.245 After directing C.P.I., Tikale to disperse the Muslim mob which had collected in the by-lanes near Shakarsha Mosque, Diwate sent P.S.I., K. N. Patil to bring the armed reserve from the police station. He then formed a cordon of S.R.P. men at Keshar Baug with a view to prevent a clash between the processionists and the Muslims and began pushing the processionists towards Hindu localities through a small lane leading to the Vegetable Market ('Mandai'). At that time he received news that the Muslims were again attacking the processionists near Hidayatullah Manzil. Diwate therefore rushed down Old Thana Road. He noticed Muslims throwing stones and acid-bulbs at the processionists from Old Thana Road and also from the by-lanes. Diwate fired two rounds from his .38 revolver. This, however, did not have any effect. Diwate, therefore, directed H.C., More to open fire. H.C., More fired four rounds from his .410 musket. This had the desired effect and the Muslim rioters started running back. In the meantime P.S.I., K. N. Patil, who was sent to the Town Police Station to bring reinforcements, returned to Old Thana Road with 12 armed men. With their assistance and that of C.P.I., Tikale 26 Muslim rioters were arrested and some weapons seized from them. According to the police officers, these weapons were three spears, five iron bars and eleven lathis. The police officers also noticed six seriously injured processionists lying on the road and in gutters. They were sent to the Bhiwandi Municipal Dispensary along with P.S.I., K. N. Patil. Two of these injured persons, namely, Prabhakar Laxman Ambre and Parashram Hari Jadhav, died on the way to the Thana Civil Hospital. One of the injured who was attacked with a sword, namely, Dhau Govind Gole (N.H.W. 14), had to remain in the Thana Civil Hospital upto 13th July 1970 and his right arm had to be amputated. After removing them to the Bhiwandi Municipal Dispensary, P.S.I., K. H. Patil took the 26 arrested Muslims to the Town Police Station and came back to Old Thana Road and assisted in the fire-fighting operations at Old Thana Road. Dy.S.P., Diwate has deposed that when the 26 Muslim rioters were arrested, there were no processionists near that place. The arrested persons were made to sit on the 'ota' of Safco Gas Company. Diwate then looked around him to see what the situation was like. From where he was, Diwate could see down Old Thana Road only upto the corner of the

lane which goes towards Kumbhar Alli. He did not see any processionists on that stretch of the road. He also saw Ishaq Bajewala's house, the shops adjoining it and Abdul Latif Jairoomi's house on the opposite side of the road on fire. He also noticed an Ambassador car lying with its rear seat burning. A person came out from Hidayatullah Manzil and extinguished the fire to the seat of the car. After the arrested persons were taken away, Diwate walked towards Ishaq Bajewala's house and saw a damaged tonga lying near it. He also saw on the road between Keshar Baug and Santosh Lunch Home some police constables chasing the processionists who were stoning the Muslims gathered in the lane which leads to the Shakarsha Mosque [P.W. 66/1(16)/1108(8-10), 42/1128, 90/1152; P.W. 36/1(4)/844(4), 20/852, 22-3/853-4; P.W. 35/1(2)/834(3), 10-1/841; P.W. 32/1(3)/575(2), 7/578; N.H.W. 14/1-8/1871-4; P.W. 4/142/662-3; P.W. 35/1(2)/834(2)].

40.246 Here was a violent Muslim mob bent on attacking Hindus. There was thus danger to life and in spite of the fire twice opened earlier, the situation was not coming under control. The Police were, therefore, justified in resorting to opening fire.

The arson to Ishaq Bajewala's house

40.247 It is the case of the Muslim parties that if the assault on Shakeel Kazi was not the first incident of the disturbances, then it was the arson to Ishaq Bajewala's house, namely, house No. 192 situate at the junction of Keshar Baug and the lane which leads to Kumbhar Alli on Old Thana Road. In support of this case, they have relied upon the evidence of Mohamed Hussain Shaikh, the Fire Brigade Inspector of the Bhiwandi-Nizampur Municipal Council (C.W. 37), and the entry made by him in the Accident Diary of the Bhiwandi Fire Station (Ex. No. 88) according to which, a telephone call was received at the Fire Station at 5-15 p.m. from Abdul Latif Jairoomi (the deponent of affidavit No. 279) about the arson to Ishaq Bajewala's house. If this case is correct, the incident in question happened in the presence of Dy.S.P., Diwate who was waiting at Keshar Baug for the rest of the procession to arrive and would imply that Diwate stayed there watching this incident and took no steps to prevent it, but instead when the rioting spread to other parts of Old Thana Road he rushed down Old Thana Road to deal with the Muslim rioters. This would be wholly incompatible with what we have come to learn about Diwate in the course of the evidence. Leaving aside this inherent improbability in the story, we will now turn to the evidence of the Muslim witnesses who have deposed about the disturbances at Old Thana Road to test the correctness of the time alleged in the said entry and whether in the sequence of events this act of arson was the first.

40.248 The power-loom factory of Ishaq Bajewala's nephew Mohamed Idris Peer Mohamed (B.R.W. 24/1-4/1502-4) was situate in Ishaq Bajewala's house, his residence being in the adjacent house

No. 110. According to Mohamed Idris, the procession arrived at Keshar Baug at about 5 p.m. or 5-30 p.m. and halted there. These processionists were shouting obscene slogans. Some of them sat down on the 'ota' of a Muslim house. After about 15 minutes some whistles were blown and there was a rush of other processionists from the southern side of Old Thana Road. Apprehending trouble, this witness, who was at that time in his factory, went to his residence and locked himself in. When he came out after some time, he found that his factory, that is, Ishaq Bajewala's house, 5 shops in front of his factory, 3 bangle shops, a watch-maker's shop and a hotel were on fire, and a tonga was lying damaged on the road with one of its horses dead as a result of injuries received in the stone-throwing. The Executive Magistrates and District Police Officers have relied upon a complaint filed by this witness on May 20, 1970 (Ex. P 493) according to which when the stone-throwing started at about 5-30 p.m., he, his wife and children ran away to Relief Camp No. 27 after locking his house and returned only at about 7 a.m. on May 12, 1970 when he found his house, factory and the other shops burnt. The said complaint concluded by stating that between 5-30 p.m. on May 7, 1970 and 7 a.m. on May 12, 1970, rioters had burnt down his house and factory and caused loss to him. When the aforesaid statements in his complaint were put to him in cross-examination he deposed that the police officer who had recorded the police statement did not correctly take down what was stated and that the police statement was not read out to him though he had signed it, his signature being in Urdu while the said complaint was taken down in Marathi. He further deposed that Camp No. 27 was housed in Ganni Compound on Old Market Road and that he and his family stayed in the safety of their house till about 7 or 7-30 p.m. and then went to Ganni Compound. He has further pointed out that in order to reach Ganni Compound one would have to cross Old Thana Road and if at about 5-30 p.m., when the disturbances had broken out on that road, his wife, three children, who were then aged 5, 3 and 1 respectively, and himself had attempted to cross that road, they would either have not been alive today or would have been seriously injured. This explanation is convincing. One would hardly expect a man to take his wife and three small children through the thick of the riots when, according to the Police, at that time there was a hail of stones and acid-bulbs and the Police had to open fire. Any man with some sense in him would in such circumstances prefer to stay in the safety of his house till things had quietened down. It is clear that like some other complaints Mohamed Idris' complaint also records not what he himself had stated, but what the officer taking down the complaint wanted to record.

40.249 Taking the earliest point of time when the procession reached Keshar Baug according to Mohamed Idris, namely 5 p.m., the sequence of events according to his evidence is that after reaching Keshar Baug, the processionists halted there, some of them sat down

on the 'ota' of a Muslim house and about 15 minutes thereafter, Mohamed Idris heard the sound of whistles and there was a rush of other processionists from the southern side of Old Thana Road, and thereupon he locked himself up in his house and it was only when he came out that he saw his factory and other shops on fire. Thus, the act of arson to his factory could have only taken place during the intervening period between his locking himself up in his house on seeing the rush of processionists from the southern side of Old Thana Road and his coming out of the house some time thereafter to see what had happened. This would be almost half an hour, if not more, after 5 p.m. The southern side of Old Thana Road referred to by Mohamed Idris is that stretch of Old Thana Road between Keshar Baug and the junction of Bhusar Mohalla and Old Thana Road. The police whistles which Mohamed Idris heard came from that side of the road. These police whistles could only have been blown if some trouble had taken place there and the policemen at that spot wanted other policemen to come to their help. The evidence of Mohamed Idris would therefore show that so far as Old Thana Road is concerned, the first incident was not the arson to Ishaq Bajewala's house, but some trouble which took place between Keshar Baug and the junction of Bhusar Mohalla and Old Thana Road, and that the arson to Ishaq Bajewala's house did not take place at 5-15 p.m., but took place some time thereafter.

40.250 The sequence of events as deposed to by Mehmood Abdul Rehman (B.R.W. 25/1-3/1505-6), the owner of the tonga which was damaged in the disturbances and who resided across the road from Mohamed Idris, was that the procession came near his house at about 5-30 p.m. and the processionists first set fire to Abdul Gafoor's bangle shop and then to the factory of Mohamed Idris situate in Ishaq Bajewala's house and thereafter damaged and set his tonga on fire and indulged in stone-throwing in which one of his two horses tethered in the open place of the road was killed and the other was injured and died some days later. Thus, according to this witness, the disturbances commenced near his house after 5-30 p.m. and the first act of arson was to Abdul Gafoor's bangle shop and not to Ishaq Bajewala's house.

40.251 The sequence of events deposed to by Nawab Husain Ahmed Husain (B.R.W. 31/1-3/1520-3) residing in Bolinjkar Chawl, at Keshar Baug, was that the procession reached Keshar Baug at about 5-15 p.m. or 5-30 p.m., the processionists behaving in a very indecent manner and shouting very obscene and abusive slogans and that thereafter there was a rush from behind them and six shops in front of his house set on fire and that fire was thereafter set to the house of his neighbour Fatimabai Abdul Latif (B.R.W. 54) and that thereafter a tonga was damaged and set on fire and thereafter fire was set to the factory of Mohamed Idris. Very much the same sequence was deposed to by Fatimabai Abdul Latif (B.R.W. 54/1-3/1584-7). Thus, according to both these witnesses the arson to Ishaq Bajewala's

house was not the first incident of the disturbances which took place at Old Thana Road, nor did this act of arson take place at 5-15 p.m.

40.252 According to the said entry made by Fire Brigade Inspector Shaikh in the Accident Diary of the Bhiwandi Fire Station (Ex. No. 88) the telephone call about the arson to Ishaq Bajewala's house was made by Abdul Latif Jairoomi. Abdul Latif Jairoomi has filed an affidavit (affidavit No. 279) in which he has alleged that at about 5-15 p.m. he noticed that the house of Ishaq Bajewala, at a distance of about 150 yards from his house, had been set on fire by the processionists and that he thereupon telephoned to the Fire Station from the house of Mohamed Jafar Ahmed (B.R.W. 30) that Ishaq Bajewala's house was on fire. After making the telephone call he returned to the burning house and saw S.P., Bhave and took his permission to put out the fire to the said house and the other burning properties. He has further stated in his affidavit that as he was extinguishing these fires he learnt that his own house, being house No. 71 on Old Thana Road, was set on fire. He again went to telephone to the Fire Station from Hidayatullah Manzil, but could not enter it as some of the processionists were trying to break open its doors which were closed from inside. He then went to his house and found that it was completely engulfed in flames. Abdul Latiff Jairoomi has not stepped into the witness-box and has not subjected himself to cross-examination. This very fact would disentitle his affidavit from being taken into consideration unless, as mentioned in Chapter 5 (paragraph 5.25), it contained admissions against the case of the Muslim parties. However, since it is he who is supposed to have played so important a role in communicating to the Fire Brigade Station the so-called first incident of the disturbances, it is necessary to deal with his affidavit and see whether there is any substance in the allegations made by him.

40.253 We will first see whether Mohamed Jafar Ahmed (B.R.W. 30/1-3/1518-20) corroborates Abdul Latif Jairoomi in his allegation that he made the telephone call to the Fire Station from Mohamed Jafar Ahmed's residence. Mohamed Jafar Ahmed resided in house No. 183 on Old Thana Road opposite Hidayatullah Manzil. There is no mention either in his affidavit or in his evidence of any telephone call about the arson to Ishaq Bajewala's house made to the Fire Station by Abdul Latif Jairoomi or any other person. Nor does the sequence of events deposed to by him bear out Abdul Latif Jairoomi in his allegation that the arson to Ishaq Bajewala's house was the first incident on Old Thana Road. The sequence deposed to by Mohamed Jafar Ahmed was that first stones and other missiles were thrown by the processionists at Muslim houses followed by the attempt to break open the doors and windows of Hidayatullah Manzil; thereafter Gulam Rasul Hidayatullah's car was set on fire followed by a free fight between the processionists and the Muslims and then the arson to two Muslim houses, one of them being Ishaq Bajewala's house, was committed.

40.254 Even the said entry in the Accident Diary does not completely support Abdul Latif Jairoomi though it mentions that the telephonic message was from him. In the said entry the telephone number from which the said telephone call was made, was first shown as "No. 147 Thana Road" the number "147" being then struck out and above it the number "341" written. According to Fire Brigade Inspector Shaikh this alteration was made because at the site of the fire somebody told him that the telephone call had come from telephone number 341 (C.W. 37/4/3484-5). The telephone directory for Bhiwandi showed that in May 1970 telephone number 147 was of "Caravan Textiles, 165 Thana Road", of which the proprietor at the relevant time was Gulam Rasul Hidayatullah and that the telephone number 341 was of "Abdul Gaffar Ahmed Weaving Factory, Thana Road".

40.255 It is thus clear that Abdul Latif Jairoomi has filed a false affidavit for the purpose of supporting the case of the Muslim parties that the first incident on Old Thana Road was the arson to Ishaq Bajewala's house and that it took place at about 5-15 p.m.

40.256 Neither the entry made by Shaikh in the Accident Diary (which is actually a table diary for 1970) nor Shaikh's evidence (C.W. 37/1-31/3480-3502, 32-4/3519-22) inspires any confidence. As a matter of fact, none of the records of the Fire Brigade inspire any confidence at all. The Bhiwandi Fire Brigade maintained a Fire Report Book in which the details of fires attended to by the Fire Brigade were required to be entered. The Fire Report Book for the relevant period did not contain any report in respect of several fires which had taken place after January 7, 1970 and which were mentioned in the Accident Diary. The explanation which Shaikh gave for this omission was that these were merely minor fires and therefore were not entered in the Fire Report Book. A number of fires so omitted from the Fire Report Book were put to him in cross-examination. These were fires where the loss suffered ranged from Rs. 50 to Rs. 1,00,000. It was also pointed out to him in cross-examination that apart from reports about fires where the loss suffered was only Rs. 50, false fire calls, that is, fire calls on which the fire-engine went out but found that there was no fire, had also been entered in the Fire Report Book. Shaikh thereupon admitted that the aforesaid reason given by him for not making any report after January 7, 1970 was not correct and he was unable to give any other reason for not making these reports. The next day he volunteered that he did not write the fire reports after January 7, 1970 because he was on leave from November 20, 1969 to February 20, 1970, a statement immediately falsified by it being put to him and he admitting that the fire reports in respect of the fires which took place from November 20, 1969 to January 7, 1970 were in his own handwriting. He then changed his explanation to say that he returned to Bhiwandi in the first week of January 1970 and the senior fireman, who did not know how to write English, asked him to write out the fire reports for the period

commencing from November 1969, but did not ask him to write out the reports for the period commencing from January 8, 1970. He changed this explanation thereafter to say that the reports for the period commencing from February 20, 1970 were not written by him in the Fire Report Book because he did not get the necessary particulars. It transpired from his own evidence that he had himself gone on fire-fighting operations on and from February 20, 1970 and that most of the entries relating to these fires in the Accident Diary were made by him.

40.257 Shaikh deposed that the practice of the Bhiwandi Fire Brigade was that when a telephone call was received at the Fire Station giving intimation of a fire, the particulars of that call would be taken down on a rough sheet of paper and after returning from the fire-fighting operation, the call would be entered in a book called the Occurrence Book which remained at the Fire Station. The Occurrence Book for the period from April 29, 1969 to September 13, 1970, which would contain the entries for May 7, 1970 was, however, not forthcoming and according to Shaikh it was lost. This was the only Occurrence Book of the Bhiwandi Fire Brigade which was missing. According to Shaikh, the first time he went to the Fire Station after May 7, 1970 was on June 14, 1970 and it was on that day that he discovered the loss of the said Occurrence Book. The explanation he gave for his absence from the Fire Station during this period was that in the disturbances he was injured by a burning beam falling on his head and could not attend duty for about a week and that he reported to duty on May 16, 1970 at the Municipal office and was asked to work there. His explanation for not reporting at the Fire Station was that the situation in that area was very dangerous. He, however, had to admit that there were hardly any riots in Bhiwandi after May 9, 1970. The Accident Diary, however, throughout remained with him and though there were 10 to 12 peons in the Municipal Office he did not give it to any of them to take it to the Fire Station, nor handed it over to the Municipal President or to the Chief Officer or to any other Municipal Officer to return it to the Fire Brigade Station. His story that after the disturbances he, for the first time, went to the Fire Brigade Station on June 14, 1970 was totally falsified by the muster book kept at the Fire Brigade Station and in which he also used to mark his own attendance. The muster book showed his presence at the Fire Brigade Station for the first seven days of May 1970 as also on May 22 and 23, 1970 and again on June 8, 1970. In order to explain away this muster book he deposed that when he started attending at the Municipal Office instead of at the Fire Brigade Station he kept the muster book at the Municipal Office and used to mark in it the attendance of the staff including himself. Immediately thereafter he changed this explanation and said that after the riots he was not marking the muster book but the head clerk at the Municipal Office was doing so and that on and from May 15, 1970 (the day from which according to him he started attending the Municipal Office) the

head clerk refused to mark him present. He admitted that he had not complained about this alleged behaviour of the head clerk to anyone. This explanation cannot be believed.

40.258 Shaikh alleged that he had himself taken the telephone call of Abdul Latif Jairoomi and written down the telephone number on a rough piece of paper and that at the site of the fire he wrote it out from memory in the Accident Diary and that Abdul Latif Jairoomi, who was present at that time, read the entry after Shaikh had written it out and told him that he had written the wrong telephone number and that the correct number was '341' and that Shaikh took it that he must have made a mistake and, therefore, changed the number from '147' to '341'. Though he admitted that he had made a mistake about the number of the telephone from which the call was made, he still persisted in saying that he had not made any mistake about the time when this call was received at the Fire Station and he persisted in this even when he was shown that in the complaint lodged by him at the Town Police Station on May 19, 1970 the time at which the call was made was mentioned as 5-20 p.m.

40.259 On July 18, 1970 Shaikh's statement was recorded by D.I., G. U. Kulkarni of the Special Investigation Squad. He admitted that he was at that time asked about the records maintained at the Fire Brigade Station and that he had told Kulkarni what these records were. The list of records set out in the said police statement, however, does not make any mention of the Occurrence Book. Obviously, Shaikh did not mention this Occurrence Book as he did not want to produce it. He alleged that he had submitted a report about the loss of the Occurrence Book and in support of this allegation he relied upon an entry dated June 23, 1970 in the despatch book of the Bhiwandi Fire Brigade Station (Ex. No. 95). The entries made in the said despatch book on June 23, 1970 showed four reports as having been submitted by Shaikh on that day, namely, (1) a report relating to repairs to the doors of his residential quarters, (2) a report relating to repairs to Fire Engine No. MHT 624, which report was called for by the Police, (3) a report relating to the mischief alleged by him to have been played against him by the staff, and (4) a report relating to the loss of the Occurrence Book. The despatch of the first two reports is shown in separate entries, but the despatch of the third and fourth reports, namely, the reports about the mischief by the staff and the loss of the Occurrence Book, are not shown in separate entries, but only in one entry, the entry relating to the report of the loss of the Occurrence Book starting in the same line in which the entry relating to the report about the mischief by the staff ends as if these two were one report only. Shaikh's explanation was that this was done because there was some space at the end of the third entry, that entry, according to him, being the last entry on that page. It was pointed out to him that there were eight other lines below the entry in question which were taken up by entries made on June 24, 1970 and that, therefore, when he made the entry relating to the report of the loss of

the Occurrence Book there would have been eight blank lines for him to write on. The only explanation he could then give was that at that time he was in a hurry. The conclusion is obvious. He has suppressed the Occurrence Book lest it should falsify his case that the telephone call in question was received at 5-15 p.m. and, in order to substantiate his case and to show that the Occurrence Book was lost, he subsequently tampered with the entry in the despatch book to make out that he had submitted a report about the alleged loss of the Occurrence Book.

40.260 . There are many other contradictions and discrepancies in the evidence of this witness, but it is unnecessary to go into them. It is clear that this witness has stated the time as 5-15 p.m. and wrote that time in the said entry in the Accident Diary in order to support the case of the Muslim parties and that he has suppressed the Occurrence Book because it would contradict the time mentioned by him in the said entry. It is also clear that he did not write out the entry in the Accident Diary on the date of the fire, as claimed by him but wrote it out much later in order to shape its contents as the Muslim parties desired. Other engine drivers and firemen of the Bhiwandi Fire Brigade were also summoned by the Commission and examined as witnesses. Some of them have alleged that the telephone call in question was received at 5-15 p.m. The evidence of these witnesses on this point is equally unsatisfactory and it is unnecessary to deal with it in detail. Suffice it to say that their allegation that the telephone call was received at 5-15 p.m. cannot be believed.

40.261 So far as the police evidence is concerned, Dy.S.P., Diwate has deposed that after fire was opened for the third time on Old Thana Road and the 26 Muslims were arrested and made to sit on the 'ota' of Safoo Gas Company, he looked round to see what the situation was like and noticed that Ishaq Bajewala's house was on fire (P.W. 66/90/1153). P.S.I., K. N. Patil has stated that he had not noticed this building on fire when he took the 26 arrested Muslims to the Town Police Station, but saw the fire to it when he returned to Old Thana Road after leaving the arrested Muslims at the Town Police Station (P.W. 35/5/838). As we have seen in paragraph 40.188, on seeing the gap behind the processionists who had reached Keshar Baug. C.P.I., Tikale asked Nimbalkar to walk back to ascertain the cause. As Nimbalkar walked down Old Thana Road he found stones, soda-water bottles and acid-bulbs being thrown at the processionists from the road and from the houses. He began dispersing the Muslims and pushing the processionists ahead, in the process going upto the Old Fish Market. After some time he returned to Old Thana Road when he noticed two Muslim factories on fire, one of which was the factory of Mohamed Idris situate in Ishaq Bajewala's house [P.W. 55/1(3)/977(2), 6/980]. When S.P., Bhawe came to Old Thana Road near Ishaq Bajewala's house at about 6-10 p.m. he saw that house and two other buildings on fire. He thereupon sent a wireless message to the Control Room to send a fire-engine. This message was received at the

Control Room at 6-11 p.m. (P.W. 4/72/599, 74/600; Ex. P 367, entry No. 56).

40.262 The evidence of the police officers who were at Keshar Baug when the disturbances broke out, namely, Dy.S.P. Diwate and P.S.Is., K. N. Patil and J. S. Nimbalkar, clearly show that it was after the Police had dealt with the disturbances on the southern side of Old Thana Road, including the rioting near Hidayatullah Manzil, and after fire was opened for the third time on Old Thana Road and Diwate had arrested the 26 Muslims that they for the first time noticed Ishaq Bajewala's house and other properties on fire and that none of these properties were on fire when they set out to ascertain the cause of the gap behind the processionists who had reached Keshar Baug or while they were dealing with the rioting on the southern side of Old Thana Road. Their evidence is corroborated by what the other Muslim witnesses above referred to have deposed. There is thus no basis for the allegation that the arson to Ishaq Bajewala's house was the first incident of the disturbances or that it was even the first incident on Old Thana Road or that this incident took place at about 5-15 p.m. Evidence clearly shows that it took place some time after 5-30 p.m.

How arson on Old Thana Road was committed

40.263 A number of Muslim witnesses have alleged that bottles containing inflammable liquid, either petrol or kerosene, used in committing arson to Muslim properties, were carried in the truck in which the float was. These witnesses are Mohamed Idris Peer Mohamed (B.R.W. 24), Mehmood Abdul Rehman (B.R.W. 25), Ameen Suleman Shaikh (B.R.W. 26), Mohamed Jafar Ahmed (B.R.W. 30), Nawab Hussain Ahmed Hussain (B.R.W. 31), Mariam Mohamed Nazir (B.R.W. 33), and Fatimabai Abdul Latif (B.R.W. 54).

40.264 It is not possible to accept this part of the evidence of the above witnesses, for, as mentioned earlier in paragraph 40.53, Inspector Pradhan had thoroughly searched the truck and had not found any kerosene or petrol bottles or weapons or missiles or other incriminating articles in it. The question then arises, how were so many properties at Bhusar Mohalla and Old Thana Road set on fire in the absence of any incendiary material? S.P., Bhave has given an explanation of how these fires could have been caused. He has deposed (P.W. 4/145/665-6) :

"The first incident of arson which I saw was to clothes in Bhiwandi Washing Company at 5-45 p.m. Thereafter I saw the power-loom factory in Ishaq Bajewala's house on fire, then a dyeing factory in which some clothes were on fire and thereafter another power-loom factory. I also saw a car on fire. Clothes could be set fire to with a match-stick. In a power-loom factory there are hanging cotton threads which form a web. These webs could be easily set fire to by a match-stick. I have even seen fires caused to power-loom factories by short-circuiting. So far as the car is concerned, I saw the seat of the car on fire and smoke was coming out from inside the car. The seat cover could have been slit open

and the stuffing set on fire with a match-stick. Fire thus started to power-loom factories and shops would spread and set the building in which these articles were as also the adjoining buildings on fire”.

40.265 From the evidence it is quite clear that the first act of arson was to the Bhiwandi Washing Company. Clothes taken out from it and set on fire in the manner deposed to by S.P., Bhavde could easily have been tied to lathis and sticks and then lathis and sticks used as flaming torches to set fire to other properties and once a match or one of these torches were applied to the hanging cotton threads of a power-loom factory, the factory would catch fire in no time, and the fire would spread to the adjoining properties. The above Muslim witnesses have undoubtedly suffered in the disturbances, but at the same time they are trying to advance the case of the parties calling them in evidence. In this context one must also remember that there was a young girl in the truck who had taken the role of the daughter-in-law of the Subedar of Kalyan. For the truck to have stood right in the midst of the most violent disturbances would have been to expose her to the danger of being seriously hurt which those with her would not have wanted.

40.266 The possibility that some of the processionists had brought kerosene bottles with them cannot, however, be ruled out. Further, when the disturbances broke out kerosene bottles or tins could have been fetched from some houses in Bhoiwada and utilized in committing arson.

Should tear gas have been used on Old Thana Road ?

40.267 There was half a Gas Squad with the Striking Force at the head of the procession. No tear gas shells were, however, fired, when the disturbances broke out on Old Thana Road. It was suggested to Dy.S.P., Diwate who was in charge of the Striking Force, by Mr. Chaphekar, Counsel for the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena, that it was a default on his part not to avail himself of this Gas Squad. In reply, Diwate has given reasons why he did not think it necessary to direct tear gas to be used when the disturbances broke out. He has pointed out that there were thousands of processionists on the road and though some of them were rioting and attacking Muslim houses and properties and fighting with the Muslims, there were many more who were running helter-skelter either out of fright or to seek shelter. Had the Police fired tear-gas shells, these processionists would have suffered the most (P.W. 66/53/1133). There were also police pickets posted at different points on this road, who too would have been engulfed in the clouds of tear gas and would have been immobilized and unable to deal with the disturbances. In the circumstances, in my opinion, it was not feasible to resort to tear gas.

The time when the disturbances commenced

40.268 As seen while discussing the evidence of the witnesses above referred to, there is no unanimity about the time when the

disturbances commenced even amongst the witnesses belonging to the same group. Normally it would have made no difference whether the disturbances commenced at 5 p.m. or at 5-15 p.m. or at 5-30 p.m. In this particular case, however, the importance of the time of the commencement of the disturbances lies in the allegation of the Hindu parties and the Special Investigation Squad that in pursuance of a conspiracy entered into by the Muslims, there were simultaneous attacks by the Muslims at 5-30 p.m. on the procession in the Bhusar Mohalla-Old Thana Road locality and on the Hindus and Hindu properties in other localities. The question of time of the commencement of the disturbances, therefore, assumes considerable importance.

40.269 The oral evidence by itself does not enable one to arrive at a satisfactory conclusion. Some of the witnesses have obviously told a lie, others have been indulging in guess-work and others have admittedly mentioned an approximate time. It would have been difficult for most people, if not almost everyone, when the disturbances broke out to stop to look at the time. There is, however, some contemporaneous documentary evidence which throws light on the question when the disturbances commenced. The crash wireless message (Ex. G 27) sent by D.M., Capoor to the Home Secretary, which he wrote out at 9-35 p.m., mentions the time when the disturbances broke out as 5-15 p.m. This time was mentioned in the said wireless message before there was time for theories to intervene and second thoughts to come into play. The wireless messages sent to the Control Room by the police wireless jeep, Apple Mobile, which was following the procession, also throw considerable light on the question in issue. As shown by entries Nos. 32 and 33 of the Control Room Diary for May 7, 1970 (Ex. P 367), at 5-18 p.m. Apple Mobile was at Dargah Road Naka and at 5-31 p.m. it gave information to the Control Room that heavy stone-throwing was taking place on Old Thana Road and asked for reinforcements to be sent there. Dargah Road Naka is the junction of Dargah Road, Sutar Alli and Bhoiwada. If at 5-18 p.m. Apple Mobile was at Dargah Road Naka, the rest of the procession had already passed by that spot. We have already seen in evidence that the processionists were lingering, particularly while passing through Muslim localities, and that it took the procession almost an hour to pass by the Saudagar Mohalla Jumma Mosque. Thus, if at about 5-18 p.m. the tail-end of the procession was in Bhoiwada, the head of the procession must have reached Keshar Baug. This conclusion is supported by the evidence of the two Executive Magistrates, S.D.M., Date and Taluka Magistrate Sane, who have deposed that while they were waiting on Old Thana Road near Bangad Galli, at about 5-15 p.m. a part of the procession came there and that on observing a gap behind these processionists they walked down Old Thana Road and found processionists running helter-skelter and shouting that stones had been thrown on the procession and that on coming to the junction of Bhusar Mohalla and Old Thana Road at about 5-35 p.m. or 5-45 p.m. they saw processionists looting Muslim shops

at that place. That the processionists were looting Muslim shops at this junction at about this time is also borne out by the evidence of D.I.G. (B.R.), Gokhale who along with D.M., Capoor dispersed these looters. Gokhale has deposed that after they had dispersed these Hindu rioters, at about 5-45 p.m. he learnt that arson had commenced in Sutar Alli.

40.270 The evidence leaves no doubt that the disturbances commenced near the Old Fish Market in Bhusar Mohalla and from there spread to the rest of Bhusar Mohalla and to Old Thana Road. Some time must elapse for the disturbances to spread from the Old Fish Market to other parts of this locality. It is clear on the evidence that the disturbances did not start all over Old Thana Road and Bhusar Mohalla at the same time. When S.P., Bhave came near Latif Manzil at about 5-30 p.m. he found stone-throwing being indulged in by the Muslims. It was at about the same time that the looting of Muslim shops at the junction of Bhusar Mohalla and Old Thana Road had started. The altercation at the Old Fish Market followed by the stone-throwing on the processionists there was, therefore, prior to this point of time. Dhamankar who was standing opposite Yusuf Chivane's house left it and went through by-lanes to the Old Fish Market when he heard a commotion taking place at the Old Fish Market. Till then the disturbances had not started near Yusuf Chivane's house. It is only when the clash near the Old Fish Market assumed some proportion and the news of it spread that riots broke out in other parts of Bhusar Mohalla and on Old Thana Road. Head Constable Manjrekar's report (Ex. G 181) mentions the time when the disturbances started as "18 to 18-15 hrs.". Since no witness has deposed that the disturbances started either at 6 p.m. or 6-15 p.m. and since according to what Manjrekar has deposed in the witness-box the disturbances commenced at about 5-30 p.m., it is obvious that the time of "18 to 18-15 hrs." mentioned in his said report was an obvious slip of the pen for "17 to 17.15 hrs.". Thus, according to Head Constable Manjrekar's said report also, the disturbances commenced between 5 p.m. and 5-15 p.m.

40.271 For the reasons stated above I, therefore, hold that the disturbances first commenced at Bhusar Mohalla near the Old Fish Market a little before 5-15 p.m.

The start of the disturbances—conclusions

40.272 The evidence discussed above has clearly established facts which leave no doubt as to how the disturbances started in the Bhusar Mohalla-Old Thana Road locality. These facts are—

- (1) The gaps between different parts of the procession had greatly widened when the procession reached the Bhusar Mohalla-Old Thana Road locality. A part of the head of the procession was at Keshar Baug on Old Thana Road and there was a wide gap, behind it; the remaining part of the head of the procession was between Hidayatullah Manzil and the junction of Bhusar Mohalla and Old Thana Road; a section of the

central part of the procession was at the Old Fish Market in Bhusar Mohalla; another section of this central part, consisting particularly of processionists from Thange Alli, had squatted in Bhusar Mohalla near Yusuf Chivane's house shouting provocative and abusive anti-Muslim slogans, encouraged in this by Baliram More, the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena; the tail-end of the procession was still in Bhoiwada.

- (2) There were some Muslim bystanders in Bhusar Mohalla standing on the 'ota' of Yusuf Chivane's house and on the stretch of the road between Asmat Hotel at the junction of Old Market Road and Bhusar Mohalla, and the junction of Bhusar Mohalla and Old Thana Road, and in the lanes and by-lanes which branch off from the said part of Bhusar Mohalla. There were, however, no Muslim bystanders in the lane which leads from Bhusar Mohalla to Latif Manzil, or from Latif Manzil to the Old Market Road, or from the Old Market Road to the Old Fish Market.
- (3) The shouting of provocative, abusive and obscene anti-Muslim slogans was the most intense in the Bhusar Mohalla-Old Thana Road locality, and so was the brandishing of fists and the making of indecent gestures at the Muslims.
- (4) There was excessive throwing of 'gural' by the processionists not only on one another, but in the air, and on the bystanders who were all Muslims.
- (5) The police officers and policemen on duty with the procession or posted on picket duty at various points in and around Bhusar Mohalla and Old Thana Road made no attempt to check the misbehaviour of the processionists.
- (6) The disturbances commenced in Bhusar Mohalla near the Old Fish Market. As a result of the provocation given by the offensive behaviour of the processionists and the provocative and abusive anti-Muslim slogans shouted by them, an altercation took place near the Old Fish Market between some processionists and some Muslim bystanders. In the course of this exchange of words, some of the Muslim bystanders started throwing stones on the processionists. The processionists immediately started pelting stones at the Muslims and their houses, shops and factories, and attacked the Muslims on the road with the lathis which they had brought with them with Bhagwa flags tied to them, and a free fight took place between the processionists and the Muslims. Other Muslims who had come to watch the procession, and who were in the lanes and by-lanes, or had collected there on learning what was happening during the progress of the procession, as also some of the residents of the locality came out and joined in the fight.
- (7) Within a short time the disturbances spread to the rest of Bhusar Mohalla and to Old Thana Road.

- (8) The processionists attacked Muslim properties and broke into and looted and set fire to several of them.
- (9) The weapons and missiles used by the Muslims were stones, brick-bats, soda-water bottles, lathis and some acid-bulbs. A few Muslims were carrying spears and at least one Muslim rioter had a sword. Stones, brick-bats and some acid-bulbs were also thrown on the processionists from some houses on Old Thana Road.
- (10) The weapons used by the processionists were the lathis which they were carrying with Bhagwa flags tied to them.
- (11) Arson was committed by the processionists by setting the clothes taken out from the Bhiwandi Washing Company on fire by applying lighted matches to them and then tying the burning clothes to sticks and lathis and using them as torches to set fire to other properties. Muslim power-loom factories were set on fire by applying lighted matches and lighted torches to hanging cotton threads. Probably some of the processionists had brought kerosene with them which they sprinkled on Muslim properties and then the properties set on fire.
- (12) Neither the incident at Yusuf Chivane's house nor the arson to Ishaq Bajewala's house was the first incident of the disturbances.
- (13) The disturbances commenced between 5 p.m. and 5-15 p.m.

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CHAPTER 41
**THE COURSE OF THE DISTURBANCES—A SUMMARY
OF INCIDENTS**

CONTENTS

Paragraph

- 41.1 Prefatory observations.
- 41.5 The incidents of May 7, 1970.
- 41.6 The incidents of May 8, 1970.
- 41.7 The incidents of May 9, 1970.
- 41.8 The incidents of May 10, 1970.
- 41.9 The incidents of May 11, 1970.
- 41.10 The incidents of May 12, 1970.
- 41.11 The incidents of May 13, 1970.
- 41.12 The subsequent incidents.

CHAPTER 41

THE COURSE OF THE DISTURBANCES—A SUMMARY OF INCIDENTS

Prefatory observations

41.1 In order to give an overall picture of the disturbances it is necessary to set out a brief summary of the incidents which took place during the course of these disturbances. It is, however, neither possible nor necessary to deal with each and every incident which took place in the course of the disturbances. This Commission is neither concerned with every house and factory set on fire, every shop broken open and looted and every individual assaulted or murdered nor with the identity of the rioters. What clause (a) of the Terms of Reference requires the Commission to do is to present a broad picture of the course of the disturbances. Those incidents in respect of which any party has made allegations, the incidents of police firings and certain other incidents important for the purpose of deciding the questions which arise in this Inquiry will, however, be dealt with in detail in subsequent chapters.

41.2 Apart from those incidents in respect of which evidence has been led before the Commission, there is no direct evidence before the Commission in respect of the other incidents, the evidence of these incidents consisting only of the entries in the Control Room Diaries and the Riot Diaries of various police stations, the F.I.Rs., the police statements and the statements of incidents Exhibits P 18, P 19 and P 658 filed by S.P., Bhave and the statement of incidents (Ex. P 1517) filed by Dy.S.P., Diwate.

41.3 The figures of loss of property mentioned in the summary are those given in the said statements Exhibits P 18, P 19 and P 658 filed by S.P., Bhave as these statements give the figures for each day of the disturbances, while the assessment made by the Collectorate gives only the total figures of loss. As mentioned in Chapter 39, the total figures of loss according to the assessment made by the Collectorate differ from those estimated by the District Police.

41.4 In any disturbances of this magnitude there are bound to be some incidents which have not come on the record and of which the Police and the parties are unaware. Most of them would be minor incidents in respect of which the aggrieved person might not have bothered to file any complaint with the Police or claim compensation from the authorities. Where an entire hutment colony is burnt down it is equally not possible to know or to find out the number of huts which were in that colony. It is also not always

possible to ascertain the exact number of properties which were affected in an incident and it is even more difficult, if not well nigh impossible, to find out the exact number of persons who died or were injured in each incident. This summary is, therefore, mostly confined to the incidents of arson and looting and of police firings, and even then it does not claim to be a complete summary.

The incidents of May 7, 1970

41.5 Appendix I to this Report is a sketch of Bhiwandi and Appendix J is a sketch of Khoni Village showing the incidents which took place in Bhiwandi and Khoni respectively on May 7, 1970. The incidents which took place on May 7, 1970 are set out below localitywise :

- (1) *Bhusar Mohalla and Old Thana Road*—The disturbances broke out between 5 p.m. and 5-15 p.m. near the Old Fish Market situate in Bhusar Mohalla near the junction of Bhusar Mohalla and Old Thana Road. When the Shiv Jayanti procession was passing by the Old Fish Market the provocative behaviour of the processionists led to an exchange of words between some of the processionists and some Muslims standing near the Old Fish Market. In the course of this altercation some of the Muslim bystanders started throwing stones at the processionists. The processionists immediately started pelting stones at the Muslims and their houses, shops and factories and attacked the Muslims with lathis which they were carrying with Bhagwa flags and baners tied to them and a free fight took place between the processionists and the Muslims. A number of Muslims and Hindus were injured. The processionists broke into some of the houses and shops and looted them. They also set fire to some Muslim properties, shops and factories. About 37 Muslim properties were attacked, out of which 22 were set on fire and the rest were damaged or looted. The window-panes of the Bangad Galli Moti Mosque were broken and the articles inside damaged. The stone-throwing was so severe that two tonga horses which were tethered in an open space on the road died in the stone-throwing. The Police opened fire thrice on Old Thana Road on Muslim rioters in which one Muslim died. The Police arrested 26 Muslims. Some officers including D.M., Capoor, Dy.S.P., Diwate and Inspector Pradhan and some policemen were injured.
- (2) *Kumbhar Alli and Bengalpura*—Some Hindu houses, a car and the Hanuman Temple were set on fire by the Muslims. The Police opened fire on Muslim rioters.
- (3) *Prabhu Alli*.—Two Muslim houses were set on fire and ten Muslim shops on the Vegetable Market Road were damaged. The Police opened fire in the air. Later in the night two Hindu houses were looted and one damaged.

- (4) *Bazar Peth*—In Bazar Peth 31 Muslim shops were looted and 29 out of them were damaged by the processionists. Three Hindu shops, which were interspersed amongst the Muslim shops, were also looted by the same mob. Later about 8 or 9 p.m. in the night another Muslim shop in Bazar Peth was broken open and burgled.
- (5) *Madarchalla*—A Muslim factory situated in Bazar Peth at the end of Wani Alli opposite Madarchalla and two Muslim houses were set on fire. The house of a Hindu very close to the Muslim factory caught fire and was burnt down.
- (6) *Habsan Alli*—In Habsan Alli 2 Hindu chawls and 8 Muslim properties were set on fire and 10 Hindu shops were looted. The Police opened fire twice on Muslim rioters.
- (7) *Sutar Alli and Hamal Wada*—In Sutar Alli and Hamal Wada some Hindu houses, some Muslim buildings and a Muslim power-loom factory rented to a Hindu were set on fire. The Police opened fire twice at Sutar Alli on Muslim rioters. A constable, who was escorting a fire-engine which was coming out of Sutar Alli to fill its water-tank, opened fire on persons who sought to obstruct the fire-engine and whose community could not be ascertained.
- (8) *Gauripada*—In Gauripada 95 Hindu houses were set on fire and 3 Hindu houses looted. A Muslim house was set on fire.
- (9) *Jaitanpura, Yakub Road and Lendi Bridge*—At Lendi Bridge a Hindu house and some Hindu huts were set on fire. At Jaitanpura and Yakub Road 35 Muslim properties were set on fire and 7 other Muslim properties were looted. Four Hindus were arrested at Lendi Bridge. The Police opened fire in Jaitanpura on Muslim rioters and arrested 17 Muslims. One Muslim died in this police firing.
- (10) *Kanheri*—Some Hindu Zopadpattis and 7 Muslim houses were burnt.
- (11) *Thange Alli*—Both the fire-engines of the Bhiwandi Fire Brigade were obstructed by Hindu rioters. Fire engine No. MHT 768 was also stoned by Hindu rioters as a result of which its wind-screen was broken. The Thange Alli Mosque was stoned, damaged and desecrated, and the articles inside the mosque damaged and some of them set on fire. The window-panes of the Thange Alli Bohari Mosque were broken and the articles inside the mosque damaged.
- (12) *The Bhiwandi-Karivali Road*—At the Bhiwandi-Karivali Road 9 Hindu houses were looted and 14 set on fire. Two Hindus returning from the procession to Karivali Village were fired upon near the burial ground by some Muslims. Both of them were injured and one of them died subsequently on reaching the village. He was cremated without the Police being informed. Four Muslim properties were burnt.

- (13) *Kap*—At Kap 3 Hindu houses were looted and one burnt near the S.T. stand. Eighteen Muslim houses were looted and 11 Muslim shops set on fire.
- (14) *Dargah Road*—At Dargah Road a Hindu house was burnt and a Hindu shop and 4 Hindu houses looted.
- (15) *Ghunghat Nagar*—In Ghunghat Nagar some Hindu houses were stoned and in an Urdu School some Hindus put up pictures of Hindu Gods and a Bhagwa flag.
- (16) *Panjrapole*—At Panjrapole some Hindu houses were set on fire and 40 Muslim properties were damaged.
- (17) *The Bombay-Agra Road*—In Jain Colony 11 Hindu houses were burnt and 3 looted. A mob, of which the community could not be ascertained, tried to break open a Government grain godown. The Police opened fire and dispersed the mob. Four Hindu huts were looted and four were burnt. The Police opened fire and arrested 18 Muslims. Eight other Hindu properties were burnt and 2 looted. The Police again opened fire and arrested 12 Muslims. Four Muslim shops were burnt. Later the Police opened fire on a Hindu mob.
- (18) *Vetalpada*—At Vetalpada 4 Hindu huts were looted and 4 were burnt. The Police opened fire on Muslim rioters and arrested 18 Muslims. Some Muslim houses were set on fire.
- (19) *Nizampura*—In Nizampura 17 Neo-Buddhist houses were broken open and looted as also a Buddha temple was also broken open and the statue of Lord Buddha desecrated and the pictures kept inside damaged. In Budhwada 14 other Hindu houses were looted and 17 burnt. Thirteen Muslim houses near Budhwada were damaged.
- (20) *Khadak*—At Khadak 4 Hindu properties and 4 Muslim properties were burnt. The fire-engine of the Bombay Fire Brigade was obstructed by some Hindus. The Police opened fire on Muslims who were trying to obstruct a fire-engine fighting fires to a Hindu timber-depot.
- (21) *The Bhiwandi-Kalyan Road*—On the Bhiwandi-Kalyan Road 5 Hindu houses were looted and one damaged. In Lahoti Compound 8 Muslim properties were damaged and 4 looted.
- (22) *Nadi Naka*—At Nadi Naka near the Bhiwandi-Ahmedabad Road 5 Muslim houses were burnt and a mile further away 2 Hindu houses were burnt and 1 looted.
- (23) *Khoni*—In Khoni village, in the Hindu locality of Tagarpada, a Hindu house and a Hindu grocery shop were looted and some Hindu houses set on fire. In the Muslim locality of Rasulabad the Rasulabad Mosque and 117 Muslim houses and huts were set on fire, 35 Muslim houses looted and 17 Muslims killed. An injured Muslim woman and a Muslim who was fired upon by the Hindus and injured died subsequently in the Thana Civil Hospital. A Bohri woman was abducted, taken into the nearby jungle and repeatedly raped.

- (24) *Police firings*—The Police opened fire on 19 occasions. In all 178 rounds were fired, out of which 13 misfired. Out of these 178 rounds 23 rounds were of .303 rifle, 75 rounds of .410 musket, 31 rounds of .455 revolver out of which 7 misfired, 43 rounds of .38 revolver out of which 6 misfired and 5 rounds of 9 mm. pistol.
- (25) *Casualties*—In the disturbances which took place on May 7, 1970 15 Hindus and 28 Muslims were killed. Out of the said 28 Muslims 17 died in Rasulabad. In the police firings 2 Muslims and a person whose community is not known were killed and 3 Muslims injured.
- (26) *Loss of property*—According to the estimate made by the District Police, Hindu properties in Bhiwandi of the value of Rs. 53,11,579 were burnt or damaged and of the value of Rs. 8,76,175 looted. Muslim properties in Bhiwandi of the value of Rs. 31,44,333 were burnt or damaged and of the value of Rs. 5,91,886 looted. In Khoni Hindu properties of the value of Rs. 2,22,592 were burnt or damaged and of the value of Rs. 41,880 looted, while Muslim properties of the value of Rs. 4,29,932 were burnt or damaged and of the value of Rs. 54,262 looted.
- (27) *Arrests*—The Police arrested 74 Muslims and 4 Hindus.

The incidents of May 8, 1970

41.6 Curfew was imposed from the midnight of May 7, 1970. Nonetheless the disturbances continued to rage in all their fury unabated for the greater part of May 8, 1970. Appendix K to this Report is a sketch of Bhiwandi showing the incidents which took place on May 8, 1970 while Appendix N is a combined sketch of Bhiwandi and the villages of Khoni and Nagaon showing the incidents which took place in these three places between May 7, 1970 and May 31, 1970. The incidents which took place on May 7, are set up below locality-wise :—

- (1) *Kanheri*—In Kanheri the Police opened fire twice on Muslim rioters and arrested 16 of them.
- (2) *Bazar Peth*—In Bazar Peth a Muslim shop and a Muslim hotel were damaged.
- (3) *Prabhu Alli*—In Prabhu Alli 2 Hindu shops were looted. The Police opened fire near the Telephone Exchange, on persons whose community could not be ascertained.
- (4) *Sutar Alli and Hamal Wada*—In Sutar Alli and Hamal Wada a Hindu house was broken open and looted.
- (5) *Habsan Alli*—In Habsan Alli the Police raided Samadia Building and Masjid Chawl, opened fire and arrested 86 Muslims. Some policemen and S.R.P. men also looted cash and ornaments from some of the rooms in Samadia Building and Masjid Chawl and damaged and smashed some articles and furniture lying in the said rooms. Some S.R.P. men also broke into the Khutala Tank

Mosque by smashing its window-panes and damaged some articles therein.

- (6) *Gauripada*—In Gauripada 2 Hindu houses were burgled and 4 Hindu houses were broken open and looted.
- (7) *The Bombay-Agra Road near Dhamankar Naka*—Near Dhamankar Naka a Muslim factory and some Muslim shops and houses were burnt.
- (8) *Vaje Mohalla*—In Vaje Mohalla houses of 3 Wagharis were broken open and looted.
- (9) *Thange Alli*—In Thange Alli one Muslim shop and 34 Muslim houses were looted and 12 other Muslim houses damaged. The Police opened fire on Hindu rioters. Later one other Muslim shop was also broken open and looted.
- (10) *Kap*—In Kap 2 Hindu houses were looted and one was burnt. One Muslim house was looted and two others damaged. Near the S.T. stand 4 Muslim properties were looted and 3 other Muslim properties damaged.
- (11) *The Bhiwandi-Kalyan Road*—The Police opened fire on Muslim rioters near the Asabibi Dargah and arrested 18 Muslims. One Muslim was injured and one died in this police firing.
- (12) *Kacheripada*—In Kacheripada near the Malaysia Sizing Works the Police opened fire and arrested 69 Muslims. The Malaysia Sizing Works and factories, houses, workmen's quarters and godowns belonging to 30 Muslims were burnt. A small portion of the roof of a Hindu house was slightly burnt. Two Hindu factories adjoining a Muslim factory also caught fire and were burnt.
- (13) *Vetalpada (1 mile north-east)*—In Vetalpada 14 Muslim houses near the S.T. Depot were burnt.
- (14) *Nizampura 4th Mohalla*—At Nizampura 4th Mohalla the Police opened fire twice on Muslims. In this police firing one Muslim was injured. Later in the afternoon the Police opened fire for the second time on Muslims and arrested one Hindu and 299 Muslims.
- (15) *Khadak*—At Khadak a Hindu house was looted and 3 Hindu houses damaged.
- (16) *Panjrappole*—At Panjrappole 10 Hindu houses were set on fire and one looted. Fifteen Muslim houses were set on fire.
- (17) *Kombadpada (1 mile north)*—At Kombadpada the Police opened fire on Muslim rioters and arrested 19 Muslims. One Muslim died in this police firing.
- (18) *Nadi Naka*—At Nadi Naka near the Bhiwandi-Kalyan Road, 7 Hindu properties were damaged and 2 Hindu houses looted and 7 Muslim properties burnt and 3 Muslim properties looted.
- (19) *Nagaon*—At Gaibi Nagar the Police opened fire and 3 or 4 Muslims died in this police firing and 6 or 7 other Muslims died of other injuries. 168 Muslim houses and huts were set on fire. In Pirani Pada 2 Muslim houses were looted and set on fire. In Nhavipada 2 Hindu chawls, one Hindu cattleshed and

3 haystacks of Hindus were burnt. 18 Muslim houses and huts were burnt.

In other parts of Nagaon Village about 18 Muslim houses and huts were burnt.

- (20) *Police firings*—The Police opened fire on 14 occasions. In all 196 rounds were fired, out of which one misfired. Out of these 196 rounds, 47 rounds were of .303 rifle, 140 rounds of .410 musket, 6 rounds of .455 revolver out of which one misfired, and 3 of .38 revolver.
- (21) *Casualties*—In the disturbances which took place on May 8, 1970 8 Hindus and 14 Muslims were killed. Out of the said 14 Muslims 7 died in Gaibi Nagar in Nagaon village. In the police firings about 7 Muslims were killed.
- (22) *Loss of property*—According to the estimate made by the District Police, Hindu properties in Bhiwandi of the value of Rs. 3,42,404 were burnt or damaged and of the value of Rs. 51,970 looted. Muslim properties in Bhiwandi of the value of Rs. 24,62,026 were burnt or damaged and of the value of Rs. 4,27,462 looted. In Nagaon Hindu properties of the value of Rs. 53,287 were burnt or damaged and Muslim properties of the value of Rs. 10,08,854 were burnt or damaged and Muslim properties of the value of Rs. 17,650 looted.
- (23) *Arrests*—The Police arrested 1,404 Muslims and 241 Hindus.

The incidents of May 9, 1970

41.7 By the evening of May 8, 1970 the fury of the disturbances died out and the number of incidents which took place on May 9, 1970 were comparatively very few. Appendix L to this Report is a sketch of Bhiwandi showing the incidents which took place in Bhiwandi on May 9, 1970. Appendix N to this Report is a combined sketch of Bhiwandi and the villages of Khoni and Nagaon showing the incidents which took place in these three places between May 7, 1970 and May 31, 1970. The incidents which took place on May 9, 1970 were—

- (1) *Bazar Peth*—Two Muslim houses situate in Bazar Peth were burgled.
- (2) *Kanheri*—In Kanheri two Muslims were robbed.
- (3) *The Bombay-Agra Road*—The Police raided the Ambassador Hotel situate near Dhamankar Naka on the Bombay-Agra Road and arrested 29 Muslims. The Police also raided Chakkan Khokawala's shed situate close to the Ambassador Hotel and arrested 15 Muslims. A Hindu house was burgled. Two Hindus carrying two tins of petrol and trying to set fire to a car and to obstruct a truck were arrested. Two other Hindus carrying a tin of kerosene and attempting to damage a truck were also arrested.
- (4) *Vanjarpatti Naka*—At Vanjarpatti Naka some Muslim property was stolen.
- (5) *Kacheripada*—The Police opened fire on some Muslim rioters. A Muslim hutment colony with a few Hindu houses interspersed in between, known as Chauhan Colony, situate in Kacheripada

near the compound of the Court house was set on fire by some Hindu rioters and burnt.

- (6) *The Bhiwandi-Kalyan Road*—At the Bhiwandi-Kalyan Road a Hindu house was burgled and another Hindu house set on fire.
- (7) *Khoni*—The Police opened fire on Muslims who were going towards Khoni Village to attack Hindus and their houses in Khoni.
- (8) *Police firings*—The Police opened fire on two occasions, the first time at Bhiwandi and the second time at Khoni. In all two rounds were fired, namely, one of .410 musket and one of .38 revolver.
- (9) *Casualties*—In the disturbances which took place on May 9, 1970 two Muslims were killed. There were no other casualties either in the disturbances or in the police firings.
- (10) *Loss of property*—According to the estimate made by the District Police, Hindu properties of the value of Rs. 18,780 were burnt or damaged and of the value of Rs. 2,100 looted. Muslim properties of the value of Rs. 42,183 were burnt or damaged and of the value of Rs. 13,802 looted.
- (11) *Arrests*—The Police arrested 75 Hindus and 290 Muslims.

The incidents of May 10, 1970

41.8 Though by May 10, 1970 the disturbances had spread to a number of other places in the Thana District, they were dying out in Bhiwandi. A few incidents, however, continued to take place. Appendix M to the Report is a sketch of Bhiwandi showing the incidents which took place in Bhiwandi between May 10, 1970 and May 31, 1970. The incidents which took place on May 10, 1970 were—

- (1) *Kanheri*—In Kanheri 2 Muslim houses were burnt.
- (2) *Bhoiwada*—In Bhoiwada a Hindu house was looted.
- (3) *Gauripada*—In Gauripada 3 Hindu houses were looted and 2 burnt.
- (4) *Habsan Alli*—In Habsan Alli a Muslim house was burnt.
- (5) *Kap*—In Sunderbeni Compound at Kap there was a clash between a Hindu mob and a Muslim mob in which a Muslim property was burnt and a Muslim fatally injured. The Police arrested 109 persons thinking that they were all Muslims. Five of them, however, turned out to be Hindus.
- (6) *Kacheripada*—In Kacheripada 2 Muslim houses were burnt.
- (7) *Casualties*—In the disturbances which took place on May 10, 1970 two Muslims were killed. There were no other casualties.
- (8) *Loss of property*—According to the estimate made by the District Police, Hindu properties of the value of Rs. 7,500 were burnt or damaged and of the value of Rs. 52,324 looted. Muslim properties of the value of Rs. 64,057 were burnt or damaged.
- (9) *Arrests*—The Police arrested 7 Hindus and 260 Muslims.

The incidents of May 11, 1970

41.9 Only a few stray incidents took place on May 11, 1970. These incidents are shown on the sketch which is annexed as

Appendix M to the Report. These incidents were.—

- (1) *Thange Alli*—In Thange Alli a Muslim house was broken open and looted.
- (2) *Quarter Gate*—At Quarter Gate 49 Muslims were arrested.
- (3) *Casualties*—In the disturbances which took place on May 11, 1970 a person whose community could not be ascertained and two Muslims were killed.
- (4) *Loss of property*—Property worth about Rs. 369 belonging to Muslims was looted.
- (5) *Arrests*—The Police arrested 13 Hindus and 92 Muslims.

The incidents of May 12, 1970

41.10 Stray incidents took place on May 12, 1970 as shown on the sketch which is annexed as Appendix M to the Report. These incidents were—

- (1) *Habsan Alli*—In Habsan Alli 2 Hindu factories were broken open and looted.
- (2) *Saudagar Mohalla*—A Hindu house near Saudagar Mohalla was broken open and looted.
- (3) *Dargah Road*—On Dargah Road a Hindu factory was broken open and the articles from it brought out on the road and set on fire.
- (4) *Bazar Peth*—In Bazar Peth a Muslim house was broken open and looted.
- (5) *Idga Road*—On Idga Road the Police fired on Hindu rioters from Khoni and Katai Villages who were crossing the river to attack Muslims and their properties at Bunder Mohalla.
- (6) *Police firings*—The Police opened fire on one occasion. In this police firing two rounds of .410 musket were fired.
- (7) *Casualties*—In the disturbances which took place on May 12, 1970 two Muslims were killed.
- (8) *Loss of Property*—According to the estimate made by the District Police, Hindu properties of the value of Rs. 44,900 were burnt or damaged and of the value of Rs. 13,919 looted. Muslim properties of the value of Rs. 1,787 were looted.
- (9) *Arrests*—The Police arrested 4 Hindus and 63 Muslims.

The incidents of May 13, 1970

41.11 Very few incidents took place in Bhiwandi on May 13, 1970. These incidents are shown on the sketch which is annexed as Appendix M to the Report. These incidents were—

- (1) *Bazar Peth*—At Bazar Peth a Muslim house and a Muslim shop were broken into, but the house burglars were arrested by the Police.
- (2) *Casualties*—There were no casualties on May 13, 1970.
- (3) *Loss of property*—No loss was suffered by the Hindus, while Muslim properties of the value of Rs. 1,500 were damaged.
- (4) *Arrests*—The Police arrested 14 Hindus and one Muslim.

The subsequent incidents

41.12 Though communal disturbances continued to take place in the other parts of the Thana District, not a single incident of a communal nature took place at Bhiwandi between May 14, 1970 and May 22, 1970. A few incidents did take place thereafter, but most of them were not communal incidents. All the incidents which took place in Bhiwandi between May 7, 1970 and May 31, 1970 are shown on the sketch which is annexed as Appendix M to the Report. The incidents which took place after May 13, 1970 were—

- (1) *May 14, 1970 to May 22, 1970*—No rioting took place during the period May 14, 1970 to May 22, 1970. During this period the Police arrested 4 Hindus and 31 Muslims.
- (2) *May 23, 1970*—On May 23, 1970 the Police fired one round of .303 rifle on Dargah Road upon some Muslims who attempted to rescue some other Muslims who had been arrested for committing a breach of the curfew order. S.P., Bhave has deposed that this was not an incident of a communal nature because it took place in a purely Muslim locality, the prisoners and those seeking to rescue them were all Muslims and there was nothing to show that any of them had any intention of attacking Hindus or their properties (P.W. 4/37/285-8). S.P., Bhave's reasoning is correct. On that day the Police arrested in all 27 Muslims.
- (3) *May 24, 1970*—No incident took place on May 24, 1970.
- (4) *May 25, 1970*—Three incidents took place on May 25, 1970. In Telipada a Muslim house was set on fire, in Bazar Peth a godown in which electrical goods of a Muslim shopkeeper were stored was burgled and electric motors stored therein stolen, and in Kap a Hindu hut was set on fire. According to S.P., Bhave the Bazar Peth and Kap incidents were not communal incidents. His reasons for saying so were that the owner of the Bazar Peth shop had left for Bombay on the previous day to take his wife to the hospital and had returned on May 26, 1970 and during his absence the burglary was committed by his former Hindu employee and another Hindu with a bad record. In the Kap incident though initially the police arrested 15 to 20 persons, after sifting evidence only two persons were charge-sheeted, one a Hindu and the other a Muslim (P.W. 4/37/287). S.P., Bhave's reasoning appears to be correct. According to the District Police the loss suffered by the Muslim Shopkeepers was Rs. 8,550, the loss suffered by the owner of the Muslim house in Telipada was Rs. 10,950 and the loss suffered by the owner of the Muslim hut was Rs. 150. The Police arrested two persons on that day.
- (5) *May 26, 1970*—On May 26, 1970 a Muslim power-loom factory in Brahman Alli and another Muslim factory in Thange Alli were set on fire. According to the District Police the loss suffered was Rs. 2,000. In the case of the Thange Alli fire,

the F.I.R. (Ex. P 361) was lodged by one Anant Laxman Waghmare. According to the said F.I.R., the said factory was set on fire by its Muslim owner with the help of two others with the intention that the adjoining Hindu houses should catch fire therefrom or that a false accusation of arson to the said factory could be made against Hindus. According to S.P., Bhawe, this offence could not be a communal incident because it is difficult to believe that any Muslim would set fire to his own power-loom shed in order to cause damage by fire to the adjoining Hindu houses or in order to accuse falsely Hindus of setting fire to it and that it was logical to believe that if the Muslim owner did set fire to his own power-loom shed he did so to claim compensation (P.W. 4/37/287). It would be even more logical to believe that this factory was set on fire by some Hindus and in order to allay any suspicion that might arise against them a false F.I.R. was lodged. On that day the Police arrested one person for committing a breach of the curfew order.

- (6) *May 27, 1970 to May 30, 1970*—No incident of rioting took place between May 27, 1970 and May 30, 1970. During this period the Police arrested five persons.
- (7) *May 31, 1970*—At Veraladevi Road two or three Muslims assaulted a Hindu and one of them inflicted an injury with a knife on him.
- (8) *June 7, 1970*—After May 1970 the only incident which took place was on June 7, 1970. That night one Eknath Laxman Shinde, whose house in Habsan Ali was burnt down during the disturbances and who was living in a temporary shed constructed by him just behind his house, lodged an F.I.R. at the Town Police Station (Ex. P 365) that when he had been to the Maruti Temple that night after dinner some stones fell on the temple and the adjoining Hindu houses and, according to him, the stones came from the house of one Babuseth and from the road. On his informing the Police, the Police came to the site and arrested three persons sitting in a room on the ground floor of Babuseth's house with the door latched from inside. One of these persons was a Muslim while the two others were Hindus. According to S.P., Bhawe, if such an offence did take place it could not be said to be of a communal nature because in all places where there is a mixed population crimes are committed by members of one community against the other as also against members of their own community and just because an altercation or a fight takes place between persons of whom some belong to the other community, it does not follow that the incident is of a communal nature and the real cause may be wholly unrelated to any communal problem (P.W. 4/37/288). S.P., Bhawe's reasoning is correct.

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CHAPTER 42

MEASURES TO DEAL WITH THE DISTURBANCES

CONTENTS

Paragraph

- 42.1 Prefatory observations.
- 42.2 The officers in overall charge.
- 42.3 The use of force.
- 42.4 Cane-charge and lathi-charge.
- 42.6 The use of fire-arms.
- 42.10 The steps taken by the I.G.P.
- 42.11 Addl. I.G.P. Modak in Bhiwandi.
- 42.12 Modak's headquarters.
- 42.13 The Riot Scheme.
- 42.14 The order banning assembly of five or more persons.
- 42.16 The curfew order.
- 42.19 Should the curfew order have come into force earlier ?
- 42.21 Curfew passes.
- 42.22 Enforcement of curfew order and other prohibitory orders.
- 42.24 The Military alerted.
- 42.25 Should the Military have been called out ?
- 42.29 Reinforcements.
- 42.32 The State Reserve Police Force.
- 42.34 The S.R.P. camps.
- 42.35 The Gas Squad.
- 42.36 The Mobile Striking Force.
- 42.37 The Border Security Force.
- 42.38 Messing arrangements for the Police.
- 42.39 Wireless sets.
- 42.40 Redeployment of police force.
- 42.43 Water supply.
- 42.45 Power failure.
- 42.60 Instalites.
- 42.61 Fire-fighting operations.

CONTENTS—*contd.*

Paragraph

- 42.63 The fire-engines of the Bhiwandi-Nizampur Municipal Council.
- 42.64 The Thana fire-engine.
- 42.67 The Kalyan water-tanker.
- 42.73 The Ulhasnagar fire-engine.
- 42.79 The Civil Defence fire-engines.
- 42.85 The fire-engines of the Bombay Fire Brigade.
- 42.88 The difficulties in fire-fighting operations.
- 42.89 Inadequacies of the fire service in the Thana District.
- 42.92 Visits of V.I.Ps. and others.
- 42.97 The exodus from Bhiwandi and the villages.
- 42.98 Obstructions on roads and highway patrolling.
- 42.107 Cutting of telegraph and telephone wires.
- 42.108 Police protection and escort.
- 42.109 Seizure of fire-arms from licensed arms holders.
- 42.110 The Home Guards.
- 42.111 Medical help and sanitation.
- 42.113 Preventive measures by the Government after the disturbances.
- 42.118 Conclusions.

CHAPTER 42

MEASURES TO DEAL WITH THE DISTURBANCES

Prefatory observations

42.1 When the disturbances broke out near the Old Fish Market in Bhusar Mohalla and spread with the rapidity of a forest fire from locality to locality, the Executive Magistrates and the District Police Officers had to grapple with a formidable task. Some of the police officers on the scene had no previous experience of dealing with riots and apart from Addl. I.G.P., Modak who reached Bhiwandi at about 10-15 p.m. on May 7, 1970, few had experience of dealing with such major disturbances. The problems facing the Executive Magistrates and the Police were manifold. They had to control rioting mobs, to protect life and property, to organize fire-fighting operations and to escort those rendered homeless as also several processionists to places of safety. To deepen the confusion and add to their difficulties, the power supply failed that night and the telephone worked intermittently. There were a number of injured and wounded—some seriously and some fatally—who needed urgent medical assistance. Within a few hours of the commencement of the disturbances, road blocks began to appear. There were obstructions to fire-engines and police escort parties had to be provided on each fire-engine. Due to complete dislocation of normal life, all municipal services came to a stop and the insanitary conditions created thereby posed a great danger to health and life. Riot-affected persons as also others, frightened by the disturbances and apprehending attacks on their localities, collected at various centres. Though some philanthropic individuals and bodies had already started feeding centres, the administration had to channelize the supply of meals to these persons. Police reinforcements began arriving in Bhiwandi soon after the disturbances and there also arose the problem of feeding them and the large number of prisoners who were in custody. The adequacy of the measures adopted by the authorities to meet this situation will now be considered.

The Officers in overall charge

42.2 On the day of the Shiv Jayanti procession, namely, May 7, 1970, the officers in overall charge of the law and order situation in Bhiwandi were the D.M., Thana, D. N. Capoor (P.W. 59), and the S.P., Thana, S. V. Bhawe (P.W. 4). The D.I.G.(B.R.), V. A. Gokhale (G.W. 4), was also present on the spot for the purposes of supervision. The position was the same after the disturbances broke out until the

Addl.I.G.P., E. S. Modak (G.W. 3), reached Bhiwandi. Thereafter he was in overall charge and control of the law and order situation in Bhiwandi. Modak stayed in Bhiwandi until May 17, 1970 and during his stay he was in overall charge of the operations, not only in Bhiwandi, but in the entire Thana District [G.W. 2/140/145 ; G.W. 3/1(23)/152(6), 9/157].

The use of force

42.3 Immediately the disturbances broke out the Police used force (as they must) to disperse the rioting mob and to put down the disturbances. The use of force by the Police for this purpose consisted in making cane-charges or lathi-charges, firing tear-gas shells and using fire-arms. The Police made several cane-charges or lathi-charges and it is neither possible nor necessary to list them. The Police resorted to tear-gas on one occasion, namely, on May 8, 1970, at Nizampura 4th Mohalla. It is alleged that tear-gas shells were also fired on May 8, 1970, in Habsan Alli near Samadia Building. As this incident was seriously disputed by the Muslim parties, it will be considered in detail later. The Police opened fire on 37 occasions. As the question whether the police firings were justified forms a specific term of reference, each of the firing incidents will be considered in detail later.

Cane-charge and lathi-charge

42.4 Formerly, the Police used to be armed with lathis. Some years ago, however, lathis were substituted by canes. A lathi is a stick made of solid bamboo, about 6' in length and tapering in shape. The diameter of the thicker end is about 2" and it was the thicker end that was used for hitting. As lathis cause greater injuries and result in fracturing the bones, they were discarded and substituted by canes. The canes used by the Police in cane-charges are Malacca canes about 4' in length with a diameter of 1½". These canes were introduced in Bombay as a substitute for lathis by Addl.I.G.P., Modak in or about 1954 when he was the Deputy Commissioner of Police ; Headquarters, Bombay. Modak has opined that canes are more effective than lathis in dealing with riots. According to him, it is not necessary to incapacitate a man with a heavy blow from a lathi or to strike a vital part of the body such as the head, in order to render him ineffective as a rioter, for a glancing blow with a cane on a vulnerable part of the body, such as the wrist or the elbow, can incapacitate a man equally effectively by causing minimum injury. According to Modak, another disadvantage of lathis is that lathis are heavy and cumbersome and, therefore, unwieldy while canes, which are lighter, make for greater mobility and striking power. As Deputy Commissioner, Headquarters, Bombay, Modak was field commander in charge of the riot operations at the time of the riots which took place in Bombay in January 1956 as a result of the States Reorganization Commission's report. His experience of the superiority of canes over lathis in dealing with riots must have been satisfactory because, when in 1966-67 he

was sent on deputation to Jammu and Kashmir as Inspector-General of Police and had to deal with two major riots, one in Jammu as a result of student agitation and the other in Srinagar on account of the marriage of a Hindu girl to a Muslim, he introduced canes as a substitute for lathis in urban areas [G.W. 2/25/89-90 ; G.W. 3/2/153, 70/192-3].

42.5 In their affidavits and oral evidence police officers and policemen have used the terms "lathis" and "canes" and "lathi-charge" and "cane-charge" indiscriminately, the majority preferring the terms "lathis" and "lathi-charge". "Lathi" and "lathi-charge" are time-honoured terms with which most people who have lived through the days of the Freedom Fights are familiar. It appears that even now police platoons carrying canes or carrying canes and expanded metal shields as protection against stones and other missiles are known as 'lathi platoons' and even Addl.I.G.P. Modak himself while referring to them has so designated them (G.W. 3/27/171). In conformity with this practice and convention the Commission has often used in the Report the time-honoured terms "lathis" and "lathi-charges" instead of "canes" and "cane-charges".

The use of fire-arms

42.6 In the course of the Bhiwandi disturbances the Police opened fire on 37 occasions. At Bhiwandi fire was opened on 18 occasions on May 7, 1970, on 14 occasions on May 8, 1970, once on May 9, 1970, once on May 12, 1970 and once on May 23, 1970. At Nagaon fire was opened only once, namely, on May 8, 1970. At Khoni also fire was opened only once, namely, on May 9, 1970. The fire-arms used in these police firings were .303 rifles, 410 muskets, .455-bore and .38-bore revolvers and .9 mm. pistols. A number of rounds were fired, some of which misfired.

42.7 A round means a cartridge and, therefore, firing one round means firing one bullet. A round misfires when the percussion-cap is not detonated by the hammer. Misfiring can take place even with new ammunition, but the possibility increases when the stock from which the ammunition is drawn is old (G.W. 3/77/197, 112/214)

42.8 The S.R.P. Companies which came to Bhiwandi had brought their .303 rifles with them. In each of the two schools where they were camping, namely, the Nizampura Primary School in Nizampura and the Primary School at Narali Talao near Madarchhalla, special armouries were set up where the rifles were deposited and fire-arms and ammunition as required were issued from these armouries. The S.R.P. officers carried revolvers or 9 mm. pistols. Not all the district policemen carried muskets but such of them as had muskets carried them on duty. There was no separate armoury set up for the fire-arms with the district police. On the number of rounds issued to the district police being exhausted, more ammunition was issued to them from the Bhiwandi Town Police Station or the Bhiwandi Taluka Police Station (G.W. 2/24/88 ; P.W. 4/11/247).

429. An account is kept of the number of cartridges issued to every policeman and every police officer and he has to account for each round fired by him out of rounds issued to him. He is also required to return the 'empties', that is, the empty cartridge cases (G.W. 2/24/88 ; G.W. 3/112/214). When arms and ammunition are issued to a police party, the receipt in respect thereof is signed by the seniormost in charge of that party and the names of all persons in such party are written out in the said receipt. The Taluka Police Station armoury was in the guard room and the Ammunition Register was kept there. As and when occasion arose, arms and ammunition were taken to the Town Police Station after making the necessary entries in the Ammunition Register and whenever arms and ammunition were issued either from the Taluka Police Station or the Town Police Station, receipts were taken at the Town Police Station as the Control Room had been established there. As the Ammunition Register remained at the Taluka Police Station, receipts were taken on loose sheets of paper which were preserved and produced before the Commission (P.W. 4/383/828-9). Inspection of the Ammunition Register and receipts for issue of arms and ammunition was given to all parties appearing before the Commission, but none of the parties desired that any of these documents should be exhibited. All the rounds said to have been fired during the disturbances were accounted for.

The steps taken by the I.G.P.

42.10 At 5-45 p.m. on May 8, 1970 a crash wireless message was received in the Thana Control Room from Bhiwandi that the Shiv Jayanti procession had been stoned and 18 persons were injured and arson had taken place and asking for reinforcements of S.R.P. men. The Home Police Inspector, Thana, was thereafter immediately informed and he put in a telephone call to the State Operations Control Room. The telephone call was received by Asst. I.G.P., Balkrishnan. Balkrishnan prepared a note (Ex. G 68) and sent it to I.G.P., Rajadhyaksha. At that time Rajadhyaksha was in the Official Gallery in the Council Hall. He passed on this message to the Home Secretary, L. G. Rajwade, who was also present in the Gallery, and then left to see the Chief Minister in his office after the Chief Minister had left the House. In the course of the discussions which the Chief Minister had with the I.G.P., a decision was taken to send the next highest ranking police official, Additional I.G.P., Emmanuel Sumitra Modak, to Bhiwandi to supervise the police arrangements and deal with the disturbances as also to rush reinforcements. The I.G.P. returned to his office and immediately issued orders sending S.R.P. Companies and other police reinforcements to Bhiwandi. He also rang up Modak and asked him to proceed to Bhiwandi and directed the D.I.G. (Crime) to depute a special team of one inspector and five sub-inspectors to proceed to Bhiwandi immediately and take up the investigation of riot cases. Throughout the night Rajadhyaksha went on issuing directives to his

office. Having learnt that the fire-engine from Kalyan could not proceed to Bhiwandi and that the fire-engines in Bhiwandi were inoperative, he directed his office to ask to the Bombay Fire Brigade and also the Civil Defence Fire Brigade to rush fire-engines and ambulances to Bhiwandi. He also had telephonic messages sent to the Ss.P. of Sholapur and Aurangabad and the Dy.S.P., Malegaon, informing them about the riots in Bhiwandi and directing them to take necessary steps to maintain peace as the Shiv Jayanti processions were in progress in those places [Ex. P 466, entry No. 16 of May 7, 1970 ; G.W. 1/10/8 ; G.W. 2/1(7-9)/70(3-4)].

Additional I.G.P. Modak in Bhiwandi

42.11 In the evening of May 7, 1970 Addl. I.G.P., Modak was at a friend's place and as they were about to sit down for dinner, at about 8-30 p.m. a telephone call was received from the I.G.P. who informed him that the Government required him to proceed to Bhiwandi as serious rioting and arson had taken place there. Accordingly, without having his dinner Modak left immediately, went home, changed into his uniform and proceeded by car to Bhiwandi, leaving at about 9 p.m. He did not even wait to take an escort car with him. On the way near the octroi post at Mulund he found four fire-engines, two from the Bombay Fire Brigade and two from the Civil Defence Fire Brigade, waiting for an escort from the Thana Headquarters. Modak obtained a police escort for the fire-engines and for himself at Thana and after leaving instructions by way of precautionary measures with the Home Police Inspector, Thana, proceeded to Bhiwandi, reaching Bhiwandi at about 10-15 p.m. At the Bhiwandi Town Police Station he met D.I.G. (B.R.), Gokhale, S.P., Bhawe and Dy. S.P., Diwate and discussed the situation with them. He arranged to get the fire-engines into action and to restore the electric power supply which had failed. After sending wireless messages to the I.G.P., the Home Secretary, the Chief Secretary and the Chief Minister about the situation and the action taken, he moved about in the town for assessing the situation and visited the spots where he was informed major incidents had taken place. He also checked the spots where police pickets had been posted and visited the Bhiwandi Municipal Dispensary. Thereafter he met D.M., Capoor and held a conference with him and the senior police officers about the situation. He directed that curfew order should be strictly enforced and that whoever was found outside his house should be immediately arrested. According to Modak, the large-scale arrests made as a result of this direction given by him constituted one of the main reasons for the disturbances being brought under control by about 4 p.m. on May 8, 1970 [G.W. 3/1(2-5)/152(1-2), 23/168].

Modak's headquarters

42.12 Modak set up his temporary headquarters in the office of the Sanitary Inspector situate on the first floor of the New Fish Market

Building opposite the Bhiwandi Town Police Station. He selected these premises, though they were not very suitable by reason of the fish market on the ground floor and the paucity of furniture and space, because of their situation opposite the Bhiwandi Town Police Station where the Control Room was. As there was no place at the Inspection Bungalow on account of the D.M. and the S.P. camping there, Modak took up his residence in a guest house attached to G. G. Dandekar Machine Works Limited. The riot operations for the entire Thana District were carried on from Modak's headquarters. Modak had never previously been to Bhiwandi, except to pass through it on his way to Nasik and other places. In the Bhiwandi Town Police Station there was only a small map of Bhiwandi. In order to make himself familiar with the topography of Bhiwandi, Modak obtained a detailed map of Bhiwandi from Thana on May 8, 1970. Modak camped in Bhiwandi till May 17, 1970 [G.W. 3/1(23)/152(6), 9/157, 15/161, 73/195, 113/214].

The Riot Scheme

42.13 There was a Riot Scheme for Bhiwandi. A Riot Scheme includes instructions on the steps to be taken to deal with a riot when it breaks out in a particular area. Riot Schemes are secret confidential documents, copies of which are issued to local officers as confidential documents. Riot Schemes mention different points which should be manned on disturbances breaking out as also detailed instructions on how to deal with the riots and contain the names of persons listed as bad characters who should be arrested or detained. Perhaps in the light of the experience gained during the May 1970 disturbances in Bhiwandi the Riot Scheme for Bhiwandi at present may be in some details different from the Riot Scheme which was in existence on May 7, 1970 and of which a copy was given to the Commission. On perusing the Riot Scheme, the Commission saw no point in making future rioters wise about the steps the Police would take in case a riot again broke out in Bhiwandi and accordingly did not permit the Riot Scheme to be exhibited. The Riot Scheme was put into force in Bhiwandi from the midnight of May 7/8, 1970. After it came into force, the Control Room Diary was called the Riot Diary (G.W. 2/147/147-8 ; G.W. 3/94/207).

The order banning assembly of five or more persons

42.14 Cyclostyled copies of the *pro forma* of an order under section 144 Cr.P.C. banning any assembly of five or more persons were kept in the jeep in which S.D.M., Date (P.W. 62) and Taluka Magistrate, Bhiwandi, Sane (P.W. 110) were travelling. After the procession passed the Saudagar Mohalla Jumma Mosque, Date and Sane proceeded to Old Thana Road and waited at Keshar Baug for the procession. On observing a gap in the procession, they went near the Old Fish Market and found that the disturbances had started. There they came across the D.M., the S.P. and the D.I.G. Meanwhile

Inspector Pradhan was injured and he was sent to the hospital in the said jeep. At this time as a result of the consultations amongst the D.M., the S.D.M., the Taluka Magistrate, the D.I.G. (B.R.) and the S.P. it was decided to promulgate an order prohibiting any assembly of five or more persons. The Taluka Magistrate tried to get into the jeep with a view to go to the Town Police Station to promulgate the order, but in view of the rush of people he got separated from the other officers and could not get into the jeep. He then started for the Town Police Station on foot and coming across a police van on the way, took a lift in it. He reached the Town Police Station at about 6-20 p.m. and immediately wrote out an order (Ex. P 410) and caused it to be promulgated through the Police. The said order banned any assembly of five or more persons in any public street or public road within the limits of the Bhiwandi-Nizampur Municipal Council and within the perimeter of three miles of the said limits and was to remain in force from 6-30 p.m. on May 7, 1970 till May 12, 1970 [P.W. 110/1(8-9)/3724(3-4)].

42.15 By an order dated May 14, 1970 the said ban on assemblies was reimposed upto the midnight of May 21/22, 1970 and then further extended by an order dated May 22, 1970 upto the midnight of June 15/16, 1970 (Ex. P 413).

The curfew order

42.16 D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhawe reached the Town Police Station at about 7-30 p.m. after dealing with the riots at Sutar Alli. At the police station the Taluka Magistrate Sane informed them that he had promulgated the said order (Ex. P 410) banning assembly of five or more persons. Capoor and the other officers thereafter arranged for police escort and protection for a large crowd which had gathered outside the police station. Calls were being received for fire-engines or for police protection and police parties were sent out in pursuance thereof. Calls were also sent out for police reinforcements and arms. At about 8 p.m. the Taluka Magistrate's office informed the Control Room that an attack was expected by a mob on the Government grain godown on the Bombay-Agra Road. Capoor thereupon sent out S.P., Bhawe with a police party to deal with the matter. Thereafter at about 8-30 p.m. Capoor wrote out a curfew order (Ex. P 409), got it stenciled and promulgated it forthwith. This order was to come into force from the midnight of May 7/8, 1970 and was to remain in force until the midnight of May 8/9, 1970. It prohibited any person from coming out on the public road or in any public place within the municipal area of Bhiwandi-Nizampur Municipal Council except by a written permission to be accorded by the Taluka Magistrate, Bhiwandi, or some other officer authorized by him in writing. This order, however, was not to apply to through motor vehicular traffic passing on the Bombay-Agra Road, the Bombay-Ahmedabad Road and the Bhiwandi-Kalyan Road. Copies of this order were

handed over to S.P., Bhave for giving publicity to the order [P.W. 59/1(51)/1000(29)].

42.17 It was submitted by the Muslim parties that D.M., Capoor did not promulgate the order at 8-30 p.m. as stated by him. This argument cannot be accepted. At 9-35 p.m. Capoor sent a message to the Home Secretary (Ex. G 27) in which it is clearly stated that curfew was being imposed after adequate pickets were placed in position. Similarly, it is stated in the message (Ex. G 52) sent by Addl. I.G.P., Modak at 10-30 p.m. that the authorities were issuing a curfew order.

42.18 By orders passed from time to time the curfew order was extended upto 7 a.m. on May 13, 1970. It was thereafter relaxed from 7 a.m. to 10 a.m. on that day and then again reimposed till 6 a.m. on May 14, 1970, on which date it was relaxed till 2 p.m. and then reimposed till 6 a.m. on May 15, 1970 and then again reimposed from 4 p.m. to 6 a.m. the next morning. It thus continued until May 20, 1970 with similar relaxations in between to enable people to provide for their daily needs. After May 20, 1970 it was only operative between 9 p.m. and 6 a.m. and finally was withdrawn from the midnight of June 15/16, 1970 (Exs. P 411, P 412 and P 413).

Should the curfew order have come into force earlier ?

42.19 It was submitted by the Muslim parties that Capoor failed in his duty in not promulgating a curfew order at 6 p.m. on May 7, 1970 to come into operation by 7 p.m. or 8 p.m. Both Capoor and Bhave have given their reasons why it was not feasible to have imposed curfew from a point of time earlier than midnight (P.W. 59/72/1039-40 ; P.W. 4/212/721). These officers were in the middle of the riots at Sutar Alli from about 6 p.m. onwards and reached the Control Room only at 7-30 p.m. All the available police force was busy dealing with and trying to quell the riots which were flaring up at various places. Before a curfew order can be promulgated, sufficient publicity must be given to it to enable the members of the public to know about it and go back to their homes. A large number of persons, including many from the nearby villages, had gathered in Bhiwandi that evening either to take part in the procession or to watch it. Though several processionists rioted, many of them were not rioters and had to be given an opportunity to return to their homes. Further, fire-fighting operations were going on and people were participating in these operations and had the curfew been imposed earlier, it would have hindered the fire-fighting operations as law-abiding citizens would not have been able to help in any fire-fighting operations. Before a curfew order can be implemented it was necessary to reorganize the Police and allocate a section to enforce it. The Addl.I.G.P., Modak has also given the same reasons why it must take time for a curfew order to be effectively enforced. He has further stated that when a riot starts, for some time the riot is in a state of fury and there are rampaging mobs all over the place

with which the Police have to battle and that in such a situation it is not possible to enforce any curfew order or an order under section 144 Cr.P.C. (G.W. 3/60/187). It was suggested to Bhave that all the processionists had dispersed and run back to their respective homes within half an hour of the disturbances breaking out and the whole town had thereupon become deserted and thereafter there would have been no difficulty in promulgating the curfew order and that he did not advise the D.M. to promulgate the curfew order to come into force earlier "in order to give the rioters time to play mischief". Bhave has denied this suggestion (P.W. 4/222/726-7). A more fantastic suggestion is difficult to imagine. There is not the least basis or warrant for saying that Bhiwandi had become deserted within half an hour of the outbreak of the disturbances or that all the processionists had returned to their homes within half an hour. On the contrary, the evidence shows that a number of processionists were stranded or had taken shelter at different places including Bhoiwada, Dhamankar Naka, the Town Police Station and in various schools and temples. The entries in the Control Room Diary for May 7, 1970 and in the Station Room Diary for May 8, 1970 clearly show the various arrangements made by the authorities to escort these processionists to their homes or to other places of safety.

42.20 The Commission finds the reasons given by Capoor, Bhave and Modak for not promulgating a curfew order to come into operation earlier than midnight to be logical and convincing. In any event, the earlier coming into operation of this order would not have made the least difference to the situation. The order banning assembly of five or more persons promulgated by the Taluka Magistrate at 6-30 p.m. did not prevent rioters from assembling in large mobs and going on a rampage and these very rioters were hardly likely to pay any more heed to a curfew order. In fact, they did not do so even after it came into force from the midnight of May 7/8, 1970. The only effect these orders had was to enable the Police to arrest a large number of persons for breach of curfew order and the order banning assembly of five or more persons. When a riot breaks out in all its fury, it is not orders under section 144 Cr.P.C. prohibiting assembly of five or more persons or imposing curfew that have a deterrent effect. What really has effect is the use of force by the Police—and in cases of serious riots, deterrent force and the killing or wounding in police firings of some rioters, particularly some ring leaders. This alone would strike fear into the hearts of the rioters and bring them to their senses.

Curfew passes

42.21 In order to enable certain classes of persons to move about during the curfew hours, curfew passes were issued by the Taluka Magistrate and other officers authorized by him, including the S.P. These passes were issued to those members of the Peace Committee who were taking an active part in the work of rehabilitation.

news-paper reporters and those who had come to Bhiwandi in search of their relatives or to inquire after their properties (P.W. 4/297/779).

Enforcement of curfew order and other prohibitory orders

42.22 Amongst the various orders given by Addl.I.G.P., Modak when he reached Bhiwandi was an order to enforce the curfew order strictly. Accordingly, a large number of arrests were made for breach of curfew order [G.W. 3/1(6)/152(2)]. According to the police records, about 1,013 persons were arrested on May 8, 1970, for committing breach of curfew order and other orders under section 14 Cr.P.C. and section 37 of the Bombay Police Act; 315 on May 9, 1970; 158 on May 10, 1970; 51 on May 11, 1970; and 67 on May 12, 1970. Further arrests were made subsequently. Most of the persons arrested were Muslims.

42.23 Allegations have been made by the Muslim parties that gross discrimination was practised by the Police in making these arrests and that under the guise of enforcing these orders the Police arrested a large number of innocent Muslims. These allegations will be dealt with in a separate chapter.

The Military alerted

42.24 In his crash wireless message sent to the Home Secretary at 9-35 p.m. on May 7, 1970 (Ex. G 27), D. M., Capoor requested that the Military should be alerted. This message was received in Bombay at 12-44 a.m. on May 8, 1970 and in the evening of May 8, 1970 Home Secretary L. G. Rajwade alerted the Military by getting in touch with the Area Commander. Rajwade has explained that the normal practice in such cases is not to alert the Military immediately but to watch the situation for some time and then to alert the Military if the situation is found to be worsening and the police force hopelessly inadequate to deal with it, the decision to alert the Military being usually taken by the Home Secretary and the I.G.P. in consultation with each other. The intention in alerting the Military is that the nearest unit can be asked to be ready to move at short notice as otherwise the staff work involved in getting the unit ready and for its transport to the disturbed area would take considerable time. As the disturbances in Bhiwandi were coming under control by about 4 p.m. on May 8, 1970, the alerting of the Military in the evening of May 8, 1970 was not by reason of the disturbances in Bhiwandi becoming worse, but because disturbances had broken out in Jalgaon and the local authorities there had called out the Military. Further, disturbances had also broken out in Kolaba District and in other parts of the Thana District and were spreading and it could not be foreseen what turn the situation might take (G.W. 1/11/9; G.W. 2/144/146-7; G.W. 3/71/194).

Should the Military have been called out ?

42.25 It was submitted that the disturbances would have come to an end much earlier had the Military been called out. Apart from

the popular impression about the efficacy of the Military in dealing with large-scale disturbances there does not appear to be any basis for this submission.

42.26 After he reached Bhiwandi at about 10-15 p.m. on May 7, 1970, Addl. I.G.P., Modak was in overall charge of the disturbances in the Thana District. He has deposed that he did not at any time feel the necessity to ask for military help. According to him, the riots would not have stopped earlier had the Military been called out on the night of May 7, 1970. Police reinforcements had started pouring into Bhiwandi and Addl. I.G.P., Modak, D.M., Capoor and S.P., Bhawe were all agreed that the situation could be effectively handled and brought under control by the Police. Capoor has deposed that it has been his experience that if the Military steps in, it initially creates a greater confusion and he has cited the instance of the Telangana disturbances to support this statement (G.W. 3/59/186; P.W. 4/212/722; P.W. 59/73/1040-1).

42.27 It was also submitted that in view of the disturbances which broke out in Bhiwandi the Military ought to have been posted in different villages where trouble could have been expected. There is no basis for this submission either. It could not be contemplated that disturbances on such a large scale would take place in the rest of the district or that so many towns and villages would be affected. As we have seen, disturbances took place in about 235 other places in the Thana District. No one could have contemplated where and in which places disturbances would take place or would break out next. It would have been an impracticable task to post the Military in all the villages of the Thana District where there was a mixed population or where a few members of the other community resided.

42.28 It was also submitted that the Military should have been called out for the psychological effect it would have created. The calling out of the Military might have created fear in the hearts of some rioters, but the psychological effect in other places would have been adverse. In the eyes of the people outside Bhiwandi the disturbances would have assumed a far more serious appearance than they actually had. Even wilder rumours would have circulated about the loss of life and property with the result that in other places fanatic as also undesirable elements of both communities would have started attacking the members of the other community to wreak vengeance.

Reinforcements

42.29 There was not sufficient police force in Bhiwandi on May 7, 1970 to deal with disturbances on such a large scale [P.W. 4/1(36)/595(22), 178/692-3, 325/696-7]. Realizing this, when the disturbances broke out the Bhiwandi Control Room informed the Thana Control Room at 5-52 p.m. to send two S.R.P. companies immediately (Ex. P 367, entry No. 48). The Thana Control Room in turn requested the I.G.P.'s office and arrangements were made to send two S.R.P.

companies to Bhiwandi. Another message was sent from the Bhiwandi Control Room to the Thana Control Room at 7-45 p.m. to send 30 policemen with 410 muskets and cartridges and a P.S.I. and 20 rifles with ammunitions to Bhiwandi. Yet further messages were sent from Bhiwandi asking for reinforcements. In pursuance of these messages, a company of S.R.P.F. reported at Bhiwandi at 8-30 p.m. on May 7, 1970 followed within 10 minutes by one P.S.I. and 30 P.Cs. from the Thana Headquarters and a little later by another platoon of S.R.P.F. At 2 a.m. on May 8, 1970 two more platoons of S.R.P.F. reached Bhiwandi and a little later 100 muskets and 10,000 ball ammunitions were sent to Bhiwandi from Thana along with one Jamadar, one H.C. and 3 P.Cs. Further reinforcements kept pouring into Bhiwandi that day and on subsequent days.

42.30 Statements (Exs. P 29 to P 40) have been filed showing the actual reinforcements received and the manner in which they were deployed. These reinforcements included three companies of the Border Security Force and two gas squads and one company of the Mobile Striking Force. The following table gives the details of the police strength deployed in and around Bhiwandi between May 7, 1970 and May 12, 1970 as augmented from time to time by reinforcements received :—

Date	A.S.P. Dy.S.P.	P.I.	S.I.	Police- men	Gas Squad	B.S.F. Co.	Remarks
Before disturbances—							
7-5-1970	.. 1	7 (3 armed)	29 (12 armed)	741 (24 armed)	1	..	1 P.I. & 1 S.I. were injured.
After reinforcements—							
7-5-1970	.. 1	8 (4 armed)	33 (16 armed)	892 (24 armed)	1	..	
8-5-1970	.. 3	16 (7 armed)	63 (25 armed)	1,263	3	..	
9-5-1970	.. 3	16	71 (26 armed)	1,463	3	..	
10-5-1970	.. 3	17	72	1,363	3	..	100 Policemen from Bombay City Police were with- drawn.
11-5-1970	.. 3	17	72	1,363	3	1	
12-5-1970	.. 3	17	73	1,363	3	3	
							Less one platoon.

42.31 Before the disturbances broke out the two senior police officers present in Bhiwandi were V. A. Gokhale, D.I.G. (B.R.), and S. V. Bhave, S.P., Thana. After the disturbances broke out, three more D.I.Gs. were sent to Bhiwandi by the I.G.P., namely, M. G. Mugwe, D.I.G. (INT.), B. K. Govardhan, D.I.G. (Crime) and S. M. Nabar, D.I.G., (Wireless). In addition, six S.Ps. were also sent by the I.G.P. to Bhiwandi. Out of these, R. Balkrishna, Asst. I.G.P.; and

P. K. Kanungo, S.P. (INT.), reached Bhiwandi at about 9-30 p.m. on the 7th May itself ; E. C. Scott, Asstt. I.G.P. (Traffic) arrived in Bhiwandi at about 6 p.m. on the 8th May ; A. V. Krishnan, Commandant, S.R.P.F., Group 3, Jalna, arrived in Bhiwandi at about 2 a.m. on the 10th May ; and on the 11th May, S. G. Sahasrabhojane, S.P. (INT.), and H. C. Almeida, Asstt. I.G.P., arrived in Bhiwandi.

The State Reserve Police Force

42.32 The State Reserve Police Force (S.R.P.F.) was organized under the Bombay State Reserve Police Force Act, 1951 (Bom. XXXVIII of 1951), as amended by the Bombay State Reserve Police Force (Amendment and Extension) Act, 1958 (Bom. LXXIV of 1958), with a view to provide an armed force, trained more or less on military lines and equipped with modern weapons, to deal with any disturbances or other emergency at any place in the State. The S.R.P. Force is constituted into groups, each under the control of a commandant of the rank of S.P. and stationed at important centres in the State. All the groups were at the relevant time under the administrative control of the D.I.G. (Headquarters).

42.33 For the Shiv Jayanti procession 4 S.R.P. companies had arrived in Bhiwandi on May 6, 1970. They were Group II 'C' Company, Group III 'E' and 'F' Companies and Group I 'E' Company. After the disturbances broke out further S.R.P. reinforcements were sent to Bhiwandi. On May 7, 1970 Group VIII 'B' Company reached Bhiwandi at 8-30 p.m. and a platoon of Group VIII 'D' Company at 9 p.m. On May 8, 1970 two platoons from Group VIII 'D' Company arrived in Bhiwandi at 2 a.m., Group VII 'C' Company at 7 a.m., a platoon each from Groups I and II at 8 a.m. and Group VIII 'A' Company at 4 p.m. As further S.R.P. companies could not be made available, B.S.F. companies were sent to Bhiwandi (Exs. P 27, P 29 and P 31 ; Bombay Police Manual 1959, Vol. I, R. 18).

The S.R.P. camps

42.34 The S.R.P. companies which were sent to Bhiwandi were asked to camp in two schools, namely, the Nizampura Primary School in Nizampura and the Primary School at Narali Talao near Madarchalla. The S.R.P. companies had their armouries in these schools and drew fire-arms and ammunitions from them as required. The district force which came from the Thana Headquarters was not lodged in any one place in particular, because it was deployed on bandobast duty immediately on arrival in Bhiwandi (G.W. 2/24/88 ; P.W. 4/11/247).

The Gas Squad

42.35 In May 1970, as per the rules then in force, a gas squad consisted ordinarily of 1 P.S.I., 2 H.Cs. and 8 P.Cs. From September 1970 a gas squad consists of 1 P.S.I., 2 H.Cs. and 10 P.Cs. In addition to the gas squad which was already sent to Bhiwandi to form part of the bandobast for the Shiv Jayanti procession, two more gas squads

were sent to Bhiwandi on May 8, 1970 after the disturbances broke out (G.W. 2/137/143 ; Exs. P 31 and P 33).

The Mobile Striking Force

42.36 The Mobile Striking Force consists of a company of about 100 men. It is led by a command vehicle equipped with wireless. Behind it is a shield platoon, then a cane or lathi platoon followed by an armed platoon. Behind this third platoon is a gas squad. A shield platoon consists of policemen wearing steel or glass-fibre helmets and carrying expanded metal shields and canes. The helmets and shields are a protection against stones and other missiles. An armed platoon carries canes and firearms and a lathi or cane platoon carries canes only. Addl.I.G.P., Modak had conceived of the idea of an independent mobile striking force equipped with wireless sets which could be rushed to the scene of any trouble when as the Deputy Commissioner of Police, Headquarters, Bombay, he was the field commander in charge of the riots which took place in Bombay in January 1956 as a result of the States Reorganization Commission's report. The company of the Mobile Striking Force from the Bombay City Police which was dispatched to Bhiwandi in pursuance of the wireless message (Ex. G 56) sent by Addl.I.G.P., Modak was employed in clearing obstructions on the roads and highways. It had, however, to be returned to Bombay the next day (G.W. 2/145/147 ; G.W. 3/21/153, 27/170-2, 70/192-3).

The Border Security Force

42.37 The Border Security Force (B.S.F.) is a special organization of the Police which maintains posts on the Indo-Pak border. Addl. I.G.P., Modak had asked for 4 S.R.P. companies by his wireless message sent on May 9, 1970 but as no companies were available, Modak requisitioned one B.S.F. Company on May 10, 1970. It reached Bhiwandi on May 11, 1970 and was employed in highway patrolling. Two more B.S.F. companies (less one platoon) reported for duty on May 12, 1970, one in the morning and the other in the evening (G.W. 3/36/174-5 ; Exs. P 37 and P 39).

Messing arrangements for the Police

42.38 The S.R.P. personnel and the police personnel from districts other than Thana had their own messing arrangements. For police personnel from Thana District, meals were sent from the police mess in Thana. From the meals so provided, the persons from the Civil Defence Fire Brigade and other services who did not have their separate messing arrangements were also fed. S.P., Bhave has given the number of meals so provided from the police mess (P.W. 4/313/787-8).

Wireless sets

42.39 On May 7, 1970 there was one wireless set installed in the Bhiwandi Taluka Police Station and one in the Bhiwandi Town Police Station. Further, there were three mobile wireless sets. Except the set at the Taluka Station which was a H.F. (high frequency) set,

all the others were V.H.F. (very high frequency) sets. Additional I.G.P. Modak's car by which he had proceeded to Bhiwandi was also equipped with a V.H.F. set. After the D.I.G. (Wireless) arrived in Bhiwandi, Modak asked him to provide three more mobile wireless sets and accordingly three such sets were provided. More wireless sets were installed thereafter and in all 25 sets were installed in the Thana District out of which 10 were H.F. sets and 15 were V.H.F. sets (G.W. 3/17/163).

Redeployment of police force

42.40 At the time of the Shiv Jayanti procession the largest concentration of police officers and policemen was kept in Nizampura area where the trouble, if any, was expected to take place. Soon after the disturbances broke out, at 5-50 p.m. some of the officers and men were recalled from Nizampura. They reached the Control Room at about 6-15 p.m. and at 7-30 p.m. most of the remaining officers and men on the procession bandobust duty in Nizampura were withdrawn. These officers and men were deployed on different duties in the town. After Dy.S.P., Diwate returned to the Town Police Station, he arranged for deployment of the police force accompanying the procession. As reinforcements started pouring in, he remained busy throughout the night deploying different police parties and patrolling parties to various places [Ex. P 367, entries Nos. 45, 57, 70, 88 and 91; P.W. 66/1(16)/1108(10)]. The redeployment of the police force was carried out with the intention of preventing mobs from collecting and of dispersing the mobs which had collected. It is the experience of the Police that the posting of one armed head constable and three armed constables with about ten policemen carrying lathis at strategic points is sufficient to disperse small unlawful assemblies in an area and also to prevent mobs from collecting. As all the police force available in Bhiwandi on any one day was not deployed in putting down the disturbances, only such of the police personnel were armed as were engaged in riot operations (G.W. 2/23/87). As a large number of incidents took place on May 7 and 8, 1970, it will be relevant to know the details of the police deployment for these two days from the maps Exhibits P 2 and P 3 and the key thereto Exhibits P 2A and P 3A :

42.41 The deployment on May 7, 1970 after the disturbances broke out and the police force was redeployed was as follows :—

Serial No.	Points	P.I.	P. S. I.	Policemen
1	2	3	4	5
1	Zenda Naka .. ..	..	1	10
2	Madarchhalla .. ..	..	1	10
3	Zuber Patel's House .. ..	..	..	10
4	Dokra Masjid Chowk .. ..	..	..	3
5	Jumma Masjid Saudagar Mohalla	1	1	20
6	Jumma Masjid, Saudagar Mohalla, East Side .. ..	..	..	10
7	Bhoiwada, Sutar Alli Cross Naka .. ..	..	..	3

1	2	3	4	5
8	Sutar Alli to Bhoiwada Road .. ..	..	..	3
9	Hydari Masjid .. ..	..	1	10
10	Samru Sizing .. ..	..	..	4
11	Karavali Cross Road .. ..	..	..	4
12	Darga Chawl .. ..	..	..	4
13	Tamir-E-Millat Office .. ..	..	..	4
14	Bhoiwada near Babu Shet House No. 22 .. ..	..	..	2
15	Bhiwandi Washing Company near Bhoiwada Road. .. ..	..	..	2
16	Bhiwandi Washing Company .. ..	..	..	7
17	Latif Manzil Street .. ..	..	..	2
18	Bhusar Mohalla, Masjid Street .. ..	..	..	3
19	Near Maharashtra Club Street .. ..	..	..	2
20	Near Chambhar Alli Street .. ..	..	..	2
21	Fish Market Chowk .. ..	..	1	4
22	Opposite Fish Market Hotel .. ..	..	..	4
23	Fish Market Takiya .. ..	..	..	4
24	Latif Cycle Mart, Old Thana Road .. ..	..	..	4
25	Waje Mohalla Cross Road .. ..	..	..	4
26	Electric Power House Sub-Station, Kesar Baug. .. ..	..	..	2
27	Kesar Baug in front of Kumbhar Alli .. ..	..	..	5
28	Kesar Baug Rice Market Road .. ..	..	..	4
29	Santosh Lunch Home .. ..	..	..	4
30	Bazar Peth Chowky .. ..	..	..	4
31	Bohri Masjid Naka .. ..	..	..	4
32	Tanaji Vyayam Shala .. ..	..	1	10
33	Lendi Bridge .. ..	..	..	5
34	V. R. Textile .. ..	..	..	4
35	In front of Shitala Devi Temple .. ..	..	1	5
36	Hanuman Bawadi .. ..	..	..	7
37	Mamata Oil Depot .. ..	..	..	3
38	In front of Apsara Dyeing Street .. ..	..	..	3
39	Near Bhiwandi Mill Store Street .. ..	..	..	3
40	Quarter Gate Mosque .. ..	..	..	5
41	Kabrastan .. ..	..	..	4
42	Kuwari Lathe Works .. ..	..	1	5
43	Pakpeer Road .. ..	..	..	3
44	Pakpeer .. ..	..	..	3
45	Nizampura Jumma Mosque East Side	1	1	10
46	Nizampura Jumma Mosque North Side .. ..	..	1	10
47	On the road to Bala Handi's House .. ..	..	..	5
48	Nizampura Chowki Road .. ..	..	..	5
49	Near Nazir Ahmed Hair-Cutting Saloon .. ..	..	..	4
50	Near Gafoor Syed's House .. ..	..	..	6
51	Vishwabharati Mill Store .. ..	..	..	6
52	New School Building .. ..	..	..	5
53	On the road Opposite New School .. ..	..	..	5
54	Oil Shop .. ..	..	..	8
55	Near Central Electric Store .. ..	..	..	8
56	Near Ismail Joku's cattle shed .. ..	..	..	4
57	Maharashtra Gadi Karkhana .. ..	..	..	4
58	Street near Keki's House .. ..	..	..	4
59	In front of Dr. Nandi's Hospital .. ..	..	..	5
60	Teen Batti Naka .. ..	..	..	10

1	2	3	4	5
61	Khadak Road .. ..	..	..	4
62	In front of New Fish Market near Town Police Station. .. ..	..	..	4
63	Dhamankar Naka .. ..	..	1	15
64	Kombadpada .. ..	..	..	11
65	Bangad Galli .. ..	..	..	13
66	Gouripada .. ..	..	..	24
67	Sutar Alli Naka .. ..	..	2	10
68	Bhoiwada Naka .. ..	..	..	10
69	Kamba Bridge .. ..	..	1	10
70	Teen Batti Naka .. ..	..	1	10
71	Khadak, Anna Mistri's Depot .. ..	..	..	2
72	Khadak .. ..	..	..	5
73	Panjarpol .. ..	..	1	14
74	Custom Office .. ..	..	..	10
75	Kumbhar Alli .. ..	..	..	5
76	Vanjarpatti Naka .. ..	..	..	9
77	Kaneri .. ..	..	..	10
78	Dr. Gandhe's Hospital .. ..	..	..	10
79	Old Thana Road Toddy Shop .. ..	..	..	10
80	College .. ..	..	..	9
81	Dr. Acharya's Hospital .. ..	..	2	19
82	Prabhu Alli No. 1 .. ..	..	1	9
83	Prabhu Alli No. 2 .. ..	..	1	9
84	Nilkantheshwar Temple .. ..	..	..	10
85	Hanuman Bavadi .. ..	..	..	10
86	Bombay-Agra Road Octroi Post .. ..	..	..	7
87	Dandekar Wadi .. ..	..	..	9
88	To the rear of Government Dispensary .. ..	..	..	2
	Total	2	20	584
	<i>Important Points</i>			
1	Court-house .. ..	..	..	5
2	Inspection Bungalow .. ..	..	..	5
3	S. T. Stand .. ..	..	..	5
4	S. T. Depot .. ..	..	..	5
5	Electric Power House .. ..	..	..	2
6	Post Office .. ..	..	..	5
7	Petrol Pump Agra Road .. ..	..	..	6
8	Maharashtra Electric Board .. ..	..	..	5
9	Dandekarwadi Post Office .. ..	..	..	7
10	Water Supply .. ..	..	..	5
11	Narpoli Petrol Pump .. ..	..	..	10
12	Municipal Dispensary .. ..	..	..	4
	Total .. ..	..	..	64
1	3 Striking Forces .. ..	..	1	43
2	1 Highway Patrol .. ..	..	1	17
3	Fire Brigade .. ..	..	4	60
4	3 Mobile Patrols .. ..	..	3	9
5	3 Wireless Patrols .. ..	..	1	8
6	1 Loud Speaker Jeep .. ..	..	..	1
7	Other important duties .. ..	..	4	106
	Total	5	12	244

1	2	3	4	5	
<i>Summary</i>					
1	89 Points	..	20	584	
2	12 Important Points	..	..	64
3	3 Striking Forces	..	1	43	
4	1 Highway Patrol	..	..	17
5	Fire-Brigade escorts	..	4	60	
6	3 Mobile Patrols	..	3	9	
7	Wireless Patrols	..	1	8	
8	Other important duties	..	4	106	
9	1 Loud Speaker Jeep	..	..	1
Total ..			7	32	892

42.42 The deployment for May 8, 1970 was the same as that set out above save that instead of three striking forces there were seven and more police parties were provided as escort for the fire-engines. The three gas squads were also deployed on various duties. The following is a summary of the deployment on May 8, 1970 :—

Serial No.	Points	P. I.	P. S. I.	Policemen	Gas Squads	
1	2	3	4	5	6	
1	89 Points	..	22	584	..	
2	12 Important Points	..	..	64	..
3	7 Striking Forces	..	3	111	..	
4	1 Highway Patrol	..	1	17	..	
5	Fire-Brigade escorts.	..	..	16	..
6	3 Mobile Patrols	..	3	9	..	
7	3 Wireless Patrols	..	1	8	..	
8	Other important duties	..	10	453	3	
9	1 Loud Speaker Jeep	..	..	1	..
Total ..			16	63	1263	3

Water supply

42.43 On May 7, 1970 while they were at Sutar Alli organizing fire fighting operations D.M., Capoor, D.I.G. (B.R.), Gokhale and S.P., Bhawe noticed at about 6-40 p.m. that there was no water in the municipal mains. Thereupon Capoor sent Vinayak K. Date, S.D.M., Bhiwandi Division (P.W. 62), to Veraldevi Water Works to arrange for water supply. Date went in a wireless jeep to the Water Works accompanied by Bhausaheb Dhamankar and an armed police party. He was informed that it was necessary to open the water valves situate in different parts of the town and that for the said purpose he should take four valvemen with him. As there was no place in the jeep for the valvemen, Date returned to the Town Police Station, took from there a bigger vehicle with five armed S.R.P. men and with the help of four valvemen from the Water Works commenced at about 8 p.m. the work of opening the water valves and returned to the police station

at about 12-30 a.m. on May 8, 1970. In all 16 valves were opened. These valves were situated at Dhamankar Naka, Gauripada, Nizampura, Bazar Peth, Vaje Mohalla and Kumbharwada. At certain places it was not possible to take the vehicle up to the valves either because the roads were narrow or because there were fires on the roads and, therefore, before going to Kumbharwada and Vaje Mohalla, the big vehicle was replaced by two jeeps [G.W. 4/1(23)/1190(17); P.W. 4/1(83)/236(54); P.W. 59/1(49)/1000(28); P.W. 62/1(12-3)/1073(4-5); Ex. P 367, entry No. 82].

42.44 Even after the valves were opened the pressure in the hydrants was low and the Fire-Brigade officers found that it took longer than it would have otherwise taken to fill the watertanks of their fire-engines [P.W. 8/4/453; P.W. 15/1(2)/440(2)].

Power failure

42.45 The electric power supply failed in Bhiwandi on May 7, 1970 at 6-25 p.m. Though the power supply was restored after some time, the failure occurred time and again on May 7 and 8, 1970 in different localities, very often plunging almost the whole town into darkness. Even the Town Police Station had to work during the night of May 7/8, 1970 with just one kerosene lamp (P.W. 8/22/377). The details of these power failures are to be found in a note Exhibit G 119 filed by Additional I.G.P., Modak and in the evidence of S.P., Bhawe (P.W. 4/36/281-2) and G. L. Das, an assistant engineer in the Bhiwandi office of the Amalgamated Electricity Company Limited (P.W. 21/1-11/468-75).

42.46 Electricity is supplied to Bhiwandi Town from the Kalyan receiving sub-station of the Tata Hydro-Electric Power Supply Co. Limited. It is first supplied to Tata's kiosk situate at Kalyan Road opposite G. G. Dandekar Machine Works Limited. The main switches are located at the kiosk. The kiosk in turn supplies electricity to the main sub-station and also directly to the areas on Kalyan Road, Nizampura, Kasaiwada, Nazarana Talkies, etc. The kiosk supplies electricity at 22 K.V. pressure, i.e., 22,000 volts. This is stepped down through transformers located at various places in Bhiwandi. The voltage ratio of the transformers is 22,000/400-230 for feeding domestic consumers at 230 volts and power consumers at 400 volts. The lines which carry 22,000 volts supply are known as High Tension (H.T.) lines and those carrying 400 or 230 volts are called Low Tension (L.T.) lines.

42.47 For all the areas falling under the main sub-station the H.T. lines go through the main sub-station. If the H.T. lines anywhere in the area under the sub-station are short circuited by any of the three lines coming in contact with each other or with the guard wire, it affects the main sub-station. There is an oil circuit breaker (O.C.B.), a type of switch controlling H.T. supply from the main sub-station. If any short circuiting takes place on the H.T. line beyond the main sub-station, the O.C.B. gets tripped off (i.e. it is switched off automatically)

and thereby damage to the transformer is saved. There is one such H.T. O.C.B. at the main sub-station. Similarly, after the voltage is stepped down through the transformers, one or more L.T. O.C.Bs. are provided at each transformer. If short circuiting takes place on L.T. lines only that particular L.T., O.C.B. which feeds electricity to that area is tripped.

42.48 The position, therefore, is that if an H.T. line is short-circuited, the whole area under the main sub-station would be affected; but if an L.T. line is short-circuited, only a part of the area falling under the particular oil circuit breaker (O.C.B.) attached to that particular transformer would be affected.

42.49 On four occasions prior to May 7, 1970 there had been tripping off, namely, on October 3, 1969, on October 8, 1969, on January 12, 1970 and February 1, 1970. On October 3 and 8, 1969 the H.T., O.C.B. was tripped off and power failure was caused by throwing a wire across the H.T. lines. On January 12, 1970 the power failure was caused by throwing a branch of a tree across the H.T. lines and on February 1, 1970 by throwing a steel wire on the L.T. lines which caused a power failure in the locality supplied by those particular lines. After each of these incidents of tripping off, for some days the Police patrolled the areas where the tripping off was caused, but when the patrolling discontinued, a few days thereafter another incident would occur.

42.50 On May 7, 1970 at about 6 p.m. Bhave was at Old Thana Road near Ishak Bajewala's house which had been set on fire. He saw that the electric wires on a wall of the said building had short-circuited and were emitting sparks. He apprehended that this short-circuiting might result in a general failure of electricity in the town and thereupon sent a message from the wireless jeep to the Control Room to have the power supply switched off temporarily. The Control Room sent a message to the 'Apple' Mobile to proceed to the power-house and convey the message. Before the 'Apple' Mobile reached the power-house there was a general power failure at 6-25 p.m. (P.W. 4/36/281-2; P 367, entries Nos. 53 and 61). What had happened was that at about 6-20 p.m. the H.T. O.C.B. had tripped off and the power supply to one of the two sub-stations had thereupon failed affecting half the town. G. L. Das, an assistant engineer in the service of the Amalgamated Electricity Co. Limited, thereupon went to check the line to ascertain the cause of the failure. At Yatimkhan, which is a Muslim orphanage situate in Kaneri across the road to the rear of Rais High School in Kaneri, a mixed locality, he saw a wire with stones tied at both ends lying on the ground below the H.T. wire of the line which passes through a compound fenced with barbed-wire fencing. Das did not take charge of the wire but proceeded further to inspect the line. After a short while he turned back on being informed that the disturbances had broken out.

42.51 The H.T. line stops near the Neelkantheshwar Temple at which place there is a transformer to step down the voltage. As a

result of this tripping off, the said transformer also went off and there was a power failure in the areas supplied by the L.T. lines from that transformer. The localities affected by the power failure were Habsan Alli, Prabhu Alli, Bazar Peth, Kumbhar Alli and Thange Alli including the Bhiwandi Talkies and the Town Police Station. Das telephoned Receiving Sub-Station of the Tatas at Kalyan and the power supply was restored at about 7-20 p.m. (P.W. 21/1-11/468-75).

42.52 These however, were not the only power failures that night. Other failures as mentioned below occurred and most of Bhiwandi remained in darkness for the greater part of the night.

42.53 Under the main sub-station at Bhiwandi there are 42 transformers. About 70 L.T., O.C.Bs. are provided to these transformers. No attendant is posted at the transformers.

42.54 On May 7, 1970 a number of buildings were burnt. This resulted in the service connections (insulated wires) supplying electricity to these buildings being short-circuited and the respective L.T., O.C.B. tripping off.

42.55 According to the instructions of the Addl. I.G.P., Dy.S.P. Diwate, and S.D.M., Date went to the main sub-station and arranged to give escort to the staff of the electricity company and thereupon Assistant Engineers Das, Joshi and Korla visited all the 70 L.T., O.C.Bs. with the help of the escort. They corrected the fault by disconnecting the short-circuited service lines and switched on the tripped L.T., O.C.Bs. They commenced this work at about 3 a.m. on May 8, 1970 and were busy throughout the day. On 8-5-70 they switched on the tripped L.T., O.C.Bs. attached to the transformers at the following places :—

- (a) 4 at Yatim Khana.
- (b) 6 at the City Sub-Station.
- (c) 1 at Yakub Road.
- (d) 2 at Nilkantheshwar Temple.
- (e) 12 at Dargah Road.
- (f) 4 at Idga Road.
- (g) 2 at the District Local Board office at Old Thana Road.
- (h) 8 at Gauripada.
- (i) 2 at Varala Devi.
- (j) 4 at Jaitunpura.
- (k) 2 at Market Road and
- (l) 4 at Tandul Mohalla.

Thus, the total number of L.T., O.C.Bs. which had tripped off was about 51 out of a total number of 70. In Nizampura area there were 42 transformers connected directly with the kiosk and there are about 80 L.T., O.C.Bs. The faults at the following areas were corrected and the L.T., O.C.Bs. were switched on by the staff of the Electricity Company on May 8, 1970 :—

- (a) 2 at Khadak.
- (b) 2 at Jai Hind Stores.
- (c) 4 at the S.T. Depot and
- (d) 6 at Vanjarpatti Naka.

Thus out of the 80 L.T., O.C.Bs. only 14 L.T., O.C.Bs. were affected and switched on.

42.56 The main H.T., O.C.B. tripped off again at 7-50 p.m. on May 8, 1970. The officers, however, could not go out to locate the fault. They suspected that it was a temporary short-circuiting as on the previous day. The H.T., O.C.B. was switched on at 7-55 p.m. after intimating the Shift Engineer at Kalyan.

42.57 The persons responsible for short-circuiting the H.T. lines could not be traced.

42.58 The H.T. lines supplying power to Nizampura areas were not short-circuited nor did the H.T., O.C.B. at the kiosk trip off.

42.59 On May 9, 1970 and subsequently no L.T., O.C.Bs. tripped off.

Instalites

42.60 Both as a precaution against failure of electricity power supply and for night operations, Addl. I.G.P., Modak obtained four instalites from Bombay on May 8, 1970. An instalite is a powerful portable lamp which works on batteries for about six hours without requiring to be recharged and can be charged on the mains (G.W. 3/114/215).

Fire-fighting operations

42.61 When the disturbances broke out, next only in importance to controlling them was the task of preventing the fires started by the arsonists from spreading and to extinguish them. Unless this was done the greater part of Bhiwandi with its narrow, twisting streets and criss-crossing lanes and by-lanes and houses huddled close together would be devastated by fire. This was realized by the officers as soon as they noticed that arson had commenced. The first message to send fire-engines was sent by S.P., Bhawe at 6-11 p.m., asking for the fire-engines of the Bhiwandi Municipal Fire Brigade to be sent to Old Thana Road. He was informed that both the Bhiwandi fire-engines were out on fire-fighting calls (entry No. 56). Another message was received at the Control Room from Apple Mobile at 6-17 p.m. asking that fire-engines should be sent to Teen Batti as a big fire had broken out in that locality. Fires had by then also started in Gauripada and Sutar Alli. Realizing that the Bhiwandi fire-engines were insufficient to cope with the fires which had started, S.P., Bhawe asked the Control Room to request the Thana Control Room to send fire-engines from Thana. Thereupon the Bhiwandi Control Room sent the necessary message to the Thana Control Room at about 6-30 p.m. At 6-48 p.m. another message was received from S.P., Bhawe to send for fire-engines from Bombay, Thana, Kalyan, Ulhasnagar and Ambarnath. Accordingly, a message to that effect was sent through the Kalyan Town Police Station to the Addl. S.P., Thana, who was then camping at Kalyan (Ex. P 467, entry No. 3). After returning to the Town Police Station, at about 7-45 p.m. Dy.S.P., Diwate requested the State Police Operations Room in the office of the I.G.P. in Bombay to send fire-engines (Ex. P 367, entries Nos. 56, 57, 70, 75 and 81 ; Ex. P 467, entry No. 3).

42.62 In pursuance of the above calls for fire-fighters, fire-engines of Thana Municipal Fire Service, the Ulhasnagar Municipal Fire Service, the Bombay Fire Brigade and the State Mobile Civil Emergency Column of the Directorate of Civil Defence, Bombay, set out for Bhiwandi. Ambarnath had no fire-fighter vehicle. The Kalyan Municipal Council did not have a fire-engine, but it had a water-tanker which served as a fire-fighter. The Kalyan water-tanker set out for Bhiwandi, but on the way it was obstructed and stoned and had to turn back. The other fire-engines reached Bhiwandi in spite of the obstructions met by some of them and took part in the fire-fighting operations. Both the fire-engines of the Bhiwandi-Nizampur Municipal Council were obstructed almost as soon as they left the Fire Station to go on fire-fighting operations and were damaged. The Police provided armed escort to each of the fire-engines operating in Bhiwandi. During the night of May 7/8, 1970 almost every one of the fire-engines operating in Bhiwandi was obstructed at one time or the other while engaged in fire-fighting operations.

The fire-engines of the Bhiwandi-Nizampur Municipal Council

42.63 The Bhiwandi-Nizampur Municipal Council had two fire-engines in May 1970, their registration Nos. being MHT 624 and MHT 768. Neither of these two fire-engines was roadworthy on May 7, 1970. There was a leakage of oil from fire-engine No. MHT 624. The certificate of fitness of fire-engine No. MHT 768 had expired on March 31, 1970; it was not renewed thereafter as no one cared to produce the fire-engine before the Regional Transport Officer, Thana Region, for inspection to check its mechanical condition (Ex. P 377). Both these fire-engines went out on fire-fighting operations in the evening of May 7, 1970 and were obstructed and damaged. These obstructions will be dealt with in subsequent chapters.

The Thana fire-engine

42.64 The first fire-engine from outside to reach Bhiwandi was the fire-engine of the Thana Municipal Fire Service. On receipt of the message from the Bhiwandi Control Room for fire-engines, the Thana Control Room telephoned the Thana Fire Brigade. The Thana Municipal Fire Service had at that time four fire-engines, but from about the end of April 1970 to the second week of May 1970 one of them was not available at its engine-pump and other equipment were being overhauled (P.W. 8/2/346). There were, therefore, only three serviceable fire-engines available in Thana and one of them, namely, fire-engine No. MHT 2942 left for Bhiwandi with V. P. Chitre, Station Officer of the Thana Fire Station (P.W. 8), fireman Ramchandra Keshav Kadam (P.W. 13) and four other firemen. According to Chitre, they left at about 6-45 p.m. within less than a minute of the receipt of the call from the Thana Control Room (P.W. 8/2-3/346-9). In the relevant records of the Thana Fire Station the entry showing the time when this fire-engine left the Thana Fire Station has been tampered with.

There is also a dispute with respect to the time when this fire-engine reached Bhiwandi and about what happened at that time. According to the Police and the Hindu parties, on reaching Bhiwandi this fire-engine followed a motor cyclist who came up and after they had gone about three or four furlongs they saw a house on fire ; thereupon they stopped and were about to start fire-fighting operations when an armed Muslim mob surrounded the vehicle asking them not to extinguish that particular fire but to extinguish fires to the houses in their locality. The members of the crew managed to extricate themselves and return to the Bhiwandi Taluka Police Station, but the fireman Kadam was struck with a spear on his left ear by one of the rioters and wounded. According to the Muslim parties, Kadam was not injured by a Muslim rioter in Bhiwandi in the manner alleged but was wounded by an arrow shot by a Hindu while on the way from Bhiwandi to Thana and the fire-engine was not obstructed while about to start a fire-fighting operation in Bhiwandi but was obstructed by some Hindus near Dhamankar Naka. This topic will be dealt with subsequently.

42.65 At the Taluka Police Station a police party was provided to escort this fire-engine. It then reported at the Town Police Station at 7-45 p.m. and was directed to Teen Batti to fight the fires there. It accordingly proceeded to Teen Batti and fought the fires to the Muslim properties. In the course of these operations stones were thrown at the fire-engine and twice a mob came out of a lane to attack it, but the Police prevented the mob from causing any obstruction. It was joined at about 10-30 p.m. or 11 p.m. by four fire-engines from Bombay. After these fires were brought under control at about 4-30 p.m. on May 8, 1970, the Thana fire-engine returned to the Town Police Station. D.M., Capoor and S.P., Bhawe who were at the Police Station asked the fire-engine to proceed to Khadak to put out the fire to Kuwari's timber depot. Accordingly it proceeded to Khadak and joined the Bombay fire-engines and the fire-engine from Ulhasnagar in fighting that fire. At about 7-45 a.m. the Thana fire-engine returned to the Town Police Station. Chitre requested the D.M. for permission to return to Thana. The D.M. said that he would let him go on another fire-engine from Thana replacing it. Chitre, however, said that as there were only three fire-engines in working order at Thana no fire-engine could be sent to relieve him and therefore he should be allowed to return to Thana and on reaching Thana he would send another fire-engine. The D.M. then gave him permission to leave. Accordingly he left, reaching Thana at about 8-13 a.m. On the way to Thana Chitre saw large stones lying on both sides of the road near Balkum village but the fire-engine managed to pass through. These apparently were stones of a road-block cleared by the highway patrol (P.W. 8/4-5/351-4, 7/356 ; Ex. P 418).

42.66 No other fire-engine was thereafter sent from Thana to Bhiwandi. In the evening of May 8, 1970 communal disturbances broke out in Thana. The Fire Brigade Officer thereupon told Chitre that as the situation in Thana was tense no fire-engine should

be sent to Bhiwandi (P.W. 8/5/354). There is, however, no explanation why during the intervening period between the return of the fire-engine to Thana at 8-13 a.m. and the outbreak of the riots in the evening no other fire-engine was sent to Bhiwandi.

The Kalyan water-tanker

42.67 The only fire-fighting equipment with the Kalyan Municipal Council in May 1970 was a water-tanker. Its registration number was BYT 2597. A message was sent from the Bhiwandi Control Room to the Kalyan Police Station at 6-48 p.m. on May 7, 1970 to send fire vehicles from Kalyan, Ambarnath and Shahad if available, as shown by entry No. 70 of the Bhiwandi Control Room Diary (Ex. P 367). In entry No. 3 of the Control Room Diary of the Kalyan Town Police Station (Ex. P 467), however, the time when this message was received is shown as 6 p.m. an obvious error, since the message could not have emanated from the Bhiwandi Control Room at 6 p.m. and this is further shown by the fact that a message was sent on the telephone from the Kalyan Town Police Station to Shahad Police Station in Ulhasnagar calling for the Ulhasnagar fire engine at 6-55 p.m. as shown by entry No. 22 of the Station Diary of the Shahad Police Station (Ex. P 468). The Kalyan Town Police Station informed the Additional S.P., Thana, who was camping in Kalyan, and he in his turn informed the Kalyan Municipal Council and the water-tanker No. BYT 2597 was sent to Bhiwandi. May 7, 1970 was a local holiday. As there was no one in the service of the Kalyan Municipal Council who was trained in any kind of fire-fighting operations, ordinarily when the water-tanker used to go on fire-fighting operations, it carried a complement of the driver and a crew of five or six persons who used to be peons working in the Municipal office and labourers working on the roads. It left for Bhiwandi with the driver Pandharinath Dattatraya More (P. W. 6), the Acting Health Officer Ramchandra Trimbak Sathe (P.W. 5), who was asked by the Chief Officer to go on the water-tanker and who knew nothing of fire-fighting operations, and one other person who was a daily-rated labourer working off and on the asphaltting of roads. The pump of this water-tanker was not working properly. It had gone out of order even on May 7, 1970 and was supposed to have been set right before the water-tanker left for Bhiwandi. This water-tanker never reached Bhiwandi for it was obstructed on the way and thereupon returned to Kalyan. The facts of this obstruction appear in the evidence of Acting Health Officer Sathe (P.W. 5/1-8/310-23) and the driver of the water-tanker Pandharinath More (P.W. 6/1-8/324-35).

42.68 After Sathe and More left Kalyan they came at about 8-15 p.m. to Kon Village which is at a distance of one or two miles from Kalyan on the Kalyan-Bhiwandi Road. At Kon about 25 persons shouted out to them to stop but they went ahead and came to Pimpalghar Village, three miles from Kalyan. At Pimpalghar the road was blocked by boulders and branches of trees near a petrol pump known

as Dave's Petrol Pump. They stopped the water-tanker and about 100 to 150 persons rushed suddenly at the water-tanker from the side of the petrol pump and began hitting the water-tanker with sticks and branches of trees. They were about to hurl stones at the water-tanker, but the driver managed to reverse and turn round and then drove off towards Kalyan. On the return journey to Kalyan stones were thrown at the water-tanker as they were passing Kon and as a result thereof the wind-screen of the water-tanker was broken. Both the mudguards were also damaged.

42.69 Both Sathe and More were cross-examined on the identity of the persons who obstructed the water-tanker at Kon and Pimpalghar and throughout they prevaricated at each stage. It is unnecessary to refer to their evidence in detail. It will be sufficient to refer to certain admissions which were extracted from them. Sathe admitted that the large majority of the population of Kalyan and other villages lying on the Bhiwandi-Kalyan Road was Hindu, that he had not heard of any damage having been caused during these disturbances to a Hindu property situate between Kalyan and Pimpalghar and that he had never seen any Muslim in Kon. Though they both admitted that the headlights and the parking lights of the water-tanker were all the while on, they persisted in saying that they did not see anyone in the beams of these lights either while reversing or turning round or when the mob was surrounding the water-tanker. They were faced with their statements recorded by the Police (Ex. P 378 collectively) in which they both stated that when they were first obstructed at Kon they had pacified the mob and proceeded ahead. In order to get out of the implication flowing from this statement that they had talked with these persons and would have, therefore, come to know whether they were Hindus or Muslims, Sathe replied that they pacified the mob merely by gesticulating. Ultimately Sathe blurted out that More had informed the obstructionists at Kon that the water-tanker was going to Bhiwandi. Sathe had to admit that the villagers must have known about the fires in Bhiwandi because as they approached Kon they could see smoke rising up from Bhiwandi in such thick clouds that it appeared that big fires were raging in Bhiwandi. More's attitude can be judged from the fact that he even went to the length of saying that he did not know whether Dave was a Hindu name or a Muslim name. Even though Sathe admitted that everyone in Kalyan was talking about the riots in Bhiwandi, he said that he had heard no one say and did not know that they were communal riots until he read the newspapers the next afternoon.

42.70 There can be no doubt that the persons who obstructed the said water-tanker at Kon and Pimpalghar were Hindus. The villages on the Bhiwandi-Kalyan Road were Hindu villages. The villagers had been subjected to the R.U.M. propaganda and knew that the R.U.M. intended to teach the Muslims a lesson if they obstructed or interfered with the Shiv Jayanti procession, and on seeing smoke and flames coming out of Bhiwandi they must have taken it that the R.U.M. had

made good its declaration. The water-tanker was proceeding towards Bhiwandi and it was apparent that it was going there on fire-fighting operations and in any event Sathe has admitted that the driver told the obstructionists at Kon that they were proceeding to Bhiwandi.

42.71. After returning to Kalyan no complaint was lodged at the Kalyan Town Police Station either by Sathe or More. A complaint was however, lodged by the Chief Officer the next day, but as the offence fell within the jurisdiction of the Bhiwandi Taluka Police Station, the complaint was returned to him to be presented at that police station. The complaint was never presented to the Bhiwandi Taluka Police Station. The water-tanker never made any attempt to return to Bhiwandi either by the same road or *via* Thana nor was any approach made to the Police to afford protection to the water-tanker for making one more attempt to go to Bhiwandi on fire-fighting operations.

42.72 The manner in which the Kalyan Municipal Council has been running its fire service, as disclosed by the evidence, is something shocking. The water-tanker was insured with the Union Co-operative Insurance Society Limited but the insurance company did not pay the claim made by the Kalyan Municipal Council for damage to the water-tanker because it had no cover for riot risk. There was not a single person in its service who was trained in any kind of fire-fighting operation. No record was maintained of the fire-calls received or of the fire-fighting operations carried out by the water-tanker or of the daily mileage covered by the water-tanker or of the trips made by it, and every morning when the driver, More, went to the garage he measured the petrol left in the tank with the help of a ruler and asked for as much petrol as he wanted. Whenever a fire broke out, arrangements were made by the Municipal Office to send municipal peons and labourers to man the water-tanker. No record was maintained at the workshop of any repairs carried out to this water-tanker and even at the date when Sathe gave evidence, namely, February 16, 1971, the damage caused to the water-tanker on May 7, 1970 had not yet been repaired. This was the water-tanker which, we are told, attended on an average two to three fire-calls per month in Kalyan.

The Ulhasnagar fire-engine

42.73 At about 6.55 p.m. on May 7, 1970 the Kalyan Town Police Station Control Room sent a message to the Shahad Police Station requesting that the fire-engine of the Ulhasnagar Municipal Council should be sent to Bhiwandi at once as disturbances had broken out. Thereupon the Shahad Police Station informed the Chief Officer of the Ulhasnagar Municipal Council to provide a fire-engine. Within five minutes another telephone call was received from the Kalyan Town Police Station Control Room that the fire-engine should not be sent then, but further instructions should be awaited. Accordingly, the Shahad Police Station informed the Chief Officer not to send the fire-engine but to keep it ready. At about 9-40 p.m. yet another telephone

call was received from the Kalyan Town Police Station Control Room at the Shahad Police Station to send the fire-engine immediately to Bhiwandi (Ex. P 467, entries Nos. 3 and 6 ; Ex. P 468, entries Nos. 22, 23, 24, 25 and 30). This message was conveyed to the Chief Officer and accordingly the fire-engine No. MHT 579 of the Ulhasnagar Municipal Council set out for Bhiwandi at about 10-30 p.m. From what we have learnt about the condition of this fire-engine in the evidence of the driver of the said fire-engine Bayaji Kamlaji Pawar (P.W. 7/1-8/336-45), it might as well have not set out. The suction pump of the fire-engine had two connections—one for drawing water and the other for spraying water. The connection for drawing water was not in order for quite some time prior to May 7, 1970. Except this defective suction pump it had no other fire-fighting gear. The body was completely corroded. As the suction pump was not working, no water could be drawn from an open water source such as a well. The fire-engine did not carry a spare tyre. Its engine was giving trouble. Its crew was inexperienced and the driver of the fire-engine had been on hardly four fire-fighting operations prior to May 7, 1970. It did not occur to anyone even to maintain a log book for this fire-engine. The only record maintained in respect of this fire-engine was that a report in writing was taken from the person whose house was on fire and then submitted to the Municipal Office.

42.74 The fire-engine proceeded first to the Kalyan Town Police Station where it was asked to go to Bhiwandi. On the way to Bhiwandi once again at Pimpalghar stones were thrown at the fire-engine and the fire-engine was damaged. About one and a half miles after leaving Pimpalghar they came across a road-block consisting of the trunk of a tree put across the road. The driver, however, managed to take the fire-engine from one side. After leaving Pimpalghar, they saw a police van waiting along with a constable near a petrol pump. Two other trucks which had also been stoned at Pimpalghar were waiting near the petrol pump. The three drivers informed the constable about the stoning of their vehicles on the way and the fire-engine then proceeded to Bhiwandi.

42.75 At the Bhiwandi Taluka Police Station the fire-engine was given a police jeep as an escort to conduct it to the Town Police Station. This fire-engine operated at Teen Batti and Khadak. Since this fire-engine had no utility as a fire-fighter, Station Officer V. V. Vaidya of the Bombay Fire Brigade used it as a transport vehicle. Vaidya has also deposed that its body was so corroded that it was impossible to distinguish between the corrosion and the damage to the fire-engine (P.W. 14/4/435, 8/437). After some time this fire-engine developed engine-trouble and one of the tyres got punctured. In the morning the fire-engine went to the Town Police Station where Pawar was informed that arrangements would be made to repair the puncture. After the puncture was repaired at about 3 or 4 p.m., Pawar requested that he should be allowed to take the fire-engine back to Ulhasnagar and have the defects attended to. He returned to

Ulhasnagar at 5 or 5-30 p.m. The engine trouble was attended to and the fire-engine was sent back to Bhiwandi at about 8 p.m. that very night with another driver. After reaching Bhiwandi it was sent to Padgha at 11 p.m. and was kept in Padgha till May 12, 1970. At Padgha it attended to the work of extinguishing fires to some haystacks at Padgha and some villages near it. It returned to Ulhasnagar at 8 p.m. on May 12, 1970 (Ex. P 380).

42.76 In the stoning at Pimpalghar the rear part of the body of the fire-engine ripped over an area of 4' x 4'. Pawar has, however, attempted to underplay the damage done to the fire-engine and to hide the community of the persons who stoned it. According to him, there were only five or seven persons and though they stoned the vehicle from a distance of about 10' only and though the head-lights of the fire-engine were on, he could not see to which community they belonged. He has also attempted to disclaim any knowledge of the fact that communal riots had taken place in Bhiwandi and even went to the extent of saying that nobody had informed him about it. His police statement, however, clearly states that the Chief Officer of the Ulhasnagar Municipal Council conveyed to him through the day-duty driver that if he, that is, Pawar, received any telephone call from the Shahad Police Station, he was to go to "the riot-affected area at Bhiwandi". He has also sought to make out that after arriving in Bhiwandi there was some sort of an obstruction to this fire-engine from a Muslim crowd. He has deposed that after he joined the other fire-engines a Muslim crowd came up to the fire-engines and asked them to go with them and put out the fires to a timber depot which belonged to a Muslim. His police statement (Ex. P 379) is however, silent on this point and merely states that they extinguished the fire to a timber depot. According to Pawar, the only damage to the fire-engine was that the door on the driver's side and some part of the body were dented. We have, however, the reliable evidence of the Mobile Column Controller, R. R. Rao, that in the morning of May 8, 1970 he saw an old fire-engine with its body near the mudguard and the rear ripped open over an area of 4' x 4' and that this fire-engine had the name 'Ulhasnagar' painted on it (P.W. 3/7/227). Pawar has admitted that the word 'Ulhasnagar' was painted on both sides of this fire-engine.

42.77 For the reasons mentioned earlier in the case of the Kalyan fire-engine, it is clear that the Ulhasnagar fire-engine was also stoned by some Hindus and the road-block which it encountered was also put up by some Hindus.

42.78 It is shocking to learn that even on the date when Pawar gave evidence, namely, February 17, 1971, the suction pump of this fire-engine was not in working order and could not draw water.

The Civil Defence fire-engines

42.79 The State Mobile Civil Emergency Column (hereinafter for the sake of brevity referred to as "the Civil Defence Fire Service")

is an auxiliary fire service in the Directorate of Civil Defence, Bombay. On May 7, 1970 R. R. Rao (P.W. 3), the Mobile Column Controller, Civil Defence Fire Service, Bombay was the operations officer on duty. On receiving a message from Dy.S.P., Diwate for fire-engines, Asst. I.G.P., M. G. Katre rang up Rao at about 8-30 p.m. informing him about the situation in Bhiwandi and requesting that two fire-engines from the Civil Defence Fire Service be sent to Bhiwandi. Rao immediately took the necessary permission of the Civil Defence Director and set out for Bhiwandi at about 8-40 p.m. with two fire-engines bearing registration Nos. MRT 1103 and MRT 1106 (which was equipped with a wireless set). Each fire-engine was manned by eight persons including the driver and Rao was in charge of both of them. Meanwhile at 8-45 p.m. the State Police Operations Room in the office of the I.G.P. in Bombay informed the Home Inspector, Thana, that two fire-engines of the Civil Defence Fire Service and two of the Bombay Fire Brigade would be going to Bhiwandi and he should keep an escort ready for them. When the fire-engines reached the octroi post at Mulund on the Eastern Express Highway a constable stopped them and informed them that an escort would be arriving. After about 15 or 20 minutes two fire-engines of the Bombay Fire Brigade in charge of Station Officers V. V. Vaidya and M. I. Anwar joined them. After some time Addl.I.G.P., E. S. Modak who had been asked by the I.G.P. to go to Bhiwandi, came there in his car and arranged for an escort for them from Thana. They all then proceeded in a convoy reaching Bhiwandi at about 10-15 p.m. [P.W. 3/1-5/222-4 ; G.W. 3/1(3)/152(1)].

42.80 The details of the fire-fighting operations carried out by the Civil Defence Fire-engines are to be found in the evidence of the Mobile Column Controller Rao (P.W. 3/5-18/224-35) and in the Occurrence Books of the Civil Defence Directorate Control Room and in the log-books of different Civil Defence Fire-engines (Exs. P 8 to P 13).

42.81 The first fires to which the four fire-engines from Bombay were directed by the Town Police Station were those at Teen Batti. Rao was put in charge of the entire fire-fighting operations. The Civil Defence Fire-engines had with them a powerful portable feather-weight pump which could fill the water-tank of a fire-engine in about three minutes. The fire-engines refilled their tanks by drawing water with this pump from the Hanuman Bavdi.

42.82 From Teen Batti Rao took fire engine No. MRT 1103 to Sutar Alli. As the fire-engine came out of Sutar Alli on its way to Hanuman Bavdi for filling the tank, a mob threw stones at it and P. C. Patil (P.W. 19) who was escorting this vehicle opened fire and drove away the mob. This incident will be dealt with in a subsequent chapter.

42.83 The two fire-engines were thereafter deployed in different localities. Their crews were relieved by fresh crews from Bombay from time to time.

42.84 According to Rao, the actual fire-fighting operations in Bhiwandi continued till 9th May 1970 and afterwards only smouldering fires were required to be put out. Fire engine No. MRT 1103 remained at Bhiwandi till May 11, 1970 when it was sent to Wada about 25 miles from Bhiwandi on the Bhiwandi-Ahmedabad Road. At Wada it supplied drinking water by bringing it from the Vaitarna River as also attended to some fire-calls. It returned to Bombay on May 15, 1970. Fire-engine No. MRT 1106 was relieved on May 13, 1970 by fire-engine No. MRS. 5045 which remained at Bhiwandi upto May 26, 1970 when it was relieved by fire-engine No. MRH 5618 which remained at Bhiwandi upto June 13, 1970.

The fire-engines of the Bombay Fire Brigade

42.85 The first two fire-engines of the Bombay Fire Brigade of the Municipal Corporation of Greater Bombay to reach Bhiwandi were fire-engines Nos. MRT 1117 and MRT 1118. Fire-engine No. MRT 1117 was in charge of the Station Officer of the Chembur Fire Station, M. I. Anwar, and fire-engine No. MRT 1118 was in charge of the Station Officer of the Dadar Fire Station, V. V. Vaidya. The details of how these fire-engines proceeded to Bhiwandi and the operations carried out by them are to be found in the evidence of Vaidya (P.W. 14/1-7/430-9) and Anwar (P.W. 15/1-4/440-1) and in the statements Exhibits G 116 and P 436. On receiving a request from Dy.S.P., Diwate for fire-engines Assistant I.G.P., Katre not only rang up the Mobile Column Controller of the Civil Defence Fire Service, but also the Bombay Fire Brigade. Thereupon at about 8-50 p.m. Vaidya received a telephone call from the Divisional Officer, Mobilization, L.S.D. Merwanji that he should proceed to Bhiwandi on a fire-fighting operation with the fire-engine of the Dadar Fire Station. Merwanji further told him that a fire-engine from the Colaba Fire Station was also being sent and that he should wait for it and both fire-engines should set out together and that at the junction of the Eastern Express Highway and Tatyasaheb Tope Road he should pick up Station Officer Anwar. The necessary message was also sent to Anwar through the Control Room of the Bombay Fire Brigade. After the Colaba Fire Station fire-engine came to the Dadar Fire Station both these engines set out for Bhiwandi at 9-26 p.m. At the specified place they picked up Anwar and proceeded along the Eastern Express Highway where at the Mulund check-post they found Mobile Controller Rao and two Civil Defence fire-engines waiting. They waited along with those fire-engines and when the Additional I.G.P., Modak came there in his car and arranged for an escort they proceeded along with him, reaching Bhiwandi at about 10-15 p.m.

42.86 The first fires they attended to were the fires in the Teen Batti area. These operations were carried out jointly with the Civil Defence fire-engines and the Thana fire-engine. When the Teen Batti fires came under control, Vaidya, who was the senior of the two Station Officers, sent Anwar to Mustafa Kuvâri's timber depot

as the fire there was serious. While fighting the fire at Kuvari's timber depot Anwar's fire-engine was obstructed. This obstruction will be dealt with in a subsequent chapter. After about half an hour Vaidya also joined Anwar in order to fight the said fire.

42.87 At about 5 a.m. two more fire-engines of the Bombay Fire Brigade arrived in Bhiwandi (Ex. P 368, entry No. 24). These four fire-engines of the Bombay Fire Brigade attended to various fires. They were relieved at about 4 p.m. on May 8, 1970 by two other fire-engines of the Bombay Fire Brigade each in charge of a Station Officer. These two fire-engines were relieved in their turn and in this manner two fire-engines of the Bombay Fire Brigade operated in Bhiwandi until May 15, 1970 after which date only one fire-engine of the Bombay Fire Brigade was stationed at Bhiwandi. This fire-engine returned to Bombay on May 19, 1970.

The difficulties in fire-fighting operations

42.88 The difficulties in carrying out fire-fighting operations in Bhiwandi have been graphically described by Mobile Column Controller Rao of the Civil Defence Fire Service, Station Officers Vaidya and Anwar of the Bombay Fire Brigade and Station Officer Chitre of the Thana Municipal Fire Service. The streets of Bhiwandi are narrow and criss-crossed with lanes and by-lanes. Shops stand cheek by jowl and houses are huddled close to one another. In such circumstances it would have been a difficult task even ordinarily to isolate a fire, but when there were not just a few fires but fires raging in almost every locality of Bhiwandi, the difficulties were immense. The narrow streets made it impossible for several fire-engines to operate at the same time. In localities where the streets were wider, they were not wide enough and only about two or three fire-engines were able to operate at one time. The number of fire-engines in operation on May 7 and 8, 1970 was insufficient to cope with the number and extent of fires. The number of fires raging in Bhiwandi and their intensity can be judged from the fact that a thick pall of smoke lay over Bhiwandi and could be seen from miles around. It was seen by Sathe, Acting Health Officer of Kalyan Municipal Council from Kon village, which is at a distance of only one or two miles from Kalyan on the Bhiwandi-Kalyan Road, and as the Bombay fire-engines turned from the Eastern Express Highway on to the Bombay-Agra Road, their crews could see a big glow in the direction of Bhiwandi and as they entered Bhiwandi, they found that there were flames on all sides and it seemed as if the whole of Bhiwandi was on fire. Some of the fires, such as those at Teen Batti and Mustafa Kuvari's timber-depot, were of such magnitude that they are known as "No. 3 Fires" that is, fires which are likely to spread and to extinguish which more than one fire-engine is required. The flames at Mustafa Kuvari's timber-depot were rising sky-high. At Teen Batti a number of shops and houses were on fire and there were fires raging in every lane leading to Teen Batti and the fires

were spreading. After the Fire Brigade personnel had succeeded in putting out the fire to one of the buildings in Teen Batti in which a cold-drink shop was situate, a cylinder containing carbon dioxide exploded, probably due to heat, and the fire broke out again. Normally carbon dioxide would help to extinguish a fire but because of the presence of excess oxygen the explosion caused a fire and the fire-engines had to rush back to fight it. Though the main valves were open, there was not sufficient pressure in the hydrants and it was lucky for Bhiwandi that the Civil Defence fire-engines had brought with them a powerful portable feather-weight pump which could draw up water and fill the water-tank in about three minutes and it was with this pump that the water-tanks of the fire-engines were filled at Teen Batti. There was no respite for the fire-fighting crews because the moment they would extinguish a fire and go to the Town Police Station, there would be another fire-call waiting for them. To add to their difficulties the power supply had failed and it was pitch dark. Even the Bhiwandi Town Police Station was working with one kerosene lamp. The telephones also worked intermittently. At times there was stoning and obstructions to some fire-engines and there was always the danger of an obstructing mob damaging the fire-engine or injuring some members of the crew. That in spite of all these difficulties these Fire Brigade personnel managed to bring the fires under control speaks volumes for their sense of duty and efficiency. But for them, a greater part of Bhiwandi would have been reduced to ashes [P.W. 3/15-7/232-4; P.W. 5/1/311; P.W. 8/4/351-2, 18/370, 20-2/375-6; P.W. 14/8/437; P.W. 15/1(2-3)/440(2)].

Inadequacies of the fire service in the Thana District

42.89 Fire Station Officer Chitre of the Thana Municipal Fire Service has deposed that as far as he was aware in all States, except Maharashtra and Gujarat, fire services were in charge of the Government, but in the States of Maharashtra and Gujarat they were run by local authorities, except in the Marathwada areas of the State of Maharashtra. Chitre is the holder of a diploma in Fire Engineering from the Government of India National Fire Service College at Nagpur. He took this diploma in 1963. It was then an eight months' course after finishing which a student had to go round and study the work of fire stations at various places such as Delhi, Madras, Bombay and Calcutta prior to sitting for the examination. Chitre has further deposed that the efficiency and equipment of the fire services are as a rule better when the fire service is run by a State and that when it is run by a municipality there is often interference by the municipal councillors which affects discipline, morale and efficiency and also results often in proper equipment not being provided (P.W. 8/24/378).

42.90 The evidence before the Commission amply bears out the truth of what Chitre has deposed. Out of the various fire services in the District of Thana which have featured in the evidence before the

Commission the only fire service which can be said to be efficient was the Thana Fire Service. The manner in which the Bhiwandi-Nizampur Municipal Council and the Municipal Councils of Kalyan, Ulhasnagar and Ambarnath have been conducting their fire services is, to say the least, alarming. Ambarnath had no fire-fighters. Neither the Bhiwandi-Nizampur Municipal Council nor the Municipal Councils of Kalyan and Ulhasnagar ever bothered to keep their fire-engines or water-tankers in proper running order. The leakage of oil from the Bhiwandi fire-engine No. MHT 624 was left unattended and the five-engine No. MHT 768 was obviously not in good mechanical condition because when its certificate of fitness expired on March 31, 1970 it was not produced for inspection before the Regional Transport Officer, Thana Region, to obtain the renewal of the certificate. The suction-pump of the Ulhasnagar fire-engine was not working for quite some time prior to May 7, 1970 and had not been set right even in February 1971. The body of this fire-engine was so corroded that it was not even possible to distinguish the corrosion from the damage suffered by this fire-engine. Apart from a pump which could only spray water but not draw it, the Ulhasnagar fire-engine had no other fire-fighting gear or equipment. There were no records maintained in respect of this fire-engine. Though there were at that time on an average two to three fires per month in Kalyan, the condition of the Kalyan water-tanker was no better and its pump was also defective. When a fire broke out, this tanker used to be manned by peons working in the municipal office and labourers working on the road. The damage caused to this tanker in the stone-throwing on May 7, 1970 had not been repaired even in February 1971. No records were maintained in respect of this water-tanker nor were any records kept at the workshop of any job carried out except in respect of purchase of materials. The only municipal fire service in the Thana District which seems to have had a trained officer was the Thana Fire Service, but even here the features endemic in fire services run by local authorities deposed to by Chitre can be seen. They are apparent from the fact that though Station Officer Chitre obtained permission of D.M., Capoor to leave Bhiwandi on an assurance that on reaching Thana he would send another fire-engine to Bhiwandi, no fire-engine was sent throughout the day, until the outbreak of the riots in Thana in the evening furnished an excuse to be trotted out before the Commission for not sending any fire-engine thereafter. These features are also apparent from the fact that Chitre had to write out an ante-dated, false report (Ex. P 422) about the injury to fireman Kadam. When we see the state of affairs in Kalyan and Ulhasnagar, both of which are industrial towns with a number of industries both within and outside the town, we shudder to think what would happen if a really serious conflagration ever took place in those towns. A fire-engine attends not only to accident fire but also to fires caused by arson. Fires caused by arson may be for various reasons, by way of revenge, to obtain insurance moneys, or in

the course of labour trouble or riots. The insurance taken out by the Kalyan Municipal Council on its water-tanker did not, however, cover it against riot risk.

42.91 The criticism levelled against fire services run by the municipalities in the foregoing paragraph does not, however, apply to the Fire Service of the Municipal Corporation of Greater Bombay and the Civil Defence, Bombay. Their fire-engines were excellently equipped and their officers and firemen well-trained and highly efficient. Mobile Column Controller, Rao, belonged to the Bombay Fire Brigade and was on deputation to the Civil Defence. These fire-engines and the officers and members of their crew rendered yeoman services in Bhiwandi and but for them the fires would never have come under control and the greater part of Bhiwandi would have been devastated by fires and reduced to ashes. The people of Bhiwandi owe a deep debt of gratitude to these officers and men for saving Bhiwandi from the flames.

Visits of V.I.Ps. and others

42.92 The Prime Minister, the Governor of Maharashtra and a number of dignitaries, ministers, senior officials, M.Ps., M.L.As., leaders of political parties, social workers, editors and representatives of newspapers and journals, and even film stars visited Bhiwandi during the disturbances. Mr. H. G. Vartak, Minister for Food and Civil Supplies, was the minister in charge of the Thana District and he visited Bhiwandi almost every day. A list of important persons who visited Bhiwandi is Exhibit P 1532. In the afternoon of May 8, 1970 the Chief Minister visited Bhiwandi. He again came the next morning with the then Union Home Minister, Mr. Y. B. Chavan, and on May 14, 1970 with the Governor of Maharashtra, and on May 17, 1970 accompanied the Prime Minister, and Mr. Fakruddin Alli Ahmed, the then Union Minister for Industries, when they visited Bhiwandi. Mr. A. R. Antulay, the then Minister of State for Law and Judiciary, visited Bhiwandi on May 8, 1970. Mr. Kalyanrao Patil, the then Minister of State for Home and Labour, and Mr. D. S. Desai, the then Minister for Revenue, visited Bhiwandi on May 10, 1970, and Dr. Rafiq Zakaria, the Minister for Public Health, visited Bhiwandi on May 25, 1970. The then Union Minister Mr. K. K. Shah visited Bhiwandi on May 25, 1970. During May 1970, 6 Members of Parliament and 7 Members of the Maharashtra Legislative Assembly visited Bhiwandi. A number of leaders of political parties, social workers and representatives of the Press and two film stars also visited Bhiwandi. The leaders of political parties included leaders of the Jan Sangh, the Shiv Sena, the Swatantra Party, the C.P.I., the S.S.P., the P.S.P., the P.W.P. and the Jamiet-ul-Ulema.

42.93 When the Chief Minister visited Bhiwandi in the afternoon of May 8, 1970, leaders of both communities and social and political workers as also all officials had assembled at the Inspection Bungalow. I.G.P., Rajadhyaksha had accompanied the Chief Minister. The Chief

Minister first addressed the social workers and the leaders and the people who had gathered there. He requested them to co-operate with the Police and the authorities in bringing the situation under control. He further exhorted the social workers to visit villages and create confidence among the villagers and in particular to dissuade the Muslims (who were in a very small minority in the villages in the Thana District except in one or two villages) from leaving the villages. He then addressed the officers present and gave them instructions to take the sternest possible measures against miscreants, including opening fire unhesitatingly and shooting at sight persons indulging in arson, looting, murder and similar offences. He further assured full support of the authorities to bring the situation to normal and also instructed the D.M. to take prompt and adequate measures for relief and rehabilitation of those who had suffered in the disturbances and directed him to start relief centres and provide gratuitous relief to the needy. He also ordered a relief committee to be formed under the chairmanship of Mr. H. G. Vartak and also asked Mr. Vartak to organize peace committees with the help of non-officials. He suggested intensification of patrolling to create a feeling of confidence and emphasized the need to keep the highways and link roads clear and traffic moving. He also visited all the riot-affected areas in the town. The visit of the Chief Minister and the instructions given by him, particularly his instructions to shoot at sight all those indulging in arson, looting and murder, had the effect of restoring confidence amongst the people. Immediately after the Chief Minister left, the first meeting of the Relief-cum-Rehabilitation Committee was held from 6-20 p.m. to 8 p.m. [G.W. 3/1(9)/152(3-4), 32/173 ; P.W. 59/1(58)/1000(31-2) ; G.W. 4/1(26)/1190(21-2) ; P.W. 4/1(95)/236(61)].

42.94 On May 11, 1970 Home Secretary Rajwade, I.G.P., Rajadhyaksha and the Commandant-General of Home Guards toured the entire area between Bhiwandi, Kalyan, Dombivali, Kausa and Thana and discussed the situation with the local officers and gave them necessary instructions [G.W. 1/1(11)/1(7)].

42.95 As Inspector Pradhan in charge of the Bhiwandi Town Police Station had been injured in the evening of May 7, 1970 and was on leave from May 8, 1970, the only senior officer on the spot familiar with Bhiwandi and its localities was Dy.S.P., Diwate. Accordingly he had to pilot all the dignitaries who came to Bhiwandi. He was thus busy most of the time on May 8 and 9, 1970, two of the most crucial days in the history of the disturbances. The same was the position with all the other senior officials who had to attend the Inspection Bungalow and meet the dignitaries either for paying their respects or discussing the situation with them and for receiving instructions (P.W. 66/118/1177).

42.96 The visits of V.I.Ps. and leaders of political parties to affected areas is a mixed blessing. The visits of the Prime Minister, the Governor, the Chief Minister and other Ministers has the result of restoring confidence in the public and making the people feel that

their woes are not being ignored. The visits of leaders of political parties make their followers feel that their leaders have come personally to hear their grievances. The other side of the picture is that the visits of ministers and other dignitaries have the disadvantage of taking senior officers away from their work of bringing the situation to normalcy and restoring law and order; and some political leaders tend to make thereafter in other places political capital and foment communal tension out of what they claim to have seen and learnt in the disturbed areas.

The exodus from Bhiwandi and the villages

42.97 When the disturbances broke out a number of persons in Bhiwandi fearing for their safety left their homes. Some took shelter in mosques, temples, and verandahs and compounds of houses in safer localities, others in the relief camps which were opened, and some fled from Bhiwandi. About 1,000 to 2,000 Muslims and an equal number of Hindus thus left Bhiwandi. As the Muslims in the villages in the Thana District were in a very small minority, a large number of Muslims fled from their villages. Out of the people who left Bhiwandi and the villages, some took shelter in the relief camps which were opened, some hid in the jungles, some trekked to Kalyan and other towns and villages where they had their relatives and some came down to Bombay. During his visit to Bhiwandi on May 8, 1970, the Chief Minister said that attempts should be made to prevent the people from leaving the town by providing them shelter locally in order to prevent rumour-mongering and spreading of panic. Accordingly D.M., Capoor instructed the Block Development Officer, Bhiwandi, and his staff to prevent the exodus of people from Bhiwandi, and to direct them to go to the relief camps. In order to create confidence amongst the villagers, particularly the Muslim villagers for they were in a very small minority in the villages, and to prevent any trouble taking place, villages in the Bhiwandi Taluka were divided into groups and police parties organized for patrolling them [G.W. 3/1(15)/152(5), 32/173; P.W. 59/1(58)/1000(31), 1(60)/1000(32), 79/1043; P.W. 39/1(10)/888(5-6)].

Obstructions on roads and highway patrolling

42.98 Within a few hours of the disturbances breaking out in Bhiwandi, road-blocks were erected and mobs started obstructing passing vehicles and stoning them. On May 7, 1970 at about 8 p.m. the Kalyan water-tanker was thus obstructed at Kon Village, hardly two miles from Kalyan on the Bhiwandi-Kalyan Road, and one mile later at Pimpalghar Village it met with a road-block of stones and tree trunks. The Ulhasnagar fire-engine proceeding to Bhiwandi and two S.T. buses were also stoned at Pimpalghar (P.W. 5/2/312; P.W. 6/2/327; P.W. 7/2/338, 8/344). S.P., Bhawe and his police party were obstructed on the Bombay-Agra Road at about 8-15 p.m. by a road-block of stones and tree trunks and a mob which had gathered

there attempted to set fire to their van. Bhave had thereupon to open fire to disperse the mob. Road-blocks, obstructions by mobs to vehicles, stoning of vehicles and assaults on their occupants and on passers-by and those fleeing from Bhiwandi and villages to other places, continued for several days. Obstructions and assaults took place on the Bombay-Agra Road, the Bhiwandi-Kalyan Road, the Bhiwandi-Ahmedabad Road, the Bhiwandi-Padgha Road, the Bhiwandi-Vadala Road and the Thana-Taloja Road, and in various villages including Purna, Rahnal, Narpoli, Kasheli, Bhinar, Balkum, Angaon, Shelar, Kalher, Karivali, Shirosepada, Kudus, Kon, Pimpalghar, Kajoli and near Vaitarna Bridge. Many of these villages were those from which the processionists had come to Bhiwandi to join the Shiv Jayanti procession. In the villages in the Thana District where there was a mixed population, except in one or two villages, the Muslims were in a very small minority. The population of the villages on the Bhiwandi-Thana Road and the Bhiwandi-Kalyan Road consisted entirely of Hindus save that in a few villages there were one or two Muslim houses and in Temghar on the outskirts of Bhiwandi a number of Muslims resided. Additional I.G.P., Modak has deposed that all these obstructions were caused and assaults committed by Hindus (G.W. 3/28/172, 32/173, 35/174 ; P.W. 4/242/740).

42.99 On the way some persons who left Bhiwandi and the villages for other places were injured or killed and some women raped by the obstructing mobs. An instance each of such rape and assault will suffice. Three Muslim women who left Bhiwandi for Kalyan in the evening of May 7, 1970 while they were passing through Kajoli village at about 8 p.m. were set upon and raped by 10 to 12 Hindus and on May, 11, 1970 a party of 300 Muslims from Nandkar village proceeding to Kalyan for safety was attacked at Atali Village and one of them killed (Ex. P 371, entry No. 47, Ex. P 1511, entry No. 13 of May 8, 1970).

42.100 To prevent these obstructions and assaults, highway patrolling was introduced from the night of May 7, 1970.

42.101 In the redeployment of police force which he made at about 8-20 p.m. Dy.S.P., Diwate provided for three mobile vans, each with an armed party of 1 H.C. and 3 P.Cs., for patrolling the Bombay-Agra Road. At 8-25 p.m. he despatched P.S.I., Joshi with another police party to patrol the Bhiwandi-Kalyan Road upto Dhamankar Road (Ex. P 367, entries Nos. 88 and 89). P.S.I., Ghosalkar and his police party were asked to patrol in the Vanjarpatti Naka area [P.W. 40/1(4)/896(4)]. On receiving information of the stoning of an S.T. bus near Kon village, the Additional S.P., Thana, who was camping at Kalyan for the Shiv Jayanti, sent at 9 a.m. on May 7, 1970 a party of armed and unarmed S.R.P. men in a van to patrol the Bhiwandi-Kalyan Road (Ex. P 467, entry No. 5). At about 10 p.m. P.S.I., Deolekar was also sent to patrol the Bhiwandi-Kalyan Road and was there from 10 p.m. till midnight [P.W. 29/1(4)/522(5)].

42.102 When Additional I.G.P., Modak arrived in Bhiwandi at 10-15 p.m., he found only one vehicle patrolling on the main highway within the limits of Bhiwandi. He, therefore, directed another vehicle

to patrol the Bhiwandi-Thana Road. This patrolling started from 11 a.m. on May 7, 1970 (G.W. 3/27/170). At the same time P.S.I., Phansopkar was sent with an S.R.P. party for patrolling between Kasheli Bridge and Kalyan Bridge (Ex. P 367, entry No. 105).

42.103 More road-blocks and obstructions made their appearance in the morning of May 8, 1970. The car in which 2 M.L.As., G. N. Banatwalla, Honorary General Secretary of the Maharashtra State Muslim League, and Gulabrao Ganacharya, were proceeding to Bhiwandi was obstructed on the way (G.W. 3/28/172). Road-blocks were erected at Rahnal village and were removed by D.I.G. (B.R.), Gokhale at about 8 a.m. [G.W. 4/1(26)/1190(20)]. He also removed at about 10-40 a.m. obstructions put up near Purna Village (Ex. P 368, entry No. 54). At about 2 p.m. D.M., Capoor and D.I.G. (B.R.), Gokhale removed two road-blocks consisting of stones put across the road between Bhiwandi and Kasheli Bridge [P.W. 59/1(56)/1000(31), 45/1030].

42.104 A State Traffic Branch vehicle was asked to patrol between Thana and Bhiwandi and for some distance on the other side on the Bhiwandi-Ahmedabad Road and the Bhiwandi-Agra Road from 7 a.m. on May 8, 1970. As the tempo of obstruction to traffic on the roads increased, Modak sent a crash wireless message (Ex. G 56) on May 8, 1970 at 1 p.m. to the I.G.P. asking for a company of the Mobile Striking Force under an S.P. consisting of a shield platoon, an armed platoon and a lathi platoon. When this Company reached Bhiwandi, it was employed in clearing obstructions on the roads and highways. It, however, had to be returned to Bombay the next day.

42.105 A difficulty experienced in checking obstructions by mobs to traffic was the adoption of hit-and-run tactics adopted by the mobs (G.W. 3/27/170-2).

42.106 As incidents continued to take place and were spread out for longer distances over highways, highway patrolling was continued and, as the entries in the Riot Diaries show, special police patrols and parties were sent for removing obstructions or dispersing mobs whenever information to that effect was received.

Cutting of telegraph and telephone wires

42.107 On the night of May 8, 1970 telegraph wires were cut near Bhiwandi and a message was received to that effect in the Control Room at 2-35 a.m. on May 9, 1970 (Ex. P 369, entry No. 3). There is, however, no particular significance attaching to it as there was none attaching to the theft of telephone wires on May 6, 1970. This was not a case of a deliberate attempt to cut off communications for Dy.S.P., Diwate has deposed that theft of telephone and telegraph wires were very common on the Bombay-Agra Road, the Bombay-Ahmedabad Road and along the railway tracks and that in the Bhiwandi Sub-Division alone 308 such offences were recorded in the year 1970 and the incidence of this particular crime in the Thana District was still higher; for these being copper wires, they fetched a good price in the market (P.W. 66/11/1111).

Police protection and escort

42.108 As appears from the affidavits, the evidence of witnesses and the entries in the Control Room Diary and Riot Diaries, on a number of occasions the Police afforded protection to persons in danger or escorted them to places of safety and Relief Camps. When the disturbances broke out, the tail-end of the procession was still in Bhoiwada, a purely Hindu locality surrounded by Muslim localities. The processionists continued to remain in Bhoiwada, as they would otherwise have to pass through intervening Muslim localities to reach their residences. From the night of May 7, 1970, arrangements were made to escort the processionists to the Town Police Station or to their respective Mohallas. This work continued till about 10 a.m. on May 8, 1970 [G.W. 4/1(25)/1190(20); P.W. 36/1(11)/844(7)]. In Gauripada, a mixed locality, almost all the Hindu houses had been set on fire and many persons were rendered homeless as a result thereof (P.W. 4/277/768). From about 9 p.m. onwards on May 7, 1970 P.S.I., N. V. Bhuse escorted some of them to Dhamankar Naka [P.W. 23/1(2)/486(1-2)]. P.I., G. N. Ajarekar, P.S.I., S. D. Sali and P.S.I., J. S. Nimbalkar escorted several Hindus, who had been rendered homeless or otherwise apprehended danger, to a house called Ashirwad Building [P.W. 39/1(4)/888(3); P.W. 41/1(3)/901(3)]. P.S.I., K. N. Patil rescued a boy, Devayya Lasamaiya who had been trapped on the ground floor of the Arab Building in Hamalwada which had been set on fire (P.W. 35/3/835-6). In the morning of May 8, 1970 a Muslim Central Excise Officer, Rafiq Ahmed Siddiqui, residing in Kanheri, requested Dy.S.P., Diwate for police protection as he apprehended danger from the Hindus residing there. Diwate accordingly posted an armed party of five policemen near his house [P.W. 66/1(18)/1108(11)]. On May 9, 1970, the Hindus who had taken shelter in Vithal Nagar and Soma Nagar near Dhamankar Naka were escorted to other places by mobile patrolling vans (Ex. P 369, entry No. 32). There are other instances appearing in the Riot Diaries where the Police have attended as immediately as possible to fire-calls or rushed armed parties and patrol parties on receiving information about any mobs assembling in a place. It is neither necessary nor possible to list all these instances.

Seizure of fire-arms from licensed arms holders

42.109 On May 9, 1970 Additional I.G.P., Modak instructed S.P., Bhawe to scrutinize the list of persons holding arms licences and take charge of the fire-arms temporarily. Lists of such licensed arms holders are kept at police stations and taking charge of fire-arms from them is a normal precautionary measure in times of serious disturbances to prevent their possible misuse. On receipt of these instructions Bhawe consulted the D.M. and they came to the conclusion that though the D.M. could suspend the licences, the issue of necessary orders would take time. It was, therefore, decided to persuade the licensees to deposit their arms with the Police temporarily for safe custody. This work was done by P.I., G. N. Ajarekar who moved about the

neighbouring villages for this purpose and by P. S.Is. L. R. Deshpande and S. S. Mane [G.W. 3/1(12)/152(5), 92/205 ; P.W. 4/47/297 ; P.W. 39/1(10)/888(5-6) ; P.W. 42/1(13-4)/905(5-6) ; P.W. 46/1(9)/938(4)].

The Home Guards

42.110 The work done by the Home Guards during the disturbances has been deposed to by Additional I.G.P., Modak (G.W. 3/12/159). In consultation with D.M., Capoor on May 8, 1970, he requested Home Guards Commandant P. M. Hegde, who had come to Bhiwandi to arrange to send Home Guards to Bhiwandi. Fifty Home Guards reported for duty at 8 a.m. on May 9, 1970. Others came in batches thereafter and by May 12, 1970, 110 Home Guards from the Thana District reported at Bhiwandi. Modak then suggested to the then Minister of State for Home, Mr. K. P. Patil, to direct 200 Home Guards from Poona to proceed to Bhiwandi. Accordingly, 29 officers and 185 Home Guards from Poona reached Bhiwandi on May 12, 1970. The Home Guards were in Bhiwandi until May 18, 1970 and performed the following duties :—

- (1) assisting the revenue officers in the work of relief and rehabilitation,
- (2) rescue work,
- (3) removal of debris,
- (4) clearance of road obstacles,
- (5) spraying of D.D.T.,
- (6) assisting the sanitary staff, and
- (7) assisting the revenue officers in distributing food packets.

Medical help and sanitation

42.111 A large number of injured persons were required to be treated. A number of autopsies had also to be performed. Bhiwandi did not have sufficient medical officers for this purpose. Accordingly the authorities had to get medical help from outside. The entries in the Riot Diaries and Control Room Diaries show the work done in this behalf. On May 8, 1970 medical officers from Kalyan and on May 10, 1970 medical officers from Badlapur and Ulhasnagar were brought to Bhiwandi with a police escort. In order to remove the injured persons to the Thana Civil Hospital not only the ambulances from Bhiwandi and an ambulance from Thana, but also police vehicles were pressed into service.

42.112 As a result of the disturbances and the consequent total disruption of normal life, the sanitary situation in Bhiwandi became critical endangering the health both of the police personnel as well as the public. Problems such as of sanitation and clearing up of the debris had also arisen. Additional I.G.P., Modak, therefore, sent a wireless message to the I.G.P. on May 12, 1970 (Ex. G 117), to request the Surgeon-General to send adequate staff to Bhiwandi for taking measures against the possible outbreak of epidemics. The I.G.P. made the necessary arrangements and officers and men of the

Public Health and Medical Department were sent to Bhiwandi. These officers gave treatment to those who had taken shelter in the Relief Camps. An Infectious Diseases Ward was opened in the Bhiwandi Municipal Dispensary and by May 17, 1970 there were 5 admissions — 4 for diarrhoea and 1 for dysentery. Thirty-three Inoculators and 12 Sanitary Inspectors were pressed into service and by May 17, 1970, 13,000 anti-cholera inoculations were carried out, chlorination of pipe-water was checked, the dose of chlorine was increased to 2.5 parts per 1,000 and 110 wells were disinfected. Additional staff from Kalyan, Ulhasnagar and Thana Municipalities was requisitioned, and in all, 100 persons were pressed into service for conservancy and sanitary work. With the help of 50 sweepers of the Municipal Corporation of Greater Bombay the work of disposing of night-soil was undertaken. Five trucks, including three additional vehicles from outside Bhiwandi, were pressed into service for removal of rubbish and night-soil. The Public Department supplied 1,096 kg. of skimmed milk-powder and the Indian Red Cross Society supplied 2,000 lbs. of milk-powder and these were distributed. Necessary escort and help to the staff from the various departments was given by the Police (G.W. 3/11/158 ; Ex. G 118).

Preventive measures by the Government after the disturbances

42.113 As the disturbances continued to spread, in order to prevent more areas from being affected, the Home Department issued various instructions from time to time. The more important of these are mentioned below.

42.114 By a letter dated May 14, 1970 addressed to the I.G.P. (Ex. G 34) the Additional I.G.P. was asked to continue in complete charge of the law and order situation in Thana District until the situation returned to normal or until the end of May 1970, whichever was later, and to arrange for vigorous patrolling on link roads and to deal ruthlessly with cases of arson, looting, etc. By the said letter it was also desired that the D.I.G. (B.R.) should pay more attention to developments in the Kolaba District and other districts of his Range except the Thana District.

42.115 By a crash wireless message (Ex. G 33) sent on May 14, 1970, all D.Ms. and Commissioners of Police were asked to issue orders under section 37 of the Bombay Police Act prohibiting for a period of 14 days meetings and processions except for religious or marriage purposes.

42.116 By a letter dated May 23, 1970 (Ex. G 35) after referring to the aforesaid wireless message, the attention of all D.Ms. and Commissioners of Police was drawn to the fact that leaders of various political parties would be visiting the districts, particularly those affected by the disturbances, to see the situation and to address public meetings and that if orders under section 37(3) of the Bombay Police Act were already in force, these leaders could not address the said meetings. By the said letter the D.Ms. and Commissioners of Police were requested

to consider the necessity of extending the life of these orders beyond a fortnight. In the said letter it was further stated that if the activities carried on privately and secretly by the leaders of a particular organization were considered objectionable and as tending to create communal tension resulting in breach of peace and if it was considered necessary in the public interest to put a curb on the said activities and prohibit these leaders from continuing such activities, an order under section 144 Cr.P.C. should be issued prohibiting these leaders either from making inflammatory speeches or from entering the place where they intended to carry on such activities, and if the activities extended to other places or to the whole of the district, the order should be extended to apply to those other places or to the whole of the district, as the case may be.

42.117 By another letter dated May 23, 1970 (Ex. G 36) the Home Secretary, after referring to the Government circular dated November 17, 1969 (Ex. G 20 collectively) whereby the attention of all D.M.s. was drawn to the wireless messages dated September 22 and 25, 1970 and the Government circular dated November 7, 1969 (Exs. G 17 to G 19 respectively), stated that the Government had reason to believe that action with respect to prosecutions under the amended section 153A I.P.C. in respect of inflammatory speeches and writings had not been as vigorously pursued as was desirable and that he would hold a conference to discuss these matters and that in the meanwhile they should not let things erupt suddenly as had happened at Bhiwandi and Jalgaon.

Conclusions

42.118 When the disturbances broke out the senior police officers, although taken by surprise, were able to organize within a short time the police force at their command. Police reinforcements were asked for and adequate reinforcements were sent. The services of the Home Guards were availed of. Senior police officers such as D.M., Capoor and Dy.S.P., Diwate, though injured, carried on with their work without thought of physical consequences for themselves. The work of dealing with the disturbances was not done haphazardly but attention was paid to every aspect of it. Curfew orders and other prohibitory orders were issued and made to come into force from the earliest practicable point of time. As soon as the senior police officers reached the Bhiwandi Town Police Station the police force was redeployed. Fire-fighting operations were organized. Measures were taken to restore and keep working water and power supplies. Police escort was given to fire-engines, to stranded processionists, to those rendered homeless and to those in search of shelter in safer localities. Highway patrolling and patrolling in villages was introduced and prompt steps taken to render medical help, prevent the outbreak of epidemics and to restore sanitary services. Apart from the discrimination shown by certain police officers and policemen in dealing with the disturbances, which cases will be dealt with in subsequent chapters, the measures taken by the authorities to deal with the disturbances were prompt, adequate and efficient.

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CHAPTER 43

THE FIRST TWO HOURS OF THE DISTURBANCES

CONTENTS

Paragraph

- 43.1 The importance of the first two hours.
- 43.3 The questions for determination.
- 43.4 The rioting at Bhusar Mohalla and Old Thana Road.
- 43.5 The rioting at the Vegetable Market Road ("Mandai").
- 43.11 The lathi-charges at Habsan Alli and Bengalpura.
- 43.14 The first police firing at Kumbhar Alli and the police firing at Bengalpura.
- 43.18 The Muslim allegations against P.S.I., Hirwe.
- 43.21 The Muslim allegations against P.S.I., Hirwe examined.
- 43.40 The attack on the Neelkantheshwar Temple.
- 43.46 The first police firing at Habsan Alli.
- 43.47 The rioting at Habsan Alli.
- 43.53 The rioting at Lendi Bridge and the police firing at Jaitunpura.
- 43.66 The looting and arson at Teen Batti.
- 43.72 The police firing at Teen Batti Naka.
- 43.74 The looting and arson at Bazar Peth.
- 43.78 The rioting at Madarchhalla.
- 43.82 The obstruction to the Bhiwandi fire-engines in Thange Alli.
- 43.85 The attack on the Thange Alli Mosque.
- 43.87 The looting of the stalls near the New Fish Market.
- 43.88 The first police firing at Sutar Alli.
- 43.95 The second police firing at Sutar Alli.
- 43.97 The rioting at Sutar Alli and Hamal Wada.
- 43.105 Whether Muslim rioters used Molotov cocktails in Sutar Alli ?
- 43.109 The murder of Farid Narvel.
- 43.112 The rioting at Gauripada.

CONTENTS—*contd.*

Paragraph

- 43.123 The rioting at Kumbhar Alli.
- 43.138 The rioting at Khadak.
- 43.144 The police firing at Prabhu Alli.
- 43.161 The rioting at Prabhu Alli.
- 43.163 The second firing at Kumbhar Alli.
- 43.166 The arson to Ganesh Sizing Works and other Hindu factories and timber-depots on the Bombay-Agra Road.
- 43.169 The rioting at Kanheri.
- 43.173 The rioting at the Bhiwandi-Karivali Road
- 43.176 The rioting at Khoni Village.
- 43.195 Conclusions.

CHAPTER 43

THE FIRST TWO HOURS OF THE DISTURBANCES

The importance of the first two hours

43.1 The first two hours of the disturbances require separate treatment as they have a very material and important bearing on the question of conspiracy, alleged by the Special Investigation Squad and the Hindu parties, to have been entered into by the Muslims. The finished shape in which this charge against the Muslims ultimately emerged is to be found in the final charge-sheet filed in Criminal Case No. 160 of 1970 in the Court of the Judicial Magistrate, First Class, Bhiwandi. A number of offences registered at the Bhiwandi Town Police Station were amalgamated in this final charge-sheet, namely, the offences registered as C.R. Nos. 177/70, 178/70, 184/70, 188/70, 189/70, 236/70, 244/70, 254/70 (with which C.R. No. 330/70 had already been amalgamated). 307/70 and 115/70 (Exs. P 174, P 175, P 181, P 185, P 186, P 221, P 227, P 234, P 279, P 258 and P 341 respectively).

43.2 The gravamen of this conspiracy charge was that the Muslims entered into a criminal conspiracy to launch simultaneous attacks at 5-30 p.m. on May 7, 1970 on the Shiv Jayanti procession in Bhusar Mohalla and Old Thana Road and the Hindus and their properties in Kumbhar Alli, Prabhu Alli, Habsan Alli, Gauripada, Hamal Wada, Sutar Alli, Khadak, Bombay-Agra Road and Tagarpada in Khoni Village. It, therefore, becomes necessary to consider whether the rioting in these localities began simultaneously and whether it was commenced by the Muslims. As it is also the case of the Special Investigation Squad and the Hindu parties that there was no rioting on the part of the Hindus on May 7, 1970 till late at night, it will be also necessary to consider the rioting in other localities with a view to ascertain whether the rioting there during this period of two hours was only on the part of the Muslims. During this period of two hours the Police opened fire on 11 occasions. It will be necessary to decide whether each of these incidents of firing was justified. Some incidents, though they did not actually take place during this period of two hours, are alleged either by the Special Investigation Squad or the Hindu parties or both to have taken place during this period and accordingly they will also have to be dealt with in this chapter. It is the case of the Muslim parties that the Police showed discrimination against the Muslims both in dealing with the riots and in opening fire. This question, so far as the period of the first two hours is concerned, will also be considered in this Chapter.

The questions for determination

43.3 The following questions arise for determination in respect of the incidents of rioting and police firing which took place during the first two hours of the disturbances:—

- (1) Whether the rioting in the localities of Bhusar Mohalla, Old Thana Road, Kumbhar Alli, Prabhu Alli, Habsan Alli, Gauripada, Hamal Wada, Sutar Alli, Khadak, Bombay-Agra Road and Tagarpada in Khoni Village took place simultaneously, either at 5-30 p.m. on May 7, 1970 or at any other time?
- (2) Whether the Muslims started the rioting in each of the aforesaid localities?
- (3) Whether the Hindus rioted in any of the said localities?
- (4) Whether there was any rioting in localities other than those mentioned above?
- (5) If so, whether the rioting in the other localities was on the part of the Muslims only or was commenced by the Muslims?
- (6) Whether the police firings were justified?
- (7) Whether the Police showed any discrimination against the Muslims in dealing with the riots or in opening fire?

The rioting at Bhusar Mohalla and Old Thana Road

43.4 The rioting at Bhusar Mohalla and Old Thana Road has already been dealt with in chapter 40. As held therein the disturbances broke out between 5 p.m. and 5-15 p.m. near the Old Fish Market in Bhusar Mohalla and then spread to other parts of Bhusar Mohalla and to Old Thana Road.

The rioting at the Vegetable Market Road ('Mandai')

43.5 The next turning to the east on Bangad Galli (the northern part of Old Thana Road) after Keshar Baug is the Vegetable Market Road. A little inside on the road is situate the Vegetable Market ('Mandai'). Some Muslim shops situate near the Vegetable Market including a medical store, known as the Nutan Medical Store, and the shop-cum-office of the stamp vendor and bond-writer Khalil Ahmed Patel (B.R.W. 59), were attacked and looted and some of them including the shop-cum-office of Khalil Ahmed Patel set on fire. There was no damage at all to any Hindu property in the 'Mandai' or on the Vegetable Market Road.

43.6 The Nutan Medical Store is situate on the ground floor of the building in which Zumberlal Kalantri resides. According to Zumberlal Kalantri, when the disturbances broke out he was near Keshar Baug on Old Thana Road for about five or six minutes only and then by a small lane he went to Mandai. When he returned home at about 11 p.m. he saw that the Nutan Medical Store had been broken open and the articles therefrom scattered on the road and he was informed that this happened at about 7 or 7-30 p.m. and that at about the same time Khalil Ahmed Patel's shop-cum-office

had also been looted. Kalantri has stated that while he was at Mandai he did not see any of the processionists indulging in any hooliganism. He has also stated that while he was on Old Thana Road he did not see any damage being caused to any Muslim property (N.H.W. 42/11/2058).

43.7 The Commission has had occasion in the course of this Report to comment on the unreliability of this witness' evidence. He is all through anxious to make out that there was no misbehaviour whatever on the part of the processionists and that all the rioting was entirely on the part of the Muslims and, as on many other points, with respect to the rioting at Mandai also, he is completely falsified by other evidence. Five messages were received in the Control Room with respect to the rioting at Mandai. They are recorded in entries Nos. 35, 37, 40, 43 and 44 of the Control Room Diary (Ex. P 367). The first message was received at 5-35 p.m. from 'Rose Mobile stating that stone-throwing was going on in Saraf Bazar and in pursuance thereof a police party was sent in a vehicle to Mandai. L. R. Deshpande (P.W. 42) was at that time the officer on duty at the Control Room. He has deposed that there is no locality or place known as Saraf Bazar in Bhiwandi and he, therefore, sent the police party to the Vegetable Market because it is near Old Thana Road and four minutes earlier, as recorded in entry No. 33, a message had been received asking for help as heavy stone-throwing was going on at Old Thana Road. The second message was received at 5-43 p.m. It was from Rose Mobile to the effect that a store near Mandai was looted and that Apple Mobile had arrived there. The message further asked for an armed party to be despatched. The reference to the store was obviously to the Nutan Medical Store. The third message was at 5-46 p.m. to the effect that attempts were being made to set fire to the market. The fourth message was at 5-47 p.m. that houses in the market area were being attacked and some were being set on fire. Both these messages asked for police reinforcements. The fifth and last message was at 17-48 p.m., again from Apple Mobile, that heavy stone-throwing was going on near Santosh Hotel and that arson was being committed in the market area. L. R. Deshpande has deposed that the market referred to in the above entries was the Vegetable Market (P.W. 42/11-2/915). The Control Room Diary also records the movements of Zumberlal Kalantri during this period. It shows that at least until 5-47 p.m. Zumberlal Kalantri was at Old Thana Road because as shown by entry No. 36 at 5-37 Zumberlal Kalantri sent a wireless message from Rose Mobile requesting for police vehicles to be despatched to Keshar Baug and entry No. 42 shows that Kalantri requested that he should be allowed to speak on the mike and on receiving the said message, the Control Room sent a message not to hand over the mike to him. Kalantri therefore left Keshar Baug and went to Mandai after 5-47 p.m. when the rioting at and near Mandai had already started and was at its height—and yet he has tried to make out in the

witness-box that the rioting at Mandai took place at 7 p.m. or 7-30 p.m. and the processionists did not have anything to do with it.

43.8 The next question is, 'Who could have indulged in this rioting?' The only persons who could have done so would be the processionists. We have seen in Chapter 40 (paragraph 40.236) that after Dy.S.P., Diwate and C.P.I., Tikale had opened fire for the first time at Old Thana Road, the Police chased away the Hindu processionists who were stoning the Muslims gathered in the Shakarsha Mosque Lane and that these processionists ran away into the lane which leads to 'Mandai'. We have also seen in Chapter 40 (paragraph 40.245) that at that time Diwate formed a cordon of S.R.P. men at Keshar Baug with a view to prevent a conflict between the processionists and Muslims and pushed the processionists towards the Hindu localities including 'Mandai'. It is clear that the rioting processionists who were chased away from near the Shakarsha Mosque Lane and some of the other processionists diverted at Keshar Baug fanned out into the adjoining lanes and localities including the Vegetable Market Road and commenced rioting there. Further, when the disturbances started on Old Thana Road, some of the other processionists instead of waiting on that road must have started dispersing through various lanes and by-lanes including the Vegetable Market Road. The rioting on the Vegetable Market Road could therefore only have been by these processionists. From the timings of the different messages received at the Control Room it is also clear that the rioting started at the Vegetable Market Road very soon after it started at Old Thana Road.

43.9 Relying upon the evidence of P.S.I., Hirwe it was, however, submitted by Mr. Rane, Counsel for the Executive Magistrates and the District Police Officers, that the rioting at Mandai did not take place until much later. Hirwe has deposed that as long as he was on the Vegetable Market Road he did not see any Muslim shops in the Vegetable Market damaged or burnt. Hirwe has, however, admitted that he did not go near the Vegetable Market (P.W. 30/15/553) and from his movements which will be set out when we come to the lathi-charges made and the fire opened by him it is clear that he was on the Vegetable Market Road for only a few minutes. Further, the road from Santosh Lunch Home to Mandai has a rising gradient and then slopes downwards towards the Municipal Dispensary; nor is it a straight road. Hirwe, therefore, could not have seen what was happening at or near Mandai.

43.10 For the reasons stated above, I hold that the rioting at Vegetable Market Road was by the Hindus only and that it commenced at about 5-35 p.m.

The lathi-charges at Habsan Alli and Bengalpura

43.11 On May 7, 1970 P.S.I., Sadanand Laxman Hirwe (P.W. 30), attached to the Bhiwandi Town Police Station, was assigned the duty

of patrolling Nizampura in a jeep from Gulzar Cold Drink House in Teen Batti Naka upto Lendi Bridge, then to the S.T. Stand, Vanjar-patti Naka and then turning left upto Nazarana Talkies back to Khadak Road and then again to Gulzar Cold Drink House. H.C., G. T. Shaikh and P.Cs. R. S. Dawrung of Jawhar Police Station and Ghogre of the Bhiwandi Taluka Police Station were assigned to work under him. Hirwe was carrying a .38 bore revolver and the policemen were carrying lathis [P.W. 30/1(1)/544(1), 12/550]. That evening after the disturbances broke out P.S.I., Hirwe made two lathi-charges and opened fire four times on Muslim mobs. Very serious allegations have been made against P.S.I., Hirwe in connection with these lathi-charges and firings.

43.12 The lathi-charges were first in point of time. The facts relating to these lathi-charges are to be found in the evidence of P.S.I., Hirwe and S.R.P.C., Mohamed Saddat Shaikh (P.W. 47). According to Hirwe's affidavit, while patrolling, at about 5-30 p.m. Hirwe came near Lendi Bridge. He saw a crowd of Hindus near the Tanaji Vyayam Shala going towards the Town Police Station. Most of them were sprinkled with 'gual' and he realized that they were processionists from the Shiv Jayanti procession. Three or four of them were injured, some of them on the head and their clothes were blood-stained. Some persons from this crowd told him that the Shiv Jayanti procession had been attacked between the Old Fish Market and Old Thana Road with acid-bulbs, sticks and spears. At that time some police constables came running and informed Hirwe that Muslims were attacking Hindu houses in Habsan Alli. There were three S.R.P. men with lathis on duty at Tanaji Vyayam Shala in that area and a party of four policemen with lathis including H.C., Shaikh Ismail and S.R.P.C., Mohamed Saddat Mohamed Jaffer Shaikh, Buckle No. 1265, of S.R.P. Group III 'E' Company, Jalna (P.W. 47), posted at Lendi Bridge. Hirwe left his jeep near the Tanaji Vyayam Shala and took these seven policemen along with him and accompanied by them and his own police party of three went to Habsan Alli after telling the injured processionists, as they were in a position to walk, to go to the Town Police Station. According to Hirwe and S.R.P.C., Mohamed Saddat Shaikh, when they reached Habsan Alli they saw a Muslim mob of about 100 to 125 Muslims throwing stones at Hindu houses. These rioters were carrying lathis and iron bars. Hirwe warned the rioters that unless they dispersed, he would make a lathi-charge. On their failure to disperse he ordered a lathi-charge. On the lathi-charge being made, the mob retreated towards Jaitunpura. Hirwe and the police party then returned to the spot near the Tanaji Vyayam Shala where the jeep was parked. At that time five or six Hindus and two policemen came from the side of the Municipal Dispensary and informed Hirwe that the Muslims were attacking Hindu houses in Kumbhar Alli. Hirwe and the police party, therefore, proceeded on foot to Kumbhar Alli *via* Vegetable Market Road. When Hirwe reached Shakti Hair Cutting Saloon near the junction of

Bengalpura Lane and Vegetable Market Road, he saw a Muslim mob about 150 Muslims shouting "Allah Ho Akbar". On seeing the police party the Muslim rioters threw stones at it. Some policemen were injured in this stone-throwing. Hirwe called upon the rioters to disperse and on their failure to do so he ordered a lathi-charge. In this lathi-charge about four or five Muslims were injured. According to Hirwe, amongst these injured persons one Mohamed Amin Younus Sardar (B.R.W. 64) was one of the persons injured in the said lathi-charge [P.W. 30/1(1-2)/544(1-2), 6/546, 13/551, 21/556; P.W. 47/1(1-6)/946(1-2), 2-3/947-8].

43.13 The four Muslims injured in the said lathi-charge near the Shakti Hair Cutting Saloon were removed to the Bhiwandi Municipal Dispensary by P.S.I., S. D. Sali (R.W. 41) who had been assigned patrol duty in a jeep and who saw these Muslims on the road, injured and bleeding [P.W. 41/1(2)901(1)].

The first police firing at Kumbhar Alli and the police firing at Bengalpura

43.14 While pushing back the Muslim mob they had encountered in Bengalpura Lane, P.S.I., Hirwe and his police party reached Kumbhar Alli Chowk. What happened thereafter has thus been narrated in Hirwe's affidavit (P.W. 30/1(2)/544(2-3)):

"We pushed the Muslim mob and came to Kumbhar Alli crossing at about 18-00 hrs. From there I saw that 100 to 125 Muslims from Bengalpura, Vaze Mohalla, Islamabad and Jaitunpura area, assembled in front of Doctor Acharya's house. They had already set fire to his house and car. They were throwing fire-balls and stones at other Hindu houses and also started attacking us. I warned the rioters that I would open fire if they did not disperse. On their failure to disperse I fired 3 rounds from my revolver. 2 persons were suspected to have been injured due to this firing; but they were removed by the rioters I was standing in front of Janata Power Clinic when I opened fire. Some Hindus including the relatives of Doctor Acharya tried to extinguish the fire to the houses in the area; but the Muslims became more violent and continued to throw bombs, fire-balls and stones at us. The mob was coming towards us from the direction of Samad Seth's factory. With a view to dispersing the mob I fired 3 more rounds at the mob from my revolver. I pushed the mob and followed it upto the Gulam Vaze's house. The Muslim rioters again started throwing stones, soda-water bottles, brick-bats and acid-bulbs at us. Police Constable Sadat and myself therefore took shelter in the verandah of Gulam Vaze's house. The mob continued to attack us. With a view to protect our lives I fired 3 more rounds at the rioters and started retreating towards Kumbhar Alli crossing. But the Muslim mob continued to attack us. While retreating I fired 3 more rounds at the mob. When I came upto Ashirvad Building in Hindu locality I fainted and became unconscious."

43.15 S.R.P.C., Mohamed Saddat Shaikh, who was with Hirwe right from the time Hirwe went to deal with the Muslim rioters in Habsan Alli, has corroborated Hirwe in every particular. He was with Hirwe at each stage and when Hirwe fell down and became unconscious he called out to the other policemen of his party and took him to the Bhiwandi Municipal Dispensary [P.W. 47/1(6)/946(2), 4-5/948-9].

43.16 Entry No. 72 of the Control Room Diary for May 7, 1970 (Ex. P 367) shows that Hirwe was removed to the Bhiwandi Municipal Dispensary at 7 p.m. Hirwe had received injuries in the stone-throwing on the police party by the Muslim rioters. The injuries suffered by him, as shown by the medical certificate, being a contusion $1'' \times \frac{1}{2}''$ below his left eye, a contusion $1'' \times 1''$ on his right temple and a contusion $1\frac{1}{2}'' \times 1''$ on his back. He also complained of pain in the chest, nausea and severe headache. Hirwe was in the Bhiwandi Municipal Dispensary till May 11, 1970 and rejoined duty on May 12, 1970. The day he rejoined duty Hirwe made a report to the Control Room in respect of the fire opened by him (P.W. 30/2-3/545).

43.17 When Hirwe opened fire for the first time two Muslims were injured, but they were removed by the rioters. Hirwe did not see anyone being injured when he opened fire for the second time. When he opened fire for the third time near Gulam Vaze's house a Muslim, whose name Hirwe subsequently learnt was Shahid Nazir Ahmed, was wounded in the leg and Hirwe saw him run away hobbling. Hirwe did not see anyone injured when he opened fire for the fourth time (P.W. 30/18-9/555).

The Muslim allegations against P.S.I., Hirwe

43.18 So far as the lathi-charges made by P.S.I., Hirwe in Habsan Alli and Bengalpura are concerned it is the case of the Muslim parties that there were no rioting Muslim mobs in those localities, but there was a rioting Hindu mob near the Shakti Hair Cutting Saloon and the Hindu rioters beat up Mohamed Amin Younus Sardar (B.R.W. 64) and even though P.S.I., Hirwe came there with some S.R.P. men he did not intervene and when one Abdul Hameed Punjabi (the deponent of affidavit No. 338) requested Hirwe to save Mohamed Amin. Hirwe slapped Abdul Hameed and pushed him towards the mob and thereupon the mob and the S.R.P. men pounced upon him and beat him mercilessly till he became unconscious.

43.19 So far as the firings by P.S.I., Hirwe are concerned, it is the case of the Muslim parties that there were no rioting mobs in the localities concerned, but Hirwe came from the side of Kumbhar Alli in his jeep, halted near the Islamabad Mosque in Bengalpura, got down from the jeep laughing like a mad man, took out a tin of petrol from the jeep, sprinkled petrol from it on the wooden partition separating the house of Mohamed Hasan Mohamed Khaleel (B.R.W. 46) from that of his neighbour and set it alight with a match, all the while holding his revolver in his hand. The Muslim parties

have further alleged that Hirwe, without any justification, shot at and killed or wounded innocent Muslims, including Sahid Nazir Ahmed.

43.20 Three reasons have been alleged by the Muslim parties for Hirwe's alleged behaviour, namely,—

- (1) that he was mentally unbalanced as a result of an injury to his head some years ago,
- (2) that he was communal-minded and had a bias against the Muslims, and
- (3) that he was friendly and on visiting terms with Baliram More, the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena.

The Muslim allegations against P.S.I.

Hirwe examined

43.21 We will deal first with the allegations made by the Muslim parties with respect to the lathi-charges made by P.S.I., Hirwe. In support of their case the Bhiwandi Relief Committee has examined Mohamed Amin Younus Sardar (B.R.W. 64/1-3/1613-5) as a witness. Abdul Hameed Punjabi, an accused in the Bhiwandi Conspiracy Case, though he had filed an affidavit, was not called in evidence.

43.22 According to Mohamed Amin Younus Sardar, at about 5-30 p.m. on May 7, 1970 he had gone to see some of his workers residing in Prabhu Alli near the junction of Prabhu Alli and Habsan Alli. He was then unaware that communal disturbances had broken out and, therefore, he was standing on the road when heavy stone-throwing started from the side of Habsan Alli and the power-loom factory of Parshuram Karwa. He was hit on the head and fell down. A Hindu mob dragged him near Parshuram Karwa's factory and started beating him mercilessly with sticks and stones. He shouted out for help. His affidavit then states :

"I was shouting for help ; but even the *S.R.P. men and the Sub-Inspector of Police. Shri Hirwe were silent spectators.* The Sub-Inspector Shri Hirwe is very well known to me ; but he did not order the mob to disperse."

His affidavit then relates how Abdul Hameed Punjabi arrived on the scene, requested Hirwe to save Mohamed Amin from the mob and how Abdul Hameed was slapped by Hirwe and pushed towards the Hindu mob to be done away with and how he became unconscious. Mohamed Amin was then removed to Thana Hospital and from there taken to the Sion Hospital, Bombay, and thereafter to Nair Hospital. According to the medical certificate issued by the Bhiwandi Dispensary, he had a contused lacerated wound $1\frac{1}{2}'' \times \frac{1}{2}''$ on the back of the top of the scalp. His left upper lip was torn and the wall of his skull was fractured. He had also a bilateral fracture of the mandible for which he was operated upon at the Nair Hospital. In cross-examination he has stated that when stone-throwing was going on P.S.I., Hirwe was not present, but he came later and just stood there. According to him, he was the only Muslim on the scene until Abdul Hameed Punjabi came up. He has denied that he was one of the

Muslim rioters near the Shakti Hair Cutting Saloon or that he was injured in the lathi-charge made by the Police.

43.23 Abdul Hameed Punjabi's affidavit states that at about 5-30 p.m. on May 7, 1970 he left his house in Prabhu Alli as it was not a safe place and went to his mother's place in Habsan Alli. After some time he learnt that Mohamed Yunus was being severely beaten by some S.R.P. men and Hindus near Parshuram Karwa's factory. His affidavit then states :

"I went to save the above Mohamed Amin and try to ease the tension prevailing in the locality. *I saw that the Sub-Inspector of Police, Shri Hirwe, instead of dispersing the mob that was beating Amin Sardar, was encouraging the hooligans.* I requested the Sub-Inspector, Shri Hirwe to save Mohamed Amin from the clutches of the mob and the S.R.P. but to my great shock, he slapped me and pushed me towards the mob to finish me. The mob and the S.R.P. pounced upon me and beat me mercilessly. I became unconscious and when I opened my eyes at about 9-00 p.m. I found myself in the Municipal Dispensary

43.24 Even on the face of it it is difficult to accept Mohamed Amin's evidence. It is difficult to believe that he did not know that communal disturbances had broken out when almost everybody in that locality had come to learn about it within a short-time. One also wonders why he should have stood on the road — the only Muslim amongst so many Hindu rioters when heavy stone-throwing was being indulged in by the Hindu rioters. There are also material contradictions between the evidence of Mohamed Amin and Abdul Hameed's affidavit about Hirwe's conduct. According to Mohamed Amin, Hirwe and the S.R.P. men just stood there doing nothing while he was being beaten up by the mob ; while according to Abdul Hameed, Hirwe was encouraging the Hindu rioters to beat up Mohamed Amin. Further, according to Mohamed Amin, he was beaten by Hindu rioters only, while, according to Abdul Hameed, Mohamed Amin was beaten by Hindu rioters and also by the S.R.P. men. Abdul Hameed has stated that he went to that place to save Mohamed Amin and try to ease the tension prevailing in the locality. It is difficult to believe that Abdul Hameed, when he saw a Hindu mob indulging in stone-throwing and beating up the one lone Muslim who happened to be on the road could have had enough courage to intervene. Both Hirwe and S.R.P.C., Mohamed Saddat Shaikh have denied the allegations made by Mohamed Amin and Abdul Hameed. They have both deposed that there were no Hindu mobs in that locality and the only mobs were Muslim mobs. Hirwe has further deposed that both Mohamed Amin and Abdul Hameed were in the rioting Muslim mob and were injured in the lathi-charge [P.W. 30/1(2)/544(2), 15/553, 17/554, 22-23/556-7, 31/558-9 ; P.W. 47/2-3/947].

43.25 Mohamed Amin's demeanour in the witness-box was highly unsatisfactory and he did not appear to be a truthful witness ; and I am not prepared to believe either his evidence or the affidavit of

Abdul Hameed. I see no reason to doubt the word of Hirwe and Mohamed Saddat Shaikh. It should also be borne in mind that amongst the S.R.P. men who were present there were constable Mohamed Saddat Shaikh and Head Constables G. T. Shaikh and Shaikh Ismail, all three of them Muslims; and it is not possible to believe that P.S.I., Hirwe and the Hindu S.R.P. men would behave in such a manner in their presence. As shown by entries Nos. 35, 40 and 43 of the Control Room Diary for May 7, 1970, read with the evidence of P.S.I., L. R. Deshpande (P.W. 42/11-2/915), the processionists indulged in rioting near the 'Mandai' (the Vegetable Market). They threw stones and looted some Muslim shops, including the shop-cum-office of the stamp-vendor and bond-writer Khalil Ahmed Patel (B.R.W. 59) and a medical store, and set on fire some of these shops. As the first wireless message in this respect was received at 5-35 p.m., the rioting by the processionists near the Vegetable Market must have commenced a little earlier. From this, however, it does not follow that either Mohamed Amin or Abdul Hameed were injured by the Hindu rioters or that there were no Muslim rioters out in Bengalpura.

43.26 For the reasons stated above, I disbelieve the evidence of Mohamed Amin and the affidavit of Abdul Hameed and accept the evidence of P.S.I., Hirwe and S.R.P.C., Mohamed Saddat Shaikh. I am of the opinion that Mohamed Amin and Abdul Hameed received the injuries suffered by them when the Police lathi-charged the rioting Muslim mob.

43.27 We will now examine the allegations made by the Muslim parties with respect to the fire opened by P.S.I., Hirwe. In support of their allegations the Bhiwandi Relief Committee has examined two witnesses, namely, Mohamed Hasan Mohamed Khaleel (B.R.W. 46/1-5/1561-5) and Mohiuddin Mohamed Umar Baradari (B.R.W. 45/1-6/1555-60).

43.28 Mohamed Hasan Mohamed Khaleel (B.R.W. 46) a science graduate of the Bombay University, is a resident of Habsan Alli. His house is situate directly opposite the Islamabad Mosque which is also referred to by many people as the Bengalpura Mosque because it is situate in Bengalpura, though there is another mosque in Bengalpura also known as the Bengalpura Mosque. Mohamed Hasan has stated in his affidavit that when the disturbances broke out he was at his residence. He heard gun-fire and peeped through a window towards the Islamabad Mosque. He saw Hirwe and some constables coming from the side of Kumbharwada in a jeep and halting near the said mosque. Hirwe took out a tin of petrol from the jeep, sprinkled petrol on the wooden partition separating Mohamed Hasan's house from that of his neighbour and then set fire to it with a match and then stood there laughing with his revolver in his hand. Mohamed Hasan shouted out to Hirwe, whereupon Hirwe immediately jumped into the jeep and ran away. According to this witness, the time was then between 6-45 and 7 p.m. and this was the second time when Hirwe had come to the said locality that evening. Mohamed Hasan

shouted to the people in the said mosque to fetch water and extinguish the fire, which they did. Mohamed Hasan and a neighbour of his thereafter took Shahid Nazir Ahmed (who, according to Hirwe, was the Muslim who was wounded in the leg when he opened fire near Gulam Vaze's house, that is, when he opened fire for the third time) to Shahid's father-in-law's house in Bengalpura Mohalla. On May 9, 1970 the witness and his family left their house and went to reside in the adjoining locality of Bengalpura. The reason he has given in his affidavit for doing so is the constant harassment by S.R.P. men meted out to him and his family. They returned to their house when the curfew was relaxed and found the ground-floor door broken open and wooden cupboards and some materials inside smashed to pieces. In cross-examination he has deposed that after setting fire to the partition of his house Hirwe threw away the tin of petrol and that it lay where it had fallen and nobody took charge of it. Mohamed Hasan has deposed that he went on May 15, 1970 to the Town Police Station to lodge his complaint and that when he related it to the police constable, the constable refused to record it but told him that he should only give a complaint with respect to the damage to his property. He has further deposed that the only local leader to whom he related about the constable not taking down his complaint was Yusuf Momin, the then Municipal President, who said that nothing could be done about it. He has not made any complaint nor sent any application in writing to any higher authority or officer or to any local or political leader and strangely enough he did not tell about it even to his advocates when giving them instructions for drafting his affidavit an omission for which he had no explanation to offer in the witness-box. He has deposed that the constant harassment to which he and his family were subjected to by the S.R.P. men was that twice a day they would come and knock on the door and tell them that if they did not run away, they would be beaten up. He further deposed that this harassment was meted out to all his neighbours, all of whom therefore left the locality. According to his affidavit, however, the only family to whom this harassment was meted out was his own family. He could offer no explanation why he had not mentioned in his affidavit about the threats to his neighbours or their consequent leaving of the locality and admitted that he had not even mentioned these facts to his advocates while giving them instructions for drafting his affidavit. In his examination-in-chief he deposed that on October 1, 1971 while he was going from Nizampura to his residence Hirwe was crossing the road outside the S.D.P.O.'s office in Nizampura. On seeing Mohamed Hasan, Hirwe told him, "Bhadwe, Mai Tumko Dekh Lunga" ("You pimp, I will show you"). In cross-examination he stated that except saying this loudly to him Hirwe did nothing else.

43.29 The other Muslim witness on this point Mohiuddin Mohamed Umar Baradari (B.R.W. 45) was a Municipal Councillor elected on the Bhiwandi Seva Samiti ticket and a member of the Peace

Committee. According to him, at about 7 p.m. he went to the Islamabad Mosque to say his evening prayers. While he was inside the mosque he heard gun-fire. He came out into the courtyard of the mosque and saw Hirwe get down from a jeep, take out a tin of petrol, sprinkle petrol over the wooden partition separating the houses of Mohamed Hasan and Yunus Seth and set fire to it with a match. Hirwe was laughing wildly all the while, holding his revolver in his hand. Mohamed Hasan shouted out to Hirwe and Baradari also rebuked Hirwe. Thereupon Hirwe jumped into his jeep and ran away towards Bazar Peth. Baradari and some others thereafter extinguished the fire to Mohamed Hasan's house.

43.30 The behaviour attributed to P.S.I., Hirwe by these two witnesses is so strange that one would have expected Mohamed Hasan, a science graduate of the Bombay University, and Baradari, a Municipal Councillor and a member of the Bhiwandi Seva Samiti, to have made a complaint or sent an application in writing to a higher authority or officer or to any local or political leader; yet Mohamed Hasan did not mention this incident to anyone until he gave instructions for drafting his affidavit and Baradari mentioned about it only to his maternal uncle Yusuf Sardar, and his friends Ismail Jokhu, a milkman and a Municipal Councillor, Aziz Lal Mahomed, also a Municipal Councillor, and Hasan Momin. In cross-examination it turned out that Yusuf Sardar was present in the said mosque when the incident is alleged to have happened and the person described by him as Hasan Momin is the previous witness Mohamed Hasan Mohamed Khaleel. According to Baradari, the only reason why he informed Ismail Jokhu and Aziz Lal Mahomed about Hirwe's behaviour was that when they met him they inquired from him what damage had been caused in the disturbances in the said locality. According to Mohamed Hasan, there were two police constables and a police driver along with Hirwe in the jeep and the two constables had also got down from the jeep and neither of them were carrying anything with them. The presence of these two constables does not feature anywhere in the affidavit of either of these two witnesses. Further, neither of these two witnesses could assign any reason why in a Muslim locality the only house selected to be set on fire by Hirwe should be the house of Mohamed Hasan Mohamed Khaleel.

43.31 According to the evidence of Baradari and Mohamed Hasan, Hirwe came in a jeep. Hirwe, however, has categorically deposed that he had left his jeep near the Tanaji Vyayam Shala and then proceeded on foot to deal with the rioting mobs (P.W. 30/21-2/556). He has further deposed that they were not carrying any tin containing petrol in the jeep because it was not the practice to do so. According to him, the practice is for the driver to obtain a coupon from the Town Police Station, to submit it to the particular petrol pump at which police vehicles are authorized to take petrol and when the coupon is so submitted, for an entry to be made by the driver in the log-book. He has further deposed that before he got into the jeep he had

inquired from the driver whether the petrol tank was full and the driver had answered in the affirmative (P.W. 30/29/558). It is pertinent to note that the aforesaid allegation of Baradari and Mohamed Hasan is contrary to the evidence of Mohamed Younus Sardar and the affidavit of Abdul Hameed Punjabi who have alleged that Hirwe came to the Shakti Hair Cutting Saloon on foot.

43.32 Hirwe's movements that evening as he dealt with the different Muslim mobs appear clearly from his evidence and the sketch of the locality which has been put in as Exhibit P 1510. Hirwe left his jeep near the Tanaji Vyayam Shala and proceeded on foot to deal with the Muslim mob in Habsan Alli. From Habsan Alli he retraced his steps past Tanaji Vyayam Shala and then proceeded by the Vegetable Market Road towards Kumbhar Alli. He then made the lathi-charge near the Shakti Hair Cutting Saloon and pushed the mob down Bengalpura Lane and from the side lane upto the Kumbhar Alli Chowk crossing Islamabad Mosque on the way. At the Kumbhar Alli Chowk he opened fire from the lane near Dr. Acharya's clinic. The factory of Samad Seth is situate at the corner of the Kumbhar Alli Chowk. When the mob coming from the side of that factory attacked Hirwe and Mohamed Saddat Shaikh, Hirwe went upto the corner of Kumbhar Alli and opened fire twice. Then when he found himself surrounded by the mob, he and Shaikh ran eastwards across a small lane and took shelter in the verandah of Gulam Vaze's house where he opened fire for the fourth time.

43.33 Hirwe and Mohamed Saddat Shaikh have denied the allegations made by these two Muslim witnesses. The demeanour of Hirwe and Shaikh has impressed me greatly. The evidence of Shaikh corroborates Hirwe in every material particular. It was, however, submitted that there is a serious contradiction between the affidavits of Hirwe and Shaikh in that while Hirwe has stated that when he was near Dr. Acharya's house after he had opened fire for the first time, the Muslim mob approaching from the factory of Samad Seth threw at him and Shaikh bombs, fire-balls and stones, Shaikh has stated that this mob threw at them burning fire-balls and balls like bombs which made a loud noise. I see no such contradiction between these two statements as is sought to be made out. I have found that in the affidavits filed in this Inquiry the word 'bomb' has been very loosely used and any object which made a loud noise has been magnified into a bomb. Hirwe's own explanation of why he said that these were bombs is as follows (P.W. 30/28/558) :

"I heard the sound of 8 to 10 bombs exploding. I say that they were bombs because they were round objects which, when they hit the ground, exploded making a noise like the 'atom bombs' burst at Diwali time. They fell about 15 to 20 feet away from me. I did not hear any sound of window panes breaking when these bombs fell."

43.34 Turning now to the first reason advanced by the Muslim parties for Hirwe's alleged behaviour, namely, that he was mentally unbalanced as a result of an injury to his head some years ago, Hirwe

has explained how he came by the said injury. On December 26, 1963 while he was taking training in the Police Training College at Nasik he had gone to his native place during the vacation. That day while cleaning the muzzle-loader belonging to his eldest brother, which was always kept loaded, not knowing this fact, he pushed back the hammer to see whether the gun was loaded or not. The hammer slipped from his hand and fired the gun. The nipple and the adjoining parts burst, injuring his head. One of Hirwe's brothers was a doctor practising in Bombay and he desired that Hirwe should be treated in Bombay. Accordingly, Hirwe went to Bombay, was admitted in the K.E.M. Hospital and was operated upon by Dr. H. M. Dastur, a neurologist. After the accident a certificate of fitness was issued to him. Obviously, no permanent injury was suffered by Hirwe as a result of this accident because he was thereafter taken up in the Police Force on May 14, 1964 as a P.S.I. Though after the accident he used to get headaches and nausea for about a month, thereafter he was not prone to nausea, headache or giddiness and had no occasion to take any medical treatment while in the Police Force except for the injuries suffered by him on May 7, 1970. The treatment given to him in the Bhiwandi Municipal Dispensary was that his injuries were bandaged and he was given tablets and a mixture twice a day. He was also able to walk on the verandah of the Dispensary from May 9, 1970 (P.W. 30/9-10/547-9). There is, therefore, no basis for the allegation that Hirwe had become mentally unbalanced as a result of the said injury to his head.

43.35 The second reason advanced for Hirwe's alleged behaviour was that he was communal-minded and had a bias against the Muslims. This is disproved when we find that while Hirwe was in the witness-box it was put to him by Mr. M. D. Pathak, Counsel for the Maharashtra Pradesh Hindu Mahasabha, that the Muslim mob at the Shakti Hair Cutting Saloon was not shouting "Allah Ho Akbar", but was shouting "Pakistan Zindabad" and Hirwe had replied that he did not hear any mob shouting "Pakistan Zindabad". A communal-minded Hindu police officer with an anti-Muslim bias would have immediately taken the hint from this leading question put to him by Mr. Pathak and would have answered in the affirmative.

43.36 The third reason alleged by the Muslim parties, namely, that Hirwe was friendly and on visiting terms with Baliram More, the Shakhapramukh of the Bhiwandi Branch of the Shiv Sena, is equally without any basis. Hirwe has denied this and has further said that he does not like the Shiv Sena. His alleged friendship with Baliram More appears to be a myth because far from wanting Hirwe on outdoor bandobast duty during the Holi festival of 1970, Baliram More wanted in the Peace Committee meeting held on March 13, 1970 in connection with the forthcoming Moharram and Holi festivals that Hirwe should be given duty at the police station (Ex. P 116). Had Hirwe been friendly with Baliram More as alleged, Baliram More would have preferred that he should be on bandobast duty in the

streets where he could turn a blind eye to the misbehaviour on the part of any of Baliram More's followers.

43.37 Finally, the very seriousness of the allegations made against P.S.I., Hirwe was relied upon as establishing their truth. It was submitted that Hirwe was the only police officer against whom such serious allegations were made and had these allegations been falsely and recklessly made, they would have been made against other police officers also ; but since they have *not* been made against any other police officer, the allegations against Hirwe must be true. I see no substance in this argument. The reason for making such allegations against Hirwe becomes clear when he find that Hirwe was attached to the Bhiwandi Town Police Station as a P.S.I. since May 21, 1967 and that he was a very strict and efficient police officer who had received several cash rewards and commendatory notes, including cash rewards and commendatory notes for arresting persons who were pelting stones on March 10, 1968 which was Bakri-Id, for keeping good bandobast on April 29, 1968 at the time of the Shiv Jayanti procession, for keeping good bandobast at the time of Id-E-Milad festival on June 9, 1968, and for keeping good bandobast from August 27, 1968 to September 5, 1968 during the Ganpati festival (P.W. 30/34/559). Strictness as a police officer, particularly the strict bandobast kept by him, appears to have made him unpopular in Bhiwandi and, as we have seen, at the Peace Committee meeting held on March 13, 1970 Baliram More wanted that during the Holi festival Hirwe should be given duty at the police station only. Hirwe had thus made himself very unpopular in Bhiwandi both with certain Hindus and Muslims by reason of his strictness and it is not surprising that he has been selected as the target for these allegations ; particularly when we remember that by his firm and determined action and by reason of the effective lathi-charges made by him and the effective fire which he opened, he prevented the Muslim mobs in Habsan Alli, Bengalpura and Kumbhar Alli from indulging in arson and looting on a much larger scale. It would be better if other police officers dealing with rioting mobs were to take the same strict and determined action so that violence is not left unchecked and the forces of lawlessness and disorder are brought under control.

43.38 I find no substance at all in the allegations made against P.S.I., Hirwe. Neither Mohamed Hasan nor Baradari have impressed me in the least bit. Their demeanour was most unsatisfactory and their evidence does not carry any conviction. On the other hand, the demeanour in the witness-box of Hirwe and Mohamed Saddat Shaikh has greatly impressed me and they appeared to me to be witnesses of truth. There is no substance in the allegation of mental instability made against Hirwe or in the allegations about his conduct on the evening of May 7, 1970. In making these allegations and in persisting in them the Muslim parties have forgotten the fact that Hirwe was himself injured as a result of the stones thrown at him by the Muslim rioters and that the witness who has corroborated Hirwe in every particular

is S.R.P.C., Mohamed Saddat Shaikh, a Muslim, who was with Hirwe throughout from the time that Hirwe reached Tanaji Vyayam Shala, and who, when the allegations in the affidavits of the above three Muslim witnesses and Abdul Mahomed Hamid Punjabi were put to him, most indignantly denied them.

43.39 The evidence makes it clear that the Muslim mobs in Kumbhar Alli and Bengalpura were very violent and while Hirwe and Shaikh were taking shelter in Gulam Vaze's verandah, the mobs were attacking them from three sides. But for the fact that the fire opened by Hirwe was so effective as to injure three rioters, both Hirwe and Shaikh would have either died or suffered grievous injuries at the hands of the Muslim rioters. The fire opened by Hirwe on all the above four occasions was, therefore, justified.

The attack on the Neelkantheshwar Temple

43.40 The Neelkantheshwar Temple is situate opposite Habsan Alli in the lane which leads to Jaitunpura. Tanaji Vyayam Shala is situate diagonally opposite to the Neelkantheshwar Temple. The temple stands in the centre of a large compound. The main compound gate faces west and the temple faces east. There is a compound wall about eight feet high on all four sides. Within the compound on the northern and western sides of the temple is a garden, while on the southern and eastern sides is a Dharamshala with a verandah facing the temple. Adjoining the Dharamshala on its southern side is a small temple of Hanuman (Maruti). Inside the compound behind the temple there is a small room of corrugated iron-sheets. During the disturbances some damage was caused to the Dharamshala in respect of which the Government gave to the trustees of the temple a subsidy of Rs. 480 for repairs. The damage as recorded in the panchnama (Ex. P 687) made on June 5, 1970 by P.S.I., L. S. Kale of the Special Investigation Squad, Bhiwandi, was that a tree and some small branches of a castor-seed plant near the corrugated-iron-sheet room were burnt. The door of the Dharamshala which faces south was charred on the outside by fire. Several tiles of the roof of the Dharamshala were also broken.

43.41 According to the Hindu parties, there were two attacks on the Neelkantheshwar Temple, one a little after 5-30 p.m. on May 7, 1970 and the other at about noon on May 8, 1970. The only witness who has deposed about these attacks on the temple is Madan Keshav Raut (N.H.W. 41/1-13/2021-30), a gardener of the temple. He has stated in his affidavit that at 5-30 p.m. on May 7, 1970 a mob of about 100 to 150 Muslims came to the houses of Hindus in Habsan Alli opposite the temple and set fire to them. Thereafter the Muslim mob came to attack the temple and continuously threw stones and burning rags on it and the door of the temple and the grass in the compound caught fire. They extinguished that fire by pouring water on it. He has further stated that several tiles of the roof of the Dharamshala were broken in the stone-throwing. According to him, but for the fact that S.R.P. men came running up, the Muslim mob

would have entered the temple. His affidavit further states that at about noon on May 8, 1970 another Muslim mob started throwing stones at the temple and that at that time Aiyya Doraiswami, the Pujari of the temple, went to the Town Police Station and brought police help in two police vans along with him. On seeing these police vans the Muslim mob dispersed and went towards Samadja Building. When he stepped into the witness-box it transpired that there was no damage to the temple and that no stones were thrown at the temple and that neither the door of the temple nor any other part of the temple had caught fire, but what had caught fire was the door of the Dharamshala and that no stones had fallen on the temple, but that several tiles of the roof of the Dharamshala had got broken as a result of the stone-throwing.

43.42 In his affidavit he had alleged that he saw the Hindu houses in Habsan Alli opposite the temple being set on fire by the Muslim mob. The compound wall of the temple is about eight feet high. The main temple entrance opens out on Habsan Alli opposite to its west. Opposite this entrance is the chawl of one Najmuddin Bobde and behind that chawl is a temple of Hanuman. To the south of this temple there are Hindu houses. There are also Muslim factories in Habsan Alli opposite the Neelkantheshwar Temple. He was asked whether from the temple compound he would be able to see the Hindu houses behind Bobde's chawl or the factory adjoining it. He answered, "I saw the arson to Hindu houses because I had come out of the temple gate and had gone a little distance and stood at the entrance of a small lane by the side of Bobde's chawl". The question was repeated and this time he answered, "These houses could be seen from the terrace of the temple". The question was again repeated and he was warned by the Commission to answer the question put to him. He then replied, "It is not possible to see these Hindu houses from the temple courtyard". He also admitted that it was not possible to see them from the entrance door or even when one came out on the road, but that these houses could be seen only when one came out into a small lane which goes to Bobde's chawl. Realizing the difficulties in his way of convincing anyone that he could have been an eye-witness to the arson to the Hindu properties in Habsan Alli, Raut came out in the witness-box with a story that he went out of the temple compound at 5-30 p.m. and saw a Muslim mob setting fire to Hindu houses in Habsan Alli and thereupon he returned to his room. The police statement of Raut was recorded by an officer of the Special Investigation Squad on June 5, 1970. In the said police statement, however, he had stated, "On May 7, 1970 in the evening rioting and arson on a large scale started in Bhiwandi. For this reason out of fear I did not go outside the temple". When this portion of his police statement was put to him in cross-examination, he was unable to give any explanation for his omission to state that he had gone out of the compound, seen a Muslim mob set fire to Hindu houses and had thereupon returned to his room. Further, in his police statement he had stated that it was on May 8,

1970 at about 11-30 a.m. that the door of the Dharamshala was set on fire by the Muslim rioters. The witness was equally unable to explain this contradiction between his police statement and his affidavit. Further, while referring to the arson in Habsan Alli his police statement did not mention the time when the arson to Hindu properties took place. He, however, alleged that he had mentioned to the police officer, recording the statement that this took place at 5-30 p.m. but the officer did not take it down in the police statement. This explanation cannot be believed. As we have seen, it is the case of the Special Investigation Squad that the Muslims attacked Hindus and Hindu properties in different localities simultaneously at 5-30 p.m. on May 7, 1970 and if, in fact, this witness had stated the time as 5-30 p.m., no officer of the Special Investigation Squad would have failed to write it down. In the witness-box Raut stated that tiles of the roof of the Dharamshala were broken both on the 7th May and on the 8th May as a result of the stone-throwing indulged in by the Muslim rioters. He could not explain why according to his affidavit these tiles were broken only on May 7, 1970. Strangely enough, according to his police statement, the tiles of the roof of the Dharamshala were broken in the stone-throwing of May 8, 1970 and there is no mention of any tiles having been broken in the stone-throwing of May 7, 1970. Finally it transpired that on May 8, 1970 he was throughout in his room and had not left it at any time. According to Raut's affidavit, the entire castor-seed plant had burnt down as a result of the burning rags which fell on it. When he was shown that the panchnama (Ex. P 687) recorded that only some small branches on the southern side of that plant had been burnt, he admitted that what was burnt were some leaves and some small branches of the said plant. At first Raut denied that he was present when the panchnama was made or had shown any spot to the investigating officer making the panchnama. When it was pointed out to him that the panchnama recorded that it was he who had gone round showing the different spots to the investigating officer, he admitted having done so.

43.43 His story about the alleged attack on the Neelkantheshwar Temple on May 8, 1970 will be dealt with in Chapter 45 when we come to the incident of police firing at Samadia Building. Suffice it to say here that his evidence about this alleged attack is as unreliable as the other parts of his evidence.

43.44 It is impossible to place any reliance upon the evidence of Raut. He has prevaricated in the witness-box on a number of points and has shown no regard for truth. It is clear that he is a got-up witness and has personally not witnessed any incident. The fact that the only damage that was caused was to the lower portion of the door of the Dharamshala, the tiles of the roof of the Dharamshala and a castor-seed plant close to it (in respect of which the Government gave a subsidy to the trustees of the temple) would show that there was no attack on the temple itself, but that the attack was on the Dharamshala which abutted on the road.

43.45 It is the case of the Muslim parties, however, that not only was there no attack on the temple, but that there was no attack even on the Dharamshala and that the castor-seed plant and the Dharamshala door caught fire from a Muslim power-loom factory close to the Neelkantheshwar Temple on its southern side. Raut has, however, deposed that the castor-seed plant was not close to the factory, but was at a distance of about 20 to 25 feet from the factory. We have further seen that there is also a compound wall eight feet high round the premises of the temple. It has further transpired in evidence that the power-loom factory as also the Dharamshala are both ground-floor structures separated by a lane and that the distance between the Dharamshala and the factory is about 40 feet. Realizing that the said allegation was not tenable, it was next put to Raut that a Muslim hut at a distance of about ten feet from the Dharamshala was set on fire by the Hindu rioters as a result of which the Dharamshala door caught fire. Raut denied that this hut was set on fire or damaged in the disturbances and said that it was demolished by the Municipal Council in 1971. As this was a fact borne out by the evidence of Dy.S.P., Diwate (P.W. 66/218/3922) and the Muslim witness Ali Mohamed Jamal. Mehta (M.T.M.W. 6/11/1745), the case was changed and it was put to Raut that the Dharamshala door got charred by the smoke coming from the hut while food used to be cooked there. This was an absurd suggestion and was rightly denied by him. There can be no doubt that some leaves and small branches of the castor-seed plant and the lower portion of the Dharamshala door got charred as a result of an attempt by Muslim rioters to set fire to the Dharamshala.

The first police firing at Habsan Alli

43.46 P.S.I., V. S. Deolekar had escorted the Bhiwandi fire-engine to the corner of Kumbhar Alli and Old Thana Road. Thereafter while he was returning to the police station along the Mandai Road he noticed a Hindu mob standing near the Bhiwandi Municipal Dispensary shouting that their houses in Habsan Alli had been set on fire. This was at about 7 p.m. He, therefore, got down from his jeep and went to the corner of Habsan Alli. In cross-examination he has admitted that he considered it unusual for a mob to be standing on the road during the time of riots and that but for the fact that the persons in this mob were shouting that their houses had been set on fire, he would have inquired what this mob was up to. When he entered Habsan Alli he saw a Muslim mob and some houses on fire. He went towards the mob. On seeing the police party the mob started throwing stones, soda-water bottles and acid-bulbs at it. Deolekar warned the Muslims to disperse but as his warning went unheeded, he fired one round from his .455 revolver. As he advanced further, he noticed that the Muslim mob was attempting to set fire to some Hindu houses. He, therefore, fired five more rounds from his revolver. Three of these rounds misfired. The mob thereupon retreated through the by-lanes, but came out from the side of the Bengalpura Mosque and started attacking the police party.

Deolekar fired five rounds from his revolver. Three of these rounds misfired. The mob thereupon dispersed and disappeared in the by-lanes. Deolekar and his party chased the mob but could not arrest anyone. He has admitted that during the time that he was in Habsan Alli no other property was set on fire (P.W. 29/1(3)/522(2), 10/530, 14/533 ; P.W. 63/1(2)/1082(2)).

The rioting at Habsan Alli

43.47 In the evening of May 7, 1970 there was rioting both by the Hindus and the Muslims at Habsan Alli. So far as the rioting by the Muslims is concerned, two Hindu chawls consisting of 12 tenements were set on fire and ten Hindu shops looted. P.S.I., Hirwe (P.W. 30) made a lathi-charge on a rioting Muslim mob in the evening of May 7, 1970 and P.S.I., Deolekar (P.W. 29) opened fire at about 7 p.m. on a Muslim mob. After this fire was opened, while he was going through Habsan Alli H.C., S. R. Dalvi, Buckle No. 1437 (P.W. 63/1(2)/1082(1)), attached to the Bhiwandi Town Police Station, received acid-burns as a result of acid thrown at him by a Muslim rioter.

43.48 Two Hindu witnesses have deposed about the arson to the houses in Habsan Alli. They are Mrs. Manjula Laud (N.H.W. 27/1-5/1944-6) and Pandharinath Sadashiv Karanjikar (N.H.W. 28/1-6/1947-50). Mrs. Laud's house was in the midst of a Muslim locality and she has deposed that her house, the house of Dwarkanath Karanjikar and the Hanuman Temple Chawl near the Hanuman Temple were set on fire by Muslim rioters. After some S.R.P. men came there she and her family went to the Hanuman Temple for shelter and thereafter to a relief camp in Mahajan Wadi. When she returned to her house on May 10, 1970 she saw that some articles from her house had been looted and some furniture thrown out and set on fire. Pandharinath Sadashiv Karanjikar has deposed about the arson to his family house.

43.49 So far as the time when the rioting by the Muslims commenced at Habsan Alli is concerned, the affidavits of Mrs. Laud and Pandharinath Karanjikar as also of Madan Keshav Raut, the gardener of Neelkantheshwar Temple (N.H.W. 41) mention it as 5-30 p.m. In cross-examination Mrs. Laud has admitted that she did not know the time when the Muslim mob came to attack her house and that while giving instructions for drafting her affidavit she had not stated that the Muslim mob had come at about 5-30 p.m. Obviously, therefore, the time of 5-30 p.m. was supplied by the draftsman of her affidavit. Pandharinath Karanjikar's police statement was recorded on May 26, 1970 (Ex. P 683) by P.S.I. L. S. Kale of the Poona City Police Station on special duty in Bhiwandi. So many facts mentioned in his affidavit do not find place in his police statement and it is not possible to place any reliance upon his evidence. While discussing the attack on the Neelkantheshwar Temple we have already seen that Madan Raut was not an eye witness to the arson to Hindu properties in Habsan Alli and had not mentioned any time in his police statement. As mentioned in the course of that discussion, he is a suborned witness and no reliance can be placed upon his affidavit.

43.50 There is, therefore, no reliable direct evidence before the Commission to show at what time the rioting by the Muslims took place at Habsan Alli. There is, however, other evidence on the record from which the time when the rioting by the Muslims at Habsan Alli commenced can be made out. P.S.I., Hirwe (P.W. 30) has deposed that he saw a crowd of Hindus near the Tanaji Vyayam Shala at 5-30 p.m. He went towards the members of the crowd and had a talk with them. Meanwhile some constables came running and informed him that the Muslims were attacking Hindu houses in Habsan Alli. He has, however, not stated that he saw any Hindu houses on fire in Habsan Alli. Jamadar Waman Adsul of Bhiwandi Town Police Station (P.W. 49) was assigned the duty of checking temples on May 7, 1970. At about 5-30 p.m. he came to Neelkantheshwar Temple when he noticed people running because the disturbances had broken out. He then noticed a Muslim mob throwing stones, soda-water bottles and lighted torches at Hindu houses. He has deposed that it was 5-45 p.m. when he saw this mob [P.W. 49/1(1)/955(1), 3/956]. Therefore the earliest any arson to Hindu properties could have taken place would be at about 5-45 p.m. or later.

43.51 So far as the arson to Muslim properties is concerned, eight Muslim properties in Habsan Alli were set on fire and burnt on May 7, 1970. Though the Muslim parties have led no direct evidence, the fact that there was arson to Muslim properties in Habsan Alli appears from the cross-examination of Jamadar Adsul, Mrs. Manjula Laud and Madan Keshav Raut. Their evidence shows that these properties included a power-loom factory to the south of Mrs. Laud's house and the house of one Siddique adjoining Mrs. Laud's house. So far as the time of this rioting by the Hindus and arson to Muslim properties is concerned, it has been elicited in the cross-examination of Madan Raut that he saw two Muslim factories on fire between 5-30 and 6 p.m. Jamadar Adsul was in this locality from 5-30 onwards. Neither he nor any other police officer or policeman has deposed about the presence of any Hindu rioters in this locality. On the evidence, therefore, of these witnesses if there was any rioting and arson in Habsan Alli by Hindus it must have taken place before these police officers and policemen reached Habsan Alli. Therefore, reading the evidence of Madan Raut according to which the arson to Muslim properties took place between 5-30 and 6 p.m. along with that of Jamadar Adsul that he reached Neelkantheshwar Temple at about 5-30 p.m. the only conclusion we can arrive at is that the arson to Muslim properties took place some time prior to 5-30 p.m.

43.52 I, therefore, find on the evidence that the rioting by the Hindus and the arson to Muslim properties took place some time before 5-30 p.m. and that the rioting and arson by the Muslims took place at about 5-45 p.m.

The rioting at Lendi Bridge and the police firing at Jaitunpura

43.53 Lendi Bridge is the bridge across an open gutter running from Rameshwar Temple up to the corner of Yakub Road. The Hindu

part of Habsan Alli and the Hindu locality of Navi Chawl are to the west of Lendi Bridge, while a small Hindu locality in Jaitunpura and the Muslim localities of Jaitunpura and Teen Batti or to its east. In the evening of May 7, 1970 near Lendi Bridge a Hindu building belonging to the Panjrapol Trust and two stalls or cabins belonging to Hindus and a building belonging to a Muslim, Aziz Bolinjar, and some Muslim huts were set on fire. Rioting also took place in Jaitunpura and fire was opened there under the orders of C.P.I., Ghosalkar. The witnesses who have deposed about these incidents are P.S.I., Shantaram Sajanjaji Mane of the Bhiwandi Town Police Station [P.W. 46/1(4)/938(2-3), 2/939, 6/941-2] and C.P.I., Shantaram Shivram Ghosalkar [P.W. 40/1(2)896(3-4), 8/899].

43.54 That afternoon P.S.I., Mane was assigned the duty of supervising the work of three P.Cs. who were to take the police parties posted on duty in Saudagar Mohalla and Sutar Alli to different points from Teen Batti to Nizampura after the procession passed Sutar Alli. After reposting these police parties, Mane was returning to the Town Police Station. What happened at that time is thus described by him in his affidavit :

“ At about 17-55 hrs. Shri Vasant Sitaram Patil of Kharbao came on a Motor Cycle and informed me that there was stone-throwing at the procession. I therefore rushed to the Police Station and found that the information regarding stone-throwing etc. had been received at the Police Station also and that the men on reserve duty had been sent to that side etc. As there were no reserve at the Police Station, I rushed to the Jumma Mosque in Nizampura and informed P.I. Shri Ghosalkar who was on duty there about the riot.”

When Mane stepped into the witness-box, after his affidavit was put in as part of his examination-in-chief he stated that the time “ 17-55 hrs.” mentioned in the first sentence of the above extract from his affidavit was a mistake for “ 17-35 hrs.”. Neither Mane’s demeanour nor his conduct during the disturbances as disclosed by the evidence have been satisfactory. It is, therefore, not possible to place any reliance upon P.S.I., Mane’s word when he seeks to change the time given in his affidavit from “ 5-55 p.m.” to “ 5-35 p.m.”. The reason why he is seeking to do so is obvious. It is to lend support to the case of the Special Investigation Squad and the Hindu parties that the Muslims commenced rioting in different localities at 5-30 p.m. in pursuance of a conspiracy entered into by them.

43.55 On receiving information from Mane about the outbreak of the disturbances Ghosalkar went with him in a police van taking along with them A.H.C., S. K. Morajkar and A.P.Cs., M. S. Shelar, V. G. Honmane and B. V. Sawant, all armed with .410 muskets, and some S.R.P. men carrying lathis. What happened when they reached Lendi Bridge is thus narrated by Mane in his affidavit :

“ As we reached the Lendi Bridge Junction we noticed a Muslim crowd throwing stones, soda-water bottles, etc. and advancing

towards Tanaji Vyayam Shala. I assisted Shri Ghosalkar in stopping this crowd by making a lathi-charge at them. Some members of the crowd had set fire to the Panjrapol building. Shri Ghosalkar, therefore, marched towards this crowd and pushed it back."

43.56 Ghosalkar with his police party pursued the said mob into Jaitunpura leaving P.S.I., S. S. Mane at Lendi Bridge along with A.H.C., Morajkar and A.P.C., Shelar to prevent any Muslim mob from entering the Hindu locality. At Jaitunpura a larger Muslim mob joined the first mob. Ghosalkar's affidavit states what happened thereafter [P.W. 40/1(2)/896(3-4)] :

"This second mob was also carrying spears, sticks, lighted torches, etc. We chased the mob upto Jaitunpura Zopadpatti, but the rioters continued to throw stones and bottles at us. It was also trying to go towards the Hindu locality nearby. I warned the rioters that the Police would open fire if they failed to disperse. Even then the mob continued to attack us. P.Cs. Narayansing B. No. 208, S. M. Nigade B. No. 168, C. K. Kamble B. No. 15, G. G. Jadhav B. No. 1314, P. A. Patil B. No. 1327 and H.C., B. M. Jadhav, all of S.R.P. Group II, Poona, were injured. As it was absolutely necessary to disperse the mob at any cost with a view to protecting life and property, I ordered P.C., Honmane to fire 3 rounds from his .410 musket. In spite of firing 3 rounds, the mob continued to throw stones and missiles at us. I therefore, ordered constable B. V. Sawant to fire. He fired 4 rounds as per my instructions. One rioter was killed on the spot due to this firing. Later on I learnt that his name was Kunji. As the mob started running away, we chased it and arrested Mohamad Kasim Ashrafmiya Ansari and 16 others. I ordered Police Constable N. V. Shinde to keep a watch on the dead body which was lying there. The arrested persons were sent to the police station."

43.57 All the arrested persons were discharged by the Judicial Magistrate, First Class, Bhiwandi (P.W. 40/8/899).

43.58 Ghosalkar has deposed that the Muslim rioters at Lendi Bridge were carrying iron bars, spears, stones, soda-water bottles, tins containing kerosene and fire-balls soaked in kerosene. According to his affidavit, the Muslim rioters in the second Muslim mob were carrying sticks, lighted torches and also spears. According to P.S.I., S. S. Mane, however, the Muslim mob at Lendi Bridge was indulging only in the throwing of stones and soda-water bottles and he makes no mention of this mob carrying any weapons. Mane has himself shown considerable bias and if, in fact, any persons in this mob were carrying spears, Mane would not have failed to mention it. Ghosalkar has reported his dealing with both the mobs, namely, the one at Lendi Bridge and the other at Jaitunpura, to the Control Room when he returned there at 8-15 p.m. The report given by him is set out in entry No. 86 of the Control Room Diary for May 7, 1970 (Ex. P 367). According to this entry,

the mob at Lendi Bridge was armed with iron bars and kerosene tins and the mob at Jaitunpura was indulging in the throwing of stones and soda-water bottles and there is no mention of either mob being armed with spears, sticks or lighted torches. Ghosalkar's F.I.R. against the 17 arrested Muslims (Exhibit P 178) also makes no mention of any persons in either mob carrying any spears. Obviously, spears are an invention of C.P.I., Ghosalkar and introduced into his affidavit to give a more serious aspect to the two incidents. .

43.59 It was submitted by the Muslim parties that the only arson to Hindu properties in this area was to a building known as the Panjrapol Trust Building and two wooden stalls or cabins opposite to it near Lendi Bridge and that, therefore, the police firing was not justified and that as there was also in that very area arson to a building belonging to a Muslim, Aziz Bolinjkar and some Muslim huts, the Police fired upon frightened Muslims who had gathered in the streets by reason of the arson and rioting on the part of the Hindu processionists. This argument completely overlooks the fact that there was also arson to Hindu properties, though it might have been only to one Hindu building and two wooden stalls or cabins. The very fact that no more incidents of arson were committed in that area must be attributed to the action taken by the Police in resorting to lathi-charge and to firing when the lathi-charge proved ineffective. This was the time when disturbances had commenced and were spreading from one area to another and they required to be dealt with in a deterrent manner. But for the action taken by the Police, there would very probably have been a clash between Hindu and Muslim mobs with much greater loss of life and property. The argument that there was no violent Muslim mob on the road, but only frightened Muslims inhabitants of the locality who had come out on the streets on seeing the arson to their property overlooks the fact that six members of the police party were injured, one of them A.P.C., Lingade (Buckle No. 164) so seriously that he was removed to the Thana Civil Hospital (P.W. 4/338/807). Not only was there danger to the life of Hindus and Hindu properties but also an imminent danger to the life of the police party. I, therefore, find that this police firing was justified.

43.60 The dead body of Kunji who died in the aforesaid police firing was lying in Jaitunpura and as directed by the Control Room it was removed that night by P.S.I., R. K. Patil of the Bhiwandi Taluka Police Station [P.W. 32/1(2)/575(1), 6/577].

43.61 According to C.P.I., Ghosalkar, Kunji when shot was in front of the Muslim mob and was throwing stones (P.W. 40/7/898). According to the Muslim parties, he was not one of the rioters, but had gone to the public latrine in Jaitunpura and as he was coming out, he was shot down by an S.R.P. man in cold blood without any provocation or justification. Two witnesses have been examined by the Bhiwandi Relief Committee in support of this allegation. They are Bawa Hanif (B.R.W. 62/1-2/1607-8), an employee in Bismillah

Hotel in Jaitunpura, and Aminabai Mohamed Islam (B.R.W. 63/1-6/1609-12), the landlady of the building in which Kunji was residing. The evidence of Bawa Hanif need not detain us as he has admitted that he has no personal knowledge of the incident and it was only on May 8, 1970 that he learnt from Aminabai that Kunji was killed by the Police while returning from the latrine. Aminabai has stated in her affidavit that while coming out of the public latrine, Kunji was shot dead at 5-30 p.m. on May 7, 1970 opposite her chawl. She has further stated that there is no Hindu house in that locality and no incident of a communal nature took place in the locality either on May 7, 1970 or thereafter and the police firing was, therefore, unjustified. Aminabai has proved a thoroughly unsatisfactory witness. In her cross-examination she has stated that workers from her factory came and told her that some trouble had taken place. She thereupon immediately closed the door of her house, her house being a one-storeyed structure. She also half closed the window and peeped through the netting to see what was happening and all that she could see was only a portion of the road in the direct line of her vision. According to her, the only persons on the road were two or four S.R.P. men, but she admitted that she did not know whether there were people on the other parts of the road which she could not see. She also admitted that she did not know the difference between an S.R.P. man and a man from the ordinary police force but that she had mentioned S.R.P. men in her affidavit because she had heard people talk of S.R.P. men. According to her, as she was peeping through the half-closed window, the only thing she saw was Kunji coming out from the public latrine and being shot dead by an S.R.P. man. A sketch (Ex. P 1519) showing the relative positions of the public latrine and her house is Exhibit P 1519. The correctness of this sketch has not been challenged. It shows that the public latrine is not opposite Aminabai's house, but is about 15 to 20 paces inside a small lane on the opposite side of the house, a position admitted by Aminabai. She has further admitted that the distance between her house and the public latrine would be roughly about 40 to 50 paces. She has also admitted that she could not see the door of the latrine from her window, a fact apparent from the said sketch. She then changed her answer and said that though she could not see the door of the latrine from her window and did not see Kunji coming out of the latrine, she saw him coming out of the lane in which the latrine is situate with an empty 'Dalda' tin in his hand and sought to explain away her previous answer by stating that according to her, he had been to the latrine because it was the habit with all the residents of her Mohalla when they went to the public latrine to take water in an empty 'Dalda' tin. Assuming such was the habit of the residents of her Mohalla, it is also the habit of rioters bent on arson to carry kerosene in tins for which purpose a 'Dalda' tin comes in as handy as any other tin. She was asked how she could say that the time when Kunji was shot down was 5-30 p.m. and her

answer was that the moment she saw him fall down, she said to herself that she must see what the time was and therefore looked at the clock in her house. When she was asked to tell from the clock in the court-room what the time was, she had to admit that she could not read the time. She thereupon changed her answer to say that she asked one of her daughters what the time was. Finally she said that Kunji came from the side of the lane which goes towards the latrine and fell down in front of her window and that all that she saw was Kunji falling down on the road near her window, but did not see him being shot and that it was her sister Sugratanbai, who was residing with her and who was at that time in another room of the house, who told her about Kunji being shot down by an S.R.P. man. Further discussion or comments on the evidence of this witness is useless. She is a got-up witness and I completely disbelieve her evidence and I accept Ghosalkar's evidence that Kunji was one of the leaders of the rioting Muslim mob and was shot down when the Police opened fire on that mob in Jaitunpura.

43.62 We will now see what was happening at Lendi Bridge while C.P.I., Ghosalkar was in Jaitunpura dealing with the Muslim rioters. As already mentioned, Ghosalkar had left P.S.I., Mane and A.H.C., Morajkar and A.P.C., Shelar at Lendi Bridge in order to prevent any Muslim mob from entering the Hindu locality. What happened thereafter at Lendi Bridge has been thus narrated by Mane in his affidavit [P.W. 46/1(4)/938(2-3)] :

"Shortly afterwards I noticed a crowd of Hindus setting fire to a hut and to the building of Bolinjkar. I chased this crowd and caught four of them on the spot and sent them to the Police Station. I gave my information about this offence at the Police Station. An offence at C.R. No. 179/70 has been registered in this connection. I then continued patrolling the area between the Police Station, Lendi Pool and Tanaji Vyayam Shala."

43.63 In cross-examination Mane has stated with reference to the Hindu mob as follows (P.W. 46/6/941-2) :

"This mob consisted of 40 to 50 persons and had come from Hanuman Bavdi side. This Hindu mob came half an hour after we dispersed the Muslim mob. I did see this mob approaching. This mob was not carrying any missiles or weapons. When this mob came behind Lendi Bridge, Panjrapole Building and two cabins opposite to it were on fire. *The mob picked up burning timber from this fire and set fire to Bolinjkar's building and hut.* At that time there were only two police constables with me. I could not arrest the actual perpetrators of this arson because at that time I was standing near Tanaji Vyayam Shala and a number of processionists from Navi Chawl were passing that road to go to the police station for protection. I had posted the two constables with me at Yakub Road Naka because a Muslim mob had started collecting there. The Hindu processionists who were running towards the police station were not in a violent mood. It is not true that the

Hindu processionists who came from Old Thana Road set fire to this building and hut and I deliberately did not prevent them from doing so. This happened at about 6-30 p.m."

43.64 What one wonders is why this P.S.I. did not take out his revolver and open fire or order A.H.C., Morajkar and A.P.C., Shelar, who had been left with him by C.P.I., Ghosalkar to open fire, when he saw Hindu rioters taking up burning timber from the fire to the Panjrapol Trust Building and setting fire with it to the Muslim building and huts.

43.65 It is interesting to learn that the four Hindus who were accused in the said offence, though they were actually charged in the F.I.R. lodged by Mane (Ex. P 176) with committing mischief by setting fire to the Muslim house and huts, were, however, not prosecuted for this offence, but two of them were prosecuted for committing a breach of the curfew order on May 8, 1970 and were convicted on their plea of guilty and sentenced to pay a fine of Rs. 10 and the other two were not even prosecuted, but released under section 169 Cr.P.C. by the investigating officer of the Special Investigation Squad. Even assuming that these four accused persons were not the actual arsonists, arson to Aziz Bolinjkar's building and the Muslim huts was committed by other members of this unlawful assembly, obviously in prosecution of the common object of that assembly; but it will appear that where Hindu rioters were concerned, the Special Investigation Squad had not heard of section 149 I.P.C.

The looting and arson at Teen Batti

43.66 Teen Batti is a chowk where Bazar Peth Road running west to east, Mamlatdar Office Road (also known as the S. T. Stand Road) running east to west, Khadak Road running north-east to south, Shivaji Nagar Road running north-west to south and Yakub Road (a small road which runs north from Lendi Bridge) meet. The three cold-drink-shops—the Gulzar Cold Drink House, the Badshahi Cold Drink House and the Eros Cold Drink House—are all situate at Teen Batti. These were the three cold-drink shops in respect of which blackboards had been put up by the Hindus prior to Shiv Jayanti asking Hindus to boycott these shops. Teen Batti is a Muslim locality with Navi Chawl and Thange Alli to its west and Muslim localities to its east. In the evening of May 7, 1970, 7 Muslim properties were looted and 35 Muslim properties set on fire in and around Teen Batti including at Yakub Road.

43.67 P.I., Gajanan N. Ajarekar (P.W. 39) was posted at Nizampura at the time of the Shiv Jayanti procession. He received a message at about 6 p.m. to proceed to Kumbhar Alli. While going towards Kumbhar Alli he noticed that looting and arson by Hindus had started near Teen Batti and he dispersed the Hindu mobs collected there and at Navi Chawl. He also saw that Muslim stalls or wooden cabins situate at Teen Batti had been looted and articles therefrom strewn on the road (P.W. 39/1(3)/888(2), 4/889). The arson

at Teen Batti is also deposed to by Mohamed Husain Azimuddin (B.R.W. 44/1-3/1553-4), the proprietor of Bismillah Hotel at Teen Batti. On the evening of Shiv Jayanti he was in his hotel when at about 5-30 p.m. news was received that some trouble had taken place. He therefore closed his hotel. The dispersing processionists came running past his hotel and after some time set a shop in front of it on fire, the fire started spreading and ultimately engulfed his hotel also (B.R.W. 44/1-3/1553-4). He has further deposed that the Police did not allow them to come out of the hotel because rioting was taking place outside the hotel, but told them to stay inside the hotel as otherwise they would be endangering their lives.

43.68 At 6-17 p.m. "Apple" Mobile sent a message to the Control Room asking for fire-engines to be sent to Teen Batti as there was a huge fire there (Ex. P 367, entry No. 58). Both the fire-engines of the Bhiwandi Fire Brigade had, however, already gone out on other fire fighting operations and, therefore, no fire-engine could be sent to this locality.

43.69 Apart from P.L., Ajarekar the conduct of other police officers and policemen in relation to the looting and arson at and near Teen Batti does not reflect any credit upon them. The advice given by the policemen posted at Teen Batti to Mohamed Husain Azimuddin and other Muslims was salutary; but Teen Batti is close to the Town Police Station and we wonder why none of these policemen, apart from giving this advice to the Muslims, cared to take any other step or to inform the police station about these acts of looting and arson and ask for reinforcements. The fire at Teen Batti was a huge fire; a fire of such magnitude is known in technical parlance as No. 3 Fire, that is, a fire which is likely to spread and to extinguish which more than one fire-engine is required. When the Thana fire-engine with Station Officer, Chitre in charge went *via* Vanjarpatti Naka to the Bhiwandi Town Police Station with a police escort at about 7.45 p.m. that evening Chitre and his crew noticed a number of fires raging in the Teen Batti locality and cabins, shops and stalls and houses were on fire. There was a row of shops and commercial establishments on fire at Teen Batti and there was fire in every lane leading to it and the fire was spreading [P.W. 8/4/351; P.W. 14/8/437, P.W. 15/1(2)/440(2)]. This looting and arson, therefore, took place some time between 5-45 p.m. and 6-17 p.m., that is the time when "Apple" Mobile sent the aforesaid message. At this time P.S.L. S. S. Mane passed through Teen Batti and dispersed a Muslim mob at Lendi Bridge near the junction of Vegetable Market Road and Yakub Road. He thereafter noticed a crowd of Hindus setting fire to a hut and to a building belonging to a Muslim named Aziz Bolinjkar and he dispersed it and arrested four of them. After lodging his F.R.I. at the Town Police Station he continued patrolling the area between the Town Police Station, Lendi Bridge and Tanaji Vyayam Shala and he has deposed that he was so patrolling between 5-45 p.m. and 7-30 p.m. This police officer must have passed by the

fires raging at Teen Batti and in the adjoining lanes at least several times in the course of his patrolling. He has admitted that from the route of his patrolling he could see Teen Batti Naka and yet this police officer has deposed that it was only at 7-45 p.m. that he came to learn for the first time that some shops and hotels at Teen Batti had been set on fire [P.W. 46/1(4)/938(2-3), 6/942].

43.70 The conduct of P.S.I., Chougule also deserves equal condemnation. At about 8-45 p.m. when he was at the Control Room Dy.S.P., Diwate asked him to proceed to the S.T. Stand where a mob was reported to have collected and he went there along with C.P.I., Tikale and a police party. On the way he noticed that a building at the corner of Teen Batti had been set on fire [P.W. 37/1(2)/856 (2-3)]. Apart from the fact that P.S.I., Chougule must have a very selective eye-sight to pick out just one building out of the number of houses and shops on fire, his attitude towards this building on fire as disclosed in his evidence leaves one amazed. He has deposed (P.W. 37/5/857-8) :

“I did not know to whom the building on fire at the corner of Teen Batti Naka belonged. I still do not know to whom it belonged. Now that I am asked to think out to whom it should possibly belong, I say that it must be a Muslim building as Muslim shops were situate in that building. We did not make any arrangements for calling a fire-engine because information had already been received in the Control Room that this building was on fire and we presumed that the Control Room must have made the necessary arrangements. I say that information about this fire must have been received in the Control Room because before proceeding to the S.T. Stand I was in the Control Room and we could see the flames coming out of this building from the police station itself. I was in the Control Room from 7-15 p.m. to 8-30 p.m. I saw the flames for the first time at 8-20 p.m.

Q. While you were in the Control Room, did you see or hear or come to know of any arrangements being made for extinguishing the fire to this building ?

A. Yes. Trunk-calls asking for fire-engines were booked to Kalyan, Ulhasnagar and Bombay.

These trunk-calls were between 7-15 p.m. and 8-15 p.m. I cannot explain how these trunk-calls can be characterized as making arrangements for putting out a fire which was first noticed at 8-20 p.m. When we passed by Teen Batti Naka we did not see any fire-engine fighting the fire to this building.”

43.71 Further comment on the conduct of P.S.Is., Mane and Chougule and the policemen on duty at Teen Batti is unnecessary.

The police firing at Teen Batti Naka

43.72 After P.I., Ghosalkar (P.W. 40) resorted to firing in Jaitunpura and arrested 17 rioters and sent them to the Town Police Station, he came to Teen Batti Naka at about 6-30 p.m. There he noticed

a mob of Muslims (whose strength he has estimated at being 300 to 400) coming from Nizampura, armed with iron bars and lighted torches. The rioters started throwing fire-balls at the Police and at the police vehicles. One fire-ball fell near the police vehicle. The P.I. warned the mob to disperse and on their failure to comply, he ordered H.C., Morajkar and P.C., Shelar to fire from their .410 muskets. Accordingly H.C., Morajkar fired three rounds and C.C., Shelar fired two rounds at the mob. The mob thereupon dispersed. It is not known if anybody was injured in this firing [P.W. 40/1(3)/896(4), 4/897].

43.73 The evidence shows that there was imminent danger to the lives of the members of the police party and also to the police vehicle as also to other properties. P.I., Ghosalkar, therefore, opened fire and dispersed the mob. The police firing was thus justified.

The looting and arson at Bazar Peth

43.74 There were a number of Muslim shops in Bazar Peth and every single Muslim shop there was looted and set on fire during the disturbance [B.R.W. 1/1(10)/1359(10) ; P.W. 66/131/1182]. There were seven police pickets posted in or around Bazar Peth for the Shiv Jayanti procession bandobast, namely, at Madarchhalla, a little further up on the said road to the west, at the junction of Old Thana Road and Bazar Peth, near the municipal office, between the municipal office and Navi Chawl, in the lane which goes to Thange Alli Bohri Masjid and at the Teen Batti Naka. In addition to the above police pickets there was a police chowki at Par Naka. Thus, there was no dearth of policemen and S.R.P. men in Bazar Peth. In spite of this 29 Muslim shops were looted and burnt and two other Muslim shops looted. There was another Muslim shop which was also broken open, but that was at about 8 or 9 p.m. that night. Three Hindu shops which were interspersed amongst the Muslim shops were also looted by the same mob which looted the Muslim shops (P.W. 66/131/1181).

43.75 So far as the time is concerned, S.P., Bhave has deposed that while returning to the Town Police Station some time before 7-30 p.m. he noticed that shops belonging to Muslims in Bazar Peth were looted. The processionists while spreading out or escaping from the Old Thana Road to the Town Police Station after the disturbances broke out would have to pass Bazar Peth and these acts of arson and looting on such a large scale which amounted to almost the sacking of the whole street, which constituted the shopping area of the town, could only have been perpetrated by them. This could have only happened, therefore, soon after the disturbances broke out. The evidence of two Muslim witnesses would also show that the arson and looting of the shops in Bazar Peth took place soon after the disturbances broke out. These witnesses are Mohamed Saeed Patel (B.R.W. 42/1-4/1548-50) and Asgarali Ismailji (B.R.W. 47/1-6/1566-8). Mohamed Saeed Patel (B.R.W. 42) was the custodian of the Saudagar Mohalla Jumma Mosque and had gone to Saudagar Mohalla to greet the procession. Thereafter while he was returning to his shop in Bazar Peth he saw heavy

stone-throwing from the side of Wani Alli. Apprehending trouble he stopped near that lane when he saw a crowd, which had come from the side of Bangad Galli and Old Thana Road, breaking open his shop. There was a home guard on duty there whose attention Mohamed Saeed drew, but the home guard told him that he was helpless to do anything in the matter. Mohamed Saeed, therefore, returned home. Asgarali Ismailji (B.R.W. 47) resided with his family on the first and second floors of the same building on the ground floor of which his shop was situate. He has deposed that the processionists returning from the procession attacked his shop and that he and the members of his family thereupon got frightened and took shelter till midnight in the house of Bachoobhai Udani, a Hindu, and the next day in the house of Madhavji Dayabhai, their neighbour, another Hindu. Neither of these two witnesses have been cross-examined on these points.

43.76 None of the policemen on picket duty in the whole of Bazar Peth area did anything to prevent these acts of arson and rioting. One of them, P.C., Sahebrao Wamanrao Jagtap (P.W. 22), was detailed at Bazar Peth Police Chowki, along with three other constables. According to him, when they learnt that the disturbances had broken out, they left the chowki to see what was happening and at about 6 p.m. went up to the Bhiwandi Municipal Dispensary and saw people running helter-skelter as also injured persons being taken to the dispensary. He further deposed that in this confusion he missed the other three constables and, therefore, went to the police station where also he did not see them. When asked about the instructions given to them when they were detailed at the Bazar Peth Chowki he deposed at first that he did not remember what those instructions were. Thereafter wisdom dawned on him and he stated that these instructions were that if any trouble should take place they should disperse the mob and should not allow people to collect at one place but should ask them to move on so that there would be no possibility of trouble (P.W. 22/3/477, 7/480). The demeanour of this witness has not impressed me and I am unable to accept his evidence. There is nothing except his own word to show that he went up to the Bhiwandi Municipal Dispensary. It is clear that neither he nor the other constables with him made the least attempt to stop the rioting in Bazar Peth, but after watching it for some time he merely went back to the police station. It is equally possible that on seeing the rioters he and the other constables with him got panicky and turned tail and ran away. In any event, even assuming what he has deposed is true on his own showing he has been guilty of dereliction of duty in that he did not in an emergency carry out the instructions given to him but left his post of duty.

43.77 On the evidence I find that the arson and looting in Bazar Peth took place soon after the disturbances broke out and were committed by the dispersing processionists and that the police pickets posted in the area did not make any attempt to prevent the commission of these offences.

The rioting at Madarchhalla

43.78 Madarchhalla is at the junction of Saudagar Mohalla and Bunder Mohalla with Bazar Peth. The Muslim locality starts from Madarchhalla. During the disturbances the factory of Sikandar Faquih situate at the end of Wani Alli opposite Madarchhalla and two Musiim houses close to it were set on fire. The house of one Kisanchand Meghraj Ahuja, adjoining and very close to the rear of Sikandar Faquih's factory, caught fire from the flames in Sikandar Faquih's factory and also burnt down (P.W. 66/131/1182). As Madarchhalla is the dividing line between the Hindu and the Musiim localities, a strong police picket of ten S.R.P. men under a police officer was posted at Madarchhalla and further west down the Bunder Mohalla Road was posted another police picket. There was also a police picket posted at Zenda Naka, a little to the east of Madarchhalla, and another police picket in Wani Alli Lane, a lane which branches off north from Madarchhalla dividing Bunder Mohalla from Wani Alli. In spite of these four police pickets, there is no direct evidence of any witness called on behalf of the Executive Magistrates and the District Police Officers as to when these acts of arson were committed. The only police witness on this point is P.S.I., Balkrishna D. Sanaf (P.W. 44) who has stated that while dealing with the disturbances he pushed a Muslim mob towards Madarchhalla and came up to Madarchhalla at 7-20 p.m. when he saw some houses already set on fire and noticed a mob of 100 to 150 Muslims towards Saudagar Mohalla and another mob of 100 to 150 Hindus in Bazar Peth and a mob of 50 to 60 Hindus assembled by the side of Brahman Alli and that as these mobs were likely to attack each other, he and the other policemen with him dispersed them. In cross-examination he admitted that the houses which he saw on fire in Madarchhalla were three Muslim houses and they were already half gutted [P.W. 44/1(2)/921(2), 5/923]. This would show that the arson to these houses took place earlier and not when Sanaf went there. .

43.79 Turning now to the other evidence, Sikandar Faquih has stated that at about 5-45 p.m. when he came to Bunder Mohalla, that is, the locality in which he was residing, he was told that not only his factory which contained 16 power-looms, but the adjoining Muslim houses had been set on fire by the Hindu rioters. Not only was Sikandar Faquih's factory completely gutted but his office was broken open and the furniture and records burnt by being thrown into the fire blazing in the factory and the building in which his office was situate set on fire from the rear, the reason he has given for this being that the front of the building abutted on Wani Alli, a Hindu locality, and, therefore, it was not set on fire from the front. He saw the fire to his factory and the adjoining houses from the house of one Abbas Bhoje at Bunder Mohalla [B.R.W. 2/1(24)/1398(13), 24/1407, 28/1409]. What happened thereafter can best be described in his own words (B.R.W. 2/25/1407, 27-8/1408) :

"While I was near Abbas Bhoje's house about 8 S.R.P. men came there. One of them was carrying an iron rod. They surrounded me.

I was wearing a Gandhi cap. As it was very hot I had taken off my Nehru Jacket. I had also put on a badge showing that I was a member of the Peace Committee. The S.R.P. men said, 'Oh, look at this big Gandhiji that has come!'. One of them tore off the Peace Committee badge from me. With great difficulty I managed to escape and returned to my Mohalla. When Mr. Vartak and Mr. Antulay came to Bhiwandi on May 8, 1970, I related this incident to them.

"..... An S.R.P. Camp was put up in Narali Talao Primary School. The fire to my factory and the adjoining house could be very easily visible from the Narali Talao Primary School.....Some young men from the Saudagar Mohalla side had, however, brought buckets of water and were trying to extinguish the fire. The S.R.P. men who were there drove them away.

"From Abbas Bhoje's house I saw a number of Hindus collected at Bazar Peth side and Brahman Alli side. I was so far away that I could not hear them shouting. There was a big rush there and I could not see what they were doing. It is not true that the S.R.P. men were preventing the Muslim crowd and the Hindu crowd from coming close to each other and clashing. If it was so, how could the factory and the adjoining houses have been set on fire?"

43.80 P.S.I., Sanaf, has claimed that he sent a constable to fetch a fire-engine to extinguish the fire to the Muslim houses in Madarchhalla (P.W. 44/5/923). However, Gopal Vishnu Pimpalkhare, the driver of Bhiwandi Municipal fire-engine bearing registration No. MHT 768, has deposed that at about 9 p.m. ten or fifteen persons came to the Fire Station to inform them that there were fires in Madarchhalla and that he went there in the fire-engine and they fought the fires for about three hours and extinguished them (C.W. 42/2/3536). Sanaf has not proved a very satisfactory witness and I prefer the evidence of Pimpalkhare to that of Sanaf that a constable did not come to fetch him but some private persons did. Even Sanaf's story that a mob of 100 to 150 Muslims had assembled on the side of Saudagar Mohalla does not carry any conviction. From the list of incidents which took place during the disturbances given by S.P., Bhave and Dy.S.P., Diwate, it is clear that no incident at all took place in Saudagar Mohalla. The evidence further shows that there were about fifty rich Hindu families residing in Saudagar Mohalla and not one of them suffered any harm or injury in the disturbances [B.R.W. 2/1(26)/1398(14); B.R.W. 40/1(6)/1544(3)].

43.81 Sikandar Faquih has given evidence in a straightforward manner. He has struck me as being a truthful and candid witness and even though he has suffered a huge loss during the disturbances, he did not harbour any rancour or bitterness, but took it as a tragedy which had befallen him as the result of circumstances beyond his control. The evidence does not leave any doubt that the arson at Madarchhalla was committed by the dispersing processionists soon after the disturbances broke out and that the police pickets and S.R.P. men, though posted

close to the spot of the arson, made no attempt to prevent the commission of these offences.

The obstruction to the Bhiwandi fire-engine in Thange Alli

43.82 The Fire Station of the Bhiwandi Fire-Brigade is situate in Thange Alli near the Bhiwandi Talkies. As we have seen in Chapter 42 (paragraph 42.63), neither of the two fire-engines of the Bhiwandi-Nizampur Municipal Council was in a roadworthy condition on May 7, 1970 — fire-engine No. MHT 624 because there was a leakage of oil from it and fire-engine No. MHT 768 because its certificate of fitness under the Motor Vehicles Act was not got renewed after its expiry on March 31, 1970. In the evening of May 7, 1970 both these fire-engines were obstructed while proceeding on fire-fighting operations. The details of these obstructions are to be found in the evidence of S.P., Bhawe (P.W. 4/38/288-91, 77/603); P.I., V. S. Deolekar [P.W. 29/1(2)/522(1), 5/524-5]; the Fire-Brigade Inspector Mohamed Hussain Abdul Gafoor Shaikh [C.W. 37/1(2)/3480(1-2)]; the fire-engine drivers Abdul Razak Saifuddin Garel [C.W. 38/1(2)/3503(1-2), 7/3505] and Gopal Vishnu Pimpalkhare (C.W. 42/2/3535-7); the firemen Qamar Miyan Shaikh Dawood [C.W. 40/1(3-4)/3523(1)] and Bhoja Kukra Shetty (C.W. 41/1-7/3528-34).

43.83 When fires broke out in Bhiwandi, S.P., Bhawe sent a message to the Control Room at 6-11 p.m. to send these two fire-engines, but he was informed that they had already left on fire-fighting operations (Entry No. 56 of Ex. P 367. Fire-engine No. MHT 624 had left the Fire Station to go to Old Thana Road on receiving a call about the fire to Ishaq Bajewala's house. There is considerable controversy about the time of this call. The topic has been discussed in Chapter 40 and the discussion need not be repeated here. Hardly had this fire-engine gone any distance when some Hindus blocked its path near the Bhiwandi Talkies in Thange Alli. The driver Abdul Razak Garel (C.W. 38) thereupon took the fire-engine to the Bhiwandi Town Police Station. According to the evidence of P.I., Deolekar, who was then at the police station, the time then would be about 5-45 p.m. Deolekar asked the fire-engine to follow him and escorted it in his jeep up to Santosh Hotel on Old Thana Road where it fought the fire to Ishaq Bajewala's house and other fires. In respect of this obstruction the Fire-Brigade Inspector Mohamed Husain Shaikh lodged his F.I.R. on July 9, 1970 (Ex. P 329). It is said that in the said F.I.R. he had falsely implicated certain persons. There was also a complaint by Dattatraya Mahadeo More against Shaikh and the other Muslim members of the Bhiwandi Fire-Brigade about their failure to discharge their duties properly during the disturbances in respect of which an inquiry was made by S.D.M., Date (P.W. 62). The Special Investigation Squad came to the conclusion that Shaikh had given false names in the said complaint and accordingly Shaikh was prosecuted for giving a false complaint. The Commission is not concerned with whether Shaikh had falsely implicated any persons or not, as it is not the

function of this Commission to determine the identity of any particular rioter. The fact remains that the said fire-engine was obstructed by some Hindus prior to 5-54 p.m. The fire-engine went back from Old Thana Road to the Fire Station to refill its water tank. It did not return to Old Thana Road as some Hindus did not allow it to leave the Fire Station. Either at that time or at the time of the first obstruction the fire-engine was damaged. Later at about 8 p.m. it went under police escort to Khadak to fight the fire to Anna Mestry's timber depot. It did not go out thereafter on any other fire-fighting operation.

43.84 In spite of the fact that fire-engine No. MHT 768 was not roadworthy, it went to join fire-engine No. 624 which was proceeding to Old Thana Road. After it had proceeded about 200 to 300 yards it was obstructed by a Hindu mob which threw stones at it as a result of which its wind-screen was broken and the driver Hanif injured on the head. Thereupon Hanif took the fire-engine back to the Fire Station. Gopal Vishnu Pimpalkhare (C.W. 42), who was sitting next to the driver, thereafter acted as the driver of the said fire-engine. While they were at the Fire Station, some Hindus came there and asked them to take the fire-engine to the corner of Wani Alli where the factory of Sikandar Faquih (B.R.W. 2) and some other buildings were on fire. These buildings were situate in a Hindu locality and were surrounded by Hindu houses. Pimpalkhare took the fire-engine to Wani Alli and fought the fires for about three hours. After extinguishing the fires they returned to the Fire Station. As the fire-engine was damaged, it did not go out again. The Station Officer of the Thana Fire Station, V. P. Chitre, saw both these fire-engines garaged in a damaged condition in the Bhiwandi Fire Station when he went there at about 1-30 a.m. on May 8, 1970 to fill the water-tank of the Thana fire-engine from a hydrant near the Bhiwandi Fire Station.

The attack on the Thange Alli Mosque

43.85 The Thange Alli Mosque is situate in the lane which leads from Par Naka on Bazar Peth Road to the Town Police Station. In the evening of May 7, 1970 Hindu rioters burst into this mosque, broke its window-panes, destroyed all the moveable properties and furniture of the mosque and the grave inside the mosque and desecrated the mosque. The only evidence on this point is that of Mohamed Shaban Samiullah, a trustee of the said mosque (B.R.W. 60/1-2/1603-4). He has deposed that he was present at the mosque for his 'asar' or evening prayer. At about 5-30 p.m. a Hindu mob came there shouting slogans and pelting stones at the mosque. All the window-panes of the mosque were broken and the mosque damaged in the stone-throwing. Mohamed Shaban and three other persons who were present in the mosque ran into one of the inside rooms and locked themselves in. The mob then entered the mosque, damaged and destroyed the grave inside it as also all the belongings and properties of the mosque, dragged some of it, including the mats, out on the road and set them on fire. After about two hours when Mohamed Shaban and the others came out of their hiding they

saw the mats lying outside on the road burning. The damage to the mosque consisted of the breaking of the pillars and the beams. A stone painted red with 'shendur' (red oxide mixed with oil) was put on the destroyed grave and a board with the legend "Shri Danglya Maruti Mandir" [the Temple of God Maruti (Hanuman) of the Riots] was placed inside the mosque and on the walls of the mosque were drawn pictures of God Hanuman and the words "Jai Hanuman", "Shriram Mandir" and "Muslim 420". This witness has not been cross-examined at all.

43.86 It is clear that the damage and desecration to the Thange Alli Mosque was by the same mob or part of the same mob which looted and committed arson in Bazar Peth and that this damage took place at about the same time as the looting of the shops in Bazar Peth. There were police pickets armed with lathis at each end of the lane in which the Thange Alli Mosque is situate. One wonders what these pickets were doing when this happened, for not one of these constables has bothered to report this incident to the Control Room. A complaint was only lodged when S.P., Bhave came to know about this incident and directed P.S.I., S. L. Hirwe to go and ascertain what had happened and to lodge a complaint. Hirwe went, verified the facts and lodged his F.I.R. (Ex. P 355) the same day (P.W. 4/235/736).

The looting of the stalls near the New Fish Market

43.87 The New Fish Market is situate just opposite the Bhiwandi Town Police Station. There were some Muslim stalls (referred to by the witness as cabins) situate very near the New Fish Market. According to P.S.I., S. S. Mane, when he returned to the Town Police Station at 7-30 p.m. on May 7, 1970 he noticed that these cabins had been looted. He has further deposed that these cabins were on the route which he was patrolling (P.W. 46/6/941). Mane was in the area from about 6 p.m. first dealing with the rioting at Lendi Bridge and thereafter patrolling the area between the Town Police Station, Lendi Bridge and Tanaji Vyayam Shala till about 7-30 p.m. One wonders what kind of patrolling this was and what he and the police personnel in the Town Police Station were doing for them not to have noticed this incident or not to have made the least attempt to prevent it.

The first police firing at Sutar Alli

43.88 The locality of Sutar Alli is criss-crossed with lanes and by-lanes. The Muslim locality of Saudagar Mohalla is to the north and north-east of Sutar Alli. To the south is the Muslim locality of Hamal Wada while on the south-east is the Hindu locality of Bhoiwada. To the west is the Muslim locality of Tandel Mohalla and Dargah Road. In the evening of May 7, 1970 after the disturbances began the Police repeatedly opened fire in Sutar Alli on Muslim mobs and all told 33 rounds were fired—18 of .410 musket, 10 of .438 revolver and 5 of 9 mm. pistol. The witnesses who have deposed about this firing

incident are P.S.I., Mohamed Abdul Gani of S.R.P. Force Group III, 'F' Company, Jalna [P.W. 43/1(2-6)/917(1-4)] P.S.I., B. A. Kale of S.R.P. Force Group III, Jalna [P.W. 48/1(2-3)/950(2-3)], D.M., Capoor. [P.W. 59/1(49)/1000(26-8)], D.I.G. (B.R.), Gokhale [G.W. 4/1(22-3)/1190(15-17), 31/1205-7] and C.P.I., V. S. Tikale [P.W. 36/1(6-7)/844 (5-6)].

43.89 On May 7, 1970 P.S.I., Gani (P.W. 43) was on duty at Hyderi Mosque from noon onwards along with a section of 10 S.R.P. men. At about 5-30 p.m. some injured processionists came running and told him that the Muslims had attacked the procession. In the meantime, he noticed that a house behind Hyderi Mosque had been set on fire. According to him it was a Hindu house. He went there with his police party and put out the fire. He heard shouts coming from the side of Murlidhar Temple. Some Hindus also came up and reported to him that their houses were set on fire and asked for help. Meanwhile P.S.I., Kale who, with a police party of four, was on fixed point duty at the Old Fish Market came there to ask for his help in dealing with the riots at Old Thana Road. Gani took Kale with him and they and their respective parties went to Sutar Alli where they noticed that some houses had been set on fire. They also noticed a Muslim mob collected in Hamal Wada and in other lanes and by-lanes. Gani and Kale have estimated the strength of the Muslim mob at 300 to 400. The Muslim rioters were armed with sticks, spears and incendiary materials. They were throwing stones, acid-bulbs and incendiary materials at the Hindu houses and shouting "Jala Do", "Mar Dalo", "Nare Taqbir Alla Ho Akbar". On seeing the police parties the Muslims also started throwing missiles at them.

43.90 At this time D.M., Capoor and D.I.G. (B.R.) Gokhale were at the junction of Old Thana Road and Bhusar Mohalla. At about 5-45 p.m. someone informed them that arson was being committed at Sutar Alli. Thereupon they inquired whether there was a telephone nearby and on the house of Hasan Kuwari being pointed out to them, they went in and D.I.G. (B.R.), Gokhale talked to the Control Room and gave them information that there was fire in Sutar Alli and asked them to send armed men and fire-engines. The officer-in-charge of the Control Room was P.S.I., L. R. Deshpande (P.W. 42). This telephonic message is entered in entry No. 39 of the Control Room Diary Ex. P 367 at 5-46 p.m. According to this entry, Gokhale asked on the telephone to send reinforcements and he was informed that reserves had been despatched. There is no mention in this entry about any fire in Sutar Alli or asking for any fire-engines. Gokhale has, however, deposed that this entry does not correctly record the message given by him. In several instances the entries in the Control Room are not correct and are at times misleading and at other times deliberately misleading. I, therefore, see no reason to doubt Gokhale's word. Unless and until he and D.M., Capoor had learnt about the arson in Sutar Alli, there was no need for them to go to Sutar Alli and if they on learning about the arson in Sutar Alli proceeded to Sutar Alli and on

the way rung up the Control Room, the logical thing for them to have done would be to inform the Control Room about the arson and ask for fire-engines and reinforcements to be despatched.

43.91 When Capoor and Gokhale reached Sutar Alli they found a Muslim mob collected in the by-lanes attacking the locality with stones, acid-bulbs and incendiary materials. They tried to disperse the mob by ordering a lathi-charge and the S.R.P. men made three or four lathi-charges, but the mob could not be repulsed and continued to attack the police. An acid-bulb narrowly missed Gokhale. Capoor suggested that one more lathi-charge should be tried. As the S.R.P. men were being regrouped for this purpose, Capoor, thinking that the S.R.P. men were ready, rushed forward, shouting at the Muslim rioters to disperse. On seeing him rushing forward Gokhale followed him half-way. By then Capoor had already reached the mob. He heard Gokhale shouting out to him to come back. At that time he saw one of the rioters take out a large knife in order to attack him and another rioter aim a blow at him with a lathi. Some others from the rioting mob, however, held the raised arms of the persons aiming the knife and the lathi. On seeing Capoor's plight, Gokhale rushed forward himself, but meanwhile since Capoor's two assailants had been stopped*by the other rioters from hitting him, Capoor retraced his steps. When he turned back he noticed that his hand and his foot were bleeding and it was when he went to the hospital along with Additional I.G.P., Modak at midnight to look up the casualties that the Medical Officer treated his injuries and informed him that they were acid-burns. Gokhale then carried out another lathi-charge, but this also proved futile. Thereupon Capoor, in consultation with Gokhale, asked P.S.Is., Gani and Kale and also P.S.I., Naik, who had come up there, to open fire. P.S.I., Gani fired five rounds from his .38 revolver. P.S.I., Kale fired five rounds from his .38 revolver and P.S.I., Naik fired five rounds from his 9 mm. pistol. The mob temporarily retreated a little, but being determined and out of revolver range, even the fire opened by the Police could not repulse it. In the meantime, on learning about the arson in Sutar Alli, C.P.I., Tikale (P.W. 36) arrived there along with a party of armed policemen. He was ordered by the D.M. and the D.I.G. (B.R.) to disperse the mob. C.P.I. Tikale thereupon went to the corner of Hamal Wada with A.P.C., Shetye and after due warning directed Shetye to open fire at the Muslim rioters. A.P.C., Shetye fired nine rounds from his .410 musket. This had the desired effect and the mob dispersed. In the meantime some Muslims were seen setting fire to the house of Dattatraya Kale. C.P.I., Tikale therefore went with A.P.C., Kute and directed him to fire one round. Kute accordingly fired one round from his .410 musket. The rioters thereupon dispersed from there but reassembled in the lane going towards Saudagar Mohalla and continued to attack with stones and fire-balls. Tikale therefore ordered A.P.C., Kute to open fire again. Kute accordingly fired eight more rounds from his musket. This had the desired effect and the mob finally dispersed and disappeared.

43.92 Since this area is interspersed with narrow lanes and by-lanes through which the rioters could run back, it was not possible for the officers to see whether anyone was injured in the firing.

43.93 The officers then commenced fire-fighting operations. It was found that there was no water in the main and Capoor thereupon directed S.D.M., Date to get all the valves of the mains opened up in the town and to fetch fire-engines. Meanwhile Hindu women in Sutar Alli had started extinguishing the fire by carrying water from a well nearby to prevent the fire from spreading. The officers helped them in organising this operation. At about 7 p.m. Capoor and Gokhale left Sutar Alli to return to the Town Police Station on foot. They picked up a police vehicle on the way and reached the police station at 7-30 p.m. Tikale stayed in the locality somewhat longer and returned to the police station at 8 p.m. P.S.I., Gani remained on fixed post duty at Sutar Alli until 9 a.m. on May 10, 1970, while P.S.I., Kale after the mob had dispersed went as directed to Teen Batti Naka.

43.94 The Muslims were armed with deadly weapons and were throwing fire-balls, stones, acid-bulbs and incendiary materials at Hindu houses. On seeing the Police, the Muslim mob started attacking them also. Repeated lathi-charges proved to be ineffective. Two of the rioters attempted to attack the D.M. and threw acid on him. D.I.G. (B.R.) also narrowly missed being injured by acid. There was thus imminent danger to the lives of the officers and policemen and also to Hindu properties. The D.M., therefore, ordered fire to be opened. The mob was so determined that even revolver-fire could not repulse it. It was only when fire was opened with muskets that it had any effect. Even then taking advantage of the topography of the area the mob dispersed from one lane and appeared in another and C.P.I., Tikale had to chase it from lane to lane and open fire till it was finally dispersed. The police firing was, therefore, justified.

The second police firing at Sutar Alli

43.95 S.P., S. V. Bhavé (P.W. 4) went to Sutar Alli at about 6-40 p.m. When he reached there someone complained to him that stones were still being hurled by the Muslims in another part of Sutar Alli. Thereupon Bhavé went with A.H.C., More through a very narrow lane leading to the Saudagar Mohalla Jumma Mosque and noticed a Muslim mob assembled there. The persons in the mob were throwing stones and carrying tins of kerosene. Bhavé warned the mob to disperse, but the warning went unheeded. Bhavé therefore asked A.H.C., More to fire one round. More accordingly fired one round at the mob from his .410 musket. This had the desired effect and the mob dispersed. Bhavé did not notice whether any one was injured in this firing. After the mob dispersed and the fire-fighting operations started, Bhavé left Sutar Alli on foot and came to Bazar Peth. By then it was almost dark. There he found a police vehicle and went in it to the Town Police Station reaching it at about 7-30 p.m. [P.W. 4/1(83-4)/236(53-4), 265/760].

43.96 When the fire-fighting operations in Sutar Alli commenced the Muslims rioters in another part of Sutar Alli collected near the Saudagar Mohalla Jumma Mosque. They were carrying tins of kerosene, their obvious intention being to commit arson to Hindu properties. They did not disperse when ordered to do so. The police firing was, therefore, justified.

The rioting at Sutar Alli and Hamal Wada

43.97 The Hindu locality of Sutar Alli lies adjacent to the Muslim locality of Hamal Wada. From the evidence reviewed while discussing the police firing in Sutar Alli it is clear that the first police officers to reach Sutar Alli were P.S.Is., Gani and Kale. They were followed by D.M., Capoor and D.I.G. (B.R.). Gokhale, C.P.I., Tikale came thereafter, the last officer to arrive on the scene being S.P., Bhave.

43.98 From the evidence of P.S.Is., Gani and Kale it is clear that Gani and Kale were together when they first learnt about the arson in Sutar Alli. Kale has deposed that he saw only three buildings on fire near the Murlidhar Temple in Sutar Alli. One was a Hindu building, another a sizing factory known as Archana Sizing Mills which was owned by a Muslim but rented to a Hindu and the third a Muslim building known as Arab Building. According to Gani, he first noticed the fire to the Hindu building and then the other fires. According to him, these three were the only buildings on fire near Murlidhar Temple. Gani and Kale have deposed that by the time they reached the spot, all these three buildings were gutted.

43.99 It may be mentioned here that the door of the Malbari Hotel (a Muslim Hotel) in Arab Building had been bolted from outside and four Muslims, who were trapped inside were burnt to death. Their skeletons were recovered from the debris of Arab Building by P.S.I., Salvi on May 24, 1970 [P.W. 33/1(3)/1579(2); N.H.W. 44/16/2054]. At about 9 p.m. when P.S.I., K. N. Patil was patrolling the area, he heard some shouts for help coming from Arab Building. When he went to the Building he found the door bolted from outside. He broke open the door and rescued a boy Davayya Lasamaiya from an office room on the ground floor. Patil has deposed that by that time, except for the portion of the building in which the said office room was situate, the rest of the building was completely burnt down. For his rescue of the said boy P.S.I., Patil was given a cash reward by the S.P., Thana [P.W. 35/1(3)/834/(2-3), 3/836, 6/839, P.W. 66/103/1165].

43.100 When Capoor and Gokhale reached Hamal Wada, the fire was spreading and one more Hindu house was on fire. Gokhale has deposed that though they did not see any Muslim rioters set fire to either of these two Hindu houses, a Muslim mob was trying to set fire to the Murlidhar Temple by throwing incendiary materials. It was this Muslim mob on which the Police opened fire. So far as the presence of a Hindu mob is concerned, Capoor has said that when they reached Sutar Alli the only Hindus they saw were some Hindu

women and about four or five Hindu men, including Savlaram Kale and Narayan Badlapurkar, the Vice-President of the R.U.M. Gani and Kale also do not depose to the presence of any Hindu rioters [P.W. 43/1(4)/917(2), 5/919-20 ; P.W. 48/3/952 ; P.W. 59/53/1032-3 ; G.W. 4/31/1206-7].

43.101 The Nagarik Hitarakshak Mandal has examined four witnesses to depose to the time of the arson to Hindu properties in Sutar Alli. Their affidavits, however, do not make any mention of arson to any Muslim property or of any rioting by the Hindus, but merely convey a one-sided picture as if in Bhiwandi the only rioting was by the Muslims. These four witnesses are Mrs. Rukmini Sawlaram Kale (N.H.W. 24), Mrs. Laxmibai Dagdu Mestry (N.H.W. 23), Damodar Raghunath Patil (N.H.W. 25) and Tukaram Harischandra Pimple (N.H.W. 32).

43.102 Mrs. Rukmini Sawlaram Naravane (N.H.W. 24) has mentioned the time of the attack by the Muslims on her house in Hamal Wada as being 5-30 p.m. How and by whom this time came to be introduced in Rukmini's affidavit is not difficult to understand when we find that in her cross-examination she has stated that it was from the angle of the rays of the sun that she could make out that the time was 5-30 p.m. [N.H.W. 24/1(1)/1932(1), 5/1933]. Mrs. Laxmibai Dagdu Mestry has also stated in her affidavit that the Muslims set fire to her house at 5-30 p.m. In cross-examination she admitted that she had not got a wrist-watch and had mentioned the time in her affidavit as being at about 5-30 p.m. as an approximate time and she could not say what the exact time was [N.H.W. 23/1(1)/1926(1), 3/1927]. Damodar Raghunath Patil (N.H.W. 25) had joined the procession. According to him, he left it and went to his house in Hamal Wada and at 5-15 p.m. his neighbour informed him that the procession had been attacked. He, therefore, sat down on the 'ota' of his house. Some time later another neighbour of his came and informed him that the Muslims were attacking Hindu houses in Sutar Alli. His police statement would, however, show that he was still in the procession when the disturbances broke out and thereafter went to Sutar Alli with a lathi in his hand. The relevant portion of his police statement is, "As the mob started advancing towards me, I took a lathi in my hand to protect myself and ran towards Sutar Alli". Realizing the damaging implication of this statement, he denied in the witness-box that he had said so to the Police. His denial cannot be believed. As we have seen, there was a purpose in introducing implicatory statements of this type in the police statements of Muslims, but there could be no purpose in doing so in the police statement of Hindu witness. In cross-examination he admitted that he did not look at the time either when he left the procession or when he reached his house and that the time mentioned by him was merely an approximation [N.H.W. 25/1(1)/1935(1), 5/1937]. Tukaram Harischandra Pimple (N.H.W. 32) had also participated in the procession. According to his affidavit, the procession was attacked at

5-15 p.m. and he ran towards his house. On the way near Murlidhar Temple some Muslims attacked him. He managed to escape and saw that the Muslims were attacking the locality. In his police statement, however, he has mentioned that the procession was attacked at 5-30 p.m. When this contradiction was put to him he stated that he had mentioned both these times, namely, the time of 5-15 p.m. in his affidavit and the time of 5-30 p.m. in his police statement, on an estimate based on the position of the sun [N.H.W. 32/1(1)/1967(1), 6/1968].

43.103 There is thus no satisfactory or credible evidence before the Commission as to when the arson to Hindu houses took place.

43.104 The Muslim parties have led no evidence about the arson to the two Muslim houses and the fact of the arson to them has been elicited only in the cross-examination of witnesses called by other parties. The F.I.R. (Ex. P 229) given by the owner of the Malabari Hotel in Arab Building, Mohomed Ibrahim Malabari, and recorded by P.S.I., J. S. Kulkarni (as shown by Exhibit P 173), is an instance of how Muslim complaints have been manipulated. When stone-throwing started in Sutar Alli Mohomed Ibrahim ran away. He returned to his hotel on May 12, 1970 and found the building gutted. The F.I.R. then states. "I do not know who has set fire, but somebody has set fire on 7th May 1970 between 7-00 to 7-30 p.m.". Mohomed Ibrahim did not see the arson to the building. He only saw the gutted building on May 12, 1970, then why "7-00 to 7-30 p.m." ? The answer is obvious — it was to show that till then there was no rioting by Hindus and the only rioting was by Muslims. The evidence of P.S.Is., Gani and Kale and of D.M., Capoor and D.I.G. (B.R.) Gokhale is, however, clear on the point. Each of them saw Arab Building on fire when they reached the spot and by the time Gani and Kale came to the spot the building was gutted. From the evidence of the police officers referred to above it is, however, clear that when P.S.Is. Gani and Kale reached the scene, Muslim mobs were there, but the Hindu rioters had disappeared. The evidence before the Commission thus establishes that the rioting at Sutar Alli started soon after the outbreak of the disturbances. Sutar Alli and Hamal Wada are very close to Bhusar Mohalla and the Muslim houses, which are on the border line of Hamal Wada and Sutar Alli, were in all probability set on fire by the dispersing processionists before the Muslims began their attack on Sutar Alli. The arson to the said Muslim houses, therefore, followed by the arson to the said Hindu houses behind Murlidhar Temple, must have taken place during the period between the outbreak of the disturbances at the Old Fish Market and the time when P.S.Is., Gani and Kale went to the spot. One thing, however, is clear on the evidence, particularly the evidence of P.S.Is., Gani and Kale and the Hindu witnesses Damodar Raghunath Patil (N.H.W. 25) and Tukaram Harischandra Pimple (N.H.W. 31), that the rioting and arson by the Muslims in Sutar Alli did not start at the same time as the disturbances at Bhusar Mohalla or Old Thana Road.

Whether Muslim rioters used Molotov cocktails in Sutar Alli ?

43.105 As mentioned in Chapter 39 (paragraph 39.8), a Molotov cocktail is a bottle containing petrol, kerosene or other inflammable liquid, with a cloth wick which is lit before throwing. On impact the bottle explodes and the flaming liquid sets fire to the object struck. In the affidavits of several Hindu witnesses it is stated that in their attack on the Hindus and Hindu houses in Sutar Alli the Muslim rioters used "bottles filled with petrol with a wick" or "burning bottles". These witnesses are Mrs. Rukmini Naravane [N.H.W. 24/1(1)/1932(1)]; Kamlakar Naravane [N.H.W. 26/1(1)/1938(2)]; Harischandra Mestry [N.H.W. 31/1(5)/1963(3)]; and Tukaram Pimple [N.H.W. 32/1(1)/1967(1)].

43.106 The only missiles P.S.I., Kale has mentioned in his affidavit are spears, sticks and lighted torches [P.W. 48/1(2)/1950(2)]. P.S.I., Gani has, however, stated that the Muslim rioters were also throwing Molotov cocktails. He further deposed that he did not know that a bottle filled with spirit or kerosene with a cloth wick was called a Molotov cocktail until he was so informed by Addl. I.G.P., Modak, when he came to Sutar Alli at about 11 p.m. on May 7, 1970. In his firing report Gani has not made any mention of Molotov cocktails being thrown. The explanation which he gave in the witness-box for this omission was that he had forgotten to mention it at that time because the situation in Bhiwandi then was such that he was under a mental stress. He was in the army and had served on the Burmah Front. He said that prior to May 7, 1970 he had only heard about Molotov cocktails, but had not actually seen one. He then immediately changed his answer to say that in the course of his army training he had seen Molotov cocktails [P.W. 43/1(4)/917(2), 4/918]. According to C.P.I., Tikale, the rioters threw stones and attempted to set Hindu houses on fire by means of fire-balls and kerosene [P.W. 36/1(7)/844(5)]. D.M., Capoor and D.I.G.(B.R.), Gokhale in their respective affidavits have stated that they saw Muslims attacking the Sutar Alli locality with stones, acid-bulbs and incendiary materials, without mentioning what these incendiary materials were. In the witness-box, however, Gokhale deposed that the Muslim mob in Sutar Alli was throwing missiles such as acid-bulbs, Molotov cocktails and fire-balls [P.W. 59/1(49)/1000(27); G.W. 4/1(23)/1190(16), 31/1207]. According to Addl. I.G.P., Modak, police officers and the members of the public informed him that Muslim rioters were throwing glass bottles filled with petrol with a lighted wick and that while he was in Sutar Alli on the night of May 7, 1970 one or two such one-pint bottles, which were unused, were shown to him by S.P., Bhavne and he recognized them as being Molotov cocktails and so informed the other officers (G.W. 3/54/184, 56/185). Strangely enough, these unused Molotov cocktails were not taken charge of by the Police. P.S.I., Gani has, however, stated that what was shown to Modak was a broken bottle with a cloth wick fixed to it and not an unused Molotov cocktail (P.W. 43/4/918).

43.107 Each of the Hindu witnesses above referred to has fared so hardly in cross-examination that no reliance can be placed upon his word. I, however, am not prepared to doubt the word of Addl. I.G.P., Modak and D.I.G.(B.R.), Gokhale. Gokhale has categorically deposed that Molotov cocktails were thrown both at the Murlidhar Temple and the police party and Modak himself saw at least one such bottle in Sutar Alli. That Modak was informed that these missiles were thrown and that he himself saw one and thereafter realized that it was a Molotov cocktail is clear from the fact that the first contemporaneous document in which the term "Molotov cocktails" is mentioned is the second wireless message (Ex. G 29) sent by Modak at 3-45 a.m. on May 8, 1970 after he had moved about in Bhiwandi and visited the spots where the major incidents had occurred. It makes no difference whether the bottle shown to Modak was broken bottle or an unbroken bottle because a rioter might have thrown down the bottle while running away and it could have broken. I have, however, not been impressed by Gani's demeanour and accept Modak's word as against his. I, therefore, hold that it was an unused Molotov cocktail which was shown to Modak. This Molotov cocktail must have been dropped by one of the rioters when the Police opened fire and the Muslim mob ran away into lanes and by-lanes.

43.108 For the reasons stated above, I hold that the Muslim rioters did use Molotov cocktails in Sutar Alli.

The murder of Farid Narvel

43.109 In the evening of May 7, 1970 a Muslim, Farid Narvel, was fatally wounded with a spear and another Muslim, Naseem Sikandar Pathan, was injured on the head in Sutar Alli in the evening of May 7, 1970. Both of them were sent to St. George's Hospital, Bombay. Farid, however, died on the way. At the St. George's Hospital a spearhead 7½" in length and 1½" in breadth was found embedded in his lung and posterior chest wall and was removed. The statement of Naseem was also recorded at the Hospital. In the last week of July 1970 while going through the Riot Diaries Dy.S.P., Diwate came across the relevant entries in the Riot Diary of May 8, 1970. He inquired from the Bhiwandi Town Police Station whether the papers and articles had been brought and if they were not, to have them fetched immediately from Bombay. Thereupon H.C., K. N. Chaudhari was sent to the Paltan Road Police Station and the case papers, articles and post-mortem notes were brought to Bhiwandi and put up before Diwate. On perusing the case papers Diwate directed an offence to be registered. Accordingly, an F.I.R. (Ex. P 333) was lodged by H.C., Chaudhari on July 31, 1970 and was registered as C.R. No. 454/70 (P.W. 66/104/1166; Ex. P 368, entries Nos. 36 and 118; Ex. P 369, entry No. 57; Ex. P 466, entries Nos. 12 and 47). Three persons from Sutar Alli, namely, Narayan Badlapurkar, the Vice-President of the R.U.M., Gajanan Kale and Jagannath Pimple,

were charged with the murder of Farid and were prosecuted. They were, however, acquitted by the Additional Sessions Judge, Thana, in Sessions Case No. 21 of 1971 on the ground that the prosecution had failed to prove its case against them (Ex. P 665).

43.110 As appears from the said judgment the prosecution case was that in the evening of May 7, 1970, Farid, who was playing a game of carom along with two of his friends, saw a mob of 25 to 30 Hindus setting fire to the staircase of the Arab Building and on Farid going up to them to protest, he was fatally stabbed with a spear. The assailant pulled out the spear and ran away. The spearhead remained embedded in his body. This incident, however, *per se* does not prove that Arab Building was the first building in Sutar Alli to be set on fire. It, however, does show that spears were not the monopoly of Muslim rioters as sought to be made out by the Special Investigation Squad and the Hindu parties.

43.111 Another point which requires to be mentioned in this connection is that in the F.I.R. lodged by H.C., Chaudhari it is stated that Farid was stabbed with a knife. It is a matter for reflection how Chaudhari could have come to make such a statement when, according to case papers, the spearhead embedded in his lung and posterior chest wall was removed at the St. George's Hospital and even brought to Bhiwandi by H.C., Chaudhari himself and the post-mortem notes showed that the spear wound was the cause of his death.

The rioting at Gauripada

43.112 Gauripada is a large Hindu locality to the west of Old Thana Road. To its north is the Muslim locality of Khajurpura and beyond it is Bhusar Mohalla. During the first two hours of the disturbances the house of Narayan Dabne (N.H.W. 36), the house of Bhaskar Mali, some other Hindu houses, the house of one Mustaq Ahmed Abdul Gafoor and the house of Mahomed Sami Sardar were set on fire and two Muslims murdered. Neither the Police nor the Muslim parties have led any direct evidence with respect to these incidents. The witnesses on behalf of the Hindu parties were Prabhakar Shrikrishna Dhamankar (N.H.W. 9/1-7/1836-9), Jayantilal Mohanlal Daftary (N.H.W. 10/1-5/1840-3), Narayan Ganpat Dabne (N.H.W. 36/1-5/1990-3), Lingayya Lachhayya Garud (N.H.W. 37/1-5/1994-7), and Anjaya Yellaya Yemul (N.H.W. 38/1-3/1998-9).

43.113 Prabhakar Dhamankar (N.H.W. 9) is a son of Bhausaheb Dhamankar and resided at Dhamankar Naka. According to his affidavit, at about 5-45 p.m. he learnt that some Muslims had set fire in Gauripada to the houses of his workers. Thereupon he started in his car for Gauripada. On the way he gave a lift to Jayantilal Daftary (N.H.W. 10) who was going towards the town and to a weaver. Some Hindus, when they passed asked them not to proceed further as rioting was going on. They parked the car near the office of the Local Board and proceeded to Gauripada. At that time they saw

several Hindu houses and the house of Gafoor Murshed, that is, Mustaq Ahmed Abdul Gafoor, on fire. They went back to the car and with a view to arrange for fire-engines and to report the matter to the Police, started going towards Bhiwandi by the Old Thana Road. On the way they saw that the road outside the factory of Mobin Master had been blocked by putting drumstick trees across the road and that 25 to 30 Muslims had collected there with sticks and spears in their hands. They stopped the car and Prabhakar and Daftary got down with the object of asking the Muslims to remove the obstacle. As soon as they stopped the car a mob of about 75 Muslims came out from Mobin Master's factory, some of them with sticks in their hands and others with spears. Prabhakar and Daftary tried to persuade them but one of them, alleged to be a nephew of Mobin Master, said, "What about the two of our men who have been killed?" Another Muslim from that mob hit Prabhakar on the head. He started bleeding and immediately got back into the car and drove away in reverse. As they were driving back in reverse, the mob began hitting the car with sticks and someone attempted to hit Prabhakar with a spear, but the spear struck the body of the car. Prabhakar has mentioned the names of several Muslims as being in the rioting mob. He was under medical treatment for his injuries for about one week and the medical certificate issued to him showed that he had laceration of the scalp as a result of an injury caused by a hard and blunt substance, obviously a stick.

43.114 Prabhakar gave to the Town Police Station a written complaint dated May 26, 1970 signed by him (Ex. NH 6). This complaint contains two significant omissions. The first omission is that there is no mention that while his car's progress was blocked any Muslim came out of the factory of Mobin Master; according to the said complaint, the Muslims had already gathered on the road and it was one of them who hit him. The second omission is that there is no mention of any attack on his car with sticks as they were going away in reverse. On April 25, 1971 a sub-inspector of the Special Investigation Squad came to Prabhakar's house and recorded his statement and, according to him, it contained all the facts recorded in his affidavit. Obviously the said statement was just a copy of his affidavit since by that time the Special Investigation Squad had with it copies of all the affidavits filed before the Commission. Strangely enough, Prabhakar was not at any time called by the Police to identify any of the persons implicated by him in his affidavit and he was unable to state whether any one of them was arrested.

43.115 The affidavit of Jayantilal Daftary (N.H.W. 10) is substantially the same as that of Prabhakar. He was also not called by the Police to identify any of the persons implicated in his affidavit.

43.116 So far as the questions in issue are concerned, all that the evidence of these two witnesses establishes is that at about 5-45 p.m. Prabhakar learnt that the houses of his workers in Gauripada had been set on fire and that when he went there he saw not only some

Hindu houses but also a Muslim house on fire and that he further learnt that two Muslims had been murdered. Their evidence does not throw any light on the real questions, namely, who rioted first in this area—the Muslims or the Hindus, and at what time did this rioting take place ?

43.117 In order to show that the rioting and arson by the Muslims in Gauripada took place at 5-30 p.m. the Nagarik Hitarakshak Mandal also examined Lingayya Lachhaya Gurud, a hand-loom worker residing in Gauripada. According to his affidavit, he was at his house in the afternoon. He came out of his house at about 5 p.m. and sat near a temple of Lord Shiva. After he had sat there for some time he heard a commotion going on behind that place and a Muslim mob came there armed with sticks, stones, acid-bulbs and soda-water bottles and one of them—alleged to be Kallu Thotya—had a country pistol in his hand. There were others belonging to Lingayya's community also sitting with him. The Muslim mob surrounded them and began throwing stones and acid-bulbs at them. Kallu Thotya fired five bullets at Lingayya out of which two hit him on the head, one on the knee and one on the calf. His affidavit states, "At that very time the house of Bhaskar Mali was seen to be on fire. Thereafter the Muslims set fire to several houses in Gauripada with the help of rags soaked in kerosene. All these incidents were taking place at about 5-30 O'clock." After he was hit by the bullets he went inside his house and slept and on getting up applied some household medicines to his wounds. He did not leave his house till the evening of May 8, 1970 when he went to Dhamankar Naka and on the next day he was sent to Bombay in a truck. Lingayya has, however, stated in his police statement that he and the other people of his locality were removed to Dhamankar Naka by some S.R.P. men in a police van at about 9-30 p.m. on May 7, 1970. The medical certificate issued to him by the M. A. Podar Hospital, Worli, shows that he was brought there at about 10-15 a.m. by a police constable from the Worli Police Station as he had complained of a foreign body buried in his left parietal region. According to the medical certificate, there were also abrasions on his chest. There was no fracture and his general condition was good. X-ray photographs were thereafter taken. They revealed the presence of a metallic foreign body in the left parietal region and in the right knee. These foreign bodies, which were lead beads, were removed.

43.118 Two police statements of Lingayya have been recorded, namely, (1) on May 13, 1970 by the Sub-Inspector of the Worli Police Station (Ex. P 685) and (2) on June 23, 1970 by the Sub-Inspector, Crime Branch, Poona, Camp Bhiwandi (Ex. P 686), that is, an officer of the Special Investigation Squad. A comparison of these two police statements is sufficient to show how the Special Investigation Squad has deliberately shaped police statements, put into the mouths of witnesses what the officer recording the statements desired that they should have said, omitted what officer did not want

and presented a completely false picture in order to support the Squad's theories. Lingayya deposed in evidence that when he came out of his house on hearing a commotion he saw two mobs, one a Hindu mob and the other a Muslim mob, throwing stones and soda-water bottles at each other. He said that he had stated this fact when each of his said police statements was recorded. We, however, find this fact mentioned in his police statement recorded by the Sub-Inspector of the Worli Police Station, but not in the one recorded by the sub-inspector of the Special Investigation Squad. His statement recorded by the Sub-Inspector of the Worli Police Station does not mention any arson at all. His statement recorded by the sub-inspector of the Special Investigation Squad states that after he returned to his house on being hit by the bullets, the Muslims began setting fire to Hindu houses. Even in the police statement recorded by the Special Investigation Squad there is no mention that at the very time he was hit by the bullets, Bhaskar Mali's house was on fire. Bhaskar Mali was the President of the R.U.M. He was also accused by some Muslims of having murdered the said two Muslims and of having committed arson to a Muslim house (P.W. 61/51/3605). The affidavit of Lingayya was filed through the Nagarik Hitarakshak Mandal. It is not difficult to see how and from where the aforesaid statement came to be incorporated in his affidavit.

43.119 Narayan Dabne (N.H.W. 36), whose house in Gauripada was burnt during the disturbances, had participated in the Shiv Jayanti procession. According to his affidavit, the procession was stoned near the Old Fish Market, he learnt that houses in his locality had been set on fire. Thereupon along with some others he went to Gauripada. When he went there he found that his house and some other houses were on fire. There was also a Muslim mob which was setting fire to other houses. The Muslim mob threw stones and acid-bulbs at them. He went inside his house to bring out his mother but the Muslim mob assaulted him and threw them both into the burning house. He, however, managed to escape. He has mentioned the name of Kallu Thotya as being in that mob. When he returned to his house in the morning of May 8, 1970 about 10 or 12 Muslims rushed at him with sticks. He again ran away to save himself. He went to the Town Police Station on May 15, 1970 and gave his complaint (Ex. P 221). The said complaint does not mention that he learnt while he was on Old Thana Road that houses in Gauripada had been set on fire. According to the said complaint, after the procession was attacked, he managed to escape and ran to Gauripada where he saw a Muslim mob setting fire to houses. The said complaint makes no mention of his going to his house in the morning of May 8, 1970 or of being assaulted by any Muslims there. According to the said complaint, the first time he went back to his house after May 7, 1970 was on May 12, 1970 when the curfew was relaxed.

43.120 According to Dabne, a panchnama of his house was made at about 10-30 a.m. on May 15, 1970 before he gave his complaint.

The panchnama, however, is dated May 18, 1970 and states that it started at 5-10 p.m. and concluded at 6-10 p.m. The manner in which this panchnama was made is an eye-opener as to how the Special Investigation Squad has worked. According to Dabne, when he returned for the first time to his house he found the bones of his mother in the northern part of the house where his mother used to sleep. He collected these bones and took them to Dhamankar Naka where he had taken shelter. He deposed that he had not at any time handed over any of these bones to the Police and that he had immersed them to the Ganges River at Varanasi. He has further deposed that for the purpose of making the panchnama he brought back the bones to his house and put them outside the room where, according to him, his mother was burnt to death. The said panchnama describes these bones as having been found outside the said room at the time when the panchnama was made. This makes doubtful the entire story of how he and his mother were thrown in the burning house and how he alone managed to escape therefrom.

43.121 Anjaya Yellayya Yemul (N.H.W. 38) was a tenant of a room on the ground floor of the house of Bhaskar Mali situate in Gauripada. His affidavit states that while he was in his room at about 5-30 p.m. on May 7, 1970 a mob of about 100 to 150 Muslims came to the locality. They started throwing stones on houses, set fire to his house from outside, broke open the door of his room and threw kerosene in the room and set it on fire. He, his wife, two of his sons and his newly born small child managed to escape, but his mother and two other sons were trapped in the room and were burnt to death. A stone hit his wife on the neck and because of the bursting of the flames his face was scorched. Both he and his wife were treated in the Thana Civil Hospital. In cross-examination it transpired that till 5 or 5-30 p.m. on May 7, 1970 he was working in the power-loom factory where he was employed, which is at a distance of about 60 feet from his house, and that on seeing the Muslim mob enter the locality he got frightened and went to his house. He has admitted that he had no clear idea about what time it was and that the time of 5-30 p.m. mentioned in his affidavit was a rough estimate. His affidavit has also been filed through the Nagrik Hitarakshak Mandal and seeing that he was Bhaskar Mali's friend it is not difficult to surmise how and from where the time 5-30 p.m. mentioned in his affidavit originated. Apart, however, from the question of time, his house could only have been set on fire by the same mob about which Lingayya has deposed.

43.122 We have seen that both according to Prabhakar Dhamankar and Daftary, when they went to Gauripada the house of Mustaq Gafoor was on fire. From their evidence it is clear that they could not have gone to Gauripada later than 6 p.m. or 6-15 p.m. By that time, therefore, the arson to Mustaq Gafoor's house had already been committed. Nonetheless the F.I.R. of Mustaq Gafoor (Ex. P 225) states that this arson took place in the night of May 7, 1970.

The grievance made by the Muslim parties that their F.I.Rs. and complaints were not correctly recorded appears to be borne out by this F.I.R. The evidence of these two witnesses establishes that the rioting on the part of Hindus and Muslims both took place prior to 6 p.m. Dabne was an illiterate witness and did not know how to read and write Marathi. No reliance can, therefore, be placed on the time mentioned by Dabne. The Muslim mob which set fire to his house appears to be the same mob from which one of the rioters fired pellets at him from an air pistol. This must, therefore, have been after the disturbances broke out in the Bhusar Mohalla-Old Thana Road locality. A number of Muslims who attacked the procession must have been from Waje Mohalla since Bhusar Mohalla adjoins Waje Mohalla. A riot spreads like a forest fire. After the riots broke out, some of the Muslim rioters must have attacked the Hindu locality of Gauripada. There was a clash between the Hindu and Muslim mobs. The Hindu mob must have set fire to the Muslim houses and the Muslim mob must have set fire to Hindu houses. There is no evidence to show that the attack by the Muslim mob in Gauripada was simultaneous with the attack on the procession. On the contrary, the evidence of Lingayya and particularly his police statement recorded by the Sub-Inspector of the Worli Police Station, Bombay, which I find to be fairly and correctly recorded, would show that the first act of rioting in Gauripada was a clash between a Muslim mob and a Hindu mob and that arson started later some time before 5-45 p.m. This is also borne out by entry No. 50 in the Control Room Diary (Ex. P 367) which records a message received at 6 p.m. that fires had broken out in Gauripada and asking for police reinforcements and fire-engines to be sent there.

The rioting at Kumbhar Alli

43.123 Kumbhar Alli is a Hindu locality. It lies to the east of Old Thana Road running almost parallel to it. As we have seen P.S.I., Hirwe opened fire there at about 6-30 p.m. In Kumbhar Alli in the evening of May 7, 1970 the Muslim rioters set fire to the houses of Dr. S. K. Acharya and some neighbouring houses, a temple of Hanuman and Dr. R. S. Acharya's car, P.S.I., Hirwe's evidence shows that before he reached Kumbhar Alli and opened fire Dr. S. K. Acharya's house and the car of his son Dr. R. S. Acharya had already been set on fire. This conclusively establishes that the rioting by Muslims in this locality started prior to 6-30 p.m. The question, however, is whether the rioting in Kumbhar Alli began simultaneously with the attack on the Shiv Jayanti procession in Bhusar Mohalla as alleged by the Special Investigation Squad and the Hindu parties. The Muslim parties have led no evidence on this point, as naturally any Muslim present there during that period would be a rioter and a participant in the various offences committed there. The evidence on the side of the Hindu parties is that of two witnesses called by the Nagrik Hitarakshak Mandal, namely.

Dr. S. K. Acharya (N.H.W. 21/1-16/1914-20, 17/1988) and his son Dr. R. S. Acharya (N.H.W. 33/1-17/1970-79, 18/1989).

43.124 Dr. S. K. Acharya owned three houses in Kumbhar Alli, one of which stood in the name of his wife. Out of these three houses, two were residential houses and also contained a nursing home and a dispensary known as the Janata Maternity and Nursing Home. There was a power-loom factory in the third house. He had also a house outside Bhiwandi near Agra Road within the limits of Kamatghar Village which stood in the name of one of his sons. Dr. S. K. Acharya mostly lived in his Kamatghar house. According to his affidavit, on May 7, 1970 he started from his Kamatghar house at about 4-45 p.m. to go to the town. While passing through Vaje Mohalla he saw a number of Muslims going from that side towards Old Thana Road with stones, fluorescent tubes, etc., in their hands. He realized that the situation had become very tense and when he reached his Kumbhar Alli house he telephoned the Town Police Station and informed the Police about what he had seen and requested them to arrange for police bandobast. Thereafter while he was in the rear side of the upper storey of his house he heard an uproar coming from the side of the Old Thana Road and he warned his sons that they should take care. He also saw Muslims rushing at Hindus who were going to Dhamankar Naka from Vaje Mohalla and, therefore, he asked these Hindus not to go towards Dhamankar Naka. In cross-examination he stated that these Hindus were coming from the side of the Vegetable Market ('Mandai'). He further said that two of these Hindus stopped near his garage by the side of his house. Thereafter Dr. S. K. Acharya left for his Kamatghar house in his car. His affidavit further states that while he was passing through Vaje Mohalla some Muslims attacked his car near the Ganesh Weaving Factory by throwing stones and soda-water bottles at it from behind. One of them also gave a blow with an axe on the rear wind shield, breaking the glass. Thereupon, instead of going to his house, Dr. S. K. Acharya went to Dhamankar Naka. While going to Dhamankar Naka he crossed Prabhakar Dhamankar. In his cross-examination he has stated that he left his house to go to Kamatghar at about 5-25 p.m. and that it was about 5-35 p.m. when he met Prabhakar Dhamankar and that he learnt at 8 p.m. or 9 p.m. that his houses in Kumbhar Alli had been set on fire [N.H.W. 21/1(2-10)/1914/(1-3), 5/1915, 9/1917].

43.125 Dr. S. K. Acharya has given a signed complaint to the Police on May 16, 1970. There is not a word in his complaint about his seeing any Muslims going from Vaje Mohalla towards Old Thana Road with stones, fluorescent tubes or any other weapons or of his telephone call to the Town Police Station or of his hearing an uproar or of warning any Hindus or of seeing Muslims rushing at Hindus going to Dhamankar Naka. He tried to explain the absence in his complaint about the incident of Muslims going towards Old Thana Road with stones and fluorescent tubes by stating that this

was because he had already informed the Town Police Station about it on the telephone (N.H.W. 21/5/1916). There is, however, no record in the Control Room Diary of the Bhiwandi Town Police Station of any such telephone call received from him (P.W. 66/166/3904) and I disbelieve his story of the telephone-call. He also sought to explain away the absence in his complaint of Muslims attacking Hindus and of his warning the Hindus going towards Dhamankar Naka not to do so by saying that these facts did not pertain to him. He had, however, to admit that the fact of his warning his sons did pertain to him, and he then changed his answer to say that he did not think it proper to mention these facts to the Police. His answer speaks for itself. While he has deposed that he met Prabhakar Dhamankar at 5-35 p.m. on the way to Dhamankar Naka, Prabhakar Dhamankar has deposed that he left his house at Dhamankar Naka after he learnt at 5-45 p.m. that his workers' houses in Gauripada had been set on fire.

43.126 The evidence of this witness does not inspire any confidence. Even assuming that what he has stated is true, his evidence would only show that the rioting at Kumbhar Alli by the Muslims started after the rioting at Old Thana Road. From his movements deposed to by him, it is clear that he first heard an uproar coming from the side of Old Thana Road. This would be the start of the disturbances at Old Thana Road. He then watched the situation for some time, then warned his family members to take care and also warned some Hindus going towards Dhamankar Naka not to do so, and then got into his car and set out for his Kamatghar house. Till then no rioting had started in Kumbhar Alli.

43.127 His son Dr. R. S. Acharya resided in their family house in Kumbhar Alli. He was conducting a consulting room and a polyclinic known as the Janata Polyclinic in the building next to that in which his father was conducting the Janata Maternity and Nursing Home. According to Dr. R. S. Acharya's affidavit, his father came to the Kumbhar Alli house at about 5 p.m. and told them that the atmosphere in the town was tense. There is no mention in his affidavit of his father having told them that he had seen any Muslims going towards Old Thana Road carrying stones and fluorescent tubes. He has sought to support his father's story about the telephone-call to the police station. He saw his father's car being stoned and he telephoned the Town Police Station and asked for police help. He asked the women and children in the house to go to the rear of the house. Just then some 'ayahs' from the Hospital shouted that his car had been set on fire. He came down and found his car on fire. He then went to the first floor and asked the women patients as well as those operated upon to go to the house of Ramrao Acharya. Then he again came down to the ground floor and made sure that the doors and windows of the hospital and the dispensary had been properly closed. Only the front door was kept open. He then came out on the road and for some time found that everything

was quiet. They partially extinguished the fire to his car, pushed the car into the adjoining lane and returned to the house. He then asked for the doors of his dispensary to be locked and came to the hospital. At that time two processionists were brought to his dispensary and he treated them. After a little while stones began to be hurled at his house and the adjoining houses and some time later he heard the 'ayahs' shouting that his house had been set on fire.

43.128 This process of going from floor to floor, having doors and windows closed, collecting patients and asking them to go to the house of Dr. Ramrao Acharya for safety, extinguishing the fire to the car, standing on the road for some time and finding that everything was quiet, and treating two injured processionists must take time. If we, therefore, accept the evidence of these two witnesses that Dr. S. K. Acharya left the Kumbhar Alli house either at 5-25 p.m. as stated by him in his affidavit or at 5-30 p.m. as stated by him in his complaint, at least some time must have elapsed on the evidence of Dr. R. S. Acharya between the departure of his father and the time when he heard the shouts of the hospital 'ayahs' that his car had been set on fire, and a longer period of time must have elapsed between the arson to his car and the arson to his house.

43.129 Dr. R. S. Acharya has, however, sought to make out that his house was stoned at about 5-39 p.m. He brought to Court a pendulum clock, which worked on a battery cell and which, according to him, was on the wall of his consulting room in the Janata Polyclinic and which was broken and stopped working as a result of the stone-throwing on his house. According to him, he did not get the clock repaired, but kept it in the same condition and showed it to a policeman who came to see him and asked him to take charge of it, but the policeman did not do so. He had brought the said clock when he came to give evidence and the clock showed that its hands had stopped at half a minute past 5-39 hours. The external damage to the said clock was that the dial glass was missing and there was a dent on the dial. He was severely cross-examined on his story of the clock and he cut a very sorry figure in the witness-box

43.130 The story about this clock did not find a place in his affidavit. The first explanation he gave for this omission was that on May 10, 1970 his back was injured in an accidental collapse of a wall of his house, having no connection with the disturbances. He was, therefore, in Dr. Talwalkar's Hospital in Bombay for about a fortnight and thereafter took rest at his sister's place for about two months and then went to Bhiwandi and for these reasons he had forgotten to mention anything about the clock in his affidavit. He realized how puerile this explanation sounded and immediately changed it to say that there was no mention of the clock in his affidavit because he had totally forgotten about the clock while giving instructions to the Advocate Mr. Kanitkar for drafting the

affidavit. He further stated that he had gone for the first time to Bhiwandi after his accident somewhere in the last fortnight of July and had given instructions for his affidavit to Mr. Kanitkar in Bhiwandi and that Mr. Kanitkar had come to his residence for that purpose. He had perused and approved the draft prepared by Mr. Kanitkar but stated that he did not remember about the clock while going through the draft. He was asked how long after he gave instructions to Mr. Kanitkar that he had affirmed his affidavit and he replied that he would have to refer to his diary for answering the question. He was asked to produce his diary. His answer was, "I have not got the diary". He was asked what he meant by saying "I have not got the diary", whether he had not brought the diary with him or he did not keep a diary and he repeated the answer. The question was repeated and his reply was, "All the facts are not in my diary. My diary is for the purposes of accounts and some important facts are also noted there. I am unwilling to produce the diary". He was asked how long after he gave instructions to Mr. Kanitkar that he went to the office of the Mamlatdar, Bhiwandi, for affirming his affidavit. Though five minutes elapsed the witness did not answer the said question. In fact, the witness took two to three minutes to answer almost every question. According to him, when he had gone to the Mamlatdar's office for affirming the affidavit, he was accompanied by Mr. Kanitkar only. The affidavit showed that he had been identified by S. D. Phanse, that is, Sudhir Phanse who, as appears from the evidence, was working in the office of the Nagarik Hitarakshak Mandal. Since the witness had stated that he was accompanied only by Mr. Kanitkar when he went to affirm his affidavit, he was asked who had identified him when he affirmed his affidavit. He did not answer this question. He was asked whether he knew any S. D. Phanse or Sudhir Phanse. This question too was not answered by him. His affidavit was affirmed on July 7, 1970. He was asked to explain how if, according to him, he had returned to Bhiwandi in the last fortnight of July 1970, he had affirmed his affidavit in Bhiwandi on July 7, 1970 and he replied that while he was staying at his sister's place he had in between come to Bhiwandi to affirm the affidavit.

43.131 According to him, he had gone twice or thrice to the office of the Special Investigation Squad to talk over matters with D.I., Lankar. He, however, denied that his police statement was at any time recorded. He was then asked whether he had told D.I., Lankar about the clock and he stated that he did not do so because he did not at any time meet Lankar or any officer, but he must have met some constable. He was asked whether there were no officers present when he had gone to the Squad's office and his first reply was that Detective Inspector Lankar was definitely not there. When the question was repeated he said that he did not know whether any other officer was present because he had inquired about Lankar only and Lankar was not there. At first he stated that as Lankar

was not there he did not talk about the matter to anyone. He then changed his answer to state that he told the facts to the persons who were sitting at the table in the office of the Squad as also to the constable who had come twice or thrice to his place to make inquiries. He further stated that he had not at any time mentioned about this clock on any of the occasions when he had been to the office of the Special Investigation Squad. His police statement was produced by Mr. Rane, Counsel for Executive Magistrates and District Police Officers. It was signed by D.I., Lankar as having been recorded before him and there was no mention of any clock in it. This witness had brought with him a copy of his Marathi affidavit filed before the Commission. According to him, he had it with him only for two days prior to coming to give evidence, and at the top of the affidavit it was written in English "Commission 365", that being the number given by the office of the Commission to his affidavit and "Police 299" being the number given to his police statement in the index of police statements, copies of which were furnished to the accused persons in C.R. No. 177/70.

43.132 According to Dr. R. S. Acharya, when the clock was damaged a portion of the dial-glass fell on the floor. the remaining portion remaining in its place in the clock. The clock brought by him before the Commission did not have any dial-glass. He was asked what had happened to the portion of the dial-glass which had remained in the clock. He did not answer the question. The pendulum of the clock was also missing. When this was put to him, he replied that 15 or 20 days after May 7, 1970 somebody had come to his place and removed the pendulum. He categorically asserted that except the pendulum nothing else had been removed from the clock. He was asked whether the battery cell from the clock had also been removed and he replied that he would have to look inside the clock to find it out. The socket for the cell could easily be seen without opening the clock by just looking at the clock. There was no cell in the socket and on this being pointed out to him he admitted that the cell was not there, but denied that he had removed it. There can be no doubt that the pendulum and the cell were deliberately removed and the hands turned to show half a minute past 5-39 hours in order to make out that the disturbances had commenced just a little earlier and to lend support to the theory that the disturbances had been pre-planned and had taken place in several Hindu localities at 5-30 p.m.—the time selected by the Hindu parties and the Special Investigation Squad. The evidence of this witness is worthless and the only pity of it is that public time had to be wasted in recording it. The attempt on the part of Dr. R. S. Acharya to establish the alleged time of '5-39 p.m.' is as unreliable and regrettable as the attempt by Fire Brigade Inspector Shaikh of the Bhiwandi Fire Brigade to show that the arson to Ishaq Bajewala's house took place at 5-15 p.m.

43.133 We have found from Dr. B. K. Acharya's evidence that he gave first aid treatment to two injured processionists. It would also

appear from his evidence that some processionists, probably in a violent mood, had collected near his garage which was by the side of his house as would appear from the following extract from his evidence (N.H.W. 33/14/1977) :

“Q. How many Hindus had collected in your garage ?

A. We had been to the garage to remove my car which was burnt in the garage.

(Question repeated)

A. There were 5 to 6 Hindus in the garage.

It is not true that Hindu processionists had collected in a very violent mood near our place.”

43.134 Kedar Jagannath Acharya, a nephew of Dr. S. K. Acharya, had filed an affidavit before the Commission through the Nagarik Hitarakshak Mandal, being affidavit No. 171. As his affidavit contained statements contrary to the case of the Hindu parties (including the Nagarik Hitarakshak Mandal) on the question of time when the disturbances commenced in Kumbhar Alli he was conveniently not called in evidence by any of these parties.

43.135 The following facts emerge from the affidavit of Kedar Acharya :—

- (1) He was in the rear of the procession.
- (2) When he was near the Old Fish Market the Muslims threw stones and tiles on the procession from a house situate on the eastern side of Old Thana Road. Thereafter stones and brick-bats were showered on the procession from both sides.
- (3) He went and stood near the door of the Old Fish Market. He met Bhausahab Dhamankar while at the Old Fish Market.
- (4) Thereafter he managed to reach Kumbhar Alli after running along Old Thana Road. According to him, at that time it might have been about 5-30 p.m.
- (5) When he reached home he found there was complete silence at the corner of Vaje Mohalla.
- (6) After a short time thereafter Dr. S. K. Acharya left in his car and the car was stoned.
- (7) Thereafter quiet reigned again for some time.
- (8) Kedar again left the house and went to the corner of Vaje Mohalla. From there he saw some Muslims taking soda-water bottles from a restaurant. The restaurant was situated in one of the buildings owned by the Acharyas and he went up to the restaurant owner, who was a Muslim, and asked him to close the restaurant and accordingly the restaurant owner closed it.
- (9) After some time the Muslims from Bengulpura and Vaje Mohalla started throwing stones on Hindu houses in Kumbhar Alli. Thereupon Kedar went inside the house.
- (10) After a short time he learnt that burning rags were thrown on their houses. He came down and extinguished the burning rags and stood on the ‘ota’ of their house.

- (11) At that time heavy stone-throwing started again and he heard shouts that the Muslims had set fire to Dr. R. K. Acharya's car. He jumped over the wall, came to the rear of the house and extinguished the fire to the car.
- (12) Five constables came there, followed a little later by P.S.I., Hirwe.
- (13) Kedar then made arrangements to take the persons in Dr. Archarya's house to Ramrao Acharya's house. He himself stayed behind.
- (14) After some time their house and the other houses in the locality were set on fire.

43.136 The above facts speak for themselves on the question of time when the disturbances commenced in Kumbhar Alli and leave no doubt that they commenced at Kumbhar Alli quite some time after the disturbances started at Bhusar Mohalla and on Old Thana Road.

43.137 For the reasons stated above, I hold that the rioting by the Muslims at Kumbhar Alli did not start simultaneously with the rioting at Bhusar Mohalla or Old Thana Road, but started a little before 6-15 p.m. and before P.S.I., Hirwe reached there at 6-30 p.m. This is also borne out by the fact that a fire-engine was sent to Kumbhar Alli at 6-15 p.m. as recorded in entry No. 57 of the Control Room Diary (Ex. P 367).

The rioting at Khadak

43.138 Khadak Road runs northward from Teen Batti Naka through Nizampura and meets Panjrapol Road which runs east to west. To the west of Khadak Road is the Hindu part of Nizampura while on the east is partially a Muslim locality and partially a Hindu locality. The timber-depot, saw-mill, power-loom factory and houses of Anna Mestri and his relatives and the timber-depot and saw-mill of Mustafa Kuwari along with the buffalo-shed and power-loom factory of Gaffar Tinwalla stand diagonally opposite each other on Khadak Road. In the evening of May 7, 1970 all these properties were set on fire. No evidence has been led by the Executive Magistrates and the District Police officers or by the Muslim parties about how and when these acts of arson were committed. The Nagarik Hitarakshak Mandal has, however, examined two witnesses with reference to this incident, namely, Keshav Harischandra Mestri (N.H.W. 20/1-4/1910-3) and Narayan Parshuram Mestri (N.H.W. 22/1-7/1921-5).

43.139 Keshav Mestri is a younger brother of Anna Mestri, the name by which Gajanan Mestri was popularly known. Anna Mestri is also known as Anna Mistry. According to Keshav, on May 7, 1970 at about 6 p.m. he, his father Harischandra, his uncle Laxman and his cousin Narayan were in the house. At that time about 100 Muslims came there and started throwing stones and bombs at their house, some of them set fire to the huts in front of their factory as also set fire to the house of the witness' father situate at Quarter Gate. In cross-examination it was revealed that it was on learning about the disturbances

that Keshav and the others stayed indoors. It further transpired that after their house and factory were set on fire they left their house at about 7-15 p.m. and went and took refuge in a building known as Ekveera Building. Keshav has admitted that Mustafa Kuwari's timber-depot had also been set on fire during the disturbances. This witness at first denied that he used to take part in the Shiv Jayanti processions, but ultimately admitted that he used to take part in these processions, but did not do so in the 1970 procession. He has prevaricated time and again and changed about the names of the members of his family who had stayed behind at home and of those who had joined the procession. He also prevaricated and would not answer at what time Anna Mestri returned from the procession. It was put to him that he, Anna Mestri, his father and their other relatives had set fire to Mustafa Kuwari's timber-depot at about 6 p.m. He denied the said suggestion. The reason for this witness's prevarication about the whereabouts of Anna Mestri and his other relatives becomes clear when we find that in the F.I.R. lodged by Mustafa Kuwari on May 21, 1970 (Ex. P 232) Keshav, his father, his brother and Anna Mestri have been implicated as being in the Hindu mob which set fire to Mustafa Kuwari's timber-depot and building. Three days later, namely, on May 24, 1970, Keshav filed an F.I.R. (Ex. P 227) in which he charged Mustafa Kuwari and some others with setting fire to Anna Mestri's timber-depot and factory and the said hutments. Thereupon Mustafa Kuwari and six other Muslims were made accused in the Bhiwandi Conspiracy Case and were committed to sessions and the case is still pending (Ex. G 398). In respect of Anna Mestri and the other Hindus accused by Mustafa Kuwari on November 16, 1970 the Special Investigation Squad applied for 'A' Summary (that is, classifying the said case as being "true but undetected") and the order thereon granting it was passed on January 9, 1971. None of them was at any time arrested. Leaving aside the question of who committed these offences (a question with which this Commission is not concerned), the evidence of Keshav Mestri establishes that the rioting at Khadak area by the Muslims did not commence until 6 p.m.

43.140 Narayan Mestri had joined the Shiv Jayanti procession and, according to his affidavit, he returned home at 4 p.m. At about 5-30 p.m. he heard shouts that the procession was attacked. A short while thereafter his son came running to his house with an injury to his head and gave him the same information. Within a short time thereafter Konkani Muslims from Nizampura and Muslims from Murgi Mohalla came in front of their house shouting, "Hindu Ko Maro, Kato, Jalao" ("kill, cut up and burn the Hindus") and "Pakistan Zindabad". These Muslims were armed with spears and bombs and threw stones, bombs and burning rags on the hutments near their house. The witness's family thereupon got frightened and sent away their womenfolk, about 7 or 8 men remaining behind. After the huts were ablaze the Muslim rioters threw burning rags

and bombs on a Hindu power-loom factory. What happened thereafter may best be set out in his own words [N.H.W. 22/1(1)/1921(2)] :

“From there they made an attack on our house but we repulsed it by making stone-throwing, etc. In the meantime the mob dispersed thinking that the Police had arrived at the scene.”

In his cross-examination he has given the names of the persons who were repulsing the Muslims by throwing stones at them. They include himself, his son Vishwanath, Keshav Mestri, Harischandra Mestri, his father, and two others. It is somewhat difficult to swallow that these 7 or 8 persons could have by merely throwing stones resisted and dispersed a mob of Muslims armed with spears, bombs and stones. A clue is furnished to what must have happened by the answers given by Narayan when he was cross-examined about the fire to Mustafa Kuvari's timber-depot (N.H.W. 22/5/1923) :

“I know Mustafa Kuvari. His timber-depot is opposite my house. Though I was there all the time, I did not see who set it on fire and how it was set on fire. I cannot even imagine to which community the persons who set fire to Mustafa Kuvari's timber-depot belonged. Gaffar Tinwala's buffalo-shed and power-loom factory are near my house on the opposite side. They were also on fire at 7 p.m. I have no idea how these properties came to be burnt. All the power-loom sheds in Mustafa Kuvari's compound were burning at 7 p.m. I do not know to whom these power-loom sheds belonged. The properties of Mustafa Kuvari and Gaffar Tinwala were not set on fire by the Muslim mob. I, however, do not know who set them on fire. I only saw that all these properties were burning. I did not notice whether the properties of Mustafa Kuvari and Gaffar Tinwala were on fire when the Muslim mob came to our locality.”

43.141 We next come to Narayan's story of the slogan “Pakistan Zindabad”. He was asked in cross-examination about the slogan which he had heard and he replied, “The only slogans which the Muslim mob which came in front of our house shouted were “Maro, Jalao, Kato”. Thereafter he was cross-examined on other points. He suddenly realized that he had not mentioned the highly prejudicial slogan “Pakistan Zindabad” and volunteered that the Muslims were also shouting “Pakistan Zindabad” and that when asked about the slogans a little earlier he had forgotten about this particular slogan.

43.142 The list of weapons carried by the Muslim mob as set out in his affidavit lengthened in his cross-examination and became bombs, spears, buckets containing kerosene, torches made of sticks and rags, and soda-water bottles which the Muslims were filling with kerosene, putting lighted torches in them and throwing at the Hindu houses. According to him, he had mentioned about the soda-water bottles and the use to which they were put by these Muslims while giving his police statement. He was unable to explain why these facts were not mentioned in his police statement. The use to which

the soda-water bottles are alleged to have been put by the Muslim rioters would imply that they used Molotov cocktails against Hindu properties and it is difficult to imagine any officer of the Special Investigation Squad coming across a witness mentioning about the use of Molotov cocktails by Muslim rioters omitting to record that fact in the police statement. Narayan's police statement was recorded on June 17, 1970. He has stated in it that he returned to his home from the procession at about 5 p.m. Before the Commission he stated that the said time mentioned in his police statement was not correct and that he had returned home at 4 p.m., but was finally made to admit that he did not wear a wrist watch and it was pure guess-work on his part to say that he had returned home at 4 p.m. According to Narayan, about two or three days after the riots he had gone to the roof of his house to repair some broken tiles. At that time he found a burnt up bomb lying on his roof and two other bombs lying on the roof of a Hindu factory, namely, the factory of Shantaram. This witness has admitted that he did not inform the Police about these bombs, but stated that his cousin Anna Mestri handed over two out of the said bombs to the Bhiwandi Town Police Station and that he himself gave the third one to the S.S.P. leader, George Fernandes. Suffice it to mention that no bombs were ever handed over by Anna Mestri or any one from his family to the Police (P.W. 66/179/3908). Anna Mestri was considered an important witness in the Bhiwandi Conspiracy Case and he was personally interrogated by Dy.S.P., Saraf, who was in charge of the Special Investigation Squad, Bhiwandi. Anna Mestri did not even tell Saraf that he had handed over any bomb to the Police or to George Fernandes. On the contrary, what he told Saraf was that he had heard some noise like that of bombs exploding (P.W. 61/102/3670, 123/3702). In order to disprove his story of the bombs, Narayan was cross-examined about the damage to his house and to Shantaram's factory. He replied that so far as his house was concerned, 10 to 12 tiles were broken while so far as Shantaram's factory was concerned, it was burnt down. Realizing that if the said factory was burnt down it was impossible for two bombs to be lying on its roof, he changed his answer to say that Shantaram's factory had been set on fire, but the fire had been extinguished and that as the roof of his factory was made of asbestos sheets and Mangalore tiles, the only damage to the roof was that some tiles were broken. In the light of such answers the Commission thought it would be a waste of time to investigate into the mystery of the third bomb.

43.143 Neither of these two witnesses have shown much regard for truth and no reliance can be placed upon their evidence. Even then Keshav Mestri's evidence establishes, and reading between the lines of Narayan Mestri's evidence it is clear, that the rioting at Khadak commenced at about 6 p.m. and that there were two mobs on Khadak Road that evening—a Muslim mob and a Hindu mob—that there was a clash between these two mobs and that in the course of this clash

stones and brick-bats were exchanged and Hindu and Muslim factories and houses set on fire.

The police firing at Prabhu Alli

43.144 On May 7, 1970 P.I., G. N. Ajarekar (P.W. 39) of the Security Branch (S.B.), Thana, was posted on fixed-point duty near the Nizampura Jumma Mosque along with an S.R.P. platoon consisting of 30 S.R.P. men and 4 armed policemen. C.P.I., Ghosalkar (P.W. 40) was also assigned bandobast duty in the same locality. When Ghosalkar learnt from Mane about the outbreak of the disturbances, he took the four armed policemen and S.R.P. men from Ajarekar and went in a police van towards the Town Police Station. Some time later Ajarekar received a message to proceed to Kumbhar Alli and, therefore, proceeded there. On the way he dispersed a Hindu mob near Teen Batti, where looting and arson by the Hindus had commenced by that time, and another Hindu mob which had collected near Navi Chawl (P.W. 39/1(1-3)/888(1-2), 4/889). What happened thereafter is thus related in P.I., Ajarekar's affidavit [P.W. 39/1(3-4)/888(2-3)] :

“ On the way I met Police Sub-Inspector (P.S.I.), Sali and some armed S.R.P. men. Out of them I took 5 S.R.P. men with me and went to Prabhu Alli along with P.S.I., Sali. I reached the house of Shri Hamid Punjabi at about 1915 Hrs. Some Hindus from Prabhu Alli requested me to protect their houses as some Muslims were throwing stones, acid-bulbs, fire-balls, bombs, etc., at them. The Hindu crowd was also likely to become violent. I dispersed them and asked them to remain in their houses. In the meantime I noticed that fire-balls were being thrown from the terrace of the three-storeyed building belonging to Shri Hamid Punjabi. Some fire-balls fell on a house belonging to Kondu Vithoba Panwalla situated on the opposite side of the road and the house caught fire. Some acid-bulbs were also being thrown at the neighbouring houses and also at us. I warned the persons on the terrace of that building belonging to Hamid Punjabi not to throw fire-balls and bombs, etc. I warned them that the Police would open fire if they did not stop the mischief, but the people on the terrace continued to throw the missiles. With a view to protecting life and property, I fired at them 3 rounds from my .38-bore revolver. Even the persons on the terrace continued to throw missiles. I therefore ordered P.C., N. B. Nikam, B. No. 426, of 'E' Company, S.R.P. Group I, to fire. He fired 2 rounds from his .303 rifle. The mischief was stopped temporarily, but after some time some more fire-balls were thrown at us from the terrace of the same building. I then ordered P.C., M. S. Pohurkar of 'E' Company, S.R.P. Group No. I, to fire. He fired one round from his .303 rifle. The persons on the terrace then stopped throwing missiles.

Shortly thereafter P.S.I., Nimbalkar came there from Kumbhar Alli and with my permission took away armed policemen, namely, K. B. Shinde, S. R. Salunke and N. B. Nikam, all of 'E' Company,

S.R.P. Group No. I. With the help of Kondu Panwalla and others I extinguished the fire to the house and then I went to Kumbhar Alli to assist P.S.I., Nimbalkar."

43.145 The affidavit of P.S.I., Sali (P.W. 41) corroborates Ajarekar with respect to what happened near the house in question, what belonged to Hamid Punjabi and Rashid Punjabi [P.W. 41/1(3)/901(2)]. In the cross-examination of Ajarekar, Sali and P.S.I., S. S. Desai, (P.W. 109) it has transpired that before the so-called throwing of missiles from the terrace of Hamid Punjabi's house, two or three Muslim houses in Prabhu Alli, including the house of Hamid Punjabi and a house opposite to it, had already been set on fire (P.W. 39/5/891 ; P.W. 41/5/902 ; P.W. 109/6/3688). It has further transpired in the cross-examination of P.S.I., Sali that when they went to Prabhu Alli there was a Hindu mob which Ajarekar dispersed, the exact words used by P.S.I., Sali being "When I reached Prabhu Alli I saw a Hindu mob. That mob looked frightened. Ajarekar persuaded the mob to disperse." Ajarekar has stated that this mob was at a distance of 20 to 25 paces from Hamid Punjabi's house and that it had assembled near the Vegetable Market and though he did not see it indulging in any violent act, from the talk of the persons in the mob he found that it was likely to become violent. He heard them say that either he should make bandobast or they would take the law into their own hands. Ajarekar has further admitted that he did not see any Muslim mob at all in Prabhu Alli and that the only Muslims there were the seven or eight Muslims on the terrace of Hamid Punjabi's house (P.W. 39/4-5/889-91 ; P.W. 41/4/902 ; P.W. 109/6/3688).

43.146 The Muslim parties have contended that no bombs or fire-balls or any other missiles were thrown from the terrace of Hamid Punjabi's house and that the allegations in that behalf have been introduced merely with a view to justify the police firing. So far as bombs are concerned, Ajarekar and Sali have deposed that they have described these missiles as bombs because when they hit the ground after being thrown, they exploded with a loud noise. Further, according to both Ajarekar and Sali, the throwing of missiles from the terrace of Hamid Punjabi's house stopped after the Police opened fire [P.W. 39/1(3)/888(3), 5/892 ; P.W. 41/5/902]. When the throwing of missiles stopped on the Police opening fire, the normal and natural thing we would have expected the police party to have done was to have gone up to the terrace, arrest the persons there and take charge of the stock of missiles. Instead, we find from Ajarekar's own evidence that he extinguished the fire to Kondu Kumbhar's house and then went away to Kumbhar Alli to assist P.S.I., Nimbalkar, leaving the persons on the terrace to resume the throwing of missiles, if they so desired. Strangely enough, though there was no police party on the scene after Ajarekar and the officers and policemen with him went to Kumbhar Alli, none of these persons threw any missiles thereafter. Ajarekar has sought to explain why he did not go upto the terrace of Hamid Punjabi's house, substituting one explanation for another when

he found the earlier one untenable in the face of cross-examination. At first he stated that he did not go upto the terrace of Hamid Punjabi's house because other houses were on fire. He next stated that the ground-floor doors of the said house had been set on fire. He admitted that the said fire had been extinguished. Realizing that if the fire was extinguished the Police could easily have entered and gone upto the terrace, he next stated that he wanted to go upto the terrace to arrest the persons who were throwing missiles, but he heard loud noises coming from the side of Bengalpura and the attention of the police party was, therefore, diverted and thereupon Nimbalkar and his party went to Bengalpura and he stayed behind to prevent the mob from Bengalpura entering the locality where he was. He then realized that if he stayed behind, he could have still gone up to the terrace of Hamid Punjabi's house and then added a further explanation that he found the ground floor door of the house locked. He deposed that there were two doors on the ground floor. The inside door was a collapsible door. The outer door was burnt. They entered through it ; but as they found the collapsible door inside locked, they were unable to effect an entry into the house (P.W. 39/2/889, 4-5/889-91). One wonders whether it was all that difficult for the Police to smash the lock with a stone or otherwise, enter the house, go up to the terrace and arrest the persons on the terrace throwing such dangerous missiles at the police party and who were likely to resume the throwing of such missiles on others when the police party left.

43.147 The Hindu parties have also alleged that bombs and acid-bulbs amongst other missiles were thrown on Hindu houses from the terrace of Hamid Punjabi's house and they have relied upon the evidence of three witnesses called by the Nagarik Hitarakshak Mandal, namely, Ranganath Ramkrishna Kulkarni (N.H.W. 11), Mohanlal Karwa (N.H.W. 53) and Janardan Kondu Kumbhar (N.H.W. 47), in support of the said allegation. As already observed while discussing the outbreak of the disturbances, Ramkrishna Rangnath Kulkarni (N.H.W. 11) is a thoroughly unreliable witness. According to him, he was one of the injured Hindus who went with Dhamankar into a Muslim house and whose injuries were treated in the said house and thereafter he went to Old Thana Road and sat down on the 'ota' of a house. He has further deposed that after some time Balasaheb Joglekar (N.H.W. 54) came there and, on account of his efforts, with police help Kulkarni went to the Bhiwandi Municipal Dispensary where he was treated at the dispensary and while returning to his house *via* the Vegetable Market he found that several Hindus had gathered near the Havewala Maternity Home on the road leading to Kumbhar Alli. He therefore went to that side. His affidavit then states (N.H.W. 11/1(2)/1844(3)):

“ At that time acid, hand-bombs, burning rags and glass marbles etc., were being thrown from the terrace of the house of Rashid Punjabi. Within a short time S.R.P. men came there and then I returned to the house.”

In cross-examination he stated that on his way home he went to Prabhu Alli because he heard the sound of a bomb thrown from Rashid Punjabi's house, that being the same house as the one referred to by the other witnesses as Hamid Punjabi's house. He, however, admitted that he did not see this bomb being thrown. According to him, it was thrown from Hamid Punjabi's house because the sound came from that direction. He admitted that there were other houses belonging to Hindus as also Muslims adjoining and in the vicinity of Rashid Punjabi's house. He was faced with the statement in his affidavit that he had gone to Prabhu Alli because he saw several Hindus gathered near the Havewala Maternity Home and he replied that the said statement was not correct, but that what he had deposed before the Commission was correct. He, however, admitted that he saw 20 to 25 Hindus gathered on the road near the Havewala Maternity Home. Ultimately, in further cross-examination he deposed, "The only things which were thrown from Rashid Punjabi's house were burning rags and glass marbles. I am positive that nothing else was thrown from Rashid Punjabi's house I now say that I did not see any acid-bulbs or any bomb being thrown from Rashid Punjabi's house. I, however, heard the noise of bombs being thrown. Prior to May 7, 1970 I had not seen or heard a bomb burst. I have not even seen a bomb". In his police statement (Ex. P 680) recorded by D.I., Lankar on May 27, 1970 he has stated that stones, acid-bulbs and burning rags were thrown on Hindus from the terrace of Rashid Punjabi's house. He has stated that the said portion of the police statement was not correct except with respect to the burning rags and that he had stated to the police officer who recorded his statement that the only missiles which were thrown were burning rags and glass marbles. The manner in which Kulkarni's police statement was recorded has already been mentioned in Chapter 40 (paragraph 40:200). Needless to state that there is no record in the Bhiwandi Municipal Dispensary of any treatment given to him (N.H.W. 11/5/1845, 8/1852-3; P.W. 66/157/3900). From the different reasons he has given for going to Prabhu Alli, from the fact that the records of the Bhiwandi Municipal Dispensary show that he had not been there to get treatment, and from his evasive and prevaricating demeanour in the witness-box it is clear that he was a member of the Hindu mob collected in Prabhu Alli which P.L. Ajarekar dispersed.

43.148 Turning now to the evidence of Mohanlal Karwa (N.H.W. 53) he went with about eight or ten Hindus to Prabhu Alli and was at a distance of about 100 to 150 feet from Hamid Punjabi's house. His presence there is also admitted by P.L. Ajarekar and Kulkarni. According to his affidavit, some persons from Kumbhar Alli came upto him and told him that burning rags and fire-balls were being thrown from the terrace of Hamid Punjabi's house. He therefore went up to Tape Lane which is between Prabhu Alli and Kumbhar Alli and saw burning rags and fire-balls being thrown from the terrace of Hamid Punjabi's house. He also saw the Police open fire twice or thrice in

the direction of the terrace of that house. He has not deposed about any bombs or acid-bulbs being thrown [N.H.W. 53/1(19)/2101(10), 17/2110].

43.149 Thus, the position which finally emerges from the evidence of both Kulkarni and Mohanlal Karwa is that bombs or acid-bulbs were not thrown from the terrace of Hamid Punjabi's house.

43.150 Lastly, reliance was placed upon the evidence of Janardan, son of Kondu Kumbhar. Kondu Kumbhar is the person whose house was said to have been set on fire by the bombs thrown from the terrace of Hamid Punjabi's house. Kondu Kumbhar was also known as Kondu Panwalla (P.W. 41/3/902). Janardan has stated that on learning that the disturbances had broken out he came back to his house from his shop which is situate at Par Naka. His affidavit then states [N.H.W. 47/1(1)/2074(1)] :

“At that time incessant throwing of bombs, acid-bulbs and burning rags was being made on our house from the front side from the terrace of the house of Rashid Punjabi and Hamid Punjabi. I went inside the house from the rear door. I brought out from the rear door all the young and old persons who were in the house. The rioters had heaped up cotton waste and other fuel on the ‘ota’ in front of my house and set fire thereto.”

His affidavit further states that thereafter he took his family to the adjoining Municipal Girls School No. 2 and after leaving them there he and his brother returned to the house and extinguished the burning rags thrown on it from the terrace of Hamid Punjabi's house. These rags had fallen and got caught on the wooden beams of the roof; some of them had caught fire which they extinguished. With the help of a bamboo stick they threw down the burning rags. As a result of the throwing of stones and bombs, the tiles on the roof of the house and the earthen pots for sale kept in the house were broken. Thereafter some S.R.P. men arrived and asked them to leave the house and on stones and bombs being also thrown at the Police, the Police opened fire. His affidavit further states that as a netting about five to six feet in height was fixed to Hamid Punjabi's house, the persons on the terrace indulging in the throwing of stones, bombs and acid-bulbs could not be seen. In cross-examination he has admitted that when he went to his house from his shop he found that the house belonging to Nazir Abdulla Momin opposite Rashid Punjabi's house was on fire.

43.151 Janardan's police statement was recorded on May 24, 1970 before D.I., Lankar (C.W. 44). There is no mention in the said police statement that he saw any bombs or acid-bulbs being thrown nor is there any mention in the said police statement that the rioters had heaped cotton waste or other fuel on the ‘ota’ of his house and had set fire to it. He could give no explanation for these omissions. On the same day when his police statement was recorded, namely, May 24, 1970, a panchnama (Ex. P 1461) of his house was made in C.R. No. 177/70 (Ex. P 174), that is, in the Bhiwandi Conspiracy Case.

This panchnama states that it was made by D.I., Lankar, though according to Janardan it was made by a different police officer than the one who recorded his police statement. Under this panchnama a bomb and some other articles were taken charge of by D.I., Lankar. The house in question is a two-storeyed structure consisting of a ground and first floor. The first floor has a loft with a staircase leading up to it. The panchnama purports to record the following facts :—

- (1) Stones, pieces of bricks and about 150 broken earthen pots were lying on the 'ota'.
- (2) The panes of the front-door ventilator and of the three windows on the ground floor were broken.
- (3) A Coca-Cola bottle which gave out "a sour smell like that of acid" and glass pieces of the said bottle and large and small stones and bricks were lying on the balcony of the first floor.
- (4) Earthen pots, large and small, were piled on the loft.
- (5) Ten or twelve broken pieces of earthen pots and three stones and two pieces of bricks were lying on the loft.
- (6) An iron bar 5' 6" in length was lying on the loft in a slanting position with a wire tied to the other end to which were sticking ashes of a burnt rag.
- (7) A bomb with a wick, about an inch in length protruding out, which appeared to have been lighted and extinguished, was lying in a broken 'ranjan' (a large earthen pot). Some water had collected in the said 'ranjan'.
- (8) About ten or twelve tiles of the eaves of the south-east corner of the roof were broken.

43.152 D.I., Lankar took charge of the broken glass panes of the ventilator and windows, the stones, the pieces of bricks and the bomb, but strangely enough not of the Coca-Cola bottle said to be giving out "a sour smell like that of acid".

43.153 The panchnama records the respective positions of this house and the house of Rashid and Hamid Punjabi and that of Nazir Abdulla Momin. In front of Janardan Kumbhar's house there is a lane going towards Bengalpura. The house of Hamid and Rashid Punjabi is at the junction of this lane and Prabhu Alli, at a distance of about 25 feet from the house of Janardan. To the south of Janardan's house, at a distance of about 40 feet, is the house of Nazir Momin. To the west of Janardan's house are other Hindu houses.

43.154 Janardan has deposed that three or four days after the disturbances broke out he went to his brother-in-law's place at Malad and the very day on which he returned from Malad to Bhiwandi and went to his house he found S.R.P. men posted in the locality and they told him to go to the office of the Special Investigation Squad in the compound of the Nazarana Talkies for the recording of his police statement. He went there and his police statement was recorded and he then returned to his shop. An hour or so later the Police came to his shop and along with them he went to his house for making the

panchnama. He was unable to explain why according to his police statement the panchnama was made before his police statement was recorded. Now, if a bomb had really fallen into the 'ranjan' kept on the loft of his house and had the Special Investigation Squad taken charge of it, these facts would have certainly found place in his affidavit. There is, however, no mention in his affidavit of any bomb falling inside his house or on his loft or of any bomb having been taken charge of from his house by the Police. According to him, stones, bombs and acid-bulbs were incessantly thrown at his house, some on the roof, some in the open space and some on the road. If that were so, some more bombs would certainly have been found lying on the 'ota' of the roof of the house or on the road and taken charge of either at the time when the panchnama was made or, more logically, by the police party on the scene in the evening of May 7, 1970; but all the other bombs seem to have vanished into thin air. The panchnama does not show that there was any hole in the roof or other inlet from which a bomb could fall into the said 'ranjan' kept on the loft. If so many acid-bulbs were thrown as alleged by him, there would have been broken pieces of glass on the 'ota' or the roof of the house or on the road and would have been taken charge of by D.I., Lankar who made the panchnama or the police party on the scene in the evening of May 7, 1970. The only pieces of glass which according to the panchnama were taken charge of under it were, however, the broken panes of the ventilator and of the window. These window-panes and ventilator are described in the panchnama as having been broken in the stone-throwing. The only damage by fire shown in the said panchnama is that a beam in the southern corner where the said iron bar was lying was partly burnt and some tiles were "affected by the fire". The ashes of a burnt rag sticking to one end of the said iron bar would imply that it was used to push down burning rags. According to Janardan's affidavit, however, the burning rags were pushed down with a bamboo stick and not with an iron bar. If burning rags were in fact pushed down as alleged, ashes of a burning rag or the remnant of a burning rag would have been found on the 'ota' or the road. No such ashes or remnants of a rag were, however, found; the only ashes noticed being the ashes of a burning rag at one end of the said iron bar. We wonder what the burning rag at that end of the said iron bar was doing and to what it was setting fire.

43.155 So far as the panchas are concerned, Janardan has deposed that he did not know who the panchas were, but that they were not from his locality. He has further deposed that at the time when the panchnama was made Raghunath Ramchandra Gavankar and Hiraji Jagannath Sane were present, that he knew them both, and that Gavankar was a resident of Prabhu Alli and Sane of Kumbhar Alli. According to the said panchnama, Gavankar and Sane acted as the panchas. It may be mentioned that Kumbhar Alli is adjacent to Prabhu Alli.

43.156 The oral testimony of Janardan and the intrinsic evidence in the panchnama itself leave no doubt that this is not a genuine panchnama.

43.157 So far as the oral evidence of Janardan is concerned, his demeanour has not inspired any confidence. His evidence is conflicting and contradictory and cannot be believed. The attempt to set fire to his house by heaping cotton waste and fuel on his 'ota' and setting it on fire, the fusillade of bombs and acid-bulbs on his house, his efforts to extinguish the fire by pushing down burning rags with a stick and the miraculous descent of the bomb into the 'ranjan', all seem a pure invention on his part. The manner in which his police statement was recorded and the panchnama of the seizure of the bomb made are a clear pointer to the fact that he is a got-up witness, and that D.I., Lankar's anxiety to make out a case of an organized pre-planned conspiracy by the Muslims has supplied the bomb.

43.158 The express admission of R. R. Kulkarni, the evidence of Mohanlal Karwa, P. I., Ajarekar and P.S.Is., Sali and S. S. Desai and the fact that neither P. I., Ajarekar nor any other police-officers on the scene ever made any attempt to go upto the terrace of Hamid Punjabi's house to arrest the Muslims alleged to be throwing bombs and acid-bulbs clearly show that no bombs or acid-bulbs were thrown from the terrace of Hamid Punjabi's house. These witnesses have also admitted that there were no Muslims in that locality apart from the Muslims on the terrace of Hamid Punjabi's house. Reading between the lines it is clear that a Hindu mob set fire to the house of Hamid Punjabi and one or two other Muslim houses situate on the outskirts of the Muslim locality in Prabhu Alli and that in order to keep back the Hindu mob some Muslims threw stones and some burning rags on the Hindu mob from the terrace of Hamid Punjabi's house, some of which might have fallen on other houses. When the police party came, they saw these stones and burning rags being thrown from the terrace of Hamid Punjabi's house; they also saw a Hindu mob close by; and opened fire.

43.159 So far as this police firing is concerned, three possibilities arise; either the Police fired at the Muslims standing on the terrace of Hamid Punjabi's house or at the Hindu mob or in the air to frighten off both the Hindu mob and the Muslims on the terrace. If the Police opened fire at the Muslims on the terrace of Hamid Punjabi's house, this police firing would not be justified because in that case the Police firing would be directed against those who were exercising their right of private defence and not against their assailants. If the Police opened fire at the Hindu mob the police firing would be justified. If, however, the police opened fire in the air to frighten off both the Hindu mob and the Muslims on the terrace, the firing in the air would be contrary to the provisions of the second paragraph of Rule 60(2) of the Bombay Police Manual, 1959, Vol. III, and the various circulars issued by the I.G.P. In such a case, however, in view of the circumstances then prevailing one can stretch a point and hold

that the police firing was justified. The Police certainly did not open fire on the Hindu mob. The only two alternatives, therefore, left are that they opened fire on the Muslims who were on the terrace of Hamid Punjabi's house or in the air. The evidence of the aforesaid three police officers and Mohanlal Karwa is that the Police opened fire on the Muslims who were on the terrace of Hamid Punjabi's house. If these witnesses are speaking the truth, then this police firing was unjustified. From the fact, however, that in their affidavits these police officers have sought to paint a damaging and prejudicial picture of what the Muslims on the terrace were doing—as if these Muslims were setting fire to the nearby houses, it appears to me that the truth of the matter is that the Police opened fire in the air to frighten off both the Hindu mob and the Muslims on the terrace and not on the Muslims on the terrace, and that their communal bias and a desire to create a prejudice against the Muslims have made them depose falsely that they opened fire at the Muslims on the terrace as they were throwing acid-bulbs and fire-balls at the Hindu houses and the police party.

43.160 I, therefore, give these police officers and policemen the benefit of the doubt and hold that they opened fire in the air to frighten off the Hindu mob and the Muslims on the terrace and that for the said reason this police firing was justified.

The rioting at Prabhu Alli

43.161 The evidence shows that on May 7, 1970 the only acts of arson in Prabhu Alli were the attempt to burn down Hamid Punjabi's house by setting fire to its door, the arson to the house of Nazir Abdulla Momin and the so-called attempt to set fire to the house of Kondu Kumbhar. P. I., Ajarekar reached Prabhu Alli at 7-15 p.m. He has deposed that before he went to Prabhu Alli the door of Hamid Punjabi's building had been set on fire and the said fire had been extinguished. Ajarekar then went to Kumbhar Alli to assist P.S.I., Nimbalkar. He returned to the Control Room at 8-30 p.m., reported about the fire opened by him and patrolled the area of Kumbhar Alli and Prabhu Alli throughout the night until 8 a.m. on May 8, 1970. Ajarekar has deposed that when he reached Prabhu Alli some other houses were also on fire and that he sent a constable to fetch the fire-engine which, however, did not come. He has admitted that he sent for the fire-engine not to put out any fire to Kondu Kumbhar's house, but to some other houses. Since no one has deposed to any Hindu building in Prabhu Alli except the attempt to set fire to Kondu Kumbhar's house, the fire which Ajarekar saw could only be to the house opposite Hamid Punjabi's house and it has been so admitted by P.S.I., Desai [P.W. 39/1(3-5)/888(1-4),/2/889, 4-5/889-92; P.W. 41/1(3)/901(2), 4-5/902. 4-5/902; P.W. 109/6/3687-8]. Janardan Kumbhar has also admitted that when he returned home from his shop he found Nazir Abdulla's house on fire (N.H.W. 47/3/2075).

43.162 The above evidence makes it clear that the attack, if any, by the Muslims, from Hamid Punjabi's house took place just before or at the time that P.I., Ajarekar reached Prabhu Alli at about 7-15 p.m. and that prior thereto the house of Nazir Abdulla Momin and the door of Hamid Punjabi's house had been set on fire. The first act of rioting in Prabhu Alli, therefore, was on the part of the Hindu rioters.

The second firing at Kumbhar Alli

43.163 The Police opened fire between 7 p.m. and 7-30 p.m. on May 7, 1970 on a Muslim mob when it sought to check the advance of the police party into Kumbhar Alli by throwing stones, soda-water bottles and acid-bulbs. The evidence in respect of this firing incident is that of P.S.I., Nimbalkar [P.W. 55/1(4)/977(2-4), 8/983-4, 19/990], P.S.I. S. D. Sali [P.W. 41/1(3)/901(2-3)] and P.S.I., S. S. Desai [P.W. 109/1(3)/3685(2-3)].

43.164 While P.S.I., Nimbalkar (P.W. 55), was at Keshar Baug, he learnt from some S.R.P. constables that a mob of Muslims was throwing stones and setting fire to houses in Kumbhar Alli and that a P.S.I. was trapped there, this P.S.I. being P.S.I., Hirwe. Nimbalkar, therefore, took P.S.Is. P. B. Desai and S. S. Desai (P.W. 109) with him and proceeded to Kumbhar Alli to rescue him. By this time P.S.I., Hirwe had already been removed to the Bhiwandi Municipal Dispensary. The said three officers saw a mob of about 100 to 125 Muslims setting fire to houses in Kumbhar Alli and to the Hanuman Temple by throwing fire-balls. On seeing the police officers the rioters started throwing stones, soda-water bottles and acid-bulbs at them with a view to prevent them from advancing further. One of the stones struck P.S.I., Nimbalkar on the chest. P.S.I., Nimbalkar, therefore, fired seven rounds from his .455 revolver. Thereupon the mob started running away and dispersed in the by-lanes. P.S.I., Nimbalkar then set about sending the frightened Hindu residents of the locality to a safer place under police escort. Meanwhile the Muslims again reassembled and started attacking from the lanes and by-lanes. Hearing report of gun-fire from Prabhu Alli which is nearby Nimbalkar went to Prabhu Alli and brought three S.R.P. men armed with rifles as also P.S.I., S. D. Sali (P.W. 41) with him. On seeing that the Muslim mob had re-assembled and was trying to set fire to the house of Yeshwant Kumbhar, P.S.I., Sali fired three rounds and P.S.I., S. S. Desai fired one round from their .455 revolvers. As the revolver fire did not prove effective, Nimbalkar directed P.Cs. Nikam and Salunke of the S.R.P. Force to fire one round each from their .303 rifles. On those P.Cs. opening fire the mob dispersed. Thereupon the Police extinguished the fire to the house of Yeshwant Kumbhar and again started escorting Hindus to a safer place. The Muslim mob once again threw stones from the side of Bengalpura. Nimbalkar, therefore, directed H.C., Shinde and P.Cs. Nikam and Salunke to fire one

round each from their rifles. This firing had the desired effect and the mob finally dispersed. It is not known if anyone was injured in this police firing. There was no further damage and trouble in this area and the Hindus were safely escorted to a building known as 'Ashirwad' Building.

43.165 This was a violent Muslim mob bent on attacking Hindus and setting fire to their properties. It was not even deterred when fire was first opened, but re-assembled in lanes and by-lanes and resumed its attack on the police party. Fire therefore had to be opened twice again to disperse the mob. There was danger to life and property from this mob and this police firing was, therefore, justified.

The arson to Ganesh Sizing Works and other Hindu factories and timber-depots on the Bombay-Agra Road

43.166 In the final charge-sheet filed in the Bhiwandi Conspiracy Case (Ex. P 1327) the arson to Ganesh Sizing Works and other Hindu factories, timber-depots and houses in the vicinity was made part of that case. The other factories, houses and timber-depots were the Sharda Saw Mills, the Shree Krishna Vijay Saw Mill, the National Garage and Savant's factory, all of them situate on the Bombay-Agra Road. As one proceeds down the Bombay-Agra Road from Vanjarpatti Naka, opposite the entrance to the Nizampura 4th Mohalla Lane is situate Savant's factory. Thereafter comes the National Garage, the Shree Krishna Vijay Saw Mill and the Sharda Saw Mill. After passing one lane, a little further down is the Ganesh Sizing Works. Next to it is the Jain Colony and by the side of the Jain Colony is a small lane which leads to Banarasi Building, a Muslim building. Three Hindu witnesses were examined by the Nagarik Hitarakshak Mandal with respect to the arson to these factories. They were Manubhai Narayan Patel, the proprietor of Ganesh Sizing Works (N.H.W. 18/1-8/1903-7), Mulji Karamsi Patel, the proprietor of Shree Krishna Vijay Saw Mill (N.H.W. 19/1-3/1908-9) and Dagadu Doulat Chawan (N.H.W. 46/1-5/2071-3) residing in Vetalpada behind these factories.

43.167 On the evidence of these three witnesses it is difficult to understand how any of these incidents could be made to form part of the Bhiwandi Conspiracy Case because, according to both Manubhai Patel and Mulji Patel, the Muslim rioters attacked these factories at about 7-30 p.m. and, according to Dagadu Doulat Chawan, the arson to his house took place after the said factories were set on fire. Manubhai Patel had participated in the Shiv Jayanti procession, while Mulji Patel had not. There are a number of contradictions between Manubhai's F.I.R. (Ex. P 258) and his affidavit and oral evidence. It is unnecessary for our present purpose to refer to them in detail. On the point of time Mulji has deposed :

"Till about 7 p.m. not a single incident happened in our locality and everything was quiet. At about 7-30 p.m. about 80 Muslims or

so came from the Zopadpattis in front of our factory. They were carrying in their hands kerosene tins and sticks to which rags were tied."

He has further deposed that this mob set fire to his factory and other factories, attacked the adjoining Jain Colony and killed a Gurkha and a Jain youth. Manubhai's evidence is to the same effect. Dagadu Chawan, a weaver, had also participated in the Shiv Jayanti procession and was in the front part of the procession. When the disturbances broke out, he along with some others came to the Town Police station and after passing through Panjrapol and passing by Shelar and Chavindre villages he came by a circular route to Vetalpada. According to him, he saw Savants' factory, the Shree Krishna Vijay Saw Mill and the Sharda Saw Mill on fire and a Muslim mob throwing stones at telephones wires. After he reached Vetalpada, the mob attacked his house and set it on fire. Though Dagadu does not mention any time, it is clear from his evidence that his house was set on fire after the arson to the said factories.

43.168 Incontrovertible evidence before the Commission, however, shows that the arson to the Hindu factories and timber-depots did not take place at the time alleged by these witnesses but much later. At about 8 p.m. that evening on receipt of a telephone message at the Control Room from the office of the Taluka Magistrate intimating that an attack on the Government grain godown was apprehended, D.M., Capoor sent S.P., Bhave to deal with the matter. Bhave went there in a police van with a police party consisting of P.S.I., L. R. Deshpande, one more police officer and 20 S.R.P. men. Bhave went to the Bombay-Agra Road via Vanjarpatti Naka. As we will see when we come to these incidents in the next chapter he first fired upon a mob which had erected a road-block on the Bombay-Agra Road and showed an intention to attack the police party. After removing the road-block he opened fire and dispersed another mob which was attempting to break open the Government grain godown. Thereafter near this very place a little later C.P.I., Tikale opened fire on a Hindu mob. After dispersing the mob at the Government grain godown, Bhave learnt that some Muslim rioters were attempting to set fire to Hindu houses in Vetalpada. He went there taking with him C.P.I., Ghosalkar whom he met on the way, dispersed the Muslim mob by opening fire, chased some of the rioters into the Banarasi Building and arrested 18 of them. He then left leaving P.S.I., Deolekar to patrol that area. P.S.I., L. R. Deshpande patrolled the said area till midnight. While he was in that area L. R. Deshpande saw a Muslim mob setting fire to a Hindu house near the National Garage and he opened fire on it and arrested 12 Muslims therefrom and took them to the police station. While going to the Government grain godown, Bhave passed all these factories. He did not see any of them on fire. Banarasi Building is very close to Ganesh Sizing Works. Had that factory been on fire before Bhave went to Vetalpada, Bhave would have seen it. Both Bhave and Ghosalkar are, however,

definite that the only Hindu property which they saw on fire in this area was a chawl with four rooms. Dagadu might have been residing in this chawl but on the evidence of these police officers the arson to Ganesh Sizing Works and other Hindu factories and timber-depots and houses could not have taken place until after Bhawe and Ghosalkar had left the scene at about 9-45 p.m. or 10 p.m. It is therefore, not possible to accept the evidence of Manubhai Patel, Mulji Patel or Dagadu Chawan that the arson to Ganesh Sizing Works and other Hindu factories on the Bombay-Agra Road took place at about 7-30 p.m. They could only have been set on fire after 10 p.m. Very probably these factories were set on fire by the same Muslim mob as the one on which P.S.I., L.R. Deshpande opened fire some time at about 11-45 p.m., an incident discussed in the next chapter.

The rioting at Kanheri

43.169 Kanheri is a Hindu locality to the east of Old Thana Road behind the Rais High School. Some Hindu zopadpattis and houses including a chawl known as Hanuman Chawl and some Muslim houses in Kanheri were burnt on May 7, 1970. There is, however, no reliable evidence on the record to show how and when this rioting took place. The Nagarik Hitarakshak Mandal had called two witnesses to depose about this rioting, namely, Narayan Mallaya Samal (N.H.W. 48/1-4/2080-2) and Anjaya Yellaya Yemul [N.H.W. 38/1(2)/1998(2)]. Narayan's affidavit describes what happened in the evening of May 7, 1970 as follows :

“In front of our house there are small ‘yatim khana’ bungalows. At about 5-30 p.m. two Muslims from that place came to us and told us that there had been arson, etc., in the town. They further stated, ‘We should not do anything and let us remain in harmony’. We agreed to that. Then they went back to their houses. Thereafter I escorted my family and children to the house of Vasant Patil which was nearby and came back near my house. Just then I saw a crowd of 25 to 30 Muslims near my house. Some of them had buckets full of kerosene and pots in their hands and some had burning torches in their hands. With those burning torches they first set fire to our house after pouring kerosene on it. The two persons who had come to me earlier were in the said mob of Muslims. I do not know their names but I will be able to identify them if shown to me. Before making the said attack, the aforesaid Muslims were throwing something in their hands on the ground which made noises like bombs. Further, before making the attack, the Muslims threw stones, bricks and soda-water bottles in the direction of our house. On account of this act of theirs, we all ran away.”

Narayan's affidavit was affirmed on July 2, 1970 and filed through the Nagarik Hitarakshak Mandal. Prior thereto his complaint was recorded on May 19, 1970 by P.S.I., B. M. Patil from Thalner, District Dhulia. There is not a word in the said complaint about the two

Muslims from 'yatim khana' or the conversation he had with them or his escorting his family and children to the house of Vasant Patil or of a Muslim mob coming and throwing stones, bricks and soda-water bottles at his house or of "throwing something in their hands on the ground which made noises like bombs" or of the said two Muslims from 'yatim khana' being in the said mob or his being able to identify any one in the said mob. He was unable to explain these omissions in his complaint. He has also admitted that there were several Muslim houses near his house which had also been set on fire and burnt during the riots, but stated that he did not know when they were set on fire. The evidence of this witness is worthless and does not need to be discussed further.

43.170 After his house was set on fire, Anjaya Yemul took shelter with his wife and two children in Hanuman Chawl behind the Rais High School. There were others also who were taking shelter there. Thereafter within a short time a Muslim mob came and set fire to the said chawl. We have already seen the evidence of this witness in connection with the rioting in Gauripada and have seen that though he had stated the time of 5-30 p.m. with respect to the rioting in that area, he had admitted that it was a very rough estimate on his part. His evidence, therefore, does not make us any wiser on the question of time.

43.171 The only other evidence on the record, though it is not direct evidence, is an F.I.R. filed by S. R. Kumbhar, a resident of Kanheri, about the arson to his property (Ex. P 297). He has stated in his F.I.R. that he was in the procession and when the procession was attacked, he came to Brahman Alli through Wani Alli and stayed in the temple of Lord Ganapati and thereafter went near the Bhiwandi Municipal Dispensary where about 1,000 to 2,000 persons from Kanheri had gathered. Thereafter he reached his residence at midnight under police escort and found that his house and factory were burnt. This also makes us no wiser.

43.172 The only Muslim evidence with respect to the rioting in Kanheri is the indirect evidence of an F.I.R. filed by Mohamed Suleman Abdul Hamid, a tailor residing in Kanheri (Ex. P 302). According to his F.I.R., he was in his shop on May 7, 1970. At about 6 p.m. the procession on Old Thana Road was attacked by acid-bottles and stones thrown by the Hindus and as the stones began falling close to his shop he ran away and stayed in Ajanta Compound. By reason of the fact that, according to him, this stoning started at about 6 p.m., he has alleged that the damage to his shop, which consisted of looting and setting fire to the articles taken out therefrom, took place between 6-30 and 7 p.m. The stoning of the procession by the Hindus, which Mohamed Suleman refers to, obviously cannot be true. It was the stoning of the procession by the Muslims but, as we have seen, the processionist also had hurled stones at the Muslims and their houses. Some of the processionists must have thereafter passed through Kanheri and attacked Mohamed Suleman's

shop. The F.I.R. of Mohamed Suleman is, however, equally unreliable and there is, therefore, no reliable evidence when any of these incidents took place — whether within the first two hours of the disturbances or thereafter. One thing, however, is clear — the rioting at Kanheri did not take place simultaneously with the outbreak of the disturbances in the Bhusar Mohalla-Old Thana Road locality.

Rioting at the Bhiwandi-Karivali Road

43.173 Karivali Village lies to the west of Bhiwandi. The Bhiwandi-Karivali Road joins Dargah Road at the junction of Bhoiwada and Hamal Wada. It is alleged that during the first two hours of the disturbances some Hindu houses were looted and others burnt by a Muslim mob and that the processionists returning to Karivali village were fired upon by the Muslims and some Muslim houses also attacked and set on fire. There is no direct evidence on any of these incidents. The only indirect evidence is that of the F.I.Rs. filed with respect to these incidents and a note Exhibit G 125 filed by Addl. I.G.P., Modak on the shooting at the Bhiwandi Karivali Road. According to the F.I.R. of Abdulla Faizulla Pinjari, whose house was set on fire by Hindu rioters (Ex. P 251), given on May 19, 1970, the arson to Muslim properties took place at about 6 p.m. and the instruments of arson were fire-balls. According to the F.I.R. of Ramaya Rajayya Amul whose house was set on fire by Muslim rioters, the arson to Hindu properties took place at 7-30 p.m.

43.174 So far as the shooting incidents is concerned, the said note Exhibit G 125 and the F.I.R. (Ex P 337) given by the Police Patil of Karivali, Mukund Tukaram Patil on October 5, 1970 show that information in connection with this incident was received from Bhausahab Dhamankar on July 7, 1970 and that inquiries were thereupon made. Mukund Tukaram Patil, one Ankush Bhaskar Patil and other villagers from Karivali had participated in the Shiv Jayanti procession. When the disturbances broke out, these villagers from Karivali returned home in batches. Mukund and two others were returning together. As they approached the burial ground they were fired upon and Mukund received two pellets in his left leg. His friends carried him home. Mukund's party was followed by Ankush and two others. They were also fired upon. Ankush was shot in the stomach and fell down. He was carried to the village by his friends and died that night. He was cremated the next day by his relatives. Mukund was taken to Thana and was admitted in Dr. Godbole's hospital where two pellets were removed from his leg. According to Mukund's F.I.R., the time then was about 7-45 p.m. and it was very dark.

43.175 The F.I.Rs. and police investigation do not constitute substantive evidence. The question here, however, is not the identity of the assailants, but the substratum of the offence, and the F.I.Rs. and police inquiries show that the arson to Muslim houses took place at about 6 p.m. and the arson to Hindu houses took place at about 7 p.m. and the shooting by some Muslims took place at about

7-30 p.m. These timings fit in and it would appear that the Muslims who fired upon Mukund and Ankush were from the same mob which set fire to Hindu houses a little later.

The rioting at Khoni Village

43.176 The Hindu locality of Khoni Village is known as Tagarpada, while the Muslim locality is known as Rasulabad. Appendix J to this Report is a sketch of Khoni Village showing the incident which took place in Khoni on May 7, 1970.

43.177 It is the case of the Hindu parties and the Special Investigation Squad, Bhiwandi that in pursuances of the conspiracy entered into by the Muslim to attack the Shiv Jayanti procession and different Hindu localities at 5-30 p.m. on May 7, 1970, the Muslims of Rasulabad attacked the Hindus in Tagarpada and looted ornaments and utensils belonging to one Gangubai Motiram Tokalkar as also the grocery shop of one Parasmal Bhandari and set some Hindu houses on fire and that in retaliation the Hindus attacked the Muslim locality of Rasulabad and set 107 Muslim houses and huts and the Rasulabad Mosque on fire, looted other Muslim houses and killed 17 Muslims and injured others.

43.178 The Nagrik Hitarakshak Mandal examined two witnesses in support of the above case. They were Laxmibai Ambo Mali (N.H.W. 34/1-14/1980-2) and Ganpat Mahadu Durgamwar (N.H.W. 35/1-10/1983-7).

43.179 Laxmibai (N.H.W. 34) has deposed that most of the Hindus staying in Tagarpada had gone to Bhiwandi in order to take part in the Shiv Jayanti procession. At about 5-30 p.m. a mob of 50 to 60 Muslims armed with spears, knives, sticks, etc., came to Tagarpada, broke open the shop of Bhau Wani, took tins of kerosene from it and set fire to the said shop and to a grain shop, a ration shop and three chawls including a chawl belonging to one Mahajan. Thereafter they set fire to Laxmibai's bundles of hay and threw the burning hay into three chawls belonging to her and set them on fire. They also set fire to her residential house. When she begged and pleaded with them not to set fire to her house one Inus Alli asked the other rioters to throw her into the burning house. She then got frightened and ran away. She has given the names of three sons of Nawab Fakih as being three of the rioters. She filed her complaint at the Bhiwandi Taluka Police Station on May 15, 1970. The complaint was written out by her landlord Keshav Shridhar Karve (also known as Balasaheb Karve) and she has put her thumb impression both on the complaint and on her affidavit. She has deposed that she gave instructions for drafting her affidavit to Mr. Kunte, Advocate. After her complaint was filed, her police statement was recorded by an officer of the Special Investigation Squad.

43.180 Though according to her affidavit a Muslim mob came to attack Tagarpada at about 5-30 p.m., she stated in her cross-examination that she did not know how to tell the time and could

not say whether it was at 5 p.m. or 5-30 p.m. or 6 p.m. that the Muslim mob came to attack Tagarpada, and that all that she knew was, "When the Muslim mob came the sun was on the hill". The conclusion is obvious. The time mentioned in her complaint was supplied by Keshav Karve who had written out her complaint, and that mentioned in her police statement by the officer of the Special Investigation Squad who recorded it, and the time mentioned in her affidavit by those who drafted her affidavit. She has also stated in cross-examination that she did not know any Inus Ali. His name, therefore, as a person who asked the mob to throw her into the burning house must also have been supplied by the persons who were responsible for inserting the time in her affidavit, complaint and police statement. She has denied that she could not see Mahajan's shop from her chawl, but the local inspection taken by the Commission along with Counsel and others on February 24, 1973 showed, as recorded in the notes of the said local inspection, that this structure could not be seen from her chawl as there were intervening structures which admittedly existed on May 7, 1970. Her implicating Nawab Fakhir's sons also does not carry any conviction. She has admitted in cross-examination that Nawab Fakhir's lands were near hers and because cattle strayed in each other's lands there used to be constant quarrels for two years prior to May 1970 between herself and Nawab Fakhir. On one of such occasions Abdulla, one of the sons of Nawab Fakhir, who has been implicated by her, had assaulted her. She has further deposed that Nawab Fakhir's sons used to boast that no one could harm them. It is clear that she was on inimical terms with Nawab Fakhir and his sons and no reliance can be placed upon her evidence implicating them, as none can be placed upon her evidence implicating Inus Ali or upon the statement in her affidavit about the time when the Muslim mob came to Tagarpada.

43.181 The evidence of the next witness Ganpat Mahadu Durgamwar (N.H.W. 35) is as unsatisfactory as Laxmibai's. The chawl belonging to Laxmibai's husband, Ambo Mali in which he was a tenant since 1968, was set on fire that evening. He has also given at the Taluka Police Station a complaint dated May 15, 1970. The contents of his affidavit and complaint are identical both in substance and language and in cross-examination the reason which he gave for this was that he had stated the same facts on both the occasions. In his affidavit he has stated that on May 7, 1970 at about 4 p.m. he along with others residing in his locality had gone to watch the Shiv Jayanti procession and that when the procession went past Bunder Mohalla he returned to his chawl at about 5-30 p.m. and found a mob of about 50 to 60 Muslims near his chawl and saw that arson had taken place all over and Muslims were setting everything on fire with kerosene from tins looted from Mahajan's grocery shop and were shouting the slogans, "Pakistan Zindabad", "Islam Zindabad" and "Allah Ho Akbar". He has mentioned the names of six persons as being the leaders of the said mob.

43.182 Laxmibai in her cross-examination had stated that Ganpat had not gone for the procession, but had gone to the Bhiwandi Bazar to the flour mill for grinding grain and that though she did not know the time when he went to Bhiwandi, he returned when the Muslim mob had come and that Ganpat, who was alone at that time was carrying a tin in his hand. Ganpat was a witness who immediately followed Laxmibai and in his cross-examination, bearing her evidence in mind, he wanted to make his evidence consistent with what she had deposed about his movements. His attempt to do so proved him to be a complete liar. At first he stated that he had not joined the Shiv Jayanti procession and that at 5 p.m. he had gone with a tin to Bazar Peth to buy some wheat, and that he waited in Bazar Peth for 10 to 15 minutes thinking he would purchase wheat after some time, but he did not purchase any wheat, but instead went at 5-15 p.m. to the factory where he was working, took a bath in the factory, washed his clothes and waited in the factory for about 15 to 20 minutes and thereafter hearing shouts ran towards his house. How this whole process could have been completed in fifteen minutes is left to one's imagination. He was forced to admit that his factory was closed on May 7, 1970 because it was a holiday. He also had to admit that every shop in Bazar Peth was closed. He then changed his story to say that he had gone from his house straight to Bazar Peth to buy wheat thinking that the shop would be open and that at that time the procession came to Bazar Peth and thereupon he went to his factory. He admitted that Mahajan's shop in Tagarpada was an authorized fair price shop and that Parasmal's shop in Tagarpada sold foodgrains such as wheat and 'bajra' and sought to explain away his visit to Bazar Peth by saying that he went to Bazar Peth to buy wheat because he could get it cheaper there. It was suggested that he was one of the rioters who took part in the looting of Bazar Peth and that the said tin was the loot he had carried home. In trying to explain away the tin in his hand, when he was faced with what he had said in his affidavit and in his complaint, he said that he had gone to the office of the Nagarik Hitarakshak Mandal for giving instructions to Mr. Kunte, Advocate, and had told Mr. Kunte all the facts which he had stated in his cross-examination. He further said that his complaint was written out by Datta Karve, the son of Keshav Karve, and that he had also told all these facts to Datta Karve, and that he had read his complaint before signing it and when he did not find these facts in it, he had pointed out their omission to Datta Karve, but Datta Karve told him that it was not necessary to mention all these facts and that it would be better if only a few facts were mentioned. He said that he did not take a copy of his complaint from Datta Karve and that Datta Karve had asked him to go to the office of the Nagrik Hitarakshak Mandal to give instructions for his affidavit.

43.183 If Ganpat were stating the truth it is strange how Datta Karve and Mr. Kunte could have both thought of changing his story

in the same identical manner on the ground that "it would be better if only a few facts were mentioned". It is clear that a copy of his complaint was kept either by him or Datta Karve and was given by one of them to Mr. Kunte who copied it out in the form of an affidavit. He has further deposed in cross-examination that while returning to Tagarpada he did not see any fire to the building in which Parasmal Marwadi's shop was situate, but he only saw a chawl, in which Mahajan's shop was situate, on fire and that a Muslim mob had collected near Parasmal's shop. The following questions and answers which then followed make interesting reading :—

"Q. Do you know whether the building in which Parasmal's shop is situate was set on fire ?

A. On what date was it set on fire ?

(Question repeated)

A. It was not set on fire."

This witness has prevaricated all through his evidence and kept on changing his story in the witness-box and the one thing he did not seem to bother about was telling the truth. No reliance can be placed upon the evidence of this witness either.

43.184 Four Muslim witnesses have given evidence about what happened in Rasulabad that evening. These witnesses are Riaz Ahmed Mohamed Hanif (S.J.U.W. 2/1-3/1671-3), Shakeel Ahmed Mohamed Hanif (S.J.U.W. 3/1-4/1674-7), Zohrabai Alihussein Dohadwalla (C.W. 34/1-12/3458-63) and Banoobai Nomanbhai Ujjainwalla (C.W. 35/1-2/3465-6).

43.185 Riaz Ahmed Mohamed Hanif (S.J.U.W. 2) was residing in a chawl in Rasulabad along with seven members of his family. On May 7, 1970 he returned home from work at noon. At about 2 or 3 p.m. he saw small groups of people coming in procession from Kamba and Katai villages to join the main Shiv Jayanti procession, carrying Bhagwa flags tied to bamboo sticks and shouting abusive slogans against the Muslims. He has deposed that a number of Hindus from Khoni had also gone to Rasulabad to participate in the Shiv Jayanti procession. According to his evidence, at about 5-30 or 6 p.m. some of them returned and while passing through the Muslim locality started abusing the Muslims and throwing stones at their houses and threatening to kill them. Apprehending danger he along with his family members went to a neighbouring chawl belonging to Hasan Kuwari which was a pucca structure. At about 8 or 9 p.m. some persons came to that chawl and warned them that an attack by the Hindus was imminent. At that time some shots were fired and stones thrown in their direction. Thereupon they became frightened and about twenty of them ran inside the Rasulabad Mosque for protection and closed the door. After about an hour the mosque was attacked by a mob of about fifty Hindus carrying spears, lathis and burning torches. The rioters burst into the mosque and launched a simultaneous attack with lathis and 'koytas' (sickles)

from both sides of the mosque on those taking shelter inside. Riaz Ahmed was injured at eight places on his body and fell down unconscious. When he regained consciousness he found not only that he was seriously wounded, but had also suffered very severe burns. His mother, his three sisters aged 20, 10 and 5, a brother aged 8 and a female cousin aged 18, were killed in this attack and the only members of his family who survived were his father who had gone to Malegaon that morning, himself and his younger brother Shakeel Ahmed (S.J.U.W. 3). He has deposed that he could see the Hindu locality of Khoni from his residence and that he did not hear any commotion in the Hindu locality nor saw any smoke or flames coming from it between 5-30 and 6 p.m.

43.186 Shakeel Ahmed Mohamed Hanif (S.J.U.W. 3) has given evidence in greater detail. He has also described the conduct of the villagers from Katai and Kamba going to Bhiwandi to join the Shiv Jayanti procession. He too was at home and has deposed that at about 5-30 or 5-45 p.m. the processionists returned shouting "Riots have broken out in the town, catch the Muslims". They started throwing stones at Muslim houses and pelting the Muslims with stones and he heard cries of "Save us, save us". He and the other members of his family took shelter in the chawl of Hasan Kuwari because it was a pucca structure. He has stated that when these incidents took place it had not become dark and the sun had not set. He too has denied that he saw any flames or smoke coming from the Hindu locality at that time. He has described how while they were taking shelter in the mosque they could hear gun shots and the shouts of persons running away towards Bhiwandi in order to save themselves. He has graphically described how a mob of about fifty Hindus burst into the mosque and from both sides attacked with lathis, spears and sickles those who were taking shelter inside. He has further deposed that the assailants thereafter put 'chatais' (mats) over the bodies of unconscious Muslims, sprinkled kerosene over them and set them on fire with burning torches which they were carrying. Shakeel Ahmed was beaten with lathis and was lying in a corner and he saw one of the persons who was being burnt alive trying to get up and being felled with a lathi blow. When all the mats were on fire the rioters went away shouting "Landia Marun Gele" (the Muslims are dead). Immediately after they left Shakeel Ahmed got up and started pulling out persons from the burning 'chatais'. He managed to extricate five persons from the fire including his sister Quraisha who was pregnant, but who later died of her injuries in the Thana Civil Hospital. He along with three other persons managed to go to Bunder Mohalla by the foot-bridge and they were helped by those who were on the other side of the foot-bridge and given first aid.

43.187 Zohrabai Alihussein Dohadwalla (C.W. 34) was summoned by the Commission. She was residing in Babu Kazi's chawl at a little distance from the Rasulabad Mosque. She has deposed about the abusive

slogans given by the processionists coming from Katai and Kamba village. She has further deposed that at about 5-30 p.m. persons came running towards her chawl shouting, "Musalman Ko Maro, Musalman Ko Maro" and picking up stones and throwing them at Muslim houses. About 40 persons had taken shelter in their chawl because it was a pucca structure. After some time at about 7 p.m. they opened the door slightly and peeped through it and saw fires in Bhiwandi and also to their right in Rasulabad where some Muslim houses and shops were situate and so out of fright they closed the door again. At about 8 p.m. or 8-30 p.m. they again saw a mob and heard shouts of "Maro, Maro". They, therefore, took shelter in the Rasulabad Mosque after closing all its doors. The rioters set fire to two doors of the mosque, broke down the third door and rushed in. They were carrying swords, lathis and other weapons and one or two were carrying guns. According to her, some of them threw four or five bombs inside the mosque. She was attacked repeatedly with a sword and suffered a number of injuries. The index finger of her left hand and half her left ear were cut off and her left eye put out. She also received a number of wounds on her head, forehead, arms, lower chest and abdomen. She regained consciousness some days later in the Saifee Hospital in Bombay. Her husband and brother were killed by the rioters and her sister-in-law was wounded on the nape of her neck and the middle finger of her right hand cut off. Her niece aged five, another niece aged one and a half years and her son aged two suffered burn injuries. She has given the name of the person who attacked her with a sword as Datta Punyarthi.

43.188 May 7, 1970 was the birthday of Zohrabai's brother's elder daughter Rashida and her step-mother Banoobai Nomanbhai Ujjainwalla (C.W. 35) had come to her brother's place to spend the day. During the course of her evidence Zohrabai mentioned that Banoobai was dragged away by the rioters from the mosque and that subsequently Zohrabai learnt that she had been raped. Finding that Banoobai was present when Zohrabai was giving evidence as she had accompanied her, the Commission also examined Banoobai as a witness, Banoobai's evidence was recorded *in camera* at her request. Banoobai deposed that she was a resident of Wani Alli and had gone to her step-son's place to spend the day as it was the birthday of his daughter. She was one of the persons who took shelter in the Rasulabad Mosque. When the Hindu mob rushed into the mosque about fifteen of them caught hold of her and dragged her to a nearby public latrine, where they tore off her clothes and several of them raped her. They then took her to a nearby jungle and kept her with them throughout the night. Two or three other groups came there during the night and by turn they all raped her. In the morning they let her go after giving her a 'dhoti' to cover herself. She went and took shelter in a relief camp which had been opened in the house of Murtaza Fakhir where she met her daughter-in-law and her grand children. They were first taken to the Bhiwandi Municipal Dispensary

and then to the Thana Civil Hospital and thereafter to the Saifce Hospital, Bombay. She has deposed that out of shame she did not inform anyone about what had happened to her, except her husband about a month later when she returned home and thereafter her daughter and some close family members. This witness was not cross-examined by anybody. Her police statement was recorded by P.S.I., R. K. Bhagwat of the Special Investigation Squad on June 7, 1970 in the Saifce Hospital, Bombay (Ex. P 1194). It is substantially in conformity with her evidence save that there is no mention of any rape committed upon her, all that she has stated therein on this point being—

“I was also hit with a stick on the back by someone. At about that time, 10 to 15 persons caught me and took me towards the latrine. From there they took me to the forest. I spent the whole of the night in the forest. I cannot identify anyone of the persons who caught and took me away or who assaulted me. The next morning I went to my friend Tahera Sirajuddin Irani living in the town. She gave me clothes, namely, a saree and a blouse. From there I took medical treatment from the Committee of Murtaja Fakih in Saudagar Mohalla. Thereafter I took medical treatment at the Bhiwandi Dispensary. Thereafter I took medical treatment at the Thana Civil Hospital, Thana, also. I was admitted to the Saifce Hospital, Charni Road on the date 15-5-70 and since then I am there in room No. 4”.

43.189 It does not require much imagination to understand the reason why the fifteen Hindu rioters should have dragged her to a latrine and then to a forest and kept her there the whole night and then allowed her to go the next morning without any clothes. The wonder is how it did not strike the investigating officer recording her police statement and why he should not have questioned her further on this point. The reason is obvious—further questions were deliberately not put to her by the investigating officer. The attempt on the part of the Special Investigation Squad has been not to depict Hindu rioters in a bad light and further investigation into the story of Banoobai would not have redounded to the credit of the Hindu rioters who perpetrated these atrocities in Rasulabad.

43.190 Dead bodies of fifteen Muslims were found in Rasulabad, nine of which were found in the Rasulabad Mosque, two in the room adjoining the mosque and four in the open area. Two of the injured persons found there died in the Thana Civil Hospital. One of these two injured Muslims, namely, Mobin Ahmed Amin Ahmed, died of bullet injuries and on inquiry made from him by D.S.I., D. L. Sharma, the Medical Officer, Thana, by his letter dated October 28, 1970 opined that this gunshot injury was caused by ball ammunition, that is, a bullet, and that it was a rifle bullet (P.W. 61/88/3660-1). The injuries suffered by Mobin Ahmed corroborates the evidence of the Muslim witnesses who have deposed about hearing gunshots and seeing guns in the hands of the Hindu rioters.

43.191 Reading together the above evidence it is clear that the villagers, who returned from the procession at about 6 p.m., first attacked Muslim properties by throwing stones, abusing the Muslims and setting fire to some Muslim properties. The Muslims thereupon retaliated by attacking Hindu properties and looted and set fire to some of them. Thereupon the Hindu rioters armed with swords, spears, lathis as also some fire-arms attacked the Muslims and set fire to their properties, burst into the Rasulabad Mosque where some Muslims had taken shelter, mercilessly attacked them, maiming and killing not only men but even women and children, and then made a funeral pyre of the dead and the dying. Some of them also dragged away Banoobai Nomanbhai Ujjainwalla (C.W. 35), kept her with them for the whole night and raped her.

43.192 A shocking thing about the events at Rasulabad is the callous indifference of the Police to what was happening there just across the river. Abdul Aziz Mohamed Yusuf Mastim has deposed that at about 8-30 p.m. on May 7, 1970 he saw the whole of Rasulabad where the majority of Muslims resided ablaze with fires [B.R.W. 40/1(7)/1544(3)]. He has not been cross-examined on this point. Sikandar Faquih has deposed that in the night of May 7, 1970 he went home at about 10 p.m. after moving about in different localities and trying to help people. From his house, which is at the end of Bunder Mohalla, he could see Muslim houses in Rasulabad on fire and these fires could be seen even more clearly from the terrace of his elder brother Akbarsaheb's house. He has further deposed that the next morning he had taken Mr. H. G. Vartak, the Minister for Food and Civil Supplies, and Mr. A. R. Antulay, the then Minister of State for Law and Judiciary, and Mr. Prabhakar Hegde, an Advocate from Thana and Commandant of the Home Guard in Thana, to the terrace of his brother's house as also to the house adjoining his house and showed them the smouldering ruins of Rasulabad (B.R.W. 2/28/1409-10). After the disturbances broke out Mustafa Fakih was in Sutar Alli with Bhausahab Dhamankar for about twenty minutes. As the situation there became very tense Dhamankar told him to go away from there. He then returned to his house in Saudagar Mohalla where Murtaza Fakih is also residing. At 7 p.m. he saw some Muslims from Rasulabad come trickling into Saudagar Mohalla for safety and shelter, some of them carrying their belongings in bundles on their heads. They told Mustafa Fakih that Rasulabad has been set on fire. He gave them shelter outside his house as also in the adjoining Urdu Municipal School (B.R.W. 3/21/1424). Local inspection revealed that between Bunder Mohalla Road and Rasulabad there is only the river and an open space and both from the house of Sikandar Faquih as also from the terrace of his brother Akbarsaheb Faquih's house and from the open strip of the Bunder Mohalla both Rasulabad and Tagarpada are clearly visible and, therefore, any smoke or fire in Rasulabad would be clearly seen from these places. Local inspection further revealed that Rasulabad and Tagarpada were clearly visible from the Narali Talao

School where an S.R.P. Camp was situate as also from the road adjoining it.

43.193 Entry No. 88 in the Control Room Diary for May 7, 1970 (Ex. P 367) shows that at about 8-20 p.m. on May 7, 1970 police parties were despatched to twenty-five places for bandobast. One of these places was Kamba Bridge, that is, the foot-bridge across the river which separates Bhiwandi from Rasulabad.—The police party at this bridge consisted of one P.S.I. and ten policemen. Another police party was posted at the custom-house which is in Bunder Mohalla right at the end of the road near the bank of the river. Throughout the night of May 7, 1970 a police party was patrolling Bunder Mohalla (B.R.W. 2/28/1412). It is shocking to know that none of these police-officers or policemen saw the fires in Rasulabad nor on seeing the fires in Rasulabad (which they could not miss seeing) sent a police party to find out what had happened and whether there were any persons wounded or trapped in the burning debris. On May 9, 1970 Sikandar Faquih's brother's son Abdul Nawab Faquih went to Rasulabad and found Zohrabai (C.W. 34) lying unconscious in the Rasulabad Mosque. He saw her lips fluttering and some trembling in her hands and feet. He reported this matter at the relief camp in Murtaza Fakih's house and the volunteers from the relief camp brought Zohrabai to the relief camp and as her condition was very serious she was sent to the Saifee Hospital in Bombay (B.R.W. 2/28/1411-2).

43.194 It appears that the Police went to Rasulabad only as a result of the complaint made by Mustafa Fakih. On May 9, 1970 between 11 a.m. and noon Dy.S.P., Saraf was sent for at the Inspection Bungalow where D.M., Capoor, the Addl. I.G.P., Modak, D.I.G. (B.R.), Gokhale and S.P., Bhawe were present. Mustafa Fakih was also there and some out of these senior officers asked Saraf to go with Mustafa Fakih to Rasulabad and see whether there was any dead body lying there. Thereupon Saraf accompanied by Mustafa Fakih went to Rasulabad and found nine dead bodies. He went back to the Inspection Bungalow and reported this fact. Thereafter P.I., Ghosalkar was sent to Rasulabad and he took charge of nine dead bodies from the half-burnt mosque. With the help of C.P.I., Tikale he searched the surrounding areas and found two more bodies. Other bodies were found on subsequent days. In all seventeen Muslims died in Rasulabad. Out of them nine dead bodies were found in the Rasulabad Mosque, two in the room adjoining the mosque and four in the open area. Two persons were found injured ; they died subsequently in the Thana Civil Hospital. Ghosalkar found the mosque half burnt down and Abdul Rahim Ansari, the Secretary of the All India Sunni Jamiet-ul-Ulema, Bhiwandi Relief Committee, when he visited the mosque found blood-stains all over it [P.W. 61/88/3661-2 ; P.W. 36/1(16)/844(10) ; P.W. 40/1(6)/896(6)] ; [S.J.U.W. 1/1(6)/1652(3)].

Conclusions

43.195 The evidence led before the Commission has completely disproved the theory that there was a simultaneous attack on the

Shiv Jayanti procession in the Bhusar Mohalla-Old-Thana Road locality and on the Hindus and their properties in other localities at 5-30 p.m. or at any other time. The evidence discussed in Chapter 40 has clearly established that the procession was not attacked throughout the Bhusar Mohalla-Old Thana Road locality at the same time, but that the disturbances broke out near the Old Fish Market in Bhusar Mohalla between 5 p.m. and 5-15 p.m. and from there spread to the other parts of Bhusar Mohalla and to the Old Thana Road. The evidence discussed in this chapter has clearly established that in all the other localities the disturbances took place at a time later than the disturbances at Bhusar Mohalla and Old Thana Road and not at the same time as the disturbances at Bhusar Mohalla or at Old Thana Road. The evidence discussed in this chapter has also established that in most of the other localities the first act of rioting and arson was by the Hindus and not by the Muslims.

43.196 The position as established by the evidence with respect to the rioting and arson which took place in localities other than Bhusar Mohalla and Old Thana Road during the first two hours after the outbreak of the disturbances is as follows :—

- (a) After the disturbances had broken out near the Old Fish Market in Bhusar Mohalla and from there spread to the other parts of Bhusar Mohalla and to Old Thana Road the first locality where the disturbances took place was the Vegetable Market Road ('Mandai'). At 'Mandai' the only rioting, looting and arson was by the Hindus, namely, the processionists, and commenced at about 5-30 p.m.
- (b) In Habsan Alli the rioting by the Hindus and the arson to Muslim properties took place some time prior to 5-30 p.m. and the rioting and arson by the Muslims took place at about 5-45 p.m.
- (c) At Lendi Bridge the rioting and arson by the Muslims took place at about 6 p.m. and thereafter the rioting by the Hindus and the arson to Muslim properties took place.
- (d) At Teen Batti the rioting and arson was all on the part of the Hindus and took place between 6 p.m. and 6-15 p.m.
- (e) At Bazar Peth, Thange Alli and Madarchhalla all the rioting, looting and arson was on the part of the Hindus and took place between 6 p.m. and 6-30 p.m.
- (f) At Sutar Alli the first act of arson and rioting was by the Hindus very soon after the disturbances took place at Bhusar Mohalla and thereafter the rioting and arson by the Muslims took place.
- (g) In Gauripada, which was a purely Hindu locality, the first act of rioting was a clash between a Hindu mob and a Muslim mob followed by arson to Hindu properties and took place a little before 5-45 p.m.
- (h) At Kumbhar Alli the rioting and arson were on the part of the Muslims only and started a little before 6-15 p.m.

- (i) At Khadak the rioting commenced at about 6 p.m. with a clash between a Hindu mob and a Muslim mob in which Hindu and Muslim factories and houses were set on fire.
- (j) At the Bhiwandi-Karivali Road there was first arson to Muslim houses at about 6 p.m. followed by arson to Hindu houses.
- (k) At Prabhu Alli the only act of rioting and arson was on the part of the Hindus and it took place some time prior to 7-15 p.m.
- (l) At the Bombay-Agra Road, the Ganesh Sizing Works, the Shree Krishna Vijay Saw Mill, the National Garage, the Sharda Saw Mill, Sawant's factory and other Hindu factories and houses were set on fire after 10 p.m.
- (m) At Kanheri the rioting and arson on the part of both Hindus and Muslims commenced after the disturbances took place in the Bhusar Mohalla-Old Thana Road locality.
- (n) At Khoni there was at first the stoning of Muslim houses and the arson to Muslim properties at about 6 p.m. by the villagers who were returning from the Shiv Jayanti procession followed by an attack by the Muslims on Hindu properties and looting and arson to some of them. This led to another attack on the Muslims and the setting fire to Muslim properties.

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CHAPTER 44

THE COURSE OF THE DISTURBANCES—THE FIRST NIGHT

CONTENTS

Paragraph

- 44.1 A night of tragedy and terror.
- 44.2 The first police firing at the Bombay-Agra Road (near the S. T. Depot).
- 44.4 The second police firing at the Bombay-Agra Road (near the Government grain godown).
- 44.7 The third police firing at the Bombay-Agra Road (near the S. T. Stand).
- 44.11 The police firing at Vetalpada.
- 44.15 The fourth police firing at the Bombay-Agra Road (near the National Garage).
- 44.17 The attack on the Thana fire-engine.
- 44.35 The alleged attack on the police lines, the Court House and the Magistrates' Bungalows.
- 44.49 The alleged rioting near Dhamankar Naka.
- 44.50 The obstruction to the Kalyan water-tanker.
- 44.51 The obstruction to the Ulhasnagar fire-engine.
- 44.52 The police firing at Khadak.
- 44.61 The second police firing at Habsan Alli.
- 44.63 The night attacks on Habsan Alli.
- 44.67 The obstruction to the Thana fire-engine at Teen Batti.
- 44.68 The obstruction to the Bombay fire-engine at Khadak.
- 44.70 The police firing near Sutar Alli.
- 44.74 The police firing at Gauripada.
- 44.77 The police firing at Kombadpada.
- 44.83 The arrests at Bunder Mohalla.

THE COURSE OF THE DISTURBANCES—THE FIRST NIGHT**A night of tragedy and terror**

44.1 A clear picture in all its horror of what Bhiwandi passed through on the night of May 7, 1970 emerges from the evidence. It was a grim night for Bhiwandi—a time of tragedy and tribulations. Fires raged everywhere—in streets and alleys, in lanes and by-lanes. A thick pall of smoke hung over Bhiwandi and the flames could be seen from miles around, even from the junction of the Eastern Express Highway with the Bombay-Agra Road 18 kilometres away. In some places the blaze was so intense (as at Mustafa Kuvari's timber-depot) that the flames rose sky-high. An equally big fire was raging at Teen Batti where a row of shops and commercial establishments were on fire and there were fires in every lane leading to it and they were fast spreading. The pressure in the water hydrants—even though the main valves were opened out—was low. There were not enough fire-engines to cope with the fires which were raging, and the narrow streets and houses huddled close together made fire-fighting operations difficult. The moment a fire-engine returned to the Control Room, it was sent out on another fire-fighting operation. The electricity power supply had failed and it was pitch-dark. Even so important a nerve-centre for directing operations as the Bhiwandi Town Police Station with its Control Room was working with the help of just one kerosene lamp. There was only one telephone at the Town Police Station and it worked intermittently on account of the raging fires, and while it was working it was constantly engaged with incoming calls for help. People rendered homeless by the fires or out of apprehension of an attack on their locality had taken shelter in schools, mosques and temples and in the verandahs and compounds of houses in other localities which were safer. Mobs assembled and when dispersed, re-assembled in other places. They poured out of alleys, and lanes and by-lanes, brandishing sticks and iron-bars, and hurling stones and brickbats, and tossing acid-bulbs and fire-balls. Messages for help came pouring into the Control Room and police parties on foot and in vehicles rushed from place to place. The Police would open fire and the mob would melt away only to re-emerge at another place. There was a steady stream of the injured, the dead and the dying at the Bhiwandi Municipal Dispensary and the more serious cases were rushed to the Thana Civil Hospital. Many left Bhiwandi that night, trudging long and weary distances to what they thought were safer villages and towns. On the way they encountered

road-blocks and barricades and armed hostile mobs waiting to fall upon them. Several of the refugees were injured, some killed, and three Muslim women fleeing from Bhiwandi to Kalyan were set upon on the way near Kajoli Village by 10 to 12 ruffians and raped [G.W. 3/1(5)/152(2), 97/207; G.W. 4/1(23)/1190(8); P.W. 59/1(50)/1500(28); P.W. 62/1(12-4)/1073(4-5); P.W. 3/15-7/232-4; P.W. 5/1/311; P.W. 8/4/351-2, 18/370, 20-2/375-6; P.W. 14/8/437; P.W. 15/1(2-3)/440(2); Exs. P 367, P 368 and P 1511].

**The first police firing at the Bombay-Agra Road
(near the S. T. Depot)**

44.2 At about 8 p.m. on May 7, 1970 D.M., Capoor, who was then in the Control Room of the Bhiwandi Town Police Station, received a telephone call from the office of the Taluka Magistrate intimating that an attack on the Government grain godown was apprehended. Thereupon S.P., Bhave went in a police van to the Bombay-Agra Road with a police party consisting of P.S.I., L. R. Deshpande (P.W. 42), one more police officer and 20 S.R.P. men. While proceeding towards the grain godown *via* Vanjarpatti Naka. Bhave saw a road-block of boulders and a mob of about 25 to 30 persons standing by the road. One of the persons in the mob was carrying a lighted torch. Bhave immediately stopped the police van and got down from it whereupon the mob started advancing and one from it shouted "Jala Do" (Set fire). Bhave warned the mob to disperse and on their failure to do so, he fired one round from his .455 revolver. The rioters thereupon started running away. They were chased but disappeared in the dark and no one could be arrested. It is not known if any one was injured in this firing nor could the community of the mob be ascertained as it was dark and there were no lights. Bhave and the police party then removed the boulders and proceeded to the grain godown [P.W. 4/1(86)/236(55), 115/607; P.W. 42/1(6)/905(2); P.W. 59/1(50)/1000(29)].

44.3 This was a mob which had barricaded the road and manifested an intention to attack the police party and to set the police van on fire. There was thus danger both to life and to property. The firing was, therefore, justified.

**The second police firing at the Bombay-Agra Road
(near the Government grain godown)**

44.4 After removing the road-block near the S. T. Depot, S. P. Bhave, P.S.I., L. R. Deshpande and the S.R.P. party proceeded on foot to the Government grain godown next to it. They found a mob of about 50 persons trying to break down its shutters with sticks and stones. These persons were obviously part of the same mob which Bhave had encountered at the road-block erected near the S. T. Depot. On seeing the Police the rioters threw stones and soda-water bottles at them. Bhave thereupon fired two rounds from his .455 revolver, one of which misfired. The mob thereupon ran away into

the darkness. The police party chased the rioters, but they jumped over the fencing and disappeared in the dark. It is not known whether anyone was injured in this firing [P.W. 4/1(86)/236(55), 331/802; P.W. 59/1(50)/1000(29), 12/1007; P.W. 42/1(6)/905(2)].

44.5 The unfortunate thing about this incident is the slant sought to be given to it by the Control Room Officer, P.S.I., Saidane. Capoor has categorically deposed that he was not informed about the community of the mob when he received the telephone call from the Taluka Magistrate's office. Nonetheless entry No. 90 of the Control Room Diary for that day (Ex. P 367) made by P.S.I., Saindane states "Received a phone from Kacheri that a large crowd of Muslims have collected near grain godowns. Superintendent of Police and party left for the spot". This telephone call was received at 8 p.m. and Bhave has deposed that when he reached the spot it was dark and he, therefore could not make out the community of the mob. One then wonders from where P.S.I., Saindane got the community of the mob, unless from his communal bias.

44.6 This was a mob on the rampage out to loot the stock of grain in the Government grain godown and but for the firing resorted to by S.P., Bhave, the rioters would have succeeded in their object. The firing was, therefore, justified.

The third police firing at the Bombay-Agra Road (near the S. T. Stand)

44.7 Information was received at the Control Room at about 8-45 p.m. on May 7, 1970 that a large crowd had collected near the S. T. Stand. C.P.I., Tikale (P.W. 36) and P.S.I., Chougule (P.W. 37) were, therefore, asked to proceed to the S. T. Stand on the Bombay-Agra Road along with Armed H.C., Surve and U.P.Cs. Mulik and Narvekar. On reaching the S. T. Stand near the S. T. Depot, the police party saw a mob of 200 to 300 Hindus setting fire to Muslim shops. About 18 Muslim properties, including a laundry, a hotel and a pan shop, had already been set on fire and about 11 shops had been looted by these rioters. On seeing the Police the mob started throwing stones and soda-water bottles at them. C.P.I., Tikale warned the rioters to disperse and on their failure to do so, he ordered P.S.I., Chougule to open fire. Accordingly, P.S.I., Chougule fired 8 rounds from his .38 revolver at the mob which was near a 'Panpatti' shop. Three of these rounds misfired. The mob retreated, but reassembled in the lanes and continued the attack. C.P.I. Tikale, therefore, ordered H.C., Surve and P.Cs., Mulik and Narvekar to open fire. Accordingly, they fired 2, 3 and 1 rounds respectively from their .410 muskets. This had the desired effect and the mob dispersed immediately. On order being thus restored the police party returned to the Control Room. It is not known if anyone was injured in this firing [P.W. 36/1(8)/844(6-7), 7/846, 27/855; P.W. 37/1(2)/856(3) 3/857; Ex. P 194].

44.8 The evidence on record shows that a mob of Hindu rioters was committing arson to Muslim properties and when confronted by

the Police, the mob threw stones and soda-water bottles at the police party. There was thus imminent danger to the lives of the members of the police party and to the properties of the Muslims. P.I., Tikale (P.W. 36), therefore, opened fire and dispersed this mob. The police firing was, therefore, justified.

44.9 One Shamlal Sindhi was originally shown as having died in this police firing as the report of the Civil Hospital, Thana, showed that he had received a bullet injury on the night of May 7, 1970. Subsequently investigation showed that Shamlal did not die as a result of a bullet injury but due to haemorrhage and laceration of the brain as a result of a fracture of the skull. Later the mother of the deceased lodged a complaint with the Police that while the deceased was travelling in a truck, the truck was attacked by a mob near Saibaba Mandir in Temghar Village on the Kalyan Road and the deceased was hit with an iron bar. A separate offence was, therefore, registered and Shamlal's name was deleted from the record of the S. T. Stand incident [P.W. 36/1(8)/844(7), 7/847 ; P.W. 4/10/246].

44.10 C.P.I., Tikale has opened fire on several occasions and has made firing reports in respect thereof. The only occasion on which he opened fire on a Hindu mob was the incident in question, namely, at the S. T. Stand on May 7, 1970 at about 9-00 p.m. In all his firing reports in respect of the fire opened by him on Muslim mobs he has mentioned the community of the mob. However, in the firing report in respect of this firing, he has not mentioned that the mob on which he opened fire was a Hindu mob. He has admitted in cross-examination that when he reached the S. T. Stand he knew that the mob was a Hindu mob because the persons in the mob were shouting in Marathi and that he had no doubt on the point of the community of the mob. The only explanation which he could give for not mentioning the community of the mob in his firing report was that he forgot about it because of pressure of work (P.W. 36/7/846). Pressure of work, however, did not make Tikale forget at any time the community of the mob when it was a Muslim mob. A similar omission is to be found in the F.I.R. (Ex. P 194) of this incident lodged by P.S.I., Chougule the next day. This F.I.R. also makes no mention of the community of the mob or of the owners of the shops and other properties which the mob had set on fire. Chougule has also reported this firing incident at the Control Room and the entry in respect of the information given by him is entry No. 97 in the Control Room Diary for that day (Ex. P 367) made by P.S.I., Saindane. This entry too is significantly silent about the community of the mob or of the owners of the properties which were set on fire. This is on a par with the other attempts of police officers and policemen to tone down the rioting on the part of the Hindus which have come on the record.

The police firing at Vetalpada

44.11 As we have seen, S.P., Bhave had gone to Vetalpada accompanied by P.S.I., L. R. Deshpande on learning at 8 p.m. on

May 7, 1970 that a mob was threatening to attack the Government grain godown. After opening fire and dispersing the mob, as Bhave and his party were coming out of the said area an employee in the Revenue Office complained to him that some Muslims were attacking Hindu huts, in Vetalpada. Bhave went there taking with him C.P.I., Ghosalkar (P.W. 40) who was patrolling in that area. When these officers reached the spot, they saw a Muslim mob trying to set fire to a chawl with four rooms which looked like zopadpattis and which were at that time mistaken by them for huts. After giving a warning to the mob, which went unheeded, Bhave fired 3 rounds from his .455 revolver. He also directed Ghosalkar to open fire and accordingly Ghosalkar fired another 3 rounds from his .455 revolver. It is not known whether anyone was injured in the fire opened by Bhave and Ghosalkar. The mob thereupon started running away. The police party, which at that time consisted of four officers, including S.P., Bhave, and 30 policemen, started chasing the rioters, but as they were chasing them, two or three fire-balls were thrown at the police party from the terrace of a two-storeyed building known as Banarasi Building. Some rioters had also run inside this building. The police party, therefore, rushed into the building and arrested 18 Muslims. Out of these 18 Muslims, 5 were arrested from the rooms on the first floor. In the said building there were four rooms on the first floor. Three of them were arrested from one room and the remaining two from another room. There were also young boys and women in the said rooms, but they were not arrested. In the other two rooms there were only women and children who were not arrested. The remaining 13 Muslims were found on the terrace hiding behind the wall of the structure which covered the staircase leading to the terrace and were arrested. There was a bucket half-full of kerosene, some fire-balls and a metal tumbler on the terrace which were taken charge of by the Police. The articles seized by the Police and the arrested persons were sent to the Town Police Station with C.P.I., Ghosalkar who lodged his F.I.R. which was registered as C.R. No. 183/70 (Ex. P 180). The S.P. asked P.S.I., L. R. Deshpande to remain there with a police party and patrol the Vetalpada area to ensure that no further trouble took place. Along with Deshpande he posted P.S.I. Naik of the S.R.P. Force [P.W. 4/1(87)/236(56), 262/756, 264/759; P.W. 40/1(5)/896(5), 5/897, 9/899; P.W. 42/1(5)/905 (3), 3/906, 5-7/907-8].

44.12 It was put to Bhave by the Muslim parties that there was no Muslim mob in the said locality but only a Hindu mob which had already set fire to some Muslim properties and was attempting to set fire to other Muslim properties and that the Muslims were, therefore, seeking to ward off the attack on their properties by lining up outside their houses and that Bhave arrested these Muslims in order to enable the Hindu mob to set fire thereafter to Muslim properties and thus made possible the burning of four Muslim properties, namely, Banarasi Building, Diamond Sizing, Tawakkal Hotel and a chawl with

four rooms. Bhave has denied this suggestion. There is no basis for any such suggestion except a statement in the affidavit of P.S.I., L. R. Deshpande that when they reached Vetalpada he found a mob setting fire to some Hindu huts and a factory. Bhave has categorically stated that the only building he saw on fire was a Hindu chawl and Ghosalkar is equally categorical on this point. L. R. Deshpande was cross-examined about the said factory mentioned in his affidavit. He stated that he learnt subsequently that the said factory was a Muslim factory and that the chawl comprising of huts was a Hindu chawl. When faced with the paradox that a Muslim mob would not be setting fire to Hindu huts as also to a Muslim factory, he changed his answer to say that when they went to Vetalpada, the factory was not on fire and must have been set on fire after he left Vetalpada at about 11-30 p.m. to patrol another area and that he saw this factory on fire for the first time on May 8, 1970 at about 3 or 4 p.m. and that at that time it was gutted. He admitted that he did not make any inquiry how and by whom this factory was set on fire. He then attempted to explain away the said statement in his affidavit about the mob setting fire to the Muslim factory by giving the reason that he had so stated because he saw it gutted the next day. He had to admit immediately that during the disturbances he had seen many burnt-down buildings in Bhiwandi. He was unable to assign any reason why only this particular burnt-down factory should have made such an impression on his mind that it should be the only building which he mentioned in this fashion in his affidavit. Had the matter rested on the evidence of L. R. Deshpande alone, the Muslim suggestion would have assumed considerable importance. From the manner in which P.S.I., L. R. Deshpande has conducted himself during the disturbances and his demeanour in the witness-box I am, however, not prepared to attach any weight to his testimony unless corroborated by other reliable evidence or accept it as against that of S.P., Bhave or C.P.I., Ghosalkar. The evidence of Bhave and Ghosalkar leaves no doubt that a Hindu mob was not on the scene when the police party went to Vetalpada and opened fire and that no Muslim building had been set on fire at that time. It is evident that these Muslim properties were set on fire after S.P., Bhave left and while P.S.I., L. R. Deshpande was patrolling the area and that he made no attempt either to prevent the arson to these properties or to drive away the Hindu rioters or to arrest any of them. This is the reason why this factory made such an impression on his mind and he happened to mention it in his affidavit.

44.13 In support of their case that there was only a Hindu mob the Muslim parties have relied upon the fact that a Hindu, Shantaram Maruti Mokal, who had a bullet-wound, was arrested by P.S.I., P. Y. Salvi (P.W. 33) on June 17, 1970 in C.R. No. 183/70 (Ex. P 180) lodged by C.P.I., Ghosalkar in respect of the arson to Hindu properties in Vetalpada. As being a Hindu he could not have committed arson to Hindu properties, he was prosecuted for committing a breach

of the curfew order on May 7, 1970 at about 9-30 p.m., that is, the time when Bhave and Ghosalkar opened fire, even though no curfew was in force at that time. Mokhal pleaded guilty and was sentenced to pay a fine of Rs. 10. The reason given by P.S.I., Salvi for prosecuting Mokhal for committing a breach of the curfew order and not for rioting or committing arson to the Muslim properties in Vetalpada was that Mokhal had come out of his house at about 9-30 p.m. on May 7, 1970 while the riots were going on and the Police had opened fire, in which firing he was wounded. It transpired in the cross-examination of P.S.I., Salvi that his only reason for saying that Mokhal had come out of the house while the Police had opened fire was Mokhal's own supplementary police statement recorded by P.S.I., Salvi on June 17, 1970 in which Mokhal had stated that at about 9-30 p.m. on May 7, 1970 he had come out of his house (in which his shop is also situate) to see what the matter was and had received the bullet injury. In his earlier police statement recorded on May 22, 1970 by D.S.I., T. B. More, who was then investigating the said case, Mokhal had, however, stated that at about 1 a.m. on May 8, 1970 he was sitting on the steps of his shop in Vetalpada and had received the bullet injury (P.W. 33/22/3691). On May 7, 1970 fire was opened by the Police four times in and around Vetalpada—the first time near the S. T. Depot by S.P., Bhave at about 8-10 p.m. the second time near the Government grain godown by S.P., Bhave a little later, the third time by S.P., Bhave and C.P.I., Ghosalkar at about 9-30 p.m. near Banarasi Building (the firing incident which we are discussing), and the fourth time by P.S.I., L. R. Deshpande near the National Garage at about 11-45 p.m. On May 8, 1970 at about 11-45 a.m. the Police opened fire near Malaysia Sizing in Kacheripada a neighbouring locality) situate behind the Taluka Police Station and the Court building on the Bombay-Agra Road. On May 9, 1970 at about 3-10 a.m. the Police again opened fire in Kacheripada. Except Mokhal's own bare statement contained in his supplementary police statement, which itself is in contradiction to his own earlier statement made to D.S.I., More, there is nothing to show that he had received a bullet injury on May 7, 1970 at 9-30 p.m., which would be the time when S.P., Bhave and C.P.I., Ghosalkar opened fire and not in any other police firing. We have it in the evidence of Bhave and Ghosalkar that there was no Hindu mob or Hindu rioter on the scene and no Muslim property had been set on fire when they went to Vetalpada. The local inspection taken on February 24, 1973 has shown that Mokhal's residence is situate in a totally different direction from the place where Bhave and Ghosalkar opened fire. It is not even in any indirect line of fire and it would, therefore, be impossible for anyone sitting in the said shop or standing in the lane outside Makal's house to be injured in the fire opened by either Bhave or Ghosalkar. Mokhal could, therefore, not have been injured in this firing and must have received his injury at some other place and some other time.

44.14 So far as the justification for opening fire by S.P., Bhavne and C.P.I., Ghosalkar is concerned, there was a mob of Muslim rioters which had already committed arson and was about to commit further acts of arson. The violent mood of the mob can be judged from the fact that when the Police chased the rioters after dispersing them by opening fire, they or some of their confederates attacked the police party by throwing fire-balls at it. This firing was, therefore, justified.

The fourth police firing at the Bombay-Agra Road (near the National Garage)

44.15 After S.P., Bhavne left Vetalpada, as directed by him P.S.I., L. R. Deshpande stayed in Vetalpada patrolling this area. While patrolling, at about 11-45 p.m. Deshpande noticed some Muslims setting fire to Hindu properties near the National Garage on the Bombay-Agra Road. He tried to disperse the mob by making a lathi-charge, but the rioters started throwing stones at the police party. The lathi-charge proved ineffective. Meanwhile a P.C. whistled for help, whereupon H.C., P. B. Patil who was near the Court building and H.C., D. G. Gurav (P.W. 58) and P.C., Jondhale, who were on duty near the Government grain godown, rushed to the Bombay-Agra Road. As the mob continued rioting and throwing stones at the Police, Deshpande ordered H.Cs., Patil and Gurav and P.C., Jondhale to open fire. Accordingly, H.C. Patil fired 2 rounds from his .410 musket and H.C., Gurav and P.C., Jondhale fired 6 rounds and 9 rounds respectively from their .303 rifles. This had the desired effect and the rioters started running away. Deshpande and his party chased the rioters and succeeded in arresting 12 of them. He then brought them to the police station and lodged his F.I.R. which was registered as C.R. No. 182/70 (Ex. P 179). It is not known whether anybody was injured in this firing. Out of the 12 Muslims who were arrested, 2 gave false names and thus could not be traced when put in police custody along with other prisoners. The remaining 10 accused pleaded guilty to having committed an offence under section 143 I.P.C. of being members of an unlawful assembly and were convicted and sentenced to pay a fine [P.W. 42/1(8)/905(4) ; P.W. 58/1-5/997-9].

44.16 The evidence shows that the Muslims had set Hindu properties on fire and were continuing their illegal activities. They attacked the Police by throwing stones at them. P.S.I., L. R. Deshpande had to open fire with a view to prevent any further damage to property or injury to some members of the police party. The firing was, therefore, justified and it proved a deterrent because there was no further trouble on the Bombay-Agra Road that night.

The attack on the Thana fire-engine

44.17 The message from the Bhiwandi Control Room to the Thana Control Room to send fire-engines was received by the Thana Control Room at 6-35 p.m. (Ex. P 466, entry No. 16). On receipt of this message, the Thana Control Room telephoned the Thana Fire Station. The

practice of the Thana Fire Station at the relevant time was that when a call was received, the fireman on telephone duty noted it down in the Call Slip Book. Call slips were written in duplicate and the original was given to the driver of the fire-engine to enable him to know the address to which he was to proceed. According to Fire Station Officer V. P. Chitre (P.W. 8), the originals were not preserved. The said call from the Thana Control Room was entered in Call Slip No. 533 of the Call Slip Book of the Thana Fire Station. The carbon copy of the said call slip is Exhibit P 416. The time when a fire-engine left on a fire-fighting operation and the names of the members of the crew were written out in the Occurrence Book of the Thana Fire Station. In pursuance of the said message received from the Thana Control Room, fire-engine No. MHT 2942 with Station Officer Chitre, the driver, fireman Ramchandra Keshav Kadam (P.W. 30) and four other firemen left for Bhiwandi. The entry in the Occurrence Book which shows the time when this fire-engine left for Bhiwandi and the names of the members of its crew is Exhibit P 417. According to Chitre, they left Thana within less than a minute of the receipt of the call from the Thana Control Room. The carbon copy of the said Call Slip No. 533 (Ex. P 416) and the said entry in the Occurrence Book (Ex. P 417) show the time when the call from the Thana Control Room was received and the time when the said fire-engine left as "6-45 p.m.". Strangely enough, the only call slip in the said Call Slip Book and the only entry in the said Occurrence Book in which erasures and overwritings occur is this particular Call Slip and this particular entry. In the carbon copy of the said Call Slip as also in the said entry the time originally written has been erased and the figures "18-45" written in Marathi over the erased portion. Thus, there is no reliable evidence about the time when this fire-engine left the Thana Fire Station and the time when it reached Bhiwandi is equally in doubt.

44.18 According to the Hindu parties and the Executive Magistrates and the District Police Officers, on reaching Bhiwandi the Thana fire-engine came across a motor cyclist who asked it to follow him, which it did. Hardly had they proceeded three or four furlongs when they saw a house on fire, stopped the fire-engine and were about to start the fire-fighting operations when an armed Muslim mob surrounded the vehicle asking them not to extinguish that particular fire. The crew of the fire-engine managed to extricate themselves and returned to the Bhiwandi Taluka Police Station, but the fireman Kadam was struck with a spear on his left ear by one of the Muslim rioters and wounded. According to the Muslim parties, Kadam was not injured by a Muslim rioter in Bhiwandi in the manner alleged but was wounded by an arrow shot at the fire-engine by a Hindu while on the way from Bhiwandi to Thana and the said fire-engine was not obstructed while about to start a fire-fighting operation in Bhiwandi, but was obstructed by some Hindus near Dhamankar Naka.

44.19 In support of their case the Executive Magistrates and the District Police Officers have examined three witnesses, namely, Fire Station Officer Chitre (P.W. 8/1-25/346-79), the injured fireman,

Ramchandra Keshav Kadam (P.W. 13/1-6/419-29, 7/439), and Police Jamadar Hari Fakira Gawade of the Thana Police Station (P.W. 12/1-5/412-8) who was posted on hospital duty at the Thana Civil Hospital from July 27, 1969 to November 3, 1970. The Hindu and the Muslim parties have not called any witnesses, but the Muslim parties have relied upon the police records and a newspaper report in support of their case. We will first examine the oral evidence of Chitre and Kadam.

44.20 Chitre has deposed that they reached Bhiwandi at about 7-15 p.m. They found a traffic constable on the Bombay-Agra Road outside the Inspection Bungalow and inquired from him where they should proceed. He directed them to turn left and go past the S.T. Stand. As they were turning, a motor cyclist in civilian dress came up and asked them to follow him. When they had gone about three or four furlongs they saw a house on fire. They stopped the fire-engine. Chitre got down to survey the situation and found a number of houses on fire. The firemen started preparing for fire-fighting operations when a Muslim mob of about 500 to 600 persons carrying swords, spears, axes, sticks and knives surrounded the fire-engine shouting "Alla Ho Akbar" and asked them not to extinguish that particular fire but first to extinguish the fires in Muslim localities which they would point out. According to Chitre, they had stopped on the main road near the entrance of a lane and before parking the fire-engine, they had passed the S.T. Stand, a mosque, two or three houses and a well which he later learnt was known as "Hanuman Bavdi". Chitre told the Muslims that he would do as they desired, but they should allow him to reverse and turn round the vehicle and one of them should come with him to show the way. He asked the crew to get in and the driver to reverse. He told the driver that the moment he had managed to turn round, he should drive on straight to the Bombay-Agra Road. As they turned round and started going towards the Bombay-Agra Road, he heard shouts of "Melo, Melo" ("I am dying, I am dying"). He looked back and saw Kadam, who had been standing in the rear of the fire-engine, on the pillion of the motor cycle. The motor cyclist signalled to Chitre to go ahead and that he would bring Kadam along with him. Kadam was resting his head on the thigh of the motor cyclist who was supporting him with one hand. When they reached the Bombay-Agra Road, the motor cyclist asked Chitre to take Kadam in the fire-engine and then left. Meanwhile an S.T. bus came along and as Kadam was bleeding profusely, Chitre stopped it, put Kadam on it and requested the driver and conductor to take Kadam to the Thana Civil Hospital. Kadam informed Chitre that he had been struck by a spear on the nape of his neck. Thereafter Chitre went to the Bhiwandi Taluka Police Station which was nearby and reported the incident and requested one of the constables there to give him police escort. Within about 15 to 20 minutes a police escort was given to him. It consisted of a police van to lead the fire-engine and four armed

constables posted on the fire-engine itself. With this escort the fire-engine proceeded to the Bhiwandi Town Police Station via Vanjarpatti Naka.

44.21 Kadam has deposed that while they were following the motor cyclist, the motor cyclist had turned back half-way probably thinking that since the flames were visible they knew where the fire was. While Chitre has deposed that the Muslims were shouting "Allah Ho Akbar", Kadam has deposed that they were shouting "Allah Ho Akbar", "Sale Ko Maro", "Sale Ko Todo" and "Sale Ko Kato". Kadam has further deposed that the Muslims were also threatening that if they did not go to extinguish the fire the Muslims wanted them to, they would beat them. According to him, as asked by Chitre he was standing in the rear of the fire-engine and as the fire-engine was reversing, about 25 Muslims out of the mob who were towards the rear of the fire-engine made a rush at him. They were armed with spears, swords and axes. Two persons were leading them. One of these two had a sword in his hand with which he aimed a blow at Kadam. Kadam who was standing on the footboard avoided it by jumping on to the vehicle. Another person, armed with an axe, also tried to strike him but did not succeed. At that time a third person carrying a spear came up and struck the back of Kadam's helmet and the helmet got pushed up with the blow. He then gave Kadam another thrust with the spear and struck him behind his left ear. Kadam fell down. The man who had struck him shouted, "He is trying to save himself, kill him". Kadam thereupon quietly got down from the fire-engine and finding a gap between himself and the crowd started running in the reverse direction towards the Bombay-Agra Road. He ran upto the said motor cyclist who was still on that road and asked him for help, requesting him to take him to a hospital. The motor cyclist made him sit on the pillion and took him to the Bombay-Agra Road by the same road by which they had come. Meanwhile the fire-engine came up. Kadam was put on an S.T. bus and taken by two passengers in the bus to the Thana Civil Hospital where his wound was cleaned and dressed. He has deposed that when the doctor asked him how he had come by his injury, he told the doctor that he was wounded by a spear. He was kept as an in-patient and discharged on the third day (P.W. 13/1/419-22).

44.22 The cross-examination of these two witnesses has not only brought out a number of discrepancies and contradictions in their evidence, some of which have already been referred to, but has established several facts which show that the alleged incident did not take place.

44.23 According to Chitre, he informed the police constables whom he met at the Taluka Police Station about what had happened and asked them to give police escort. One of these constables must have rung up the Bhiwandi Town Police Station because P.S.I., S. S. Mane (P.W. 46), A.H.C., Jayasingh Yeshwant Shirke (P.W. 17) and Lance Naik

Salvi were sent to the Taluka Police Station to escort the fire-engine. Mane has deposed that at about 7-30 p.m. while he was at the Town Police Station P.S.I., L. R. Deshpande (P.W. 42), the Control Room Officer, informed him that the Thana fire-engine had been stopped by some people near Dhamankar Naka and that thereupon he went there along with A.H.C., Shirke and Lance Naik Salvi and finding that the fire-engine had gone to the Taluka Police Station, he went to the Taluka Police Station, met Chitre, then asked the constables with him to act as escort to the fire-engine, and conducted the fire-engine to the Town Police Station [P.W. 46/1(6)/938(4)]. In the witness-box Mane stated that when he met Chitre at the Taluka Police Station, Chitre informed him that while proceeding towards the Town Police Station a Muslim mob had stopped the fire-engine near Hanuman Bavdi and that one of them had injured Kadam with a spear and that Kadam had been sent to the hospital by an S.T. bus (P.W. 46/6/941). H.C., Shirke has stated in his affidavit that P.S.I., Mane informed him that the Thana fire-engine was detained at Dhamankar Naka and asked him and Salvi to accompany him and that when they reached the Taluka Police Station they were asked by Mane to escort the fire-engine and they accordingly did so and were with it throughout the night. Curiously enough, no member of the crew of the fire-engine at any time told Shirke what had happened when the fire-engine first entered Bhiwandi or about the attack on Kadam [P.W. 17/1(3)/444(2)].

44.24 That some telephone call or message must have gone from the Taluka Police Station to the Control Room at the Town Police Station cannot be denied since P.S.I., Mane along with some constables was sent to Dhamankar Naka to give protection to the Thana fire-engine. A curious fact, however, is that there is no mention of the making of any such telephone call or the sending of any such message in the Station diary of the Taluka Police Station (Ex. P 1511) nor is there any entry in the Control Room Diary of the Town Police Station of any such telephone call or message being received. Obviously the message which was received was that a crowd had obstructed the fire-engine near Dhamankar Naka because the police party under P.S.I., Mane was asked to proceed to Dhamankar Naka. The Control Room Officer then in charge was P.S.I., L. R. Deshpande. From what we have seen about this sub-inspector and the Control Room Diary, if the information received was that a Muslim mob had obstructed the Thana fire-engine and that one of them had injured a fireman with a spear, P.S.I., L. R. Deshpande would most certainly have recorded it in the Control Room Diary, for it is only when Hindu rioters are concerned or involved that we find that either the incident is omitted to be mentioned or the community of the mob is not mentioned. It is significant that neither P.S.I., Mane nor H.C., Shirke have mentioned in their affidavits the community of the mob which is said to have obstructed the fire-engine near Dhamankar Naka.

44.25 Another curious fact is that no complaint about this obstruction by the Muslims to the fire-engine or of the injury to

Kadam has ever been lodged. There is no mention whatever in any record or document of any police station of any such obstruction or of Kadam being wounded with a spear by a Muslim from a Muslim mob. At no time was the police statement of Chitre or Kadam recorded. Kadam was at the Thana Civil Hospital for three days. Jamadar Gawade has deposed that from May 8, 1970 onwards police officers were coming to the Thana Civil Hospital to record statements (P.W. 12/3/416).

44.26 Yet another curious fact is that apart from telling the constables at the Taluka Police Station and P.S.I., Mane, Chitre has not mentioned this incident to anyone. He has deposed that during the night while they were engaged in fire-fighting operations at Teen Batti, the police bandobast provided for the fire-engine included two or three police officers with whom he carried on conversation. He had also been to the Town Police station that night three or four times and after he had extinguished the fires at Teen Batti he also met the D.M. and the S.P. at the Town Police station and was directed by them to proceed to Kuvari's timber depot to put out the fire to it. Yet he did not at any time mention about this incident to anyone of the police officers on bandobast duty with whom he conversed at Teen Batti or to the D.M. or to the S.P. or to anyone else at the Town Police Station. Chitre also did not take down the number of the motor cycle (P.W. 8/10/359, 12/364, 20/374).

44.27 Stranger than even these facts are the entries in the Occurrence Book of the Thana Fire Station. The entry for May 7, 1970 showing the departure of the fire-engine (Ex. P 417) states that fire-engine No. MHT 2942 left with the Station Officer, that is Chitre, and the driver and five firemen. The driver and the firemen are not mentioned by name, but their initials are mentioned and the initials of one of them is "R.K.K.", that is the initials of Kadam. This fire-engine returned to the Thana Fire Station at 8-13 a.m. on May 8, 1970. The entry about the return of the fire engine (Ex. P 418) states, "*The Station Officer and all the firemen who accompanied returned to the fire station*". There is no mention in this entry of any obstruction to the fire-engine or of any injury to any fireman. Chitre has attempted to explain away this omission by stating that this incident was not mentioned in the Occurrence Book because it was not the practice to do so. Since, however, it could never be the practice to show that all firemen who had set out returned to the Fire Station when one of them did not, Chitre was unable, as was to be expected, to explain the statement in the said entry that all the firemen had returned to the Fire Station (P.W. 8/11/360).

44.28 Though P.S.I., Mane has deposed that Chitre informed him that a Muslim mob had stopped the vehicle near Hanuman Bavdi and one of them had injured Kadam with a spear and Kadam had been sent to the hospital by an S. T. bus, Suprisingly enough his affidavit does not state that any such information was given to him

by Chitre, but only mentions the information given to him by P.S.I., L. R. Deshpande. Another reason why Mane cannot be believed is that Chitre's own evidence is that he was not familiar with Bhiwandi, that he did not know the name of the locality where the Muslim mob obstructed him and that he came to know later in the night while fighting the fires at Teen Batti that the well which they passed on the way before stopping was called Hanuman Bavdi (P.W. 8/3/349,9/357). He could not have, therefore, mentioned the name 'Hanuman Bavdi' to Mane while proceeding to the Town Police Station from the Taluka Police Station.

44.29 Things, however, become "curiouser and curiouser" (as Alice would say) when we turn to the reports made by Chitre on returning to Thana. He has made three reports on May 8, 1970, one to the Fire Brigade Officer and two to the Chief Officer of the Thana Municipal Council. According to him, he wrote all these three reports in one sitting on reaching the Fire Station before going up to his quarters. The first report to the Fire Brigade Officer, who was his immediate superior (Ex. P 420), is written on page 49 of the Station Officer's Report Book and merely states that he left for Bhiwandi on May 7, 1970 at 6-45 p.m. with fire-engine MHT 2942 and that after working for 13 hours he requested the D.M. on May 8, 1970 for orders to return and that on the D.M. telling him that he could return on another fire-engine arriving from Thana, he explained to the D.M. that the Thana Fire Brigade did not have so many fire-engines and that another fire-engine would be able to go to Bhiwandi only after his fire-engine returned. There is not a word in this report about any obstruction to the fire-engine or about the injury to Kadam. His first report to the Chief Officer (Ex. P 421), is written on page 50 of the said Report Book and states that only 15 firemen were available in the Fire Brigade and taking into consideration the prevailing situation it was necessary that all should be given 24 hours' duty so that help could be sent immediately to other places. There is no mention in this report of any obstruction or injury to Kadam. Chitre has, however, explained that this was because this particular report related to the question of working overtime and he, therefore, made a separate report to the Chief Officer with respect to the obstruction to the fire-engine and the injury to Kadam. This is a logical explanation and could have been safely accepted but for the fact that there is no explanation (as there can be none) for the said report stating that there were only 15 firemen then available in the Thana Fire Brigade because we find that on May 7, 1970 before the fire-engine left for Thana, the available strength of the firemen, including Kadam, was 15 and since Kadam was hospitalized on the night of May 7, 1970, the available strength on May 8, 1970 was 14 and not 15. It is not possible that while writing this report Chitre could have forgotten Kadam lying injured in the Thana Civil Hospital. That he did not forget Kadam is shown by the fact that straight after finishing these three reports Chitre went to his quarters, bathed, changed his

clothes and went and saw Kadam in the hospital (P.W. 8/5/355, 11/360-1, 13/366, 16/368). The third and the last report Ex. P 422 was written on pages 51 and 52 of the said Report Book. It was, therefore, written after the other two reports. This report mentions that when they went to Bhiwandi they were asked by a traffic constable to go by the S. T. Stand Road and that after they had proceeded a short distance along that road a motor cyclist asked them to follow him which they did and after some distance they saw inside a lane several houses on fire and, therefore, just as they were taking the fire-engine inside the lane a crowd of 700 to 800 persons attempted to make an armed attack on them shouting "Extinguish the fire to Muslim houses first, otherwise..." and that he acceded to their demand and requested them to allow the fire-engine to turn round and asked his crew to get into the fire-engine, but told the driver to drive straight outside the town. The report further states that Kadam was at that time attacked with a spear. It then mentions how they saw the motor cyclist bringing Kadam on his motor cycle and asking them to go ahead and their putting Kadam on the S. T. bus. It then relates about the police escort given to the fire-engine and the fire fighting operations carried out in Bhiwandi. Chitre has admitted that the statement in the said report that they took the fire-engine inside a lane and were obstructed there was incorrect. Though in cross-examination he reiterated what he had stated in his examination-in-chief, namely, that the crowd was only shouting "Allah Ho Akbar", when shown the dots in his report he changed his answer and stated that these dots represented filthy abuses and that besides uttering filthy abuses, the crowd was threatening to tear out their entrails.

44.30 When we turn to the cross-examination of Chitre and Kadam we wonder whether there ever was any crowd of rioters there, leave aside Muslim rioters. Here was a mob—of 500 to 600 according to Chitre's evidence, of 700 to 800 according to the said report Ex. P 422 and of 300 Muslims according to Kadam—uttering filthy abuses and shouting threats, armed with spears, swords and axes, demanding that the fire-engine should first extinguish the fires to Muslim houses. This was a violent crowd since Kadam was thrice attacked, once with a sword, once with an axe and once with a spear. Yet what did these persons do when Chitre acceded to their demand and asked them to get into the fire-engine to show the way? According to both Chitre and Kadam, not one of them got into the fire-engine. We would expect this violent mob to attack the fire-engine when it sought to speed away, but we find that no one from that mob attempted to put the least obstruction in the way of the fire-engine. They merely stood there, gesticulating, asking them to go to the other side. So far as Kadam is concerned, though three persons had attacked him, when he started running away after being struck with the spear, no one obstructed him or prevented him and no one attempted to hit him again (P.W. 8/12/363, 20/374, P.W. 13/6/429). We are left bewildered

and wondering what could have happened to this mob of armed Muslims, breathing fire and fury, for them suddenly to have turned into a peaceful gathering of law-abiding citizens in spite of the frustration of their attempt to make this fire-engine come and put out the fires to their houses.

44.31 There is also a contradiction between the versions of Chitre and Kadam about the flight of the fire-engine to the Bombay-Agra Road. According to Chitre the motor cyclist was behind them carrying Kadam on his pillion and the fire-engine went first to the Bombay-Agra Road and then the motor cycle came there. According to Kadam he ran towards the Bombay-Agra Road, got on the motor cycle and the motor cycle went first to the Bombay-Agra Road and waited for the fire-engine to come.

44.32 What happened at the Thana Civil Hospital is the most curious part of the entire incident. When Kadam was taken to the Thana Civil Hospital, Jamadar Gawade made an entry (Ex. P 432) in the Thana Civil Hospital Police Entry Book. According to this entry, Kadam was brought by the driver and the conductor of the S. T. bus and Gawade took the signature of the driver at the foot of the said entry. According to Kadam, however, the driver and the conductor did not accompany him to the hospital, but he was taken there by two passengers. In the two entries which precede the entry Exhibit P 432 both of which relate to injured persons from Bhiwandi, the time of the arrival of the patients in the Thana Civil Hospital is mentioned as 6 p.m. and 7-10 p.m. respectively. No time, however, is mentioned in the said entry relating to Kadam. The explanation given by Gawade was that there was a rush of wounded and dead persons. According to Gawade, Kadam must have been brought to the hospital about three-quarters of an hour after 7-10 p.m. when a number of injured and dead were brought in from Bhiwandi and he, therefore, did not find time to write in the entry the time when Kadam was brought. He, however, did find time to take the S.T. bus driver's signature and also to write in the said entry that the conductor (mentioned by name and designation in the said entry) had accompanied the driver. Gawade did not make any report about Kadam to the Thana Police Station. He deposed that he had inquired from Kadam how he had come by his injury and Kadam had told him that he had gone to Bhiwandi on fire-fighting operations and was injured by a spear thrown by a Muslim. We would expect the information given to him by Kadam to be mentioned in the said entry Exhibit P 432, but strangely enough, the said entry only mentions that Kadam was injured on the car at Bhiwandi and does not mention that the injury was caused by a spear. Of course, Gawade could have in the rush omitted to write in the said entry the weapon mentioned by Kadam and the community of Kadam's assailant, and he could possess a good memory and, therefore, depose in the witness-box what Kadam had told him. His memory, however, appears to be good only so far

as Kadam is concerned, for Gawade was unable to enlighten us whether, apart from Kadam, any other person with a spear wound was brought to the Thana Civil Hospital during the disturbances (P.W. 12/3/415, 5/417). Our confidence in Gawade's memory is further shaken when we turn to the medical certificate (Ex. P 423) issued to Kadam by the Medical Officer of the Thana Civil Hospital and find that the history of the case is mentioned in it as "alleged assault with arrow".

44.33 It appears that Kadam was lionized in the hospital. In May 1970 the Thana Municipal Council was controlled by the Shiv Sena. After Kadam was taken to the hospital not only all the Shiv Sena Councillors, but all the other Councillors of the Thana Municipal Council came to see him and the next morning an M.L.A. from Thana along with his family also came to see him. Kadam narrated the incident of the attack on him to all of them, but strangely enough not one of them asked him whether he had made a complaint to the Police or asked him to make one (P.W. 8/19/372 ; P.W. 13/3/425, 4-5/427-8). It is thus clear that the assault with a spear on Kadam by a Muslim had become the talk of the town. Newspaper reporters would have pounced upon this incident. One newspaper has reported this incident, namely, the May 8, 1970 issue of the daily the *Indian Express* [Ex. Mh. (Ind.) (1)]. This report while giving the news about the disturbances in Bhiwandi stated, "Amongst the injured persons were ... one Thana firemen who was on way to Bhiwandi and was hit by an arrow". Kadam was treated handsomely by the Municipal Council. He was given two months' leave and also got treated at the expense of the Thana Municipal Council by an E.N.T. Specialist at the Lokmanya Tilak Municipal General Hospital, Sion, Bombay. It was put to Chitre and Kadam in cross-examination that it was at the instance of the Shiv Sena and Jan Sangh municipal councillors that they were stating that a Muslim mob had obstructed the fire-engine and that a Muslim had attacked and injured Kadam with a spear. They have denied this suggestion.

44.34 In this state of evidence it is not possible to determine how and when Kadam came by his injury. One thing, however, is clear. Both Chitre and Kadam are not telling the truth and I disbelieve their evidence about how Kadam came by his injury. I also disbelieve that the said report Exhibit P 422 was made at the same time as the reports Exhibits P 420 and P 422. I hold that the said report was made subsequently at the instance of interested parties. I also disbelieve P.S.I. Mane when he states that Chitre informed him that his fire-engine was obstructed by an armed Muslim mob and that a Muslim from the mob had wounded Kadam with a spear. I disbelieve Jamadar Gawade when he states that Kadam told him that a Muslim had struck him with a spear. There is no direct evidence that Kadam was wounded with an arrow while on the way to Bhiwandi, but he was certainly not wounded after he had entered Bhiwandi. He could, therefore, only have been wounded on the way. The villages between

Bhiwandi and Thana are either Hindu villages or villages in which there are a very few Muslim houses. Injured persons from Bhiwandi had already started coming to Thana from 6 p.m. onwards and Chitre has told us that clouds of smoke were rising above Bhiwandi and could be seen from a long distance (P.W. 8/18/370). It had spread everywhere that communal disturbances had broken out in Bhiwandi. The villagers had seen thousands of other villagers marching to Bhiwandi to join the Shiv Jayanti procession carrying lathis. They had been subjected prior to May 7, 1970 to the propaganda carried on by the R.U.M. that it would teach the Muslims a lesson if they in any way sought to obstruct the Shiv Jayanti procession. On seeing the fire-engine proceed towards Bhiwandi they would, therefore, take it that the R.U.M. had made good its promise. The other fire-engines proceeding to Bhiwandi were all obstructed by Hindus. It is, therefore, very likely that this fire-engine was also obstructed by Hindus and an arrow shot at it. There is, however, no direct evidence on this point to give a definite finding. From the affidavits of P.S.I., Mane and A.H.C., Shirke it is, however, clear that the report which Chitre gave at the Taluka Police station was that he was obstructed by some persons at Dhamankar Naka. This is a purely Hindu locality and from the fact that the community of the mob is not mentioned in the affidavit and the Control Room Diary omits to record this information, it can safely be presumed that the fire-engine was obstructed near Dhamankar Naka by some Hindus and thereupon it went to Taluka Police Station to seek police escort.

The alleged attack on the police lines, the Court House and the Magistrates' Bungalows

44.35 The police lines where there are chawls for the residence of police constables are adjacent to the Bhiwandi Taluka Police Station. The Bhiwandi Taluka Police Station is in the same compound as the Mamlatdar's office. Beyond the police lines is the building in which the civil and criminal courts are housed and in the compound of which there are the bungalows where two Civil Judges and Judicial Magistrates were residing. It is alleged by the Hindu parties that in the night of May 7, 1970 Muslim mobs attacked the police lines, the Court house, and the Magistrates' bungalows. The only evidence with respect to these incidents is that of a Parsi, Eruch Kawasji Hawewala (N.H.W. 8/1-7/1824-35), who had filed an affidavit through the Nagarik Hitarakshak Mandal and was called as a witness by the said Mandal.

44.36 Hawewala was the Vice-President of the Bhiwandi-Nizampur Municipality from 1942 to 1947. He was elected from the Prabhu Alli Ward, a Hindu locality, where he had his own house. From 1943 to 1948 he was an Honorary Magistrate. From 1947 onwards he had been working as a District Village Defence Organizing Officer in the Thana District. He was the chief trustee of Kawasji Hawewala Charity Maternity Home, known as Hawewala Maternity Home,

situate on the Vegetable Market Road in Bhiwandi. For some time prior to the disturbances he had gone to reside in his own house in Rahanal village, about a mile from Dhamankar Naka on the Bhiwandi-Thana Road. He was a member of the Rahanal Grampanchayat which is a purely Hindu village. He was elected to this Grampanchayat from an Adiwasi ward.

44.37 According to his affidavit, on May 7, 1970 Hawewala had been to Kasheli village to attend a family planning meeting which the Chairman of the Thana Zilla Parishad had attended. After the meeting Hawewala went to the Rahanal Panchayat Samiti Office which is near the Bhiwandi Taluka Police Station. He was travelling in a jeep and at about 5-30 p.m. when he came to Dhamankar Naka he saw thick clouds of smoke coming from the town and some persons running hither and thither. He straightway went in his jeep near the Bhiwandi Taluka Police Station. What happened thereafter is thus set out in his affidavit (N.H.W. 8/1(5)/1824(2-3) ;

“When I came in a jeep near Bhiwandi Police Station in the evening on the date the 7-5-70, it was seen that houses were set on fire in Bhiwandi town and noise was heard as if bombs were bursting in the town and shouts and clamourings of the people were heard. At that very time at about 7 O'clock in the evening 25 to 30 Muslims came from the side of Patel's bungalow with spears, daggers and acid-bulbs in their hands and they attacked the neighbouring Police linnes shouting the slogans, “Allah-ho-Akbar-Marô Kafirko (Kill the unbelievers)”, etc. But the Policemen who were there ran and caught hold of one person from amongst them. The rest of the persons ran away. The said policemen produced the person whom they had caught at the police station. The Muslim persons again made attacks twice on the house of the Policemen within an hour's time in the manner stated above. At that time also the Police had caught some Muslim persons. Then one Fire-brigade vehicle came to the Police station from Bhiwandi Town. The said vehicle was of Thana Fire Brigade. The Officer of the said Fire Brigade told me that while their vehicle was going from road in Bhiwandi town, one of his men was assaulted by a Muslim in a Muslim Mohalla and that they had sent him to Thana in an S. T. Bus. He further stated that unless the help of armed policemen was given to them, they were not prepared to go to the town for extinguishing fire. On hearing this I arranged to send four armed police constables with them. After some time one constable came and told me that both the Magistrates were sitting inside by closing the doors of their bungalows in the court compound and the persons belonging to Muslim community were attacking on them from both the sides. Then I somehow went in the jeep near their bungalows. While I was going the persons belonging to Muslim community threw stones on my jeep also near Patel's bungalow. At that time when I went near their bungalows, noise like that of firings of bullets was coming from the ‘Zopadpattis’ (hutments)

of Muslims near Court compound and these Muslim men were shouting "Allah-ho-Akbar", etc. Just then one police constable followed me in a police van. In the meantime, I brought the said two Magistrates and their families and children out of the house, made them sit in the jeep and brought them safe in the compound of Taluka Police Station."

44.38 The officer of the Thana Brigade referred to by Hawewala was Station Officer Chitre of the Thana Municipal Fire Service (P.W. 8) and the man on the fire engine alleged to be assaulted was Ramchandra Kadam, the fireman on the fire-engine No. MHT 2942 of the Thana Fire Brigade which went to Bhiwandi on fire-fighting operations. The Muslim parties have challenged every incident alleged by Hawewala. Accordingly, the following points arise for determination :

- (1) Whether the Muslim mob attacked the police lines at 7 p.m on May 7, 1970 ?
- (2) Whether the police arrested anyone from the said mob ?
- (3) Whether Chitre, the Station Officer of the Thana Fire Service, told Hawewala that while they were going to Bhiwandi one of his firemen had been assaulted by a Muslim in a Muslim Mohalla and that he had been removed to Thana in an S. T. bus ?
- (4) Whether a Muslim mob attacked the Court building and the Magistrates' bungalows in the court compound ?
- (5) Whether Hawewala's jeep was stoned as he was going to the bungalows of the Magistrates ?

44.39 We will first see Hawewala's movements during the intervening period between his reaching the Bhiwandi Taluka Police station and the attack on the police lines alleged by him. According to his affidavit, Hawewala was near the Bhiwandi Taluka Police Station at about 5-30 p.m. though in cross-examination he stated that he did not know what the exact time was. From that time until 7 p.m. he was on the Bombay-Agra Road outside the Taluka Police Station. He was asked what he was doing all this time on the Bombay-Agra Road and he replied that he was trying to render what assistance he could. As an example of the assistance rendered by him, he has stated that when a car with Mustafa Fakhir's son in it passed the Taluka Police Station to go to the Bhiwandi, he asked him to turn back as riots had broken out in Bhiwandi. He has further said that there were very few policemen on the Bombay-Agra Road at that time and that they were also trying to help the people. During this intervening period he heard noises as if bombs were bursting in the town. Since it is nobody's case that bombs were burst anywhere near this locality and country bombs do not make when they explode as much noise as regular bombs, Hawewala obviously must have an extra-acute sense of hearing. Then comes the incident alleged by Hawewala, namely, the attack on the police lines. He has deposed in cross-examination that he did not know

whether there were any policemen inside the police lines at that time. He has further deposed that there were, however, four or five police constables on the Bombay-Agra Road armed with only canes and that the persons in the mob attacking the police lines had spears, lathis and daggers. He has further deposed that they were not carrying any acid-bulbs and that they did not throw any acid-bulbs. He was faced with the statement in his affidavit that they had acid-bulbs in their hands and he answered that the said statement was not correct. So far as the arrest of the Muslim rioter who he alleged was the first to be arrested, Hawewala has deposed that he was carrying a dagger and that he saw the dagger himself and saw the arrested man being taken away by the Police inside the compound of the Bhiwandi Taluka Police Station. When asked he said that he did not know whether that man was prosecuted or not (N.H.W. 8/9/1831).

44.40 The one thing that anyone would naturally expect the Police to feel most incensed about would be an attack on the police lines where their families are also residing and the Police would spare no pains to find out who the miscreants were in order to bring them to book and if they had succeeded in arresting any rioters and had taken them in custody, they would most certainly prosecute them and in that prosecution an eye-witness of position and status like Hawewala would be a material, if not the most material, witness. From his activities that night alleged by him in his affidavit the Police knew that he was present and the first thing that would be done in the investigation of that case would be to record his police statement. But imagine our surprise to find that his police statement was not recorded at any time. There are, however, other surprises in store for us like Ossa piled on Pelion until we pass the point of credulity and reach the point of disbelief. We find that there is no mention in the station diary of the Bhiwandi Taluka Police Station of any attack on the police lines or of the arrest of any Muslim rioter—leave aside a Muslim rioter with a dagger in his hand. We find that no Muslim was ever prosecuted for any attack on the police lines or for rioting on the Bombay-Agra Road outside the Taluka Police Station. We find that there is no record whatever anywhere, except what appears in the affidavit of Eruch Hawewala, of any such incident ever having taken place. From all this we can only conclude that the entire incident is an invention—whether of Hawewala or some one else will be seen later.

44.41 We turn now to the meeting alleged to have taken place between Hawewala and Fire Station Officer Chitre, at which we are informed by Hawewala that Chitre told him about the assault on one of his firemen by a Muslim in a Muslim Mohalla in Bhiwandi. The incident of this alleged assault has already been discussed and it has been held that Kadam was neither assaulted by a Muslim nor did the incident of assault take place in the manner alleged by Chitre and Kadam. Chitre could have, therefore, not given Hawewala the information alleged by Hawewala. Hawewala's cross-examination on

this point shows that Hawewala did not meet Chitre. In his cross-examination Hawewala has elaborated upon what took place at the time of the alleged meeting between him and Chitre. He has stated (N.H.W. 8/9/1830-31) :

"The Thana Fire Brigade engine entered the compound of the Taluka Police Station. I myself did not enter the compound of the Taluka Police Station except once when I drove into the compound in my jeep with the Magistrates and their families to leave them at the Mamlatdar's Office. The Fire Brigade Officer came out on the road and talked with me. I was on the road along with the Block Development Officer, the Chairman of the Panchayat Samiti Office. We were all in civilian dress. The Fire Brigade Officer came to us immediately after parking the vehicle. I did not tell him to go inside the police station and get some police escort from there. While the Fire Brigade Officer was talking with us, a police van came there with some S.R.P. men and Sub-Inspector Mane. I requested Sub-Inspector Mane to arrange for police escort for the fire-engine. The Fire Brigade Officer told me that he was proceeding from Hanuman Bavdi to a Muslim Mohalla and on the way one of his firemen was attacked and that he had put him on an S.T. bus and sent him to the Thana Hospital and had himself come to the police station for escort. The officer did use the words 'Hanuman Bavdi'."

44.42 We have already seen that, Chitre was not familiar with Bhiwandi and did not know the locality where the alleged incident of the attack on the fireman took place and it was only later in the night while fighting the fires at Teen Batti that he came to learn that the well which he had passed on the way was called Hanuman Bavdi.

44.43 In cross-examination Chitre has given further details as to what transpired while he was at the Taluka Police Station (P.W. 8/12/363-4) :

"It took about 15 to 20 minutes after we reached the Taluka Police Station and reported the incident for the escort to be made available to us. During this period we were in the compound of the Taluka Police Station. We had parked the vehicle in the compound. The police van came later from outside. I do not know the name of the Police Inspector who was in the van. He was a Sub-Inspector. The Sub-Inspector had a talk with me while we were in the compound of the Taluka Police Station. The information which I had given to the constable I repeated to the Sub-Inspector, I informed him about the obstruction by the crowd and what had happened to Kadam. The Sub-Inspector did not reduce my information to writing. He was in a hurry and asked us to follow him."

Thus, while according to Hawewala his conversation with Chitre took place on the road outside the Taluka Police Station, according to Chitre, he never left the compound. According to Chitre's evidence, he was throughout in the compound of the Taluka Police Station and he had a talk while in the compound with the Sub-Inspector who came there

in a police van. Further, according to Chitre, the only persons he talked with while he was at the Taluka Police Station were a police constable and a Sub-Inspector who asked him to follow him. Chitre makes no mention of any other person bustling around and obtaining armed police escort for him. It is obvious that this alleged meeting and conversation between Hawewala and Chitre has been trotted out in Hawewala's affidavit merely to lend support to the story that the fireman Kadam was attacked in Bhiwandi by a Muslim.

44.44 Turning now to the incident of the alleged attack on the Court house and the bungalows of the Magistrates, according to Hawewala's affidavit a constable informed him that Muslim mobs were attacking the bungalows of the Magistrates from two sides and that when he (that is, Hawewala) went there in his jeep, his jeep was stoned, and that the Muslim rioters were shouting "Allah Ho Akbar". His affidavit makes no mention of his personally witnessing any attack on the bungalows of the Magistrates or the Court house. This defect, however, was made good by him in his examination-in-chief in which he has deposed (N.H.W. 8/4/1825-6) :

"I went to the Magistrate's bungalow at about 9-30 or 10 p.m. There are two bungalows of Magistrates in the Court Compound. *In May 1970 there was no compound wall and no fencing in the Court Compound. When I went to the Magistrate's bungalow I did not see any mob inside the Court Compound.* There was a mob behind the Magistrates' bungalows and on one side of the Court Building, but *both these mobs were outside the Court Compound.* The persons in the mobs were throwing bulbs in the Court Compound and were shouting 'Maro, Maro'. *The mob at the back was about 70 to 100 feet from the bungalow, while the mob at the side was about 100 to 150 feet from the bungalow.* The mob at the side was on the left of the Court Compound as we enter the compound from the Agra Road. Both these mobs were Muslim mobs and presumably from the Zopadpattis behind the Court Compound."

44.45 Hawewala's cross-examination on this point is illuminating and deserves to be reproduced in his own words. He has deposed (H.H.W. 8/9/1832, 11/1834) :

"I do not know from where the constable, who gave me information that the bungalows of the Magistrates were being attacked, had come. *When I went to the Court Compound I found two or three police constables there. I did not see either of these two mobs near the Court Compound attacking any particular property.* From the road outside the Taluka Police Station, where we were standing, it was not possible to see the mobs near the Court Compound. I was myself driving the jeep. *I went alone in the jeep to the Court Compound.* I saw these mobs for the first time when I entered the Court Compound. On the way I passed Patel's bungalow. When I went to the Court Compound I heard the sound of gun-fire. I do not know who were firing the bullets. These were not the bullets being fired from any of the Muslim Zopadpattis near the Court Compound.

I heard some sounds which resembled the sound of bullets being fired, but I cannot say that it was gun-fire. These sounds were coming from all directions, not only from the direction of the Zopadpattis. It is true that in my affidavit I have not stated what I have deposed in examination-in-chief before the Commission, namely, that 'There was a mob behind the Magistrates' bungalows and on one side of the Court Building, The persons in the mob were throwing bulbs in the Court Compound and were shouting 'Maro, Maro'. 'I must have forgotten to mention this fact in my affidavit.

The bulbs were thrown by the mob to the rear of the Magistrates' bungalow. There was no one at the place where these bulbs fell. Though stones were thrown at my jeep and fell on it, my jeep was not in any way damaged nor was it in any place dented or scratched. On my return journey to the Taluka Police Station along with the Magistrates and their families no stones were thrown at my jeep."

44.46 Hawewala's answers in cross-examination leave one completely bewildered. Why did the constable give the information about the attack only to him and not at the Taluka Police Station? Why did this constable not ask for a police party from the Taluka Police Station to come to the rescue of the Magistrates? What kind of rioters were these Muslims who with no compound wall or fencing to keep them out were nonetheless standing outside the limits of the Court compound content with merely throwing acid-bulbs in the compound at nothing or no one in particular? Why were acid-bulbs thrown at a place where no one was there? What was the purpose of this exercise in futility? And what kind of stones were these which made not a single dent or scratch on Hawewala's jeep when they hit it? An attack on the Court house and on the bungalows of the Magistrates is a very serious matter. Undoubtedly, the Magistrates or the two or three constables who are said to have been in the Court compound would report about it when they went to the Taluka Police Station and obviously thereupon an entry would be made in the Station Diary, an F.I.R. lodged, an offence registered and an investigation undertaken; but, just as in the case of the attack on the police lines, it is equally useless to expect any normal or logical behaviour in the case of an incident alleged by Hawewala. We find no mention in the Station Diary of the Taluka Police Station of any such attack. There is no F.I.R. lodged and naturally no offence registered. There were two Magistrates who were taken in Hawewala's jeep to the Taluka Police Station — Mr. V. L. Ruikar and Mr. Kotnis. Mr. Ruikar has written a letter dated May 16, 1970 (Ex. P 679) to D.M., Capoor in which he has appreciated Hawewala's act in taking them to the safety of the Taluka Police Station. Mr. Ruikar has stated in the said letter that they were scared. His letter further states, "In fact our minds were not at all working but it is Mr. Hawewala who not only suggested but also brought his own jeep and took us to the safe place like Bhiwandi Taluka Police Station." There is no mention or even any suggestion or hint in the said letter of any attack on the Court house or the bungalows

of the Magistrates or of any Muslim mob. It was put to Hawewala in cross-examination that when he went to Bhiwandi on May 7, 1970 he left his jeep at the Taluka Police Station, went on foot and called on the two Magistrates, had a talk with them, suggested that they should be taken to the safety of the Taluka Police Station and on their agreeing, went back to fetch his jeep and drove them and their families to the Taluka Police Station. He denied this suggestion (N.H.W. 8/10/1833). The statement in Mr. Ruikar's letter namely, "It is Mr. Hawewala who not only suggested but also brought his own jeep and took us to the safe place like the Bhiwandi Taluka Police Station", however, shows that this suggestion was rightly made. After this, there can be no doubt that the noises of bombs and bullets which Hawewala heard were all "sound and fury, signifying nothing".

44.47 A question arises, why should a Parsi file a false affidavit in a communal matter between Hindus and Muslims? On the record the answer is clear. While Hawewala was in the witness-box and being examined-in-chief, Mr. Pradhan, Counsel for the Nagarik Hitarakshak Mandal and the Bharatiya Jan Sangh, Maharashtra Pradesh, called upon Mr. Rane to produce the said letter of Mr. Ruikar, which was thereupon produced and marked as an exhibit. It is clear that those parties for whom Mr. Pradhan was appearing knew about the said letter and its contents. On coming to know from the said letter that Hawewala was in Bhiwandi that evening and had brought the Magistrates to the Taluka Police Station they must have got Hawewala to file his affidavit. Hawewala's affidavit was filed through the Nagarik Hitarakshak Mandal. He has, however, sought to make out that the Nagarik Hitarakshak Mandal had nothing to do with the preparation of his affidavit. He has deposed that he was not asked by anyone to make his affidavit and had made it of his own accord and had it drafted by his advocate Mr. Konkar and that though he had told his advocate to file it before the Commission, he had not told him to file it through the Nagarik Hitarakshak Mandal. He admitted that he knew that there was an organization in Bhiwandi called the Nagarik Hitarakshak Mandal, but denied that he knew the persons who constituted it. He has further deposed that the advocate was his personal friend and he therefore did not pay him any fees for drafting his affidavit. Hawewala's evidence on this point cannot be believed and the position becomes all the clearer when we find that in his original affidavit filed before the Commission the words "Pakistan Zindabad" were scored out from the sentence "they attacked the Police lines shouting the slogans 'Allah Ho Akbar, Pakistan Zindabad and Maro Kafir Ko'." Hawewala deposed that when he read this sentence he himself struck off the words "Pakistan Zindabad" because this slogan was not shouted by any of the Muslim rioters and he had not given instructions to his advocate that this slogan was shouted. Then from where did this slogan come into his affidavit, if not from the Nagarik Hitarakshak Mandal? We have seen that this is a pet slogan of the Nagarik Hitarakshak Mandal and features in a number of affidavits filed through it. Hawewala has

been in civic and political life for a number of years. He has to depend upon votes to get elected again and again. His constituencies have all been Hindu constituencies. He could hardly refuse the leaders of the Nagarik Hitarakshak Mandal if asked to make an affidavit to suit them, though he balked at introducing into his affidavit the slogan "Pakistan Zindabad".

44.48 For the reasons mentioned above, I disbelieve Hawewala and do not accept his evidence. I hold that there was no attack by the Muslims on the police lines and that no Muslim rioter was arrested near the police lines, leave aside one with a dagger in his hand. I further hold that no meeting took place between Fire Station Officer Chitre (P.W. 8) and Hawewala. I further hold that there was no attack on the Court house or on the bungalow of either of the Magistrates. I find that Hawewala called on the Magistrates, suggested that instead of staying in their isolated bungalows they should be taken to the safety of the Taluka Police Station, and on their agreeing, he walked back, fetched his jeep and drove them down to the Taluka Police Station.

The alleged rioting near Dhamankar Naka

44.49 From Dhamankar Naka a road goes to the Veraladevi Temple and the Veraladevi Tank which is the source of water-supply for the town of Bhiwandi. After we cross the New English High School a road branches off from the Veraladevi Road to go to the Bhiwandi-Nizampur Municipal College. Opposite the New English High School is Shakti Sizing Works of which the proprietor at the relevant time was Purushottam Mehijbhai Patel. He was examined as a witness by the Nagarik Hitarakshak Mandal (N.H.W. 17/1-7/1892-6). Purushottam has alleged in his affidavit that at midnight on May 7, 1970 about 250 to 300 Muslims attacked the college grounds. These Muslims were shouting slogans such as "Allah Ho Akbar", "Pakistan Zindabad" and "Maro, Pito, Jala Do". They were hurling acid-bulbs, bombs and stones in the direction of the college. Purushottam tried to ring up the Town Police Station but did not get the connection. Just then he heard from the side of the factory of Abdul Tawab Ansari (B.R.W. 58) the sound of two or three rounds being fired. The commotion at the college continued for about two hours and ultimately the Police arrived at about 2 a.m. and the mob dispersed. His cross-examination makes interesting reading and gives us an insight into how some of the affidavits filed before the Commission have come to be drafted and also furnishes an indication of what value is to be attached to them. He has deposed (N.H.W. 17/6/1895) :

"At about 11 p.m. on May 7, 1970 a Muslim mob came to the school compound. The persons in the mob were shouting the following slogans :— 'Allah Ho Akbar' and 'Maro, Pito, Jala Do'. I tried to ring up the Police but did not get the connection. Ultimately the Police came at about 2 a.m. The Muslim mob in the school and college compound was not doing anything except shouting slogans. On

seeing the Police the mob ran away. Apart from what I have stated here, nothing else happened. Before the Police came I also heard some noise. It may be of gun-fire, or of bombs or of something else. I do not know what it was."

It will be thus noticed that in the cross-examination the slogan "Pakistan Zindabad", the acid-bulbs, the bombs and the stones have all vanished into thin air and now all that the Muslim mob was doing in the compound was to shout slogans. It is difficult to imagine that a Muslim mob should just stand for over two hours in the college compound shouting slogans and doing nothing else. As shown by entry No. 88 of the Control Room Diary for May 7, 1970 (Ex. P 367), from 8-20 p.m. onwards on May 7, 1970 a police picket of one P.S.I. and 15 men was posted at Dhamankar Naka. There is no report in any police record of the happening of the incident alleged by Purushottam Patel. It is not possible to attach any weight to this witness's evidence and I disbelieve it. I, therefore, hold that no such incident took place as alleged by Purushottam Mehjibhai Patel (N.H.W. 17).

The obstruction to the Kalyan water-tanker

44.50 The obstruction to the Kalyan water-tanker while on its way from Kalyan to Bhiwandi has been dealt with in paragraphs 42.67 to 42.72 of Chapter 42.

The obstruction to the Ulhasnagar fire-engine

44.51 The obstruction to the Ulhasnagar fire-engine while on its way from Ulhasnagar to Bhiwandi has been dealt with in paragraphs 42.73 to 42.78 of Chapter 42.

The police firing at Khadak

44.52 Three police constables opened fire at Khadak at about 8-30 p.m. on May 7, 1970. The facts of this incident are that as shown by entry No. 84 of the Control Room Diary for May 7, 1970 (Ex. P 367), at about 7-45 p.m. a message was received in the Control Room giving information that the timber-depot of Anna Mestri was on fire and requesting that a fire-engine with a police-escort be sent there. Thereupon the Bhiwandi Fire Brigade fire-engine No. MHT 624 was sent to the scene of fire along with a police escort party consisting of three police constables who had come to Bhiwandi from the Bassein Police Station, namely, D. S. Kamble, Buckle No. 2128 (P. W. 20), S. W. Jagtap (P.W. 22) who had not till the time he gave evidence received a buckle number and More. All three of them were carrying .410 muskets. According to the affidavit of Kamble and Jagtap, when the fire fighting operations to Anna Mestri's timber-depot and factory were going on a mob of about 150 Muslims collected and attempted to set fire again to the said timber-depot. Jagtap warned the mob to disperse, but it refused to do so and began throwing stones at the police party, shouting "Gadi Ko Jala Do, Police Ko Maro" ("Burn the fire-engine, beat the Police"). In this stone-throwing the wind-screen

of the fire-engine was broken. Thereupon Kamble fired eight rounds at the mob and Jagtap and More four and eight rounds respectively. No one was injured in this firing. In the cross-examination of Kamble it has emerged that the Muslim mob was at a distance of 50 to 60 paces and that they did not fire all the rounds at one time but Kamble, Jagtap and More fired one round each, then when the mob again threatened to become violent they each fired another round and that all the rounds were fired at intervals. When they returned to the police station, Jagtap reported the matter to the Control Room at about 9-15 p.m. as is shown by entry No. 96 of the Control Room Diary for May 7, 1970 (Ex. P 367). He also gave his F.I.R. (Ex. P 196) at about 11 p.m. the next night [P.W. 20/1(1)/453(1-2), 22/465 ; P.W. 22/1(1)/476(1-2)].

44.53 It is the case of the Muslim parties that there was no Muslim mob on the road, but merely some Muslims trying to extinguish the fire to Mustafa Kuvvari's timber-depot and the Police opened fire upon them without justification. The Muslim parties did not lead any evidence in support of these allegations, but two members of the Bhiwandi Fire Brigade, namely, the driver of the said fire-engine, Abdul Razak Saifuddin Garel (C.W. 38), and one of the firemen on the said fire-engine, Qamar Miyan Shaikh (C.W. 40), had independently filed their affidavits in which also the same allegations were made. Accordingly, the Commission summoned them and examined them as witnesses. As both these witnesses were Muslims and it transpired in evidence that there was also a Hindu fireman on the said fire-engine, namely, Bhoja Kukra Shetty (C.W. 41), the Commission also summoned him and examined him as a witness.

44.54 In order to understand the evidence, it is necessary to know the locale of the incident. We find from Kamble's evidence that they had gone to Anna Mestri's timber-depot via the Nazarana Talkies and Dargah Road. By that route Kuvvari's timber-depot comes before Anna Mestri's timber-depot. Two sides of Kuvvari's timber-depot abut on the road while an open space adjoins the other two sides. On the other hand, there are residential houses round about Anna Mestri's timber-depot. According to Garel's affidavit, as they passed Kuvvari's timber-depot he tried to stop the fire-engine, but was prevented by the police party from doing so and one of the constables asked him to go to Anna Mestri's timber-depot first. He had no alternative but to do so. After they succeeded in extinguishing the fire to Anna Mestri's timber-depot Garel started to proceed to attend to the fire to Mustafa Kuvvari's timber-depot, but the constables again prevented him from doing so, saying "Leave aside the Landiyas". At that time he saw some Muslims trying to extinguish the fire to Kuvvari's timber-depot. When the constables saw this they opened fire upon these Muslims [C.W. 3831 (6) 3503(4)]. Garel's police statement with reference to this incident was recorded by P.S.I., R.K. Bhagwat of the Special Investigation Squad on May 23, 1970. Garel deposed that while recording the

said statement Bhagwat did not allow him to tell his story, but insisted that he should only answer the questions put to him (C.W. 38/6/3505). From the facts set out below it would appear that this allegation is false. Dattatraya Mahadeo More, the brother of Baliram More, had made an application (Ex. P 655) on May 21, 1970 to the D.M. complaining that Fire Brigade Inspector Shaikh, Garel, another Muslim fire-engine driver, Qamar Miyan and two other Muslim firemen were guilty of dereliction of duty during the communal disturbances and requesting that an inquiry should be instituted and an action taken against them. Thereupon an inquiry was held in which S.D.M., Date (P.W. 62) recorded on July 17, 1970 the statement of Dattatraya More, the six persons complained against and some others. Date has admitted that the inquiry held by him was not a formal inquiry as none of the persons complained against were given any opportunity to cross-examine the witnesses deposing against them and that he only read statements recorded by him and then made his report and that he had conducted some other inquiries in some matters in the same way (P.W. 62/5/1175). We are not here concerned with the manner in which Date conducted the said inquiry or made his report. What is pertinent is that Date also recorded the statement of Garel (Ex. P 1196) and that Garel has made no allegations with respect to it. The only thing he has said about the said statement was that as at the time when his statement was recorded three or four other persons were present, he was unable to give the names of any persons who had on different occasions obstructed the fire-engine. He has admitted that otherwise he did not feel embarrassed or helpless nor was deterred from telling Date everything and that apart from the names of the obstructionists he had told Date everything that had transpired and that all that he had told Date was taken down by Date who took his signature on the statement. Strangely enough not a word of what he has stated in his affidavit about the alleged incident at Khadak is to be found in the said statement. All that the said statement mentions about the said incident is :

"I accompanied by 4 armed men went to Anna Mestry in Khadak area where there was a fire. The firemen (1) Kamar, (2) B. K. Shetty, (3) Pithu were in my fire-engine. On reaching the fire at Anna Mestry's, I started the work of extinguishing the fire at that place. After extinguishing the fire there, I came to Teen Batti."

As expected Garel had no explanation to offer for this (C.W. 38/27/3512). It is also curious that this witness did not discuss the alleged incident with anyone nor inform anyone about it except Fire Brigade Inspector Shaikh who is alleged to have told him that the Commission had issued a notification inviting affidavits and that they should, therefore, all file their affidavits before the Commission and accordingly, Shaikh prepared Garel's affidavit for filing it before the Commission (C.W. 38/11/3506). Commonsense tells us that if

there were Muslims on the road trying to extinguish the fire to Kuvari's timber-depot they would certainly request the crew of the fire-engine or the Police to attend also to that fire, in any event after the fire to Anna Mestri's depot was extinguished. Garel has, however, deposed that none of them came at any time to ask them for help in putting out the fire to Kuvari's depot (C.W. 38/30/3513). This witness has proved himself to be a complete liar and no reliance can be placed upon his evidence.

44.55 The version set out in Qamar Miyan's affidavit is very different from that given by Garel. According to Qamar Miyan, as they were passing Kuvari's timber-depot the Police opened fire on the Muslims who were trying to extinguish the fire to it, remarking "Leave aside the Landiyas" [C.W. 40/1(9)/3523(3)]. There is not a word in his affidavit about Garel wanting to stop at the said fire while they first passed by it or of Garel attempting to return to the said fire after extinguishing the fire to Anna Mestri's timber-depot, and in the witness-box he has emphatically stated that this firing took place while they were proceeding to Anna Mestri's timber-depot and not while returning after extinguishing the fire to it. He has further deposed that none of these Muslims tried to stop them on the way to Anna Mestri's timber-depot, a behaviour which, if true, would be most unnatural (C.W. 40/3/3524). His statement was also recorded by S.D.M., Date on July 17, 1970 (Ex. P 1198). According to Qamar Miyan, when that statement was recorded some persons from the lane in which the Fire Station is situate were present and for that reason he felt afraid to give out the names of the obstructionists, but he otherwise told Date the complete facts of each and every incident that had taken place. This is what the said statement relates about the Khadak incident :—

"Thereafter at about 7 O'clock, one fire-engine was taken to Khadak, Nizampura for extinguishing the fire. We three, namely, I, Razak, Vithal Govind Jadhav and B. K. Shetty were therein. We extinguished the fire. When the water was exhausted, we came back, took water and went. At about 11 O'clock at night, we returned after extinguishing the fire. Then, we went to Teen Batti for extinguishing fire."

When this statement was shown to him, Qamar Miyan said that he forgot to tell Date what he has mentioned in his affidavit. He has further deposed that the only person to whom he had related the facts mentioned in his affidavit was Shaikh (C.W. 40/5/3525).

44.56 When he stepped into the witness-box Shetty did not let his colleagues down and preserved inviolate the reputation earned in the witness-box by the staff of the Bhiwandi Fire Brigade for not speaking the truth. Though admittedly by the time the fire-engine reached Khadak, Kuvari's timber-depot was on fire, a fact admitted also by P.Cs., Kamble and Jagtap, Shetty stated that he did not see any fire in the Khadak area except a small fire to Anna Mestri's timber-depot and that nothing at all had happened to Kuvari's depot

while they were at Khadak, but he saw the next day that it had been burnt down (C.W. 41/3/3530, 7/3534).

44.57 The evidence of these three witnesses is so worthless that the only question that would arise would be who out of these three was the greater liar, but the better conclusion seems to be that there is nothing much to choose from amongst them.

44.58 The next question is whether the firing incident did actually take place as related in the affidavits of Kamble and Jagtap. According to the said affidavits, they opened fire on the mob which, while the fire-fighting operations were going on, again tried to set fire to Anna Mestri's timber-depot. In the F.I.R. (Ex. P 196) lodged by Kamble there is, however, not a word about this attempt to set fire again to Anna Mestri's timber-depot. The only explanation Kamble could give in cross-examination for this omission was that when he lodged this F.I.R. it was a time of serious riots and they were all very busy and at that time he did not recollect all the details (P.W. 20/16/463).

44.59 The attitude of Kamble and Jagtap that night towards the fire to Kuvari's timber depot as disclosed by their cross-examination deserved to be condemned strongly. Kamble has stated that the fire to Kuvari's timber-depot was a very big fire and it was blazing so furiously that it was no use making an attempt to extinguish it and therefore, no attempt was made at all to do so. He has admitted that neither he nor any other constable escorting the fire-engine even suggested that an attempt should be made to extinguish that fire. He did not even care to ascertain thereafter what had happened to Kuvari's timber-depot, whether it was completely gutted or not. While fighting the fires at Khadak the fire-engine went five times to refill its water tank from a hydrant near the Fire Station. The Bhiwandi Town Police Station is very close to the Fire Station. Neither Kamble nor Jagtap gave any report or informed the Town Police Station or any police officer or police constable that Kuvari's timber-depot was on fire. He has further deposed that he did not see anyone else making any attempt to extinguish that fire and that when they passed Kuvari's timber-depot, the driver himself went ahead saying that they must first try to extinguish the fire to Anna Mestri's timber-depot so that they might be able to save some human lives. He admitted that he knew that the two timber-depots on fire belonged respectively to Kuvari and Anna Mestri. Realizing that this would mean that he had shown communal discrimination in the discharge of his duty, he stated that he did not know Kuvari's community, but learnt the second or the third day after the incident in the course of conversation with his colleagues in the Police force that he was a Muslim. He further said that at about 1-30 a.m. on May 8, 1970 the fire-engine went out of order and they returned to the Fire Station and it was thereafter at the Fire Station that he learnt for the first time that the driver of the fire-engine was a Muslim because he heard others addressing him by Muslim name. Jagtap had admitted that while they were returning after extinguishing the fire to Anna Mestri's

timber-depot, the fire to Kuaris timber-depot was still raging. He was unable to offer any explanation why no attempt was made to put out that fire or for his not giving information at the Town Police Station or the Fire Station that Kuvari's timber-depot was on fire and the fire was raging and nobody was attending to it. At first he tried to make out that he did not know that Kuvari's timber-depot belonged to a Muslim and that he learnt this fact only on May 8, 1970 at the Town Police Station when he went to give his firing report. He, however, admitted that he learnt from Kamble on the night of May 7, 1970 that the said timber-depot belonged to Kuvari. Then he finally admitted that he did understand from the name 'Kuvari' that it was a Muslim name and that he did know as he passed by that timber-depot that it belonged to a Muslim. The first reason he gave for not stopping at Kuvari's timber-depot to extinguish the fire was that the orders which he had received from the Control Room were to extinguish the fire to Anna Mestri's timber-depot. He also added that even the driver of the fire-engine did not make any attempt to stop at Kuvari's timber-depot. Thereafter he changed his explanation and said that they did not stop at Kuvari's timber-depot because as they passed by it the fireman and the constable discussed whether they should stop or not and then came to the conclusion that as there were no residential houses adjoining Kuvari's timber-depot, while there were residential houses adjoining Anna Mestri's timber-depot, they should fight the fire to Anna Mestri's timber-depot as otherwise the fire would spread to the houses. He expressed his inability to give any explanation why he had earlier given a different reason for not stopping at Kuvari's timber-depot. He denied that this discussion took place because someone suggested that they should stop at Kuvari's timber-depot to extinguish the fire to it. This denial cannot be accepted. Such a discussion could have only taken place on the suggestion of someone that they should stop to fight the fire to Kuvari's timber-depot (P.W. 20/13/459, 6-7/455-6, 16/464-5; P.W. 22/4/477, 6/478-80).

44.60 Reading between the lines it is quite clear that as the fire-engine passed Mustafa Kuvari's timber-depot the Muslim driver and fireman wanted to stop there to fight the fire to it, while the Hindu constables wanted them to fight the fire to Anna Mestri's timber-depot. The reasons given for fighting the fire to Anna Mestri's timber-depot first are merely a subsequent rationalization and from the callous attitude shown by these constables it is clear that what motivated them was communal bias just as what motivated the driver and the fireman was equally communal bias. This was a time of unprecedented communal riots and communal feelings must have been then at their fever pitch. The truth with respect to the firing incident appears to be that some Muslims attempting to extinguish the fire to Kuvari's timber-depot seeing that the fire-fighting operations had started only with respect to Anna Mestri's timber-depot came up and insisted that the fire to Kuvari's timber-depot should be extinguished first.

Upon the refusal by the constables to allow this to be done they become violent and began obstructing the fire-fighting operations to Anna Mestri's timber-depot and threw stones at the police party and the fire-engine to prevent the fire-fighting operations to Anna Mestri's timber-depot. Finding their lives jeopardized the police constables warned them to stop and on their refusal to do so opened fire. In the circumstances, therefore, though the attitude of the police constables with respect to the fire to a Muslim timber-depot deserves to be condemned, the fire opened by them must be held to be justified.

The second police firing at Habsan Alli

44.61 A.H.C., Jaysingh Yeshwant Shirke (P.W. 17) and A.P.C., Vasant Chandrarao Salvi (P.W. 18) were on reserve duty at the Town Police Station on May 7, 1970. At about 7-30 p.m. they were detailed to give protection to the Thana fire-engine and accordingly they escorted that fire-engine to Teen Batti Naka on fire-fighting operations. At about 10 p.m., on a message received from H.C., Patankar who was in Habsan Alli, Shirke and Salvi went to Habsan Alli. According to their affidavits, they noticed a mob of Muslims. They have estimated the strength of the mob at 200 to 300. The mob was armed with sticks and was throwing fire-balls and bottles at the houses of Hindus and also at the policemen. Shirke warned the members of the mob to disperse. On their refusing to do so, he fired one round from his .410 musket. Salvi also fired one round from his .410 musket under Shirke's instructions. The mob thereupon dispersed. The constables chased the mob but could not arrest anyone. As it was dark they were unable to see if anyone was injured in this firing [P.W. 17/1(3)/444 (2-3); P.W. 18/1(2)/448(2)].

44.62 In cross-examination Shirke has stated that he could make out that the mob in Habsan Alli was a Muslim mob because several persons in the said mob were carrying lighted torches and were dressed in 'lungis' and had beards and further that they had come from Bengalpura, a locality in which there were no Hindu houses. These facts are, however, not to be found in his affidavit. When this was put to him, he stated that he had mentioned these facts while giving instructions for drafting his affidavit. He could not, however, give any explanation why these facts should not have found a place in his affidavit. He further admitted that he was at a distance of 70 to 80 paces from the mob when he opened fire. In police parlance a pace means 30 inches. He admitted that no one in the police party nor any member of the public was injured by the throwing of fire-balls or bottles. He also admitted that none of the houses in the said locality were set on fire. According to him, the mob made the police party its first target. The evidence of these two constables does not inspire much confidence and it would seem that they have grossly exaggerated the incident. Habsan Alli is a mixed locality. The electric power supply had failed that night and Bhiwandi was plunged in darkness. There is no convincing evidence that this mob on which

the two constables opened fire was a Muslim mob. Though there are infirmities in the evidence of these constables, there is no evidence on the record to justify the Commission in holding that this incident of firing was not justified. What appears to have happened is that on seeing the police party, a rioting mob sought to attack it, but help was sought for from the two armed constables at Teen Batti Naka and on their opening fire the mob dispersed. The mob does not appear to have been as large or as violent as sought to be made out by these two constables nor is there any basis for saying that it was a Muslim mob. In this circumstances, this firing must be held to be justified.

The night attacks on Habsan Alli

44.63 The police case is that throughout the night of May 7, 1970 and the early hours of May 8, 1970 Muslim mobs made continuous attacks on Habsan Alli until these rioters were finally concerned and arrested near Samadia Building at about 11-30 a.m. on May 8, 1970. What happened at Samadia Building will be seen in the next chapter when we come to the police firing at that place. So far as the night attacks on Habsan Alli by Muslim rioters are concerned, the only witness who has deposed about them is Jamadar Waman Appaji Adsul (attached to the Bhiwandi Town Police Station) [P.W. 49/1(1)/955(1-2), 3/956].

44.64 As seen in the preceding chapter, on May 7, 1970 Adsul was assigned the duty of checking temples and was given one head constable and two constables for that purpose. He came near Nilkantheshwar Temple in Habsan Alli at 5-30 p.m. and dispersed a Muslim mob, which was throwing therefrom stones and lighted torches at the police party, by making a lathi charge. At about 7 p.m. a section of the S.R.P. men armed with .303 rifles came there. Out of this party, five men were taken away by P.I. Ajarekar and five remained with Adsul. He had thus with him one head constable, two constables armed with lathis and five S.R.P. men armed with .303 rifles. His affidavit then states [P.W. 49/1(1)/955(2)] :

“The riotous mob then retreated towards Bengalpura and started the attack from there.....Houses of 10 to 12 Hindus from Habsan Alli had been set on fire and hence these Hindus had taken shelter in the Maruti Temple along with their womenfolk and children. The Muslim riotous mob continued the attack throughout the night and till the morning of 8-5-70. He used to disperse them again and again. The mob had assembled near the Samadia Building. At about 11-30 hrs. P.S.I., Deshpande came there with S.R.P.F. men and the gas squad of Greater Bombay Police and proceeded towards Samadia Building.”

The rest of his affidavit deals with what happened at Samadia Building.

44.65 Adsul's cross-examination on the point of the night attacks by the Muslims makes interesting reading. He has deposed (P.W. 59/3-4/956) :

“.....We did not take charge of any missiles thrown at the houses or at us. The stones would fall on the road and lie there. The

bottles when they hit the ground would break and the lighted torches would get burnt up.....

I did not send any information to the Control Room about the continuous attack by the Muslim mob in Habsan Alli throughout the night and till the morning of the 8th May. I did not do so because I was busy making "Bandobast". There were 10 to 12 attacks in all. These attacks consisted of throwing stones and acid-bulbs from behind houses. It was dark and as we would proceed to the direction from which these missiles were thrown the rioters would disperse."

44.66 Jamadar Adsul is an old and experienced policeman and was 51 years old in 1970. He was attached to the Bhiwandi Town Police Station since July 8, 1968. It is not possible to believe that if all these attacks had taken place as deposed to by him he would not have sent information to the Control Room nor taken charge of at least some of the missiles alleged to have been thrown. The way his affidavit is drafted it would appear that there were 10 or 12 Hindu houses in Habsan Alli which had been set on fire. The statements Exhibits P 18, P 19 and P 1517, however, show that only two Hindu chawls consisting of 12 tenements were set on fire. If there were so many attacks as deposed to by him, someone in the police party would have been injured, but no one was. Adsul's demeanour in the witness-box was not satisfactory. Parts of his evidence smack of unreality and it is not possible to believe that there were continuous night attacks by Muslim mobs on Habsan Alli as alleged by him. It is very likely that he has invented this story to cover up what happened at Samadia Building and to provide a justification for the firing and arrests there in which he participated.

The obstruction to the Thana fire-engine at Teen Batti

44.67 After reaching the Town Police Station under police escort from the Taluka Police Station, the Thana fire-engine was directed to fight the fires at Teen Batti. A number of fires were raging in that locality. At about 10-30 or 11 p.m. on May 7, 1970 four other fire-engines, two from the Civil Defence, Bombay, and two from the Bombay Municipal Fire Brigade, came and joined the Thana fire-engine. There was police protection for these fire-engines consisting of four S.R.P. constables with rifles near the fire-engines and the Police had cordoned off the place where the hose was placed. There was also a sub-inspector present. While these fire-fighting operations were going on, stones were thrown at the fire-engines and twice a mob tried to come out of a lane, but the Police prevented it from doing so. Since these fire-engines were trying to fight the fires to the Muslim houses and shops, the mobs which tried to prevent these operations could only be Hindu mobs. (P.W. 8/4/351-2, 20-1/375-6).

The obstruction to the Bombay fire-engine at Khadak

44.68 While fighting the fires at Teen Batti, Station Officers Vaidya and Anwar of the Bombay Fire Brigade noticed Kuvari's timber-depot

at Khadak on fire. As it was a serious fire, Vaidya, who was the senior of the two, asked Anwar to proceed to the timber-depot. While Anwar was proceeding to fight the said fire in his fire-engine No. MRT 1117 he saw on the road about 10 to 15 persons dressed in 'Banians' and 'dhotis'. Anwar stopped the fire-engine to ask them whether there was a well nearby and on their pointing out a well he immediately ordered his crew to take the fire-engine near it and prepare two lines on either side of the road to put out the fire. When these persons saw him putting out the lines, they objected to his fighting the fire to the timber-depot and threatened to set fire to the said fire-engine. Anwar tried to plead with them on the ground that fire did not recognize any community, but they insisted that he should come and put out the fires to their buildings. In these circumstances, Anwar had to abandon the fire to the timber-depot and go where they wanted him to. The fire to which they took him was a smouldering fire and Anwar therefore instructed his crew to put only the line so that after putting out that fire they could extend their operations to the fire at the timber-depot. They managed to extinguish the said smouldering fire within about 10 to 15 minutes and switched over the line towards the timber-depot. Soon after they had extended the hose in the direction of the timber-depot the same persons who had first prevented them from fighting the fire to it, cut off the water supply from the well and refused to allow the well water to be used for putting out the fire to the timber-depot. Thereupon Anwar ordered his crew to bring the fire-engine to the side of the timber-depot. He saw a number of persons near the timber-depot trying to extinguish the fire to it. He asked these persons to remove the timber which was stored near the houses and towards which the fire was spreading so as to make a fire-break. There was another well nearby and he began his fighting operations by taking water from it. [P.W. 14/3/432; P.W. 15/1(2)/440(2-6), 2-3/441; P.W. 8/5/353, 23/378]. Since Kuvari's timber-depot was a Muslim property there can be no doubt that these obstructionists were Hindus.

44.69 Within half an hour Vaidya joined Anwar and some time later they were joined by the Thana fire-engine which was directed there by the D.M. and the S.P. when Station Officer Chitre in charge of it reported at the Town Police Station after fighting the fires at Teen Batti. Two other fire-engines from the Bombay Fire Brigade, namely, fire-engines Nos. MRT 8160 and BMU 5344, also came and joined them. The area of the timber-depot was 200 metres × 200 metres. The flames were rising sky-high and they had to fight this fire till 8 a.m. on May 8, 1970 to bring it under control.

The police firing near Sutar Ali

44.70 On May 7, 1970 A.P.Cs., R. T. Patil and Raut were assigned the duty of escorting the Civil Defence fire-engine No. MRT 1103 of which Mobile Column Controller R. R. Rao was in charge. This fire-engine first went to Teen Batti Naka and extinguished a fire to

a building there. It was then asked to proceed to Sutar Alli. It fought a fire in Sutar Alli ; but as the water in its tank was exhausted, it proceeded to Hanuman Bavdi to fill up the water-tank. It was obstructed on the way by a mob which threw stones at it. No stones actually fell on the fire-engine and no one in the fire-engine was injured in the stone-throwing. A.P.C., Patil has estimated the strength of this mob at 150. Patil was sitting in the rear of the fire-engine. When the stone-throwing started, he got down from the fire-engine, called upon the mob to disperse and warned it that he would otherwise open fire. The mob, however, continued to throw stones and Patil fired one round from his .410 musket. As it was dark, Patil could not see whether anyone was injured in the firing. The mob thereupon immediately dispersed. According to Patil it was a Muslim mob and he could make out what its community was because the persons in the mob were shouting "Allah-Ho-Akbar" and "Maro Sale Ko". Rao has stated that he could not make out the community of the mob as it was dark and all he could see was some stones falling and some people in the distance. Since it was dark and one could not see clearly, the question of the community of the mob depends purely upon whether in fact Patil heard these slogans or not. Both according to Patil and Rao, the mob was at a distance of about 50 to 60 paces from the fire-engine which was stationary because they had lost their way and had entered a wrong lane. Leaving aside the question whether from this distance Patil could have made out the words of the slogans, had these slogans in fact been shouted and heard by him, his affidavit would have certainly made mention of them. The fact that his affidavit makes no mention of the mob shouting slogans, leave aside these particular slogans, shows that these slogans were not shouted (P.W. 3/7/226, 12/229, 16/223 ; P.W. 19/1-4/450-2).

44.71 It was submitted that this fire-engine was coming from Sutar Alli and was going to Hanuman Bavdi *via* Dargah Road to fill up its water-tank and thereafter a Hindu mob would not stone a fire-engine fighting the fires in a Hindu locality. It was further submitted that as the mob was to the right of the fire-engine, the locality to the right as one comes out to Sutar Alli is Dargah Road, a purely Muslim locality, and, therefore, it must have been a Muslim mob. This submission cannot be accepted because we do not know which way the fire-engine was facing at the time when it encountered the mob. According to both Patil and Rao, they had lost their way and Rao has stated that they had entered a wrong lane and so they had turned the fire-engine round. The fire-engine was, therefore, not facing where it would normally face when it comes out of Sutar Alli and turns from the corner of Dargah Road to proceed towards Hanuman Bavdi. On the contrary, having entered the wrong lane it would be facing the other way and Dargah Road would be to its left, in which event the Hindu locality of Bhoiwada would be to its right and it can equally be argued that on seeing a fire-engine came out of a Muslim locality a Hindu mob thought that it had been fighting fires in a Muslim

locality and, therefore, attempted to stone it. In the alternative, having taken the wrong turning, it might have been proceeding westwards along Dargah Road, in which event a Hindu mob might think it was going to fight a fire in the Muslim locality of Dargah Road and attempt to stop it by throwing stones at it. Either way, it would be pure guess-work and there is, therefore, no evidence before the Commission, except the very dubious one of slogans deposed to by A.P.C., Patil, which I disbelieve, to show what the community of the mob was.

44.72 To say that the mob consisted of 150 persons also seems an exaggeration on the part of A.P.C., Patil. It was dark and he could not possibly estimate the number of the persons in the mob. He is merely seeking to justify his opening fire, particularly as no one was injured in the stone-throwing and none of the stones fell on the fire-engine and as there was no physical obstruction to the fire-engine except the throwing of stones at it from a distance of 50 to 60 paces, none of which from such a distance could have fallen close to the fire-engine.

44.73 In the circumstances then prevailing, the intention of the mob was, however, clear. Had the fire-engine proceeded further and come nearer the mob, the stones thrown by the mob would have certainly fallen on it and damaged it or injured some members of the crew. In these circumstances, the fire opened by A.P.C., R. T. Patil in order to disperse the mob was justified.

The police firing at Gauripada

44.74 P.S.I., N. V. Bhuse (P.W. 23) of the Thana Headquarters Reserve reported for duty at Bhiwandi with 30 armed men at about 8-40 p.m. on May 7, 1970. As soon as he came he was detailed to give assistance to people in Gauripada where a number of Hindu houses had been set on fire. He therefore went to Gauripada along with a party of one head constable, three constables and two sections of the S.R.P.F. accompanied by Bhaskar Mali, the President of the R.U.M. After escorting the distressed Hindus in the said area to Dhamankar Naka, Bhuse was patrolling in Gauripada when at about 12-30 a.m. on May 8, 1970 he heard loud shouts and noticed some Muslims, whose number he has estimated at 50 or 60, setting fire to the remaining houses in Gauripada. Bhuse split up his men in two parties, one under himself and the other under H.C., T. B. Jadhav, and tried to surround the mob. As Bhuse's party advanced, the members of the mob started throwing stones and brick-bats at it. Bhuse's warning to the mob proved futile. He therefore ordered P.Cs., Palande and Gaikwad (P.W. 24) to open fire. Palande threupon fired three rounds and Gaikwad fired five rounds from their .410 muskets. The mob then started running and Bhuse and his men chased it. In the meantime the party led by H.C., T. B. Jadhav (P. W. 25) approached the mob from the other direction. The mob was trapped and the police party succeeded in arresting twelve rioters and taking charge of some

weapons from them. According to Bhuse, these weapons were a knife, two razors, six iron bars and two sticks. Bhuse then brought the arrested persons to the police station. He lodged his F.I.R. (Ex. P 181). It is not known if anybody was injured in this firing [P.W. 23/1(3)/486(2), 7-8(490-1); P.W. 24/1-4/493-4; P.W. 25/1(2)/496(1)].

44.75 To a question by Mr. M. D. Pathak, Counsel for the Maharashtra Pradesh Hindu Mahasabha, P.S.I., Bhuse replied that the persons in the mob were shouting the slogans "Pakistan Zindabad", "Nare Taqbir Allah Ho Akbar" and "Jala Do. Maro". Neither the F.I.R. filed by him nor his firing report (Ex. P 442) nor his affidavit mentions that these slogans were shouted. The explanation which he gave for not setting out these slogans in his F.I.R. or the firing report was that he was at that time in a hurry. He, however, had to admit that he was not in a hurry when he affirmed his affidavit and thereafter the only excuse he could think of for not mentioning the said slogans in his affidavit was that this was due to oversight (P.W. 23/3/487, 6/489-90). "Pakistan Zindabad" is not a slogan which any police officer or policeman would forget to mention if in fact this slogan was shouted by Muslim rioters. It is, therefore, not possible to accept the explanation given by P.S.I., Bhuse and it must be held that these slogans were not shouted by the Muslim mob. In fact, P.C., Gaikwad, who was with P.S.I., Bhuse when fire was opened, has deposed that at the time when they opened fire the distance between them and the mob was 50 to 60 paces. It is not possible to hear clearly at this distance the slogans shouted by a mob. I, therefore, do not believe P.S.I., Bhuse when he states that these slogans were shouted by the mob.

44.76 Serious rioting was taking place that night with loss of life and considerable damage to property. No mob would have been out that night on any but a lawless errand. The only reason for this mob to be in Gauripada could have been to set fire to Hindu properties. When the police party advanced towards the mob it was met with missiles. The fire opened by P.S.I., Bhuse prevented the mob from carrying out its criminal design and prevented further arson in Gauripada. The firing was, therefore, justified.

The police firing at Kombadpada

44.77 At 1 a.m. on May 8, 1970 information was received in the Control Room that some persons were setting fire to houses in Kombadpada (Ex. P 368, entry No. 11). Thereupon P.S.I., M. S. Chougule (P.W. 37) with a section of the S.R.P. men carrying lathis and two armed police constables, namely, A.P.Cs., Mandhare and Gaikwad, was sent to the spot. When the police party reached Kombadpada, they saw a Muslim mob carrying iron bars, sticks and bamboo sticks. When the police party approached the mob, it started throwing stones at the Police. Chougule warned the members of the mob to disperse and also warned them that he would open fire if they did not do so. As, however, they continued indulging in stone-throwing

Chougule ordered Mandare and Gaikwad to open fire and they fired three and one rounds respectively from their 410 muskets. The mob thereupon retreated towards the Muslim burial ground. According to Chougule's affidavit, the mob started setting fire to some huts near the burial ground. The police party ran towards the mob and after giving a warning Chougule ordered Gaikwad to open fire again. Gaikwad fired one round from his musket. the Police then chased the mob and arrested 19 Muslims and recovered some iron bars, wooden pieces and bamboo sticks from them. Though they searched, they could not find any injured persons. Later on it transpired that one Bachu Hasan Sabaji Farokh was injured in this firing and had died as a result thereof. Chougule thereafter went to the Town Police Station reported the action he had taken. He also lodged his F.I.R. (Ex. P 195) at 10-45 p.m. on May 8, 1970 [P.W. 37/1(3)856(3-4), 6/859-61 ; Ex. P 368, entry No. 11).

44.78 There are certain features about P.S.I., Chougule's conduct in relation to this incident which does not reflect credit upon him. He has stated in his evidence that the persons in the mob were carrying only iron bars, sticks and bamboo sticks and were not carrying any other weapons. Even in his firing report he has stated that the members of the mob were carrying iron bars, cudgels and lathis. In his F.I.R., however, he has stated that they "were armed with lathis, spears and iron bars". In cross-examination he admitted that the mention of spears in his F.I.R. was a mistake. He admitted that when he arrested the 19 persons, none of them had any spear with him. He then sought to gloss over the false statement in his F.I.R. by stating that he had made the said statement because from a distance he mistook some pointed sticks carried by the rioters for spears. He admitted that the distance from which he saw these sticks was 100 yards. He tried to make out that from this distance he saw these sticks by the light cast by the flames of the burning huts. He had to admit that when he chased the mob and arrested the 19 rioters and found that none of them was carrying spears, he realized that what he had mistaken for spears were actually pointed sticks. Ultimately he deposed, "I cannot explain why in spite of this I mentioned in the F.I.R. that some members of the mob were carrying spears. I know that my F.I.R. would be the basis of a prosecution against the accused in this case".

44.79 Chougule's affidavit states that when they reached Kombadpada a person named Madhukar told them that Muslim leaders were setting fire to huts and that Chougule took Mandhare along with the police party. This attempt to implicate Muslim leaders is as unworthy as the attempt to foist spears on the mob. In his cross-examination he stated that when they reached Kombadpada and saw a house, the doors of which were open, they stopped the truck and asked a man inside where the trouble was and asked him to direct the police party to that place. This man gave his name as Madhukar and told them that Muslim leaders were setting fire to Hindu huts on the bank of the

creek near Sangampada. Chougule asked him the names of the Muslim leaders, but he stated that he did not know their names. Chougule has further deposed that he did not ask him how he knew that they were Muslim leaders if he did not know their names nor asked him how many Muslim leaders were indulging in this act of arson. This story of Madhukar informing him about Muslim leaders setting fire to Hindu huts has been introduced for the first time in the affidavit, very probably to give colour to the case of the Special Investigation Squad that there was a conspiracy amongst the Muslims, including Muslim leaders, to start disturbances on the Shiv Jayanti Day. His F.I.R., however, does not mention that anybody had informed him that Muslim leaders were setting fire to Hindu huts. He could give no explanation for this omission in his F.I.R.

44.80 In his affidavit Chougule has further stated that when they saw the Muslim mob, the persons in the mob were shouting "Pakistan Zindabad, Allah Ho Akbar". His F.I.R. mentions only the slogan "Allah Ho Akbar", while his firing report only mentions that the persons in the mob were shouting slogans but does not mention the particular slogans which they were shouting. He has deposed, " 'Pakistan Zindabad' is not a slogan which is ordinarily shouted in India. I cannot explain why the fact that this particular slogan was shouted is not mentioned in my firing report. I know that in view of the relationship between India and Pakistan the fact that the accused were shouting 'Pakistan Zindabad' would raise a prejudice against them ".

44.81 In his affidavit Chougule has stated that after Mandhare and Gaikwad opened fire, the mob retreated towards the burial ground and started setting fire to some huts there. This fact is not mentioned in his F.I.R. and all that his F.I.R. states is, " Then they went towards the burial ground and started pelting stones from behind trees."

44.82 It is clear that P.S.I., Chougule has sought to give a twist to the whole incident, has falsely sought to implicate Muslim leaders in this incident, foisted deadly weapons on the Muslim mob and sought to raise a false prejudice against the Muslim accused by stating that the persons in the mob were shouting "Pakistan Zindabad". Nonetheless, in the circumstances of the case, this police firing must be held to be justified, because even if the persons in the mob were not armed with spears but were carrying only iron bars and lathis, they threw stones at the police party. This was a night when rioting in Bhiwandi was at its height. Mobs, both Hindu and Muslim, were out on the roads and the Police were justified in opening fire to make the mob disperse.

The arrests at Bunder Mohalla

44.83 Bunder Mohalla and Saudagar Mohalla to its south form the western boundary of Bhiwandi. They are Muslim localities with just a few Hindus houses situate therein. There are two mosques in Bunder Mohalla, namely, Bunder Mohalla Masjid and Memon Masjid. The

house of Sikandar Faquih (B.R.W. 2) is the last house on Bunder Mohalla Road. Local inspection has revealed that Memon Masjid is clearly visible from the house of Sikandar Faquih and that Bunder Mohalla Masjid is visible from the house of Shafiq Ahmed Fareed, the husband of Sikandar Faquih's sister.

44.84 It is the case of the Muslim parties that at about 3-30 a.m. on May 8, 1970 S.R.P. men arrested a number of Muslims from Rasulabad who had taken shelter in the Bunder Mohalla Masjid and Memon Masjid and on the 'otas' of houses and beat them up. The witness who has deposed to this case is Sikandar Faquih [B.R.W. 2/1(28-29)/1398(14-15), 28/1410-14].

44.85 Sikandar Faquih has deposed that at about 10 p.m. on May 7, 1970 he had gone to his house and found that his house was locked because his wife and children had got frightened on seeing the fires in Rasulabad and had locked their house and taken shelter in the house of his brother-in-law Shafiq Ahmed Fared. At that time Sikandar Faquih saw a number of Muslims coming to Bunder Mohalla from Rasulabad by the foot-bridge across the Kamadevi River in order to take shelter. Sikandar Faquih then went to his brother-in-law's house. At about 3-30 a.m. on May 8, 1970 he saw S.R.P. men drag out 3 or 4 Muslims from inside the Bunder Mohalla Masjid as also arrest 12 or 15 Muslims from the 'otas' of houses and beat them up. After the arrested persons were sent away he heard cries coming from the side of the Memon Masjid. He took the key of his house from his wife and went to his residence and from a window of his house saw S.R.P. men beating the people with lathis and heard the cries of those who were being beaten. The Police thereafter arrested these Muslims. He has further stated that amongst the people who were beaten he recognized the 'Bangis' (muezzins) of the Bunder Mohalla Masjid and the Memon Masjid. He has given in his affidavit the numbers of the houses from the 'otas' of which Muslims sitting there were beaten and arrested as also the names of some of the Muslims who were so beaten and arrested. He further stated that some of the Muslims were forcibly dragged out from inside their houses, beaten and arrested.

44.86 The police case as deposed to by P.S.I., B. D. Sanaf of the Igatpuri Police Station, Nasik District [P.W. 44 1(3-4)/921(2-3), 6/923, 11/925] is that on May 8, 1970 Sanaf was patrolling that area along with three police constables. At about 2 a.m. the Muslims from Bunder Mohalla started throwing stones and brick-bats at the police party and thereupon he went towards Bunder Mohalla and found a Muslim mob whose strength he has estimated at 100, shouting "Allah Ho Akbar" and "Dekhate Kya? Age Badho, Khalas Kar Do" What are you waiting for? Advance, finish them off). P.C., Pawar was injured in this stone-throwing. On the Muslims not heeding Sanaf's warning to disperse, Sanaf sent for P.S.I., Khedkar, who was nearby, for help and with the help of Khedkar's police party charged the mob and chased and arrested 40 persons from Bunder

Mohalla Masjid into which some of the Muslims had run. According to Sanaf, some of the arrested persons had spears, sticks and iron bars with them which the Police seized. Thereafter at about 3-15 a.m. they heard shouts of "Islam Zindabad" coming from the other side of Bunder Mohalla. Sanaf and Khedkar, therefore, went there along with the police parties and noticed a mob of about 150 Muslims. The members of that mob were shouting slogans such as "Allah Ho Akbar", "Hindu Murdabad", "Hindu Ko Mardalo" (Kill the Hindus), "Hamare Admiko Chhod Do" (Release our people). These Muslims threw stones and brick-bats at the Police. The police party charged the rioters and arrested 36 persons. In this stone-throwing P.S.I., Khedkar and two constables received minor injuries. The injuries received by Sanaf were contusions on both hands and left leg and the injury received by P.C., Pawar was a swelling of the big toe of his left foot. The F.I.R. in respect of the first incident was lodged by P.S.I., Sanaf and in respect of the second incident by P.S.I., Khedkar (Exs. P 182 and P 183 respectively). In cross-examination Sanaf has stated that when he went to Bunder Mohalla he was accompanied by some constables from the District Police as also some men from the S.R.P. Force. He has further stated that the articles seized by him have been entered in the Muddemal Register of the Bhiwandi Town Police Station (Ex P 670). We have already seen in Chapter 38 what this Muddemal Register is and how no reliance whatever can be placed upon it. Suffice it to say here that the entry in support of the articles alleged to be seized by Sanaf is entry No. 99 dated May 8, 1970. The entry which precedes it, namely, entry No. 98, is, however, dated May 13, 1970. No reliance therefore, can be placed upon the evidence of the seizure.

44.87 The question is whether what Sikandar Faquih is stating is a total falsehood. Sikandar Faquih has been from the very beginning a Congressman, now belonging to the Congress (R). He was an Honorary Magistrate for about three years from 1968 and was a member of the Peace Committee ever since it was formed. He had taken a loan from the State Bank of India, Bhiwandi Branch, on the security of his factory, the United Silk Mills, situate at the corner of Bazar Peth and Madarchhalla, and the persons who had stood as sureties for the repayment of the said loan were Zumberlal Kalantri and Anwar Bubere. Even though he was not a member of the Shiv Jayanti Utsav Samiti he was participating in the Shiv Jayanti processions from 1965 onwards. Since 1965 he was a member of the District Committee of the District Probation and After-Care Association, Remand Home, Bhiwandi, and ever since its formation in or about April 1971 he was a member of the Taluka National Integration Council, Bhiwandi Taluka (B.R.W. 2/2-6/1399-1401). He has deposed in his evidence that he had also informed Mr. H. G. Vartak, the then Minister for Food and Civil Supplies, and Mr. A. R. Antulay, the then Minister of State for Education, Law and Judiciary, and P. M. Hegde, the District Home Guards Commandant, Thana, about the behaviour of

the S.R.P. men and had made them stand at the window of his brother-in-law's house to satisfy them that he could see from it the happenings deposed to by him.

44.88 After the disturbances broke out Sikandar Faquih moved about the Muslim localities of Saudagar Mohalla and Bunder Mohalla requesting Muslims not to get out of their houses and to maintain peace and order. He has further deposed that there were about 50 Hindu families, all of them rich merchants, residing in these localities and he ensured that they were quite safe by requesting the Muslims of that locality to see that they were protected [B.R.W. 2/1(26)/1398(4)]. He has been corroborated in this by Abdul Aziz Mohamed Yusuf Mastim [B.R.W. 40/1(6)/1544(3)]. Sikandar Faquih and Abdul Aziz were not cross-examined on this point and their evidence is borne out by the fact that there was no injury to any Hindu nor damage to any Hindu property in Saudagar Mohalla and Dunder Mohalla. In cross-examination nothing has been made out or suggested against Sikandar Faquih except a suggestion that because his power-loom factory, which was his sole means of livelihood, was burnt down in the evening of May 7, 1970 he had become bitter. He replied that he had not become bitter but was much worried and troubled about the future. He further deposed that prior to the riots he had not entertained any feeling that the Police were biased against the Muslims (B.R.W. 2/29-30/1414). I see no reason to doubt the word of Sikandar Faquih. His evidence remains unshaken in cross-examination and his demeanour has impressed me. He had a clear opportunity to exaggerate what had happened, but has not done so. He was watching the incident from the window of his house and he has, therefore, stated on being asked, that he did not see whether the Muslims who were beaten by the Police were bleeding, when he could have easily stated otherwise.

44.89 In sharp contrast to the non-communal attitude of Sikandar Faquih was the attitude shown by P.S.I., Sanaf. According to Sanaf's affidavit, he came to the corner of Madarchhalla at about 7-20 p.m. and saw some houses on fire. His affidavit is significantly silent as to whether these were Muslim houses. This fact was, however, elicited from him in cross-examination. It was further elicited in cross-examination that there were three Muslim houses in all on fire and that he had sent a constable to fetch a fire-engine to extinguish the fire and that on making inquiries he learnt that some Hindus had set fire to them. He has, however, admitted that he did not lodge any complaint in respect of arson to these houses [P.W. 44/1(2)/921(2), 5/923, 11/925].

44.90 For the reasons mentioned above I am not prepared to disbelieve Sikandar Faquih. At the same time it cannot be said that every person who was arrested in Bunder Mohalla was an innocent Muslim. Entry No. 15 in the riot diary of May 8, 1970 (Ex. P 368) shows that a message was received in the Control Room from Asst. I.G.P., Katre that the situation in Bunder Mohalla and Saudagar

Mohalla was tense and that unlawful groups were moving about in those areas that night. That night there was rioting both by Muslims and by Hindus and for Muslim mobs and Hindu mobs to appear in each other's locality they have first to assemble in their own locality. Some Muslim mob must have assembled in Bunder Mohalla and on seeing the police party, thrown stones at it. The fact that Sanaf, Khedkar and three constables received injuries in the stone-throwing has not been disputed or challenged in cross-examination. On the police party being stoned, the police chased the rioters. Some rioters must have run into mosques to hide. As deposed by Sikander Faquih, the doors of the mosques are usually kept open at night for midnight prayers ('Thajjud') and after the 'Thajjud' some stay in the mosque till the morning, reciting from the Koran (B.R.W. 2/28/1413). The Police chased the rioters into the mosques, dragged out all who were inside, irrespective of the fact whether they were rioters or were there for prayers or were taking refuge there, beat them up and arrested them. They also dragged out Muslims who were sheltering on the 'otas' of houses, beat them up and arrested them. Amongst them must have been some rioters who must have climbed up on the verandahs to lose themselves amongst those who were sheltering there. From Sanaf's evidence it is clear that there were some S.R.P. men with him and that the Police went inside mosques and arrested people from there. In this connection we must remember that the Additional I.G.P., Modak when he came to Bhiwandi had given an order for mass arrests. Unfortunately, the order for mass arrests was interpreted by quite a few police officers and policeman as mass arrests of Muslims. Sikandar Faquih admittedly did not see the entire incident. While he was at his brother-in-law's place he saw the S.R.P men arresting Muslims. He did not see what preceded it. Similarly, he witnessed the scene near the Memon Masjid after the beatings and arrests has started.

44.91 In the result I find that though the Police arrested some Muslim rioters in Bunder Mohalla, they also arrested some innocent Muslims who were sheltering in the mosques and on the 'ota' of houses, beat them up and took them into custody.

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CHAPTER 45

THE SUBSEQUENT COURSE OF THE DISTURBANCES—THE MAIN INCIDENTS

CONTENTS

Paragraph

- 45.1 The arrest of Shabbir Ahmed Ansari.
45.6 The search of Mohamedi Sizing Factory.
45.15 The third firing at Habsan Ali.
45.18 The firing near Rais High School.
45.20 The arson to Abdul Tawab Ansari's factory.
45.23 The arrest of Abdul Tawab, his relatives and workers.
45.28 The rioting at Dhamankar Naka.
45.30 The first police firing at Nizampura 4th Mohalla.
45.33 The police firing at the Bhiwandi-Kalyan Road near the Asabibi Dargah.
45.41 The arrests in Thange Ali.
45.49 The police firing at Thange Ali.
45.53 The firing near the Bhiwandi-Ahmedabad Road.
45.58 The second police firing at Nizampura 4th Mohalla.
45.71 The firing at Kanheri.
45.78 The arrest of Nazirahmed Hafizmohamed Zahid.
45.81 The police firing at Samadia Building.
45.105 The arrests from Samadia Building and Masjid Chawl.
45.111 The looting of Samadia Building and Masjid Chawl.
45.114 Conclusions on the Samadia Building incident.
45.115 The police firing at Gaibi Nagar.
45.144 The first police firing at Kacheripada and the arson to Malaysia Sizing Works.
45.166 The death of Mobin Ahmed Mokeef Ahmed Ansari.
45.170 The second police firing at Kacheripada.
45.179 The police firing near the Telephone Exchange.
45.181 The arson to Chauhan Colony.
45.194 The firing at Khoni Village.
45.197 The raid on the Ambassador Hotel and the miracle of the bombs that multiplied.
45.210 The raid on Chakkan Khokewalla's shed.
45.215 The arrests at Sunderbeni Compound.
45.225 The arrests at Quarter Gate.
45.228 The police firing at Idga Road.
45.231 The police firing at Dargah Road.

CHAPTER 45

THE SUBSEQUENT COURSE OF THE DISTURBANCES—THE MAIN INCIDENTS

The arrest of Shabbir Ahmed Ansari

45.1 On the morning of May 8, 1970 the Police arrested Shabbir Ahmed Ansari (C.W. 3), the Vice-President of the Bhiwandi Branch of the Majlis-E-Mushavarat and after the death of its first President Siddique Fakhir its *de facto* President, the principal founder of the Bhiwandi Seva Samiti, a Municipal Councillor and for some time the Municipal President, and a prominent and influential local leader who had made several communal speeches in Bhiwandi which have been referred to in Chapter 27 (paragraph 27.11). According to Shabbir Ahmed, he was lured away by the Police out of his house on a false pretext with a view to arrest him wrongly. According to the Police, he was arrested because he was found on the road during curfew hours and had thus committed a breach of the curfew order.

45.2 Shabbir Ahmed has alleged in his affidavit that the Police and the S.R.P. men came to his residence with a note which contained his name as a person to be arrested. He has further alleged that at about 8 a.m. on May 8, 1970 he had telephoned to S.P., Bhawe at the Town Police Station to inquire from him about the situation in the town and in the course of the conversation Bhawe casually mentioned that the curfew order was to come into force from 9 a.m. and, therefore, Shabbir Ahmed stayed at home. Some time later an S.R.P. man came there and asked him to come out and on his pointing out that the curfew order was in force, the S.R.P. man gave him an assurance that nothing would happen, but that no sooner did he step out than a policeman arrived with an officer and some other S.R.P. men. They abused him, held him by the neck and dragged him into the van and when he protested, and S.R.P. man slapped him several times. He has further alleged that when he went to the Town Police Station he saw Bhawe and strongly protested against his arrest and that Bhawe casually inquired from the S.R.P. men why he had been arrested and an S.R.P. man gave him some false explanation which he did not hear. In his cross-examination he has told a different version, that version being that when the S.R.P. man came and knocked at the door, he opened the door and the S.R.P. man told him to come out and see what was happening at the back of his house and even though it was a member of the police force who was asking him to come out and see what was happening, he nonetheless pointed

out that as the curfew order was in force it was not possible for him to come out, but on the S.R.P. man insisting he ultimately did so and they arrested him. He has further deposed that after his release on bail the Jamaat-E-Islami wanted to represent his case to the Chief Minister and, therefore, they asked him for a copy of his affidavit which he forwarded to them and which they in turn forwarded to the Chief Minister. The said copy submitted to the Chief Minister through the Jamaat-E-Islami was a copy of his draft affidavit and it differed in several particulars from the affidavit filed by him before the Commission. The explanation he gave for this was that when he finally settled his affidavit he deleted from it several things as being unnecessary [C.W. 3/1(8-9)/1776(2-3), 4/1777, 22/1787]. In the copy of the said draft affidavit submitted through the Jamaat-E-Islami it was written (C.W. 3/24/1791-2) :

“Mr. Bhave knows me since long and has always been expressing good opinion about me. The S.R.P. man quickly took out a piece of wire from his own pocket and with utter shamelessness told a lie that he had found the wire with me and so I was arrested. In addition to this he further said that I had blocked the road near my house with the object of stopping the police van and consequently attacking on the van itself suddenly.”

In the affidavit filed by him before the Commission, instead of the above passage the following was substituted (C.W. 3/24/1792) :

“Mr. Bhave knows me since long and has always been expressing good opinion about me. The S.R.P. man made obviously a false statement as to why I was arrested.”

45.3 S.P., Bhave has denied that he ever informed Shabbir Ahmed that the curfew order was to come in force from 9 a.m. on May 8, 1970. According to Bhave, that morning while he was out on his rounds he saw Shabbir Ahmed on the road at about 7-30 or 8 a.m. and told him that the curfew order had already been promulgated and he ought not to be out. He has further deposed that when Shabbir Ahmed was brought to the Town Police Station, on seeing Bhave he said, “Bhave Sahib, you know me, you release me”. Bhave made inquiries from the S.R.P. men and the police officers who were accompanying the prisoners why Shabbir Ahmed was arrested and he was informed that Shabbir Ahmed had been instigating others to set up road-blocks and, therefore, Bhave did not release him on bail. He has further said that Shabbir Ahmed did not complain to him of having been slapped or beaten or abused (P.W. 4/197/710).

45.4 Shabbir Ahmed has admitted that there was no bad blood or ill-feeling or enmity between Bhave and himself and was unable to assign any reason why Bhave should have deliberately misled him about the time when the curfew order was to come into force. The fact that Shabbir Ahmed first inserted one story in his draft affidavit and then changed it would show that he has not told the entire truth. Between Shabbir Ahmed and Bhave I believe Bhave when he states that Shabbir Ahmed was walking about on the road in the morning

of May 8, 1970 and that Bhave told him that he should not do so as the curfew order was in force. Shabbir Ahmed apparently did not take any notice. He thought that he was too important a local leader for the Police to touch him and was arrested. At the Town Police Station when the S.R.P. men and the police officers saw that Bhave knew Shabbir Ahmed, they, perhaps out of fear, told him that he had been instigating others to set up road-blocks. I., therefore, hold that Shabbir Ahmed was not wrongly arrested.

45.5 So far as the prosecution against him was concerned, the complaint against him did not mention that he was instigating anyone to put up road-blocks. He was remanded into magisterial custody, sent to Thana Jail and released on bail on June 3, 1970. A complaint against him was filed by P.S.I., S. S. Mane, in a cyclostyled form with particulars such as name, date, time and place of offence, etc., filled. His case was called out on February 6, 1971 when Mane was absent and Shabbir Ahmed was acquitted both on the ground of the absence of the complainant and because the complaint had not been filed by the proper authority as required by section 195(I) Cr.P.C. (P.W. 4/200/712-3 ; Exs. P 520 and P 521).

The search of Mohamedi Sizing Factory

45.6 On May 8, 1970 at about 10-40 a.m. Dy.S.P., Diwate's orderly, P.C., Mandlik, who resided in Vetalpada, informed him that on the previous night bombs and other missiles had been thrown from the terrace of Mohamedi Sizing Factory situate on the Bombay-Agra Road. A message was also received in the Control Room at about 10-50 a.m. that some trouble had started on the Bombay-Agra Road. Diwate thereupon took the Striking Force, P.I., Ajarekar (P.W. 39) and P.S.I., Deolekar (P.W. 29) with him and went to the Bombay-Agra Road in a police van to deal with any trouble that might have taken place and to take a search of Mohamedi Sizing Factory. He did not inform Ajarekar and Deolekar about the information which he had received. He also did not take with him any panchas as he thought he would get them from the locality. On the Bombay-Agra Road they noticed a crowd which ran away in an easterly direction on seeing the Police and some of them went inside the Mohamedi Sizing Works. A constable was sent in the van to get two panchas. He brought them from the side of the S.T. Stand. After the panchas arrived, the Police entered the building and searched it. Three persons were found hiding in the engine-room on the ground floor with a bundle by their side containing 23 fire-balls. These fire-balls have been described as country-bombs in the panchanama. Three more persons were found on the second floor. In the search of this floor a box containing in all about six kgs. of 'ganja' in bags and a plastic tin containing two gallons of acid were found. On the terrace four small tins containing acid, a heap of stones and a catapult were found. All the aforesaid articles were taken charge of and a panchnama made (Ex. P 446) and the said six persons were arrested. P.S.I.,

Deolekar then lodged separate complaints, one in respect of the articles found on the ground floor and the other in respect of the articles found on the second floor and thereupon two offences were registered, one as C.R. No. 188/70 (Ex. P 185) and the other as C.R. No. 189/70 (Ex. P 186). A separate offence was also registered under the Bombay Prohibition Act in respect of the possession of 'ganja' without a licence [P.W. 66/1(26)/1108(11), 61/1138, 72-3/1143-5, 122/1178-9, 128/1180; P.W. 29/1(6)/522(4), 12/531-2, 13-4/532-3, 16/536, 23/539, 25/540; P.W. 39/1(6)/888(4), 3/893].

45.7 Diwate has candidly explained that he described the fire-balls as bombs in the said panchnama because none of them had at any time seen a country bomb or a crude bomb and that it is difficult to distinguish between a fire-ball and a crude bomb or a country bomb from their external appearance. The Senior Inspector of Explosives had come to Bhiwandi on May 11, 1970. On receipt of his report the mistake was immediately corrected and the said articles were thereafter referred to as fire-balls (P.W. 66/180/3909, 188/3912; P.W. 29/23/539).

45.8 C.R. Nos. 188 and 189 of 1970 were investigated by the Special Investigation Squad and were amalgamated with C.R. No. 177/70 (the Bhiwandi Conspiracy Case). Mahomed Umar Musa Memon the owner of Mohamedi Sizing Factory, was arrested at Poona and made an accused in C.R. No. 307/70 (Ex. P 258), being the complaint filed by Manubhai Narayan Patel (N.H.W. 18) about the arson to Ganesh Sizing which was one of the cases amalgamated with C.R. No. 177/70. After the conspiracy charge was withdrawn and the cases separated, all the accused were discharged, C.R. Nos. 188 and 189 of 1970 being classified as 'C' summary, that is, as being "A mistake of fact" and C.R. No. 307/70 as 'A' summary, that is, as "True but undetected".

45.9 Mahomed Umar Musa Memon made an application dated May 13, 1970 to the Chief Minister, a copy of which has been annexed to the affidavit of G. N. Banatwala the General Secretary of the Maharashtra State Muslim League (Affidavit No. 61). Mahomed. Umar Musa himself has neither filed an affidavit nor given evidence before the Commission nor has Banatwala given evidence before the Commission. In fact, no witness has been examined before the Commission to prove the allegations contained in the said application.

45.10 The allegations contained in the said application were as follows :—

- (a) that Mahomed Umar Musa Memon's father's building situate at Teen Batti was set on fire on May 7, 1970 though it was near the Town Police Station;
- (b) that his factory 'R. K. Chemicals' situate at Narpoli Village was also set on fire on the night of May 8, 1970 and that he did not get police assistance for Dy.S.P., Diwate declined to give him any help;

- (c) that Mohamedi Sizing Factory was broken open by Dy.S.P., Diwate on May 8, 1970 at about 11 a.m. and his men were wrongly arrested ;
- (d) that Dy.S.P., Diwate bore a grudge against him because his brother Abubaker Musa Memon had made a complaint against Diwate for his rude behaviour.

45.11 So far as the aforesaid allegations are concerned, Mahomed Umar Musa's father's building situate at Teen Batti was set on fire in the evening of May 7, 1970 along with other buildings belonging to Muslims. This act of arson forms the subject-matter of C.R. No. 179/70 (Ex. P 176). In this incident a Hindu mob was chased by P.S.I., Mane (P.W. 46) and some four Hindus were arrested. They were, however, charged not with rioting and committing arson, but as mentioned in Chapter 43 with having committed a breach of the prohibitory orders under section 144 Cr.P.C. and under section 188 I.P.C. with having committed a breach of the order prohibiting assembly of five or more persons. Fire-engines were sent in the night from 7-45 p.m. onwards to fight the fires at Teen Batti (Ex. P 367, entry No. 83). Musa's chemical factory, namely, R. K. Chemicals situate on the Bombay-Agra Road in Narpoli Village, was set on fire in the night of May 8, 1970. Musa was a partner with a one-third share in this factory along with two Hindus of Bombay. Mohamedi Sizing was also set on fire in the evening of May 8, 1970 or on May 9, 1970. On May 9, 1970 Fire Bridge Officer Ramakant Tamhane while putting out the fires to Mohamedi Sizing found eight hundred-rupees notes in a tin and some bangles, anklets and silver ornaments which he produced at the Town Police Station (P.W. 66/72-3/1143).

45.12 There is no evidence how the arson to R. K. Chemicals or Mohamedi Sizing was caused. There were highway patrolling parties from the night of May 7, 1970 which regularly passed by R. K. Chemicals. A police party was also posted at the petrol pump near this factory and on the night of May 8, 1970 as soon as information was received at the Control Room about the attempt to set fire to R. K. Chemicals, a Striking Force and a fire-engine were sent there [P.W. 4/63(6)/595(3) ; Ex. P 368, entry No. 115]. As regards Mohamedi Sizing Factory, police parties had been posted at the octroi naka on the Bombay-Agra Road, the S.T. Depot and the Government grain godown, all not very far from Mohamedi Sizing Factory. A mobile patrolling party also regularly patrolled this area [P.W. 4/63(6), 595(3) ; Ex. P 368, entry No. 88, Exs. P 2 and P 29]. How these patrolling parties or pickets did not see the commission of the arson to R. K. Chemicals and Mohamedi Sizing Factory and did not attempt to prevent it is difficult to understand.

45.13 The allegations made by Mahomed Umar Musa that he contacted the Police for help appear to be false. Inquiries were made about him on May 8, 1970 after his factory was searched, but he could not be traced and was ultimately arrested in Poona (P.W. 66/126/1180 ; Ex. G 115, item No. 4).

45.14 The complaint made by Mahomed Umar Musa's brother against Dy.S.P., Diwate has been referred to in Chapter 16 (paragraph 16.28). It arose out of Diwate preventing him from tutoring complainants who came to the Town Police Station to lodge their complaints in the wake of the incidents which took place in the first week of July 1969, and, as mentioned in the said Chapter 16, the said complaint was not true.

The third firing at Habsan Alli

45.15 On May 8, 1970 P.S.I., J. S. Nimbalkar (P.W. 55) was patrolling the areas of Kumbhar Alli and Prabhu Alli. At about 11-15 a.m. he heard shouts coming from the side of Prabhu Alli. He also noticed clouds of smoke indicating that some houses were on fire. He, therefore, went towards Prabhu Alli taking two S.R.P. constables with him. When he reached Ayub Manzil in Habsan Alli he saw a Hindu mob trying to set fire to the houses and shops of Muslims. Nimbalkar has estimated the strength of this mob as 200 to 300. Nimbalkar ordered the constables to make a lathi-charge, but when the constables advanced to do so, the mob started throwing stones at them. Nimbalkar, after shouting out a warning, fired three rounds at the mob from his .455 revolver. The mob thereupon dispersed. Nobody appears to have been injured in this firing [P.W. 55/1(5)/977(4), 9/984-5, 11/986].

45.16 The evidence shows that a mob of Hindus had attacked Muslim properties and when challenged by the Police, it attacked the Police by throwing stones at them. There was thus imminent danger to property and also to the lives of the members of the police party. P.S.I., Nimbalkar therefore opened fire and dispersed the mob. The police firing was thus justified.

45.17 There are some peculiar features about this firing incident, as there are about almost every incident in which Hindu rioters were concerned. Apparently Nimbalkar has not informed the Control Room about the fire opened by him because there is no entry in the Riot Diary about this incident. Nimbalkar has, however, filed an F.I.R. (Ex. P 200) on May 9, 1970 with respect to this incident. Like all other F.I.Rs., in which fire was opened by the Police on Hindu mobs, this F.I.R. too does not make any mention of the community of the rioting mob or to whom the properties, which were the subject-matter of arson, belonged. In this case Nimbalkar has not even the excuse of pleading that this incident took place at night and that he, therefore, could not identify the community of the mob.

The firing near Rais High School

45.18 On May 8, 1970 H.C., T. B. Jadhav (P.W. 25) was patrolling Old Thana Road near the Panchayat Samiti quarters. At about 11-30 a.m. he saw a Muslim mob advancing from the compound of Rais High School towards Gauripada. Jadhav has estimated the strength of the mob as 400 to 500. The mob was carrying sticks and

other weapons. H.C., Jadhav took five policemen with him and marched towards the mob. On seeing the Police, the mob started throwing stones, soda-water bottles and acid-bulbs at the police party. Jadhav warned the mob to disperse but his warning went unheeded. He therefore fired one round at the mob from his .410 musket. This had the desired effect and the mob immediately dispersed. It is not known whether anybody was injured in the firing. Jadhav's F.I.R. is Exhibit P 203 [P.W. 25/1(3)/496(2)].

45.19 The evidence shows that the lives of the policemen were in danger on account of the attack made on them by the rioting mob. There was also an imminent danger to properties in Gauripada which the mob apparently intended to set on fire. The firing had a deterrent effect in that the mob dispersed without causing any damage to property. The firing was, therefore, justified.

The arson to Abdul Tawab Ansari's factory

45.20 Abdul Tawab Abdul Raof Ansari (B.R.W. 58) was a neighbour of Bhausaheb Dhamankar. His residence was only about 30 or 40 yards away from Dhamankar's. His factory with 76 power-looms belonging to the members of his family and some others was in the same compound (P.W. 4/352/814). He has stated in his affidavit that at about midnight on May 7, 1970 stones were thrown in the compound of his house and at his factory. On May 8, 1970 his factory and all the power-looms inside it were burnt down. Abdul Tawab's affidavit describes what happened. At about 10 a.m. he saw some four or five Hindus setting fire to an electrical goods shop situate at the entrance of his property. He immediately telephoned Gulam Mohamed Momin as also Dhamankar. Dhamankar promised to send some S.R.P. men who were posted near Dhamankar Naka. Abdul Tawab also rang up the Fire Brigade and the Police. After some time some S.R.P. men came there with buckets of water. Abdul Tawab has stated that although they saw the arsonists, they did not arrest them, but seeing them the arsonists ran away. The fire to the said shop was then extinguished with the help of the S.R.P. men. After the S.R.P. men left, the same arsonists returned and again started setting fire to the said shop. By that time a fire-engine came there and on seeing the Fire Brigade people the arsonists again disappeared and the fire-engine extinguished the fire. After the fire-engine went away the arsonists returned. This time three S.R.P. men were present at the site and, according to Abdul Tawab, instead of arresting the arsonists they assisted them. Abdul Tawab again tried to contact the Police but found that his telephone was disconnected. Meanwhile a jeep of the Amalgammated Electricity Company Limited came on the scene and on seeing it the rioters again disappeared. Abdul Tawab requested the driver of the jeep to take him and his family members to Dhamankar's house. At Dhamankar's place he saw Gulam Mohamed Momin waiting in a car. He sent the women and children to Gulam Mohamed Momin's house in the car and he and the other members

of his family went in the jeep to seek shelter at their relative's place. As it was not possible for the jeep to take them there, the driver of the jeep left them at the Bhiwandi Taluka Police Station. The jeep made three trips to bring Abdul Tawab, his relatives and some of his workers to the Taluka Police Station. They had taken with them some trunks and suitcases in which they had hastily packed some clothes. Abdul Tawab was not cross-examined on what he had stated in his affidavit about the arson to his factory [B.R.W. 58/1(2-9)/1596(1-2)].

45.21 Abdul Tawab has also been corroborated by Bhausaheb Dhamankar. Bhausaheb Dhamankar has deposed that there was a police chowki next to his house and a police picket was posted there two days prior to Shiv Jayanti and it continued there during the disturbances. From the said chowki the compound and the front portion of the house of Abdul Tawab were visible. He has further deposed that on May 8, 1970 both Abdul Tawab and his wife rang him up three or four times and told him that unless they were rescued, they would all be burnt alive. Dhamankar tried to contact the authorities. He also rushed up to their house. He found a rowdy Hindu mob collected there and as he tried to go inside the house a drunkard from the mob rushed at him to attack him, but some other persons from the mob rescued him. Meanwhile some saner Hindu elements in the locality came there and made Dhamankar go back to his house. At that time the mob had set fire to the said shop. After he returned home Dhamankar again received a telephone call from Abdul Tawab that his house had been set on fire and unless something was done he and his family would be burnt alive. Dhamankar thereafter telephoned to the D.M. and the D.I.G.(B.R.) and they sent a police party and a fire-engine. He has further deposed that Abdul Tawab and his family came to his house for shelter and that he arranged for them to be transported in a jeep to their relatives' place. He afterwards learnt that it was not possible for the jeep to take them to the place of their relatives and that the driver of the jeep left them near the Taluka Police Station (C.W. 2/40/1727-8). The testimony of Dhamankar thus completely corroborates Abdul Tawab that three or four attempts were made to set fire to his property. It also corroborates him about the indifferent attitude of the Police to the Hindu rioters because it is clear from Dhamankar's evidence that the police picket near the chowki could have easily seen what was happening in the front portion and the compound of Abdul Tawab's property.

45.22 At the time of the making of the panchnama of the burnt down factory of Abdul Tawab an exploded country-bomb which contained gelatine as the explosive charge was taken charge of by the Police. The said bomb was used in committing arson to Abdul Tawab's factory and house. Strangely enough the Special Investigation Squad made the said bomb, admittedly used in the arson to a Muslim property, a 'muddemal' in a prosecution against Muslims accused of committing arson to Hindu properties, an apparent paradox not very difficult for us to understand from what we have come

to know of the Special Investigation Squad, but which Dy.S.P., Saraf in charge of this Squad was naturally unable to explain in the witness-box (P.W. 61/131/3709-10; Ex. P 1358).

The arrest of Abdul Tawab, his relatives and workers

45.23 As Abdul Tawab and the others with him entered the compound of the Taluka Police Station, three constables came up, arrested them and after giving two or three blows with their sticks to Abdul Tawab and some others, herded them amongst the other prisoners. As each party of Abdul Tawab's relatives and workers came in, every member of it was arrested and treated in the same fashion. On May 9, 1970 Abdul Tawab was remanded into magisterial custody and sent to the Thana Jail. He was released on bail on May 30, 1970. On August 5, 1970 he was convicted on his pleading guilty to a charge of committing a breach of the curfew order on May 8, 1970 at noon at Dhamankar Naka (P.W. 4/279/768).

45.24 The fortunate thing for Abdul Tawab was that Mr. Salik, Counsel for the Bhiwandi Relief Committee, was a relation of his and Abdul Tawab wrote a postcard dated May 11, 1970 (Ex. BR 6) from the jail to Mr. Salik in which he requested him to ascertain the whereabouts of his other family members. In that postcard he also stated :

“ Please understand that we are completely uprooted. We have somehow managed to save our lives. Children were sent to Nizam-pur. I, Awalbhai etc. went to take shelter at Kacheri. There we were sent to jail. There are 3 trunks, one suitcase, one Jhola, in the Kacheri. You should take them somehow. They contain clothes.”

45.25 On May 8, 1970 Mr. Salik accompanied by Abdul Tawab's wife went to Bhiwandi Town Police Station and met P.L. M. Y. Patil and informed him that Abdul Tawab's trunks were kept in the Taluka Police Station and should be handed over to him. Patil sent a constable with them to the Taluka Police Station and after some time the constable came back and reported that articles belonging to Abdul Tawab were in the compound of the Taluka Police Station. Patil then went with the constable to the Taluka Police Station and handed over to Abdul Tawab's wife his trunks and suitcase which were lying in the compound near a wall of the canteen (C.W. 4/1-2/1801-2).

45.26 The fact that Abdul Tawab, his relatives and workers were arrested wrongly is not denied. Further the evidence of Bhausahab Dhamankar referred to in paragraph 45.21 and the handing over by P.L. Patil of Abdul Tawab's suitcase and trunks which were found lying in the compound of the Taluka Police Station completely corroborates Abdul Tawab and proves that he was wrongly arrested. It was submitted by Mr. Rane that when Abdul Tawab and his relatives went to the Taluka Police Station they must have got mixed up with the other prisoners and they should have complained to P.S.I., S. S. Mane who was in charge of the prisoners, but they failed to do so. From the evidence on the record, we do not know whether Abdul Tawab had made such a complaint because he was not asked

about it in cross-examination, but one can guess what fate such a complaint would have met with. As Inspector Pradhan was injured in the disturbances and was on leave, Inspector M. Y. Patil was transferred to Bhiwandi and took charge of the Bhiwandi Town Police Station at 11 a.m. on May 12, 1970. Surely, P.I., Patil could not have failed to understand that a man does not riot with his trunks and suitcase in his hands nor is a man found walking on the road with trunks and suitcase committing a breach of the curfew orders. He would understand, as anyone else would, that this man must have been fleeing for shelter or protection elsewhere. Nonetheless the prosecution against him was persisted in. We fail to understand what prevented P.I., Patil from taking steps in the matter to have the case dropped or to report the matter to Dy.S.P., Diwate or S.P., Bhawe.

45.27 Neither Abdul Tawab nor any other person with him had committed any breach of the curfew orders at 12 noon on May 8, 1970 and his case and those of his relatives and workers who went with him to the Taluka Police Station to take shelter and were arrested and prosecuted for committing a breach of the curfew order on May 8, 1970 clearly prove that no reliance can be placed on police records relating to the disturbances unless what is stated therein is corroborated by other reliable evidence.

The rioting at Dhamankar Naka

45.28 Purushottam Mehjibhai Patel, the owner of Shakti Sizing Works (N.H.W. 17), the witness called by the Nagarik Hitarakshak Mandal, who, as mentioned in Chapter 44, had falsely alleged in his affidavit about Muslims attacking the Bhiwandi-Nizampur Municipal College at midnight on May 7, 1970, as further alleged in his affidavit that on May 8, 1970 at about 11-30 a.m. about 100 Muslims armed with sticks, spears, swords, stones, acid-bulbs and bombs came and attacked the New English High School and that at that very time about 50 Hindus from the villages came from the side of the Veraladevi Temple and "resisted the Muslims with all their might". He has further alleged in his affidavit that when some of the Muslim rioters proceeded to attack the said college, the said Hindus from the villages resisted them and that at about 1 p.m. Dy.S.P., Diwate came there along with some S.R.P. men and on seeing the police party the Muslim rioters ran away. Hindus "resisting the Muslims with all their might" is a nice euphemistic way of describing a clash between two rioting mobs. In his cross-examination he has stated that the Muslim mob was in the compound of the New English High School and the villagers were in the compound of the college and that as the college was at a height the Hindu mob was driving off the Muslim mob by throwing stones at it from the compound.

45.29 Dy.S.P., Diwate has told us in his affidavit what actually happened. Rose Mobile informed the Control Room at about 12-03 p.m. that some people had collected at Dhamankar Naka and had started rioting. Diwate thereupon proceeded to Dhamankar Naka along

with a P.S.I. and a party of 15 policemen. He noticed a mob of Hindus on one side of the Bombay-Agra Road and a mob of Muslims on the other side. The Police first chased the Hindu mob and arrested some Hindus. Thereafter they chased the Muslim mob and arrested some Muslims. All the arrested persons were sent to the police station [P.W. 17/1(4)1892(2); P.W. 66/1(21)/1108(12); Ex. P 368, entry No. 66].

The first police firing at Nizampura 4th Mohalla

45.30 After dispersing the Hindu and Muslim mobs at Dhamankar Naka and sending the arrested Hindus and Muslims to the Town Police Station, Dy.S.P., Diwate patrolled the Bombay-Agra Road in the police wireless jeep Apple Mobile. While patrolling, at about 1-15 p.m. he noticed a mob of about 150 to 200 Muslims setting fire to huts near the octroi post outside a factory known as Sawant's Factory on the Bombay-Agra Road opposite the entrance of Nizampura 4th Mohalla Lane. He warned the mob to disperse, but some of the members of the mob started throwing stones at the police party. Diwate thereupon fired one round from his .38 revolver. The rioters then entered the lane which leads to Nizampura 4th Mohalla and again attacked the police party by throwing missiles at it. Diwate then asked P.Cs. V. R. Bhavari and Raje to open fire and Bhavari fired four rounds from his .410 musket and Raje one round from his .303 rifle. The mob then dispersed. The police party chased the mob and attempted to corner it by dividing into two parties—one consisting of Diwate and a constable and the other of the two other constables, the two parties entering from opposite sides of the lane. At that time something fell in front of Diwate and exploded and he took it to be a bomb. Diwate did not see if anyone was injured in the firing, but it subsequently transpired that a Muslim had been injured. The Police were unable to arrest anyone. The report to the Control Room (Ex. P 368, entry No. 79) was given by Apple Mobile. The F.I.R. (Ex. P 209) was lodged by A.P.C., Bhavari. Though Diwate has stated in his affidavit that after the rioters entered the road to Nizampura they started attacking the police party by "throwing bombs, etc.", he has deposed that he only saw one bomb being thrown, that it, the missile which exploded and fell near him when he entered the Nizampura 4th Mohalla Lane. He has further deposed that the only other weapons or missiles used by the rioters were stones. The F.I.R. lodged by A.P.C., Bhavari, however, makes no mention of any bombs but only mentions that stones were thrown at the police party. Diwate has explained that Bhavari along with one other constable was in the other party which entered the lane from behind a hut and that, therefore, Bhavari might not have seen the said missiles and accordingly not have mentioned it in his F.I.R. [P.W. 66/1(22)/1108(12), 60/1137, 112/1173-4, 139/1185].

45.31 It was contended by the Muslim parties that the huts which were set on fire were Muslim huts and that the mob upon which Diwate opened fire was a Hindu mob. In support of this contention the entry in the said Riot Diary and the said F.I.R. were relied upon

and it was submitted that neither the said entry nor the F.I.R. mentioned the community of the mob and that this was a feature endemic only to the firings upon Hindu mobs and not on Muslim mobs. When this was put to Diwate he deposed that the huts which were being set on fire were two or three Hindu huts outside the compound of Savant's factory opposite the Bag-e-Firdaus Mosque at the junction of Nizam-pura Fourth Mohalla and the Bombay-Agra Road and that there were some Muslim zopadpattis on the other side of the Bombay-Agra Road opposite these Hindu huts, but there were no Muslim huts next to these Hindu huts. He has further deposed that the said Muslim huts were not set on fire during the disturbances and were still existing. As appears from the evidence of Dy.S.P., Saraf, four Muslim huts and one Hindu hut in a place called Ashik's Compound were set on fire during the disturbances. The Muslim parties have sought to link up the arson to these Muslim huts with the mobs upon which Dy.S.P., Diwate opened fire. Ashik's compound is situate behind Sawant's Factory and is more than a furlong away from the Hindu zopadpattis which were the subject-matter of the arson by this Muslim mob [P.W. 66/111/1173-4, P.M. 61/141/3715-6]. There is, therefore, no logic or warrant nor any evidence on the record for saying that these Muslim huts were the huts which were set on fire by the said mob.

45.32 For the reasons stated above, I find no substance in the contention of the Muslim parties that the mob upon which Dy.S.P., Diwate fired was a Hindu mob. I hold that it was a Muslim mob and that it had set fire to some Hindu huts and that when the Police called upon it to disperse it attacked the police party with stones and when fire was first opened it ran into a lane and continued attacking the police party and that this necessitated the opening of further fire. There was thus danger both to life and property and the police firing was, therefore, justified.

The police firing at the Bhiwandi-Kalyan Road near the Asabibi Dargha

45.33 Rajaram Keshavrao Phadtare, a retired Unarmed Head Constable in the Thana District Police and a Municipal Councillor, who was running power-looms, at Lahoti Compound of the Bhiwandi-Kalyan Road, was sitting in front of his factory in the morning of May 8, 1970. At about 10-30 a.m. two police constables on their bicycles went towards Hanuman Tekdi (Hill). Some time later he learnt that some Muslims had assaulted them on the Bhiwandi-Kalyan Road. He immediately telephoned to the police station [N.H.W. 29/1(4)/1951(3)]. Entry No. 69 of the Riot Diary of May 8, 1970 (Ex. P 368) records a telephone call received at 12-10 p.m. from an unknown person that disturbances had started near the Asabibi Dargah situate at the Bhiwandi-Kalyan Road and that in pursuance thereof C.P.I., Tikle with a police party was sent to the spot. Apparently this telephone call was from Phadtare.

45.34 The two constables referred to by Phadtare were P.C., Jagannath Raghunath Pawar (Buckle No. 2455 — the deponent of affidavit No. 510) and P.C., Nagraj Patil. They were detailed for cycle patrolling on the Bhiwandi-Kalyan Road. According to Pawar's affidavit, at about 12 noon while they were patrolling they noticed on the road about 50 to 60 Muslims carrying sticks and iron bars. On the two constables accosting them, they started shouting "Police Ko Maro". Pawar was hit with a stick on his head and back and left shoulder. Patil was also hit with a stick. They thereupon blew their whistles. Lans Naik Salvi and A.P.C., Sitaram Baliram Patil (P.W. 50) were detailed on patrol duty on the Bhiwandi-Kalyan Road. Sitaram Patil was carrying his .410 musket, while Lans Naik Salvi was armed with a lathi. While patrolling they heard the police whistles for help from the direction of Asabibi Dargah. They ran towards the Asabibi Dargah, the direction from which the sound of whistles had come. They saw about 150 Muslims carrying sticks and iron bars shouting "Police Ko Maro" and P.Cs., Pawar and Nagraj Patil being assaulted by them and the constables' cycles lying nearby in damaged condition. When they went near the two policemen in difficulty, the rioters attacked them also. One of them tried to hit Sitaram Patil with an iron bar. He saved himself by shielding himself with his musket with the result that the butt of his musket got cracked. Another rioter also raised an iron bar to hit him. Realizing that his life was in danger, he fired six rounds from his musket. The two rioters, each of whom had tried to hit Sitaram Patil with iron bars, were injured in the firing. Meanwhile C.P.I., Tikale came there in a police van accompanied by a police party. The mob thereupon retreated slightly but continued to throw stones at the Police from the Bhiwandi-Kalyan Road as also from nearby huts. Tikale shouted out a warning to the rioters that the Police would open fire unless they dispersed, but as the stone-throwing continued Tikale ordered P.Cs., Madhukar Krishna Parkhe (the deponent of affidavit No. 453), Ashok Shiva Mhaske (the deponent of affidavit No. 454) and Subhash Shivram Bagad (the deponent of affidavit No. 455), all belonging to the S.R.P. Force, to open fire and they fired seven, two and three rounds respectively from their .410 muskets. The rioters then started running away. The Police chased them and arrested 18 of them. Some of the arrested persons were carrying sticks and iron bars. Among the arrested persons was one Mumtaz Ahmed, one of the two persons injured in the fire opened by A.P.C., Sitaram Patil [P.W. 50/1-3/965-6 ; P.W. 36/1(13)/844(8), 12-3/848].

45.35 Though A.P.C., Sitaram Patil has exaggerated the number of the rioters for, while according to P.C., Pawar, their number was 50 or 60, according to Sitaram Patil, their number was about 150, there can be no doubt that the fire opened by Sitaram Patil was justified. A muslim mob was attacking the police party with sticks and iron bars. The musket-butt of Sitaram Patil got cracked in Patil trying to fend off a blow with an iron bar and, but for the fire

opened by him, the lives of the four constables would have been in danger. The mob was in an equally violent mood when C.P.I., Tikale arrived there with the police party. The lives of the members of his police party were also in danger and it was necessary for Tikale to order fire to be opened in order to protect their lives. The fire opened under Tikale's orders was, therefore, also justified.

45.36 According to the Police, the other person injured in the fire opened by A.P.C., Sitaram Patil was Mohamed Saeed Maqbool and while Mumtaz Ahmed was arrested by the Police, Mohamed Saeed was removed by the rioters, his dead body being found subsequently. According to the Muslim parties, Mohamed Saeed was not one of the rioters, but was murdered by the Police. The only witness the Muslim parties have produced in support of their case is Rukaiyya, the widow of Mohamed Saeed Maqbool (B.R.W. 68/1-3/1635-8). According to her affidavit, at about 11 a.m. on May 8, 1970 some policemen came running accompanied by some persons who were wearing vestes and half pants, and were armed with sticks. There were reports of police firing. Rukaiyya and the other women accompanied by their menfolk left their huts and went into some rooms in a permanent structure. She went into one of the rooms, while her husband went into the room opposite. The policemen and others started breaking down the doors with stones and bayonets of their rifles. They succeeded in doing so and a policeman fired a shot into the room where Mohamed Saeed was sheltering. Thereafter the Police went on breaking down other doors. When the policeman were away Rukaiyya rushed into the room and found her husband lying on his stomach bleeding profusely from a bullet wound in his chest. By that time he was dead. She removed his body to her hut. The next day she managed to send a message to her father-in-law Maqbool Ahmed Gherao (B.R.W. 69) who resided in Bhiwandi. He arrived with the assistance of the Police. The Police removed the body after making a panchnama and though thereafter her father-in-law tried to get the body of his son, he did not succeed in doing so.

45.37 Thus, according to the affidavit of Rukaiyya, she was not an eye-witness to the murder of her husband, because all that she has stated in her affidavit is that a policeman fired a shot and she heard a loud report of a gun and it was after all the policemen left that she rushed into the room where her husband was and found him lying dead with a bullet wound. In her cross-examination she has stated that there were two policemen who were accompanied by two or three persons wearing vests and half pants; that she and her husband were in their hut and on hearing the sound of gun-fire her husband took her to the pucca structure where the other women had gathered; that she had to walk down the lane in order to reach that room; that there were no women in the lane but only men, who were all Muslims; and that when the firing commenced, some Muslim residents of the huts were outside in the lane and some in the huts and those who were outside in the lane were not

doing anything but just standing. On further cross-examination it transpired that the room in which her husband had taken shelter was not in the same chawl but was in a chawl opposite to the chawl in which she had taken shelter. At first she stated that the door of the room in which she had taken shelter was open but later on she stated that it was only half open because they had closed the door and when the Police came and started breaking down doors she peeped through the door to see what was happening. The one shot which according to her affidavit she saw the policeman fire became two shots in her cross-examination. She has further deposed that when the Police broke down the door of the room in which her husband was, many persons ran out of the room and the Police fired into the room. She stated that she did not know whether anyone, apart from her husband, was injured and that the other women who were with her in the room ran away when the Police left and she alone went into the room where her husband was. It was very difficult to understand what she said in the witness-box or to follow her evidence. Her evidence does not carry much conviction. If she and the other women were in one room and their menfolk were in a different room in the opposite chawl and if a policeman had fired into that room as alleged by her, the other women would have been equally interested in knowing whether any of their menfolk were injured and would not just go away after the Police left, leaving Rukaiyya alone to go into that room to find out what had happened. From her evidence it is clear that she went and took shelter after the Police had opened fire. By that time there were not just two constables on the scene but Tikale had arrived with his police party. The police party had chased and arrested 18 persons. They must have chased the rioters right upto the hutments and the chawls. She is either all mixed up in what she says or is seeking to clear the memory of her dead husband. It was submitted that there was no direct evidence that Mohamed Saeed Maqbool when injured in the police firing, was taken away by the rioters, the only evidence to that effect being that of C.P.I. Tikale who has deposed that it was P.C., Pawar who informed him that the injured person was removed by the mob. It was argued that Pawar, though he had filed an affidavit, was not called before the Commission and that the other constables, namely, P.Cs., Parkhe, Mhaske and Bagad, were also not called to depose to the fact that Mohamed Saeed Maqbool was injured in the police firing and was removed by the rioters. I do not find any substance in this argument. It was further submitted that P.C., Sitaram Patil, who opened fire and who is supposed to have injured Mohamed Saeed, has not stated in his affidavit that the injured man was removed by the rioters, though he has stated that the other injured man was amongst the persons arrested by the Police. I equally do not find any substance in it. If Mohamed Saeed was injured in the police firing, he could have been removed only by the rioters. The story deposed to by Rukaiyya suffers from a number of

inconsistencies as pointed out above and on her bare word it cannot be held that after the firing by A.P.C., Sitaram Patil and by the three constables under C.P.I., Tikale's orders, two constables went and fired into the room where her husband was sheltering and murdered him.

45.38 Another question which arises with reference to this incident is what happened to the dead body of Mohamed Saeed. According to the Police, it was handed over to his father Maqbool Ahmed Gherao (B.R.W. 69). On receiving a message from his daughter-in-law he had gone on May 9, 1970 with P.S.I., Mullani (P.W. 28), P.S.I., Patil and two constables to fetch his son's body from his place. The body was then removed to the Bhiwandi Municipal Dispensary. On May 10, 1970 Maqbool went to the hospital at 8 a.m. when the post-mortem was performed. At 5 p.m. the doctor told him that he could take away the dead body. He signed the receipt for the body asked for by P.S.I., Mullani. According to him, though he had brought along a van to take away his son's body he did not receive the body and he was told that the body could not be given to him. From his cross-examination it appears that after he had given a receipt there was an altercation between him and P.S.I., Mullani, Patil and Hirwe, and Mullani told him not to teach him the law (B.R.W. 69/1-3/1639-42, 4/1738). This witness has made several applications complaining about not receiving his son's body and requesting for an inquiry into the matter. These applications were made to the Prime Minister, the then Union Home Minister Mr. Y. B. Chavan, the then Union Minister for Industries Mr. Fakhruddin Ali Ahmed, the Chief Minister Mr. V. P. Naik, the Minister for Public Health Dr. Rafiq Zakaria and Mr. H. J. H. Taleyarkhan, the former Minister for Housing. The application to Dr. Rafiq Zakaria is part of Ex. P 522 (colly.). A report was asked for by the I.G.P. from the S.P. on Maqbool Ahmed's application and S.P., Bhawe has made his report thereon dated September 8, 1970 (part of Ex. P 522 collectively). This report sets out the history of the police firing which took place near Asabibi Dargah and concludes by stating that Maqbool's contention that the dead body was not handed over to him was not tenable. Maqbool's statement was recorded by an officer of the Special Investigation Squad on July 24, 1970 in which he is supposed to have said that the dead body was duly received by him after the post-mortem examination. In his statement (Ex. P 1527) recorded by D.S.I., Nikam of the Special Investigation Squad on August 25, 1970, P.C., K. A. Nalge has stated that after the post-mortem examination the dead body of Mohamed Saeed was handed over to Maqbool. On the basis of this statement the Under Secretary to the Government of Maharashtra, Home Department, by his letter dated October 24, 1970 (part of Ex. P 522 collectively) informed Maqbool that his son's dead body had been handed over to him by P.C., Nalge. Meanwhile, Maqbool's statement was recorded by Dy.S.P., Diwate on October 16, 1970 (Ex. P 1528) in which Maqbool categorically stated that he

had not received his son's dead body and that he did not know what had happened to it. Thereafter on November 11, 1970 Maqbool made another application to the I.G.P. reiterating his contention that the dead body had not been received by him and requesting that the inquiry should be conducted by the Bombay Police. The Addl. S.P.(II), Thana, by his report dated March 26, 1971, after reiterating the same facts, intimated to the I.G.P. that Maqbool's allegation that his son's dead body was not handed over to him was an afterthought and, therefore, untenable. The I.G.P.'s office by its letter dated April 13, 1971 (Ex. P. 1529) communicated what the Addl. S.P. had reported to the Home Department and by the Government's letter dated April 21, 1971 (Ex. P 678) Maqbool was informed that the Government had nothing to add to the reply already given to him.

45.39 There is no reason why Maqbool should falsely allege that his son's dead body had not been handed over to him. Apart from the fact that Maqbool's demeanour has impressed me and he seemed genuinely indignant in the witness-box about not having received his son's dead body, documentary evidence shows that Maqbool's allegation that his son's dead body was not received by him is not an afterthought on his part. He had made repeated complaints about it to the Prime Minister, the Chief Minister and other Ministers by his applications dated June 20, 1970. It is, therefore, not possible to believe that he would give a statement on July 24, 1970 to the Special Investigation Squad that his son's dead body had been received by him. Maqbool's said police statement was not put to him in cross-examination. As mentioned earlier, there is considerable doubt about police statements recorded by the Special Investigation Squad and the evidence before the Commission shows that the officers of the Squad have not scrupled to put into police statements what they wanted a witness to state instead of what the witness had actually stated. In his police statement recorded by Dy.S.P., Diwate, Maqbool has categorically stated that the dead body of his son was not received by him. The police statement of P.C., Nalge, on which reliance has been placed in various reports made on Maqbool's applications, does not carry the matter any further because in that police statement Nalge has not stated that he had handed over the dead body to Maqbool, but has merely stated that the body was handed over to Maqbool.

45.40 In the circumstances, I see no reason to doubt the word of Maqbool Ahmed Gherao that he did not receive the dead body of his son, though it has not been possible to find out the reason why it was not handed over to him. It could be that the dead body was no more available to be given to Maqbool, it having been given for burial to the representatives of the Muslim community along with some unidentified bodies.

The arrests in Thange Alli

45.41 There is a row of Muslim houses in Thange Alli situate behind the northern end of the municipal quarters which adjoin the

Bhiwandi Town Police Station. Behind the Town Police Station is a row of houses and behind this row are these Muslim houses and in order to reach them one has to step down from Shivaji Nagar Road on to a lane at a lower level. It is the case of the Muslim parties that there was great commotion in this locality in the night of May 7, 1970 and as a result thereof the residents of about 12 Muslim houses in the said locality gathered together in the house of Mohamed Ismail Abdul Khalik (B.R.W. 53) and that on May 8, 1970 a mob of about 50 Hindus headed by Baliram More attacked this house with stones and acid-bulbs for about two hours trying to break open the door and that some time later S.R.P. men knocked on the door and when the door was opened, the S.R.P. men beat up the Muslims who had gathered inside the house, took all of them to the Town Police Station, arrested all the men and locked up the women and children in the municipal garages close by till about 5 p.m. on May 9, 1970 without any food or water and that on May 9, 1970 Dr. Muqry rescued them and took them to Islampura. They have further alleged that after the S.R.P. men took away the residents of these houses the Hindus looted the houses.

45.42 According to the Executive Magistrates and the District Police Officers, these houses were abandoned by their residents in the morning of May 8, 1970 and many of them took refuge in the garages in the municipal quarters and between about 1 and 2 p.m. disturbances started in Thange Alli and on information received in the Control Room P.I., Ajarekar (P.W. 39) was directed to proceed to Thange Alli. He found a violent mob of Hindu rioters and dispersed it by opening fire.

45.43 It is an admitted position that in Thange Alli 34 Muslim houses were looted and 12 Muslim houses and one Muslim shop damaged on May 8, 1970. The question is whether the incident took place in the manner alleged by the Muslim parties or by the Executive Magistrates and the District Police Officers.

45.44 The Bhiwandi Relief Committee has examined four witnesses in support of the Muslim case. They are Ruqayya Mohamed Umar (B.R.W. 50/1-3/1574-6), Hajera Abdul Gafoor (B.R.W. 51/1-2/1577-8), Khairunnisa Noor Mohamed (B.R.W. 52/1-2/1579-80) and Mohamed Ismail Abdul Khalik (B.R.W. 53/1-4/1581-3), all residents of Thange Alli. Ruqayya Mohamed Umar (B.R.W. 50) has alleged in her affidavit that on May 8, 1970 she with all her family members shifted for shelter to the house of Abdul Aziz Abdul Khalik, that is, the same house in which the witness Mohamed Ismail Abdul Khalik (B.R.W. 53) was staying, and that the residents of all the 12 houses in the said Mohalla had gathered there. A mob of about 50 Hindus collected and began throwing stones, acid-bulbs and soda-water bottles at the house and tried to break open the door. Thereafter several S.R.P. men came and knocked on the door and the door was opened. The S.R.P. men mercilessly beat all the men who had gathered there and took them to the jail. She has further alleged that all the women

and children were removed to the Bhiwandi Town Police Station where they were detained till May 9, 1970 without any food or water and later they were all removed by Dr. Muqry in a truck to Islampura. Her house was one of the houses which were looted. Amongst the persons whom she has implicated as having taken part in the said offence are Baliram More, Pandu Vastad and Bhai Nagle. Baliram More was the Municipal Councillor from this locality while Pandu Vastad resided just behind her house. According to her, Bhai Nagle also used to come to the locality very often and that is how she knew him and also because he was a former resident of Thange Alli. In the witness-box she has tried to improve upon her version in order to make it consistent with the Muslim case and has said that they were detained not in the police station, but in a garage in the municipal quarters adjoining the police station. She has admitted that none of the women and children were arrested by the police. Though in her affidavit she has alleged that all the menfolk were arrested and taken to jail, it transpired in her cross-examination that her husband and brother were not arrested though they were sitting on the 'ota' of the house and that the only male member of her family who was arrested was her nephew Shabir Ahmed.

45.45 The version given in the affidavit of Hajera Abdul Gafoor (B.R.W. 51) is the same as that of Ruqayya. She has, however, stated in her affidavit that the women and children were detained in a building adjoining the Town Police Station. Her three sons were arrested and her house was also looted. She had also implicated several persons in her affidavit including Baliram More and Pandu Vastad. In the witness-box, however, she stated that they were not detained in the building adjoining the police station but in a garage in the municipal quarters adjoining the police station.

45.46 The version of Mohamed Ismail Abdul Khalik (B.R.W. 53) is the same as that of the other two witnesses. He has alleged in his affidavit that at about 1 p.m. the women and children were marched to the police station and were detained in the garage of the adjoining municipal building. His house was also looted. He has also implicated Baliram More and Pandu Vastad. In the witness-box he alleged that he was beaten by the S.R.P. men, but he ran away to the Town Police Station for protection where Dy.S.P., Diwate said that as he was a resident of the locality, there was no need to arrest him. He has stated that this happened at 10-30 or 11 a.m. It has further transpired in his evidence that his brother was also not arrested, even though Diwate did not know his brother. Realizing the damaging effect of this statement he volunteered that his brother had not gone to the Town Police Station but had run away to Islampura.

45.47 Khairunnisa Noor Mohamed (B.R.W. 52) was not present when the alleged incident happened. According to her, on May 7, 1970 she stayed the whole night in her house with her four children and the next day at about 5 p.m. went to the Town Police Station with her children for protection and on May 9, 1970 she was sent

to her brother's house in Islampura. Her two sons were, however, not allowed by the Police to accompany her, but were arrested and sent to jail. Her house was also looted, a fact discovered by her when she returned to her house after the curfew was relaxed. Even though she was not there, she has implicated four persons, including Baliram More and Pandu Vastad, as being amongst the persons who looted her house.

45.48 On the face of it, the evidence of these four witnesses does not sound to be true. Their own evidence disproves the allegation that all the Muslim residents of Thange Alli were arrested. The husband and brother of Ruqayya were not arrested. Two out of the four children of Khairunnisa were not arrested. Mohamed Ismail Abdul Khaliq and his brother were not arrested. The evidence even does not show that all the women and children were detained. Assuming the two children of Khairunnisa who were not arrested were small children or were daughters, Khairunnisa and her two children were not sent to the municipal garage and detained there. She took shelter with her children in the Town Police Station and was allowed to take shelter there without any harassment. She has not made any complaint about her or her children being kept without food or water. She and two of her children were sent to her brother's house at Islampura under police escort. Further, if the intention was to arrest all the Muslim residents of Thange Alli so as to facilitate the looting of their houses by the Hindus, it would be a strange thing for Dy.S.P., Diwate to say that there was no need to arrest Mohamed Ismail Khalik as he was a resident of the locality. There is also no unanimity about the time when this incident took place. Abdul Khalik's affidavit makes out that this happened at about 1 p.m., but in his cross-examination he has stated that the incident happened at 10-30 a.m. or 11 a.m. and that at that time he ran away for shelter to the Town Police Station. If by 11 a.m. he had taken shelter in the Town Police Station, he could hardly state, as he has purported to do, about what happened at about 1 p.m. to the women and children who were in the house and we are also left wondering what these women and children were doing between 11 a.m. and 1 p.m. after all the men were beaten up and arrested and Abdul Khalik had run away to the Town Police Station for shelter. There is also no unanimity as to the time when the women and children were taken by Dr. Muqry to Islampura. According to Rukayya and Mohamed Ismail it was at 5 p.m. on May 9, 1970 while according to Hajera, it was at 3 p.m. on May 9, 1970. Dr. Muqry has not been called in evidence even though he has filed an affidavit (affidavit No. 228). The reason obviously is that his affidavit makes no mention of his removing to Islampura any women and children detained in the garage in the municipal quarters. On the contrary, his affidavit concludes by stating, "At about 5-30 p.m. at my dispensary I learnt that the processionists had gone violent and there was some rioting. So I went home and moved from by residence to a safer place". S.P.,

Bhave has admitted that in the two garages in the compound of the municipal quarters some Muslim women and children had taken shelter. He and Dy.S.P., Diwate have mentioned how and in what circumstances the relatives of the three women witnesses were arrested. In all, 15 Muslim residents of Thange Alli were arrested on May 8, 1970 for breach of curfew order out of whom 13, including Rukayya's nephew Shabir Ahmed and one of the sons of Hajera, were arrested in Thange Alli at about 11 a.m. ; another son of Hajera was arrested in Jaitunpura at 11 a.m. ; one of the sons of Khairunnisa was arrested in Nizampura at about 4 p.m. Seventeen more Muslim residents of Thange Alli, including the other son of Khairunnisa, were arrested on May 11, 1970 at about 12 noon for committing a breach of the curfew order. All these 32 persons were convicted on their plea of guilty and fined. Hajera's third son Abdul Hamid was arrested in the evening of May 7, 1970 and is an accused in C.R. No. 177/70, the Bhiwandi Conspiracy Case. It is undoubtedly true that the Police have no proper record of the arrest of any person, for no Arrest Register was maintained and in some cases the accused are shown as having been arrested at the time and place suitable to the police officer concerned. Pleading guilty by all the accused to the charge of committing a breach of the curfew order also does not carry the matter any further because these people were all remanded into magisterial custody and before they pleaded guilty had remained in jail for quite some time. They would, therefore, any day prefer, as they in fact did, to plead guilty and be done with on paying a fine of Rs. 5 or Rs. 10, that being the standard fine imposed at that time on persons arrested during the disturbances for committing a breach of the curfew order. It is pertinent to note that everyone charged with committing a breach of the curfew order had pleaded guilty until one of the Magistrates on December 16, 1970 for the first time imposed a fine of Rs. 125 even though the accused had pleaded guilty. Thereafter some of the accused started pleading not guilty (P.W. 4/279/768-9, 315/789 ; P.W. 66/189/3912). In certain cases innocent Muslims have been arrested and falsely implicated either in substantive offences or for committing a breach of the curfew order. From this, however, it does not follow that every Muslim who was arrested was innocent or that no Muslim ever committed a breach of the curfew order. Not a single resident of Thange Alli, who was alleged to be falsely arrested, has been called in evidence. If the Muslim case was true, it is inconceivable that the Police should not have arrested Mohamed Ismail Khalik and his brother or the husband and brother of Rukayya or would have given shelter to Khairunnisa and her children in the Town Police Station. It is clear that Thange Alli was a predominantly Hindu locality and the stronghold of Baliram More and that out of fear the Muslims abandoned their houses, the women and children went to the Town Police Station and it was arranged to give them shelter in the adjoining municipal garages and that several of the Muslims were

arrested for committing a breach of the curfew order, their arrests having no connection with the incident in Thange Alli. I, therefore, disbelieve the allegations made in this behalf by the Muslim parties.

The police firing at Thange Alli

45.49 At about 1-55 p.m. a telephonic message was received at the Control Room from an unknown person that disturbances were taking place in Thange Alli. Thereupon P.I., Ajarekar and a police party of four constables were sent to Thange Alli (Ex. P 368, entry No. 77). They saw a mob of Hindus carrying iron bars, lathis, acid-bulbs and spears, throwing stones and acid-bulbs on Muslim houses. Ajarekar has estimated the strength of this mob at 200 to 300. Ajarekar also saw some of the rioters looting some Muslim Zopadpattis. On seeing the police party the rioters started hurling missiles at the Police. Ajarekar called upon them to disperse, but they refused to do so and he thereupon fired two rounds from his .38 revolver. The rioters thereupon ran away into the adjoining lanes. No one was injured in this firing. Ajarekar returned to the Town Police Station and lodged his F.I.R. (Ex. P 201). Baliram More, Pandu Vastad and 10 other Hindus were subsequently arrested in this case. One of them was discharged on November 5, 1970 and the remaining 11 acquitted on November 13, 1970 by the Judicial Magistrate, First Class, Bhiwandi [P.W. 39/1(7)/888(5), 6/892-3, 9-10/894].

45.50 Baliram More was arrested on May 30, 1970 and was remanded in magisterial custody till June 7, 1970. The news of his arrest caused great resentment amongst the Hindus of Bhiwandi in general and the workers and supporters of the Shiv Sena in particular, and the workers of the Shiv Sena, the R.U.M., the Jan Sangh and the R.S.S. caused a hartal to protest against his arrest to be observed in Bhiwandi on May 31, 1970. The hartal was completely successful in the Hindu localities and prominent Congress workers such as Zumberlal Kalantri, M.L.C., and Mohanlal Karwa also kept their business establishments closed on that day. Immediately on learning about Baliram More's arrest V. M. Marathe, the editor of the Shiv Sena weekly *Shiv Garjana* published from Thana, visited Bhiwandi on May 30, 1970, contacted local Hindu leaders with a view to find out the reason for Baliram More's arrest and the possibility of getting him released on bail and to decide on the further line of action. On his return to Thana, Marathe contacted the Shiv Sena leaders there and they decided to give a "Thana District Bandh" call on June 1, 1970. He then telephoned the Shiv Sena Chief Bal Thackeray, for permission to call a 'bandh', but he was asked to meet Bal Thackeray on the night of June 1, 1970. At this meeting, though at the outset Bal Thackeray supported the 'bandh', he ultimately decided against it on the ground that Baliram More's arrest was for an offence which was under investigation in a Court

of law and advised the Shiv Sena workers to give up their decision to call a 'bandh' and instead to register their protest by hoisting black flags on their houses. These facts were reported by the D.I.G. (Int.) to the Home Secretary by his report dated June 4, 1970 (Ex. G. 328).

45.51 It was contended by the Muslim parties that these Muslim houses were situate just behind the Town Police Station and that so many houses could not be looted and others damaged without the officers and policemen in and near the Town Police Station coming to know about it and that knowing that these were Muslim houses which were being looted the police personnel at the Town Police Station turned both a deaf ear and a blind eye to these acts of rioting and looting. The location of these houses has already been described above. Local inspection has shown that it is very unlikely that anyone in the Town Police Station would come to know about the looting of Muslim houses in Thange Alli if the looters came from the lane behind the houses unless there were some policemen or police officers in the lane which leads to the Old Wada Stand Road. There are, however, three houses behind the Municipal Chawl which were also looted. The police personnel in the Town Police Station would come to know about the looting or the attack on these three houses unless the mob concerned was a very small one. On the evidence the contention of the Muslim parties, however, does not seem to be justified. If the police personnel in the Town Police Station were deliberately ignoring what was happening to the Muslim houses in Thange Alli, they would not have promptly despatched P.I., Ajarekar and a police party on receiving information about the disturbances in Thange Alli. Just as in the case of the other incidents where fire was opened by the Police on Hindu mobs, here also an attempt has been made in contemporaneous documents to suppress the fact that this mob was a Hindu mob and neither the report given by P.I., Ajarekar to the Control Room which was entered in the said entry No. 77 of the Riot Diary (Ex. P 368) nor P.I., Aarekar's F.I.R. (Ex. P 201) makes a mention that the mob which was rioting and looting in Thange Alli and upon which fire was opened was a Hindu mob.

45.52 Apart from this attempt to suppress the community of the mob, here was an armed and violent Hindu mob which was looting Muslim houses and on seeing the police party attacked it with stones and acid-bulbs. The firing was, therefore, justified.

The firing near the Bhiwandi-Ahmedabad Road.

45.53 On May 8, 1970 at about 2-5 p.m. Dattatraya Mahadeo More gave information to the Control Room that Kombadpada was likely to be attacked (Ex. P 368, entry No. 80). S.P., Bhave therefore sent P.S.I., L. R. Deshpande (P.W. 42) with a striking force to Kombadpada and himself went in a jeep along with Asstt. I.G.P., Bala-krishnan, P.S.I., Shirke of the S.R.P. Force and S.R.P.C., S. S. Bagad

(Buckle No. 391) of S.R.P. Group No. VIII, Marol (the deponent of affidavit No. 455), towards Kombadpada from another direction via the Bhiwandi-Ahmedabad Road with the intention of surrounding the rioting mob. Bhavé entered the fields near Nadi Naka from the Bhiwandi-Ahmedabad Road and saw that some huts were already on fire. He also saw a mob of 100 to 150 persons. On seeing the police party the mob started throwing stones at it. Bhavé called upon the rioters to disperse. On their failure to do so, Bhavé ordered P.C., Bagad to open fire. Bagad accordingly fired two rounds from his .410 musket. The mob thereupon dispersed. Nobody was injured in this firing. Bhavé thereafter did not proceed to Kombadpada as he had already encountered the rioters on the way. The next day Bhavé lodged his F.I.R. (Ex. P 208) which was registered as C.R. No. 215/70 [P.W. 4/1(93)/236(60), 263/757].

45.54 The evidence clearly shows that the mob encountered by Bhavé had already committed arson and on seeing the police party began throwing stones at it. There was thus danger to the lives of the members of the police party and also to other properties which this mob might be marching to attack. The opening of fire had the desired effect of dispersing the mob. This police firing was, therefore, justified.

45.55 The only controversy about this firing is with respect to the identity of the mob. Neither Bhavé's F.I.R. nor S.R.P.C., Bagad's affidavit mentions the community of the mob, but Bhavé's affidavit describes this mob as a Muslim mob. According to the Muslim parties it was a Hindu mob. In his cross-examination Bhavé stated that in his affidavit he had described this mob as a Muslim mob because he took it to be the same mob which had attacked Kombadpada (a pre-dominantly Hindu locality) about which he had received a complaint from Dattatraya More and that this was a logical inference to draw. Had Bhavé been able to see the mob and been able to make out that the persons in the mob were Muslims, his F.I.R. would have stated so. He has admitted that the mob was at a distance and the Police were, therefore, not able to arrest anyone from the mob. The only question which, therefore, falls for determination is whether this was a logical inference for Bhavé to draw. Bhavé's affidavit states, "At about 13-30 hrs. Shri Datta More came and reported that Kombadpada was likely to be attacked by some Muslims." The information given by Dattatraya More has, however, been reproduced in entry No. 80 of the Riot Diary for May 8, 1970 (Ex. P 368) as follows :

"Datta More informed as follows: 'some persons are coming from outside the town to Kombadpada for arson and looting. Therefore, send Police'."

The time when this information was given at the Control Room is mentioned as 2-5 p.m. and not 1-30 p.m. as alleged by Bhavé. If, as alleged by Bhavé, Dattatraya More had, in fact, given the information that a Muslim mob had attacked Kombadpada,

this statement would have found a place in the aforesaid entry. The entry, however, makes no mention of the community of the attackers. In fact, the entry does not say that a Muslim mob or any mob had attacked Kombadpada. It only talks of a likely attack by persons from outside Bhiwandi on Kombadpada. Further, if it was a logical inference for Bhave to have drawn, he would have drawn it when he reported the matter to the Control Room and lodged his F.I.R., but neither his report to the Control Room nor his F.I.R. mentions the community of the mob. Obviously, this inference was, therefore, drawn by him only when he came to draft his affidavit. I, therefore, find no basis for drawing any such inference. In fact, we have seen that it is only when Hindu rioters are concerned that the entries in the Control Room Diary and Riot Diaries and the F.I.Rs. are studiously silent on the community of the mob and the fact that the community of the mob has not been mentioned either in the aforesaid entry or in Bhave's F.I.R. would itself raise a strong suspicion that it was a Hindu mob. This suspicion turns into a near certainty when we find from the other evidence on the record that at the relevant time there was a rioting Hindu mob in this locality. The evidence of Rafiq Ahmed Abdul Aziz (B.R.W. 13/1-2/1463-4) and Ismail Gulam Akbar Farid (M.T.M.W. 12/1-18/1773-5) shows that Hindu villagers from Shelar attacked this locality several times between 6 p.m. on May 7, 1970 and the noon of May 8, 1970. They damaged several Muslim properties including huts, houses, a factory and a flour mill and it is very likely that after setting fire to Muslim properties and factories this mob was proceeding to Kombadpada to attack Muslim hutments there, when they encountered S.P., Bhave on the way. It is pertinent to remember that Dattatraya More has referred to the likely attackers as persons 'from outside the town'. While Bhave's affidavit only talks of some huts on fire, his F.I.R. (Ex. P 208) mentions that they saw some huts and a factory on fire, which would be the Muslim factory set on fire by this mob. In the circumstances the logical inference to draw would not be that it was a Muslim mob, but would be that it was a Hindu mob.

45.56 In order to substantiate the contention that this was a Muslim mob Mr. Rane has relied upon the evidence of Ganu Dhau Gaikwad (N.H.W. 50/1-5/2088-93) who has deposed that at about 12 noon on May 8, 1970 a Muslim mob came and set fire to their huts. This witness, however, is not a resident of the locality in question but is a resident of Sangampada near the Muslim graveyard which is on the other side of Kombadpada, Kombadpada being to the west of Sangampada. The locality with which we are concerned is, however, to the east of Sangampada very near the Bhiwandi-Ahmedabad Road and at quite some distance from Sangampada. The Muslim mob referred to by Ganu Gaikwad cannot, therefore, be the same mob as the one upon which Bhave ordered fire to be opened near the Bhiwandi-Ahmedabad Road.

45.57 In the circumstances, I find that there is no warrant for holding that the mob on which S.P., Bhave opened fire was a Muslim mob. If there is any logical inference which could be drawn, it would be that this was a Hindu mob.

The second police firing at Nizampura 4th Mohalla

45.58 On May 8, 1970 between 4-30 p.m. and 5 p.m. fire was opened for the second time and tear-gas shells fired in Nizampura 4th Mohalla and 300 persons were arrested by the Police. According to the Police, the firing took place on a violent rioting Muslim mob. According to the Muslim parties, the Police raided Nizampura 4th Mohalla, fired tear-gas shells and opened fire to terrorize the residents of the locality and thereafter arrested innocent Muslims.

45.59 The police case is deposed to by P.S.I., Prabhakar Krishnaji Bagul (P.W. 31/1-15/561-74), P.C., Dattatraya Shripati Kamble, (Buckle No. 2128) of Bassein Police Station, Thana District (P.W.20/1 (3)/453(2-3), 14-15/460-3, 24-5/466), and P.C., Sahebrao Wamanrao Jagtap (who had not been allotted a buckle number) also of Bassein Police Station (P.W. 22/1(3)/476(2-3), 8/482-3, 10-11/484).

45.60 Two police parties went to Nizampura 4th Mohalla, the first consisting of P.S.I., Bagul and four armed constables armed with .410 muskets, including Kamble and Jagtap, and 20 S.R.P. men armed with lathis and the second consisting of P.S.I., S. A. Rane of L. A. I Gas Squad, Nigaum Headquarters, Bombay, along with 20 to 22 constables and S.R.P. men including the Gas Squad. Some of the constables and S.R.P. men in Rane's party were armed with .410 muskets. P.S.I., S. A. Rane has filed an affidavit (affidavit No. 520) but has not been examined as a witness. The evidence of the three police witnesses and the affidavit of P.S.I., S. A. Rane contradict one another in a number of material particulars.

45.61 Bagul has stated in his affidavit that he left Nasik on May 8, 1970, reached Bhiwandi at 2 p.m. and reported his arrival at the Control Room. Asst. I.G.P., Balakrishnan asked him to proceed to Bombay-Agra Road and take necessary action as a mob was reported to be committing offences there. Thereupon he, P.S.I., S.A. Rane and some other policemen went to the Bombay-Agra Road in a police van reaching there at about 4-30 p.m. They saw a mob of about 400 Muslims trying to set fire to a timber-depot. In cross-examination he has stated that after reaching Bhiwandi he waited in the Control Room for about two hours and at about 4-20 p.m. Asst. I.G.P., Balakrishnan asked him to proceed to Sawant's timber-depot on the Bombay-Agra Road as a mob was attempting to set fire to it, that he left in a police van along with his police party and Rane and his police party followed him five minutes later in another van. He has further deposed that when he went to Sawant's timber-depot he saw that it had had already been set on fire. P.Cs. Kamble and Jagtap have also stated that Rane's party came separately. While Bagul has been emphatic that he did not leave the Town Police Station at 2-30 p.m., Jagtap and

Kamble have both stated that Bagul and his party left the Town Police Station at 2-30 p.m. for patrolling duty at Vanjarpatti Naka as the S.T. Depot people had made a complaint that they apprehended arson to the depot and that their party waited at the S.T. Depot till about 3-30 p.m. and then patrolled the Bombay-Agra Road between S. T. Depot and Vanjarpatti Naka in the van and while patrolling saw a Muslim mob of about 400 persons setting fire to a timber-depot on the Bombay-Agra Road. While according to Bagul the timber-depot which had been set on fire by the Muslim mob was Sawant's timber-depot, according to Kamble it was the Sharda Saw Mills belonging to a Gujarati. Jagtap had, however, stated in his affidavit that Bagul asked him and the other policemen to go with him in a police van at about 4-30 p.m. and that they went to Bombay-Agra Road where they saw a Muslim mob setting fire to a timber depot. In cross-examination he stated that the said statement in his affidavit was not correct. Jagtap had further stated in his evidence that the Muslim mob had set fire not only to a timber-depot but also to a sizing factory and two or three other factories. Bagul has also stated that in all two or three timber-depots, Sawant's factory and timber depot and another factory all in the same line had been set on fire including the watchmen's residential huts attached to each of these factories and timber-depots. He has further stated that while they were at Sawant's timber-depot a police wireless van came there and saw the fire and went ahead and that after they had arrested the 300 persons, a fire-engine came to the spot and attempted to extinguish the fire and that its water-tank got exhausted before the fire could be put out and thereupon it went away. P.S.I., S. A. Rane's affidavit states that he went to Bhiwandi along with a Gas Squad and eight armed policemen reaching Bhiwandi at 4 a.m. on May 8, 1970 and he was asked to remain in reserve at the Town Police Station and that at about 4 p.m. the Control Room Officer asked him and P.S.I., Bagul to proceed to the Bombay-Agra Road as it had been learnt that some persons were indulging in arson and they all went there in a police vehicle reaching the point near the National Garage on that road. They saw there a mob of 400 to 500 Muslims and a factory and some huts and a timber-depot on fire.

45.62 Sawant's factory and timber-depot are on the Bombay-Agra Road opposite the entrance of the lane which leads to Nizampura 4th Mohalla. Adjoining it to the south is the National Garage, then the Krishna Vijay Saw Mills and then the Sharda Saw Mills. Behind Sawant's factory is Ashik Compound. On the northern side of the junction of the Nizampura Fourth Mohalla Lane with the Bombay-Agra Road is the Bag-e-Firdaus Mosque and on the southern side of it are some zopadpattis followed by the S. T. Depot and thereafter the Government grain godown.

45.63 Since Rane and Bagul were directed at the Control Room either by the Asst. I.G.P., Balakrishnan or the Control Room Officer to proceed to the Bombay-Agra Road to Sawant's factory which a mob was attempting to set on fire, this could only have been on some

message received at the Control Room. The only entry made by the Control Room in this connection is entry No. 83 in the Riot Diary for May 8, 1970 (Ex. P 368) which recorded a message received from the police wireless jeep Rose Mobile sent from the S. T. Depot on the Bombay-Agra Road at 2-30 p.m. The message was that the Muslims from the Bhiwandi-Kalyan Road, Vetalpada, Kacheripada and the zopadpatti area had collected in Kasai Wada in Nizampura and were likely to attack the police lines and the Inspection Bungalow. Under the column for 'action taken' it is stated that an armed party and an officer were sent to the spot and in the column for 'compliance reported' it is stated that P.S.I., Bagul reported that he had fired one round from his revolver while P.S.I., Rane had fired 34 gas shells and one hand grenade and that the S.R.P. men had fired 34 rounds to disperse the mob and that 300 persons were arrested. The 'remarks' column states that an offence at C.R. No. 202 of 1970 (Ex. P 198) was recorded. The F.I.R. on which the offence was registered was given by P.S.I., Bagul at 12-20 a.m. on May 9, 1970. Though in the evidence Bagul has deposed that not only Sawant's factory and timber-depot but some other timber-depots and factories and residential huts of watchmen attached to them had been set on fire, his F.I.R. only mentions that the mob was setting fire to a timber-depot near the Bombay-Agra Road and makes no mention of arson to any other property.

45.64 Frankly one does not know what to make of all these contradictions and our confusion becomes worse confounded when we recollect that according to the Hindu parties and the Special Investigation Squad, Sawant's timber-depot and factory, the Sharda Saw Mills, the National Garage, the Krishna Vijay Saw Mills and the Ganesh Sizing a little further to the south and the adjoining Hindu houses were all set on fire on May 7, 1970 simultaneously with the outbreak of the disturbances in the Bhusar Mohalla Old Thana Road locality and that the arson to these properties formed the subject-matter of the charge-sheet in the Bhiwandi Conspiracy Case' (Ex. P. 1327). The arson to these factories, timber-depots and other properties has already been dealt with in chapter 43. We have seen there that according to the evidence of Manubhai Narayan Patel, the proprietor of Ganesh Sizing Works (N.H.W. 18), and Mulji Karamsi Patel, the proprietor of Krishna Vijay Saw Mills (N.H.W. 19), and one of the weavers residing nearby, Dagdu Daulat Chavan (N.H.W. 46), the arson to these timber-depots, factories and houses took place after 7-30 p.m. on May 7, 1970. In chapter 43 it has been held that these properties were set on fire on May 7, 1970 after 10 p.m. Had the Police seen the Muslim mob setting fire to any factory or timber-depot or had they seen any factory or timber-depot on fire, Bagul and Rane in their reports to the Control Room would have definitely mentioned this fact; but entry No. 83 in the Riot Diary Ex. P 368 makes no mention of any mob setting fire to any property or of any properties having been set on fire. Though Bagul has deposed that the residential

huts of watchmen attached to these factories and timber-depots had also been set on fire, the panchanama does not show that the watchman's hut attached to Sawant's factory was set on fire or burnt (P.W. 61/156/3720).

45.65 Strangely enough, the only act of arson which, in fact, took place during the period in question was to the Baug-e-Firdaus Mosque. Bagul has deposed (P.W. 31/10-1/567-9) :

“Near the petrol pump on the Bombay-Agra Road opposite Sawant's Timber-Depot there is a mosque. I know that it has been constructed unauthorizably by a bootlegger known as Eklakh Dada. This was my first visit to Bhiwandi but I was posted on duty in this area for 9 to 10 days and I got this information from the constables who were on duty with me in that area. I did not arrest any person from inside this mosque. During the period that I was in that locality this mosque remained completely closed. I did not see any person taking shelter in the mosque. While taking the arrested persons to the Bombay-Agra Road, I saw that a portion of this mosque about 5 to 6 feet in width was burnt. The mosque is a wooden structure and had this fire not been extinguished promptly the entire mosque would have been gutted. I did not see this burnt portion when first I went to the spot or passed by it. The persons residing in the nearby huts had left their residence so I could not inquire from any one when and how this fire had broken out. The persons at the petrol pump had also run away. As Vanjarpatti Naka is at a distance of one to 1½ furlong away, I did not make any inquiry from any one at Vanjarpatti Naka. To the south of the mosque were some huts and to the west was a power-loom factory. On 9th May I saw that some wooden packing cases which were lying outside the powerloom factory were burnt. The factory belonged to a Gujarati Hindu from Bombay. As the fire to the mosque was completely extinguished it must have been caused several hours prior to my going to the spot. As this had happened before I went to the spot, I did not report this fact to the Control Room. I thought that somebody must have already reported it. It is not true that my party arrested persons who had taken shelter in this mosque. It is not true that after arresting such persons the police constables set fire to the mosque. I do not know whether this mosque is known as Baug-e-Firdaus Mosque.

“The fire to the mosque could have been caused in any one of the three ways. Firstly, by some Hindu rioters ; secondly, by a spark from the wooden cases in the Gujarathi Hindu factory which were set on fire by Muslim rioters ; and thirdly, by some one from the mob which set fire to Sawant's timber factory while running away because 2 to 3 persons in that mob were carrying lighted torches. I admit that since the burnt portion appeared as if the fire to it had been completely extinguished the fire could not have been caused by any person in the mob which I and my party chased into Nizampura. I did not pass by the Hindu's factory on 8th May. So

I do not know on what day those wooden cases were burnt. I did not make any inquiry on 9th May how the wooden cases were burnt because there were no inhabitants left in that locality from whom I could make this inquiry. They had all run away. This is a purely Muslim locality. The inhabitants who had run away were Muslims. I found the locality deserted when I went there on 8th May for the first time. They must have run away to seek safety and protection against communal riots. I did not see any school for small children adjacent to this mosque. But on 9th or 10th May while making inquiries from the constables about Eklakh Dada I learnt that a school for small children was conducted in the mosque itself, and that Eklakh Dada had dispossessed the backward-class people from their huts and had demolished their huts and in their place constructed this mosque. Though I had so much discussion with the constables about this mosque and its antecedents I did not inquire from them as to who had set fire to it and when this act of arson was committed, for the reason that this information could have been furnished to me only by the persons residing nearby, all of whom had left their houses."

45.66 After arresting the 300 persons Bagul informed the Control Room about their arrest. He then made the arrested persons sit down in the by-lane and, according to him, sent two or three constables in their midst to collect their weapons. Thereafter he took down their names and addresses and then sent for his police van. It was brought as near the by-lane as possible. Each prisoner was searched before he was made to get into the van. Rane guarded the other end of the by-lane while this was being done. The prisoners were sent to the Town Police Station in batches in the police van in which Bagul's party had come. Bagul has deposed that he did not know where the van, in which Rane's party had come, had gone. Each trip to the police station and back took about 10 to 12 minutes. Bagul waited in the by-lane and went with the last batch of about 30 to 40 prisoners. He reached the Control Room at about 9 p.m. He must have, therefore, left the spot at about 8-50 p.m. If Bagul did not see any fire to Bauge-Firdaus Mosque or any burnt portion of the mosque when he first went to the spot, but saw it while he was leaving with the last batch of prisoners for the Town Police Station, the arson to the mosque could only have been committed between about 5 p.m. and 8-50 p.m., that is, after Bagul had entered Nizampura 4th Mohalla and before he left in the bus with the last batch of prisoners. Bagul's inquiry about the antecedents of the mosque could only have been when he saw the fire to the mosque. It was then his duty to have inquired how this mosque situate in a purely Muslim locality had been set on fire. When Rane's party went to the scene and started chasing the rioters, they first arrested six persons. After their arrests, these six persons were made to sit in the police van which was parked on the Bombay-Agra Road. There was the driver of the van and police constables to guard the arrested persons. If there was another van in

which Rane's party had come, that van also had its own driver. If on seeing the fire to the mosque Rane inquired about the mosque and its antecedents, it was equally his duty to have asked the driver of the van (or the drivers of the van, if Rane's van was also there) and the constables guarding the prisoners how the mosque was set on fire. Bagul has, however, admitted that he did not make any such inquiry. If on the subsequent days he again inquired from the constables about Eklakh Dada, the mosque and its antecedents, it is strange that he did not make any inquiry about how the arson to the mosque took place. His behaviour does not stand to reason.

45.67 Though according to the police witnesses, the Police arrested 300 persons from the rioting Muslim mob, in fact, as S.P., Bhave has deposed one of these persons was not a Muslim but a Hindu (P.W. 4/346/811). Bagul's F.I.R. also describes the 300 arrested persons as Muslims. However, in the list of names attached to this F.I.R. is the name of one Rampyare Rambhajan Hajam. He must be the Hindu deposed to by S.P., Bhave. The names of the arrested persons were taken down partly by Bagul and partly by a constable. No attempt has been made to show how one Hindu came to be in the midst of a rioting Muslim mob or how and from where he was arrested or to explain his presence at the scene.

45.68 In support of their case that the Police arrested persons from the Baug-e-Firdaus Mosque and set fire to it the Maharashtra State Muslim League has examined Maqbool Alam Basharatali a teacher in the Baug-e-Firdaus Mosque and a resident of the Nizampura 4th Mohalla (M.L.W. 3/1-4/1667-70). He had filed an affidavit jointly with Abdul Jabbar Tabarakullah, also a resident of Nizampura 4th Mohalla. In the said joint affidavit Maqbool Alam has alleged that they had gone to the Baug-e-Firdaus Mosque for their evening prayers when armed police constables entered the mosque and started assaulting the Imam, the Bangi and other members of the congregation. On seeing this, Maqbool Alam and Abdul Jabbar jumped out of the window and ran away. The Police then arrested persons from the mosque, put them in a van, some policemen set fire to the mosque, opened fire, fired tear-gas shells, rushed into two nearby buildings and arrested the persons who had taken shelter there. In his cross-examination Maqbool Alam stated that after he had gone inside the mosque for the evening prayers and before the Police came inside the mosque he saw Sawant's factory and timber-depot on fire from the open door of the mosque. He also said that he did not see any crowd near Sawant's factory. When asked whether Sawant's factory was on fire when he went to the mosque for his evening prayers, he replied that he did not know. He was asked whether it was possible for him not to see Sawant's factory on fire when he entered the mosque had it been set on fire by that time. He answered after considerable hesitation and after the question was repeated twice that he did not see it burning with his own eyes. He admitted that he was offering his prayers facing west, that is, towards Mecca, and that Sawant's factory

was to the east of the mosque. He was asked what had distracted him from his prayers to turn round and see Sawant's factory on fire and then he answered that he had not seen it on fire. He then said that he had seen it burning on May 10, 1970 for it was set on fire on May 10, 1970. He further deposed that after he and Abdul Jabbar jumped out of a window they ran and hid in the residence of one Ashraf Mistry on the third floor of a building opposite the mosque and saw the Police arrest persons from the mosque and take them away in a van. One of the policemen remained behind. He was carrying a tin which he had brought with him when the Police first entered the mosque. The policeman sprinkled the contents of that tin on the mosque and set fire to it with a match. The demeanour of this witness has been most unsatisfactory and he transparently seemed to be a suborned witness and no reliance can, therefore, be placed on his evidence.

45.69 Turning now to the evidence of the police witnesses as to what transpired when they were on the Bombay-Agra Road, according to P.S.I., Bagul, on seeing the mob setting fire to Sawant's factory, Bagul's party got down from the van and started advancing towards the mob. The rioters began throwing stones at the police party. The Police chased the rioters but they ran away into the lanes and buildings in Nizampura and began throwing stones at the police party therefrom. The Police arrested six persons from the mob. Thereupon the rest of the rioters became furious and started throwing missiles at the police party. Meanwhile P.S.I., Rane's party came up and fired tear-gas shells at the mob. The mob retreated slightly and again started throwing missiles at the police party. Bagul warned the mob that he would open fire if it did not disperse, but it again started advancing towards the police party. Bagul, therefore, ordered P.Cs. Kamble, Sawant and Jagtap to open fire. Kamble and Jagtap thereupon fired two rounds each from their .410 muskets at the mob. Even then the rioters who had gone into the lanes and by-lanes continued to throw missiles at the police party. One of the rioters threw a spear at Bagul which missed him. He fired one round from his .455 revolver. Bagul then again ordered his constables to open fire and Kamble fired two rounds and Jagtap and P.C., Salvi three rounds at the mob. The police party with P.S.I., Rane also opened fire [P.W. 31/1(1)/561(1-2)]. Though neither P.S.I., Bagul nor Kamble nor Jagtap have mentioned how many tear-gas shells were fired or how many rounds were fired by P.S.I. Rane's party. Rane has stated in his affidavit that he himself fired 9 gas shells and threw one gas hand grenade. P.C., Salvi fired 13 shells, P.C., Bhonsale 9 shells and another constable, also named Bhonsale, fired 3 shells. He has further stated that P.C., Shinde fired 7 rounds, P.C., Chavan 4 rounds, P.C., Ahire 2 rounds, H.C., Dhule 1 round, Jadhav 5 rounds and P. C., Savant 1 round from their muskets. There is a petrol pump on the western side of the Bombay-Agra Road. By the side of this petrol pump is a lane which goes into Nizampura. Further to the south there is another lane radiating from the Bombay-Agra Road into Nizampura.

Inside Nizampura these two lanes are connected by a by-lane. Rane's party then advanced into Nizampura by the lane which passes by the petrol pump, while Bagul's party took the other lane. With the two police parties advancing from two sides, the mob was trapped in the by-lane and 294 persons from the mob were arrested. The three police witnesses corroborate one another so far as the above broad outlines are concerned. There is, however, considerable variation when we come to the details. According to the Muddemal Register the Police had taken charge of 45 lathis and sticks varying from three to six feet in length, 20 iron bars also varying from three to six feet in length, 5 spears, 1 axe and 1 sword. As we have seen, for the relevant period there are two Muddemal Registers and the entry in respect of this seizure is dated May 21, 1970 and is at page 189 of the first Muddemal Register (Ex. P. 670). Bagul's F.I.R. (Ex. P 198) states that stones, acid-bulbs and spears were thrown at the police party. In his evidence, however, he has stated that a bomb was also thrown at the police party. He, however, admitted that he himself did not see any bomb being thrown, but he heard a sound like that of a bomb exploding and that this sound was much louder than that of tear-gas shells and gas grenades. P.C., Jagtap has deposed that the persons in the mob were also carrying country bombs and that someone from the mob threw one of them which exploded near the police van. He admitted that he had not actually seen this bomb being thrown but only heard an explosion. He further stated that by "country bomb" he meant an "Apti Bar", this is, anything which, when thrown, makes a noise. According to him, some of the rioters were also carrying knives. P.S.I., Bagul has further stated that they seized two swords. Neither in his affidavit nor in his F.I.R. nor in his firing report given on May 9, 1970 is the fact that any rioter was carrying a sword or that the Police seized any sword mentioned and the said entry in the Muddemal Register only shows one sword. Bagul then admitted that he had made a mistake in mentioning that two swords were also seized and that he had at no time in the course of his career seized any swords. The said entry No. 83 in the Riot Diary does not mention that any weapons were produced, an incomprehensible fact when we find that there are even briefer entries in the Control Room Diary and the Riot Diaries which mention recovery of weapons from arrested persons. Neither the affidavits of any of these three police witnesses nor the F.I.R. mention any country bombs. Though a large number of acid-bulbs are said to have been thrown and, according to Bagul, broken pieces of bottles and bulbs were lying about, none of them have been seized. Though the mob was said to be setting fire with flaming torches, no torch was seized nor were any of the arrested Muslims found to be carrying a torch. According to Bagul, five or six constables in his police party received minor injuries. Kamble has also stated that some persons in the police party received minor injuries and his own little finger of the right hand was fractured. His affidavit, however, does not mention that he had suffered any injury.

The only explanation for this lacuna he could give was that these were all very minor injuries. Even in his firing report which he has given Kamble has not mentioned the injury alleged to be received by him. Jagtap, who was with Kamble, has stated that no one who was with him in the police party was injured. Bagul's affidavit states that when they chased the rioters, they started throwing stones at them from the lanes and buildings in Nizampura and that the Police arrested some of them. Realizing in cross-examination that the case of the Muslim parties was that the Muslims were arrested from their houses and not from the lane, he sought to make out that none of the rioters had run inside any house and that the doors and windows of all the houses were closed and that stones were thrown at them from roof-tops. He then also said that the persons who threw stones from the roof-tops were not from the mob because he had not seen any one from the mob run into any house. Jagtap has also stated that no one ran inside any house, but Kamble has stated that stones and other missiles were thrown at them not only by the members of the mob but also from the chawls and houses on both sides of the road and that the rioters would come out of the houses, throw stones at them and then run back into the houses. All three are, however, agreed that no one from either of the two police parties entered any house.

45:70 The conduct of P.Cs., Kamble and Jagtap in the night of May 7, 1970 when they escorted the Bhiwandi fire-engine to Khadak on fire-fighting operations has already been criticized in Chapter 44. All the three police witnesses have been guilty of considerable exaggerations. None of them has been candid with the Commission about the reason why the Police went to Nizampura 4th Mohalla or about the arson to the Baug-e-Firdaus Mosque. Their story of the arson to Sawant's factory and timber-depot and the other factories and timber-depots on the Bombay-Agra Road is false as we have seen. Their story of the circumstances in which the police opened fire is equally strange. As many as 34 musket rounds were fired at a Muslim mob inside the lane, and yet not a single person was injured. The story of the missiles alleged to be thrown at the police parties — the swords, spears, bombs — is as full of inconsistencies. The evidence of these police witnesses thus raises considerable doubt about the *bona fides* and justification of this police firing. The Muslim witness, Maqbool Alam Basharatali, has, however, shown an equal disregard for truth, and his evidence cannot be relied upon to arrive at a conclusion that the Baug-e-Firdaus Mosque was set on fire by policemen, or that the Police entered different houses and arrested every male Muslim who was inside. After all, on Maqbool's own evidence, neither he nor Abdul Jabbar Tabakullah who were hiding in a house opposite the said Mosque were arrested from it. The truth has, therefore, not come out before the Commission. There is no reliable evidence to show that the fire opened by the Police was either *mala fide* or without justification. In this doubtful state of evidence, I am not prepared to condemn these police officers and policemen.

Accordingly, I give them the benefit of the doubt and hold that this police firing was justified.

The firing at Kanheri

45.71 The Police opened fire at about 9 a.m. on May 8, 1970 in Kanheri behind the Rais High School. The police officers who have deposed about this incident are P.S.I., M. S. Chougule [P.W. 37/1(4)/856(3-4), 7-8/861-4]; P.I., G. N. Ajarekar [P.W. 39/1(5)/888(3-4)]; P.S.I., V. S. Deolekar [P.W. 29/1(5)/522(3-4), 12/530-1, 21-3/538-9]; S.P., Bhave [P.W. 4/1(91)/236(59), 332/802]; and Dy. S.P., Diwate [P.W. 66/1(18)/1108(10)]. Three police parties went to the spot, the first consisted of P.S.I., Chougule and a Striking Force; the second consisted of P.I., Ajarekar, P.S.I., Deolekar and a section of the S.R.P. Force consisting of ten S.R.P. men; and the third consisted of S.P., Bhave, Dy. S.P., Diwate and another section of the S.R.P. men. Each of these three parties opened fire.

45.72 The main evidence about this incident is that of P.S.I., Chougule. This is how he has described the incident in his affidavit [P.W. 37/(4)/856(5-6)].

“ At about 0900 hrs. on 8th May 1970 the S.P., Thana, told me that in Kanheri behind Rais High School some trouble was going on. He directed me to go there. I therefore took another striking force with me and went to Kanheri. I saw a mob of about 100 Muslims setting fire to some houses. One truck completely burnt was found there. As we started advancing towards the mob, it started throwing stones at us, but the mob retreated slightly. *When we were passing by a small hut, some missile fell on the hut and there was explosion. The hut immediately caught fire. The missile was thrown from the terrace of a building nearby.* The road was obstructed by putting some wooden logs there. I got the obstruction removed and proceeded ahead. I surrounded the building from which the missile was thrown on the hut. *I went up to the terrace with some constables.* I found one person on the terrace. At the point of the revolver I stopped the person and searched him. Nothing was found on his person. *There was a basket containing 59 fire-balls on the terrace.* I arrested that person and brought him down. Police Inspector Ajarekar, P.S.I., Deolekar and the S.P., Thana, came there almost immediately. The Muslim mob which had retreated slightly had again started throwing stones at us. *Another mob was also noticed advancing towards us from slightly different directions. The mobs were throwing stones, soda-water bottles and bombs at us.* Inspector Ajarekar and myself shouted at the mob and ordered them to disperse, failing which we warned them that fire would be opened, but the mob continued to advance towards us. I ordered H.C., G. N. Ingle of S.R.P. Group No. VIII to open fire. He fired one round from his .410 musket, P.I., Ajarekar and the S.P., Thana, had also ordered P.Cs. V. G. Patil and Khanvilkar to open fire. The mob started running away and we chased it and

arrested 15 rioters. I took all of them to the police station where I lodged my information about this offence. It was registered at C.R. No. I 187/1970."

P.C., V. G. Patil fired one round from .410 musket under orders of P.I., Ajarekar and P.C., Khanvilkar fired two rounds from .410 musket under orders of S.P., Bhawe.

45.73 The F.I.R. filed by P.S.I., Chougule is Exhibit P 184. This offence was investigated by the Special Investigation Squad, Bhiwandi. Some of the accused persons gave false names and accordingly there was a confusion of identity. It was also discovered that three of the persons alleged to be arrested in this incident had been prosecuted for committing on May 8, 1970 a breach of the curfew order. The remaining accused persons were thereupon discharged under section 169 Cr. P.C. on December 27, 1970 (P.W. 61/82/3654-5).

45.74 The affidavit of Chougule conveys the impression that what was thrown on the hut from the terrace of the building was a bomb and that the second Muslim mob attacked Chougule's police party by throwing at it stones, soda-water bottles and bombs. According to the F.I.R. lodged by him, however, what was thrown on the police party from the terrace of the house was a fire-ball which exploded when it fell on a hut. The F.I.R. also states that acid-bulbs and stones were thrown at the police party and does not make any mention of bombs being thrown at it. According to the F.I.R., what was seized from the terrace of the building was a basket containing "country-made bombs". These 59 country bombs were actually fire-balls. Chougule has deposed that he had never seen a hand-bomb or a country bomb prior to that day nor heard at any time a bomb exploded. He has further deposed that about seven or eight days after May 8, 1970 the muddemal clerk in the Town Police Station had told him that these articles were fire-balls. The Inspector of Explosives visited Bhiwandi on August 19, 1970. The report dated August 20, 1970 made by him on an examination of these article is as follows :

"I visited the Bhiwandi Town Police Station on the 19th August 1970 and examined the 59 articles which were suspected to be bombs. *Each of these articles consisted of a big stone piece covered by a piece of jute sack and tied by a piece of string. No smell or stain or presence of any chemical could be detected in any of the articles. I am of the opinion that none of these articles contain any explosive.* The articles were left in the Bhiwandi Town Police Station after examination."

45.75 The answers given by P.S.I., Chougule in further cross-examination make interesting reading. They are as follows (P.W. 37/7/862-4) :

"I mistook these 59 articles for bombs because the missile which was thrown on the roof of a hut exploded when it fell on the roof. This missile was thrown from the terrace of the very building on which we found these 59 articles. It is true that in the F.I.R. this missile which fell on the roof of the hut has been described by me

as a fire ball (*Aqicha Gola*) and I have further stated that it exploded when it fell on a hut and the hut caught fire. I have described in my F.I.R. Exhibit P 184 the 59 articles as 'country-made hand bombs'. *In all only one fire-ball was thrown. That was the fire-ball which fell on the hut. The only fire was to that hut. The Muslim mob threw stones and acid-bulbs and soda-water bottles at us. I do not remember what else they threw at usNot a single policeman or police officer in any of the police parties was injured by any of the missiles thrown at them. No bomb was at all thrown at any police party. No fire-ball was thrown at any police party.* It is true that in paragraph 4 of my affidavit I have mentioned that 'The mob was throwing stones, soda water bottles and bombs at us.' *I say that it is by mistake that I have mentioned that the mob threw bombs at the police party.* I further say that it is by a mistake that I have forgotten to mention that the mob threw acid-bulbs at us. I now say that both acid-bulbs and soda-water bottles were thrown at us. I have never heard a bomb explode.

(Shown the following sentences in the witness's F.I.R. Exhibit P 184 :—'The abovenamed persons threw fire-balls on the localities of Hindus and burnt their houses. They were also trying to burn more houses.')

Q. Since you have already stated earlier in your evidence that the only fire ball which was thrown was the one which fell on the roof of the hut and that the only building which was set on fire was that hut, can you explain which fire-balls they were and which houses they were ?

A. These fire-balls were thrown from behind the building on the terrace of which we recovered the 59 fire-balls. I do not remember how many fire-balls were thrown from behind the building. They set four houses on fire. They were small houses. I did not state this fact earlier in my evidence because at that time I did not recollect it. These four houses were not the houses which we saw on fire when we went to Kanheri.

...No panchnama of the scene of offence was made. We did not recover any fire-balls other than the 59 fire-balls. No weapon or missile was recovered from the person of any accused. I cannot say whether all the fire-balls which were thrown hit their target. We did not take charge of or recover any broken pieces of soda-water bottles or acid-bulbs or any stones which were used in the fire-balls which were thrown."

When Chougule affirmed his affidavit, the report of the Inspector of Explosives had already been made, and Chougule knew that the so-called bombs were really fire-balls. Chougule could not, therefore, in his affidavit describe the fire-balls seized from the terrace as bombs. He has, therefore, mentioned in his affidavit the fire-ball being thrown on the hut in such a way as to make it appear that it was a bomb and has further incorporated bombs in the list of missiles thrown at the police party.

45.76 We have already seen while discussing the police firing at Kombadpada that P.S.I., Chougule has no regard for truth nor any scruples in filing false complaints and F.I.Rs. We have seen how, even though the Muslim mob at Kombadpada was carrying sticks only, he has mentioned in his F.I.R. lodged in that case that it was carrying spears. P.I., Ajarekar is no better in his communal bias. In his affidavit he has armed the Muslim mob in Kanheri not only with sticks and stones but also spears. Neither Diwate nor Bhawe have mentioned any such weapons in the hands of Muslim rioters and, as admitted by Chougule himself, no weapon or missile was recovered from any of the accused. In fact, it is highly debatable whether any missiles at all were thrown at the police party, because the Police did not take charge of any weapons or missiles or broken pieces of soda-water bottles or acid-bulbs or stones used in fire-balls.

45.77 The communal bias of P.S.Is. Chougule and Deolekar can be seen from the fact that Chougule has deposed that during the period he was at Kanheri he did not see any Hindus indulging in looting or arson. He has further deposed that some houses two or three furlongs away to the west were on fire but he did not know whether they were Hindu houses or Muslim houses (P.W. 37/8/864). According to Deolekar also, he had not seen any Hindu committing any offence during the entire period of the communal disturbances (P.W. 29/22/538). These bold statements on the part of these two witnesses sound extremely strange when we find from Diwate's evidence that when Bhawe and he reached the spot, they separated and Bhawe went on one side and Diwate went ahead towards the temple where he noticed a mob of about 25 Hindus, near house No. 193 in Telipada in Kanheri, which ran away as Diwate approached [P.W. 66/1(18)/1108(10-1)]. Ajarekar has also stated in his affidavit, "The S.D.P.O., Bhiwandi Sub-Division, who had come there along with the S.P., Thana, was dispersing the Hindu mob at some distance." Bhawe has deposed that when he went to Kanheri at about 9 a.m. on May 8, 1970 he saw some huts on fire and that at that time he did not inquire whether they were Muslim huts or Hindu huts but subsequently he learnt that these huts belonged to both Hindus and Muslims (P.W. 4/332/802). The list of incidents which took place on May 8, 1970 filed by S.P., Bhawe (Ex. P 18) read along with the relevant F.I.Rs. (Exs. P 220 and P 265) shows that in Kanheri on May 8, 1970 at about 8 a.m. 8 Hindu shops were set on fire and that between 8-30 a.m. and 10 a.m. 3 Muslim houses were attacked, 14 Muslim houses damaged and 34 Muslim properties consisting of huts, chawls and buildings set on fire and burnt down. The damage, arson and looting to these Muslim properties can only be the work of rioting Hindu mobs. The grievance of the Muslim parties is that in the incidents which took place during the communal disturbances the Police showed partiality towards Hindu rioters and discriminated against Muslim rioters. The above facts speak for themselves and no comment is necessary. Nonetheless, seeing that arson had already been committed and was likely to be repeated

in this area and seeing that a Muslim mob was on the road bent on rioting and committing further mischief by fire, the fire opened by the Police at Kanheri must be held to be justified.

The arrest of Nazirahmed Hafizmohamed Zahid

45.78 The case of Nazirahmed Hafizmohamed Zahid (M.T.M.W. 1/1-7/1678-83) is an instance of the unreliability of police records relating to the disturbances. According to the Police, he was arrested on the S.T. Stand Road, which divides Islampura from Jaitunpura, at noon on May 8, 1970 for committing a breach of the curfew order. On October 7, 1970 he was remanded into magisterial custody and sent to Nasik Jail and released on bail on June 4, 1970. He was convicted on his plea of guilty and sentenced to pay a fine of Rs. 5 (P.W. 4/279/767). He has alleged in his affidavit that on May 9, 1970 at about 3 p.m. he had left his house in Islampura to go to a public urinal in Jaitunpura and that on the way four S.R.P. men stopped him and told him that they wanted to search him. They searched him and took away from his pocket Rs. 400 which he had taken with him for safe custody as he had given shelter to several others in his residence in Islampura. He has further alleged in his affidavit that the police officer took out a knife and wanted to plant it in his pocket and as he protested against this, they assaulted him. They then took him to the Taluka Police Station. According to him at the Taluka Police Station he was again beaten in the presence of D.M., Capoor and S.D.M., Date (P.W. 62) and was injured on the head and bled profusely. He was examined at the Bhiwandi Municipal Dispensary on May 9, 1970 and the medical certificate issued to him shows that he had a contused lacerated wound $1'' \times \frac{1}{2}''$, bone deep, on his right parietal region, multiple contusions on the back and a contusion on his right leg. The wound on his right parietal region had to be sutured. In the Nasik prison he was examined by the medical officer on May 12, 1970 and the medical examination report in his prison record shows that he had an oblique stitched wound $1\frac{1}{2}''$ in length over his right parietal region, that his right ankle joint was swollen and that he had multiple irregular simple contusions over his back, which had become black in colour. The age of the injuries is stated to be within 96 hours and under the column headed "Allegations made or explanation given by the prisoner as to the injuries" it is stated, "History of assault by police on 9th May 1970 at 2 p.m. with sticks".

45.79 Nazirahmed either had these injuries before he was arrested or received them at the time of his arrest or subsequently. One of them was a bleeding injury and required to be sutured. A prisoner with a bleeding injury before or at the time of his arrest would be sent for medical treatment as soon as possible and, accordingly, Nazirahmed would have been sent to the Bhiwandi Municipal Dispensary on the day of his arrest itself, namely, May 8, 1970, since he is alleged to have been arrested on that day at noon, but the very fact that he was sent for medical treatment on May 9, 1970 would show that he was

not arrested at the date and time mentioned in the police records. His allegations that he was beaten in the presence of D.M., Capoor and S.D.M., Date does not carry any conviction. The conduct of D.M., Capoor and S.D.M., Date as disclosed in the evidence shows that neither of them would have permitted any such act in their presence. His allegation against D.M., Capoor and S.D.M., Date also makes suspect the fact of robbing him of Rs. 400, but the fact of his injuries, however, shows that he was not arrested at the time mentioned in the police records and that he was arrested on the day that he was sent to the Bhiwandi Municipal Dispensary, namely, May 9, 1970, and since he is shown to have been arrested for committing a breach of the curfew order and not for rioting or being a member of an unlawful assembly, he obviously must have received these injuries at the hands of the Police.

45.80 A number of houses in Bhiwandi do not have sanitary facilities and the residents have to go to the public latrines. At the time of his arrest Nazirahmed, therefore, might have been going to a public latrine and might not have been out on the street with a criminal intent. Nonetheless, the S.R.P. men who arrested him would not know this fact or, even if informed about it, would naturally not believe it. Nazirahmed did not have a curfew pass with him and he was, therefore, guilty.

The police firing at Samadia Building

45.81 Samadia Building is situate in Habsan Alli. It is a three-storeyed building with a terrace. To the south of the Neelkantheshwar Temple Dharamshala is an open space about 150 feet in length from north to south and about 30 to 35 feet in breadth from east to west. Samadia Building is to the south of this open space. To the north-east of Samadia Building, is the Khutala Mosque and a power-loom factory while to its south-west is a chawl owned by the trustees of the Khutala Mosque and, therefore, known as Masjid Chawl. The Masjid Chawl is also known as Yatim Khana Building. There is a large open gutter to the east of the Khutala Mosque, on the other side of which there were some Muslim huts which were burnt during the disturbances. We have seen in chapter 18 that the Khutala Tank had been reclaimed by the Municipality for the purpose of constructing municipal staff quarters, but in 1968 the trustees of the Khutala Mosque had encroached upon the reclaimed land and started some construction thereon and though there was considerable resentment amongst the Hindus in respect thereof, the Municipal Council, the majority in which consisted of Muslims, took no steps to remove the said encroachment. The Khutala Mosque was thus a sore point with the Hindus of Bhiwandi.

45.82 At about 11-30 a.m. on May 8, 1970 some police parties went to the open space outside Samadia Building, opened fire and arrested 86 Muslims. According to the Police, they also fired tear-gas shells. The police case is that a Muslim mob had assembled in the

open space outside Samadia Building and when the police parties on learning about it went there, they were met by a hail of stones and acid-bulbs, not only from the mob collected in the open space, but also from the Muslims who had gathered on the terrace and galleries of Samadia Building and that as the Muslims, in spite of warning being given to them, persisted in attacking the police parties, the Police resorted to the use of tear-gas and opened fire. According to the Muslim parties, at about 11-30 a.m. some S.R.P. men set fire to the said huts, entered the Khutala Mosque, damaged the photo-frames and other articles in the said mosque, burst into the rooms of Samadia Building and Masjid Chawl, arrested all male residents except small boys, and looted the rooms.

45.83 The police witnesses who have deposed about this incident are P.S.I., L. R. Deshpande of the Bhiwandi Town Police Station [P.W. 42/1(9)/904(5), 8-10/909-15], Jamadar Waman Appaji Adsul of the Bhiwandi Town Police Station [P.W. 49/1(1)/955(2-3), 5-6/957-63] and P.C., Balbhim Vishwanath Gadhawe (buckle No. 446) of S.R.P. Force, Group III, Jalna (P.W. 54/1-3/975-6). P.S.I., S. A. Rane of L. A. Gas Squad, Naigaum Headquarters, Bombay had filed an affidavit before the Commission (affidavit No. 520), but he was not examined as a witness. The reason for not examining P.S.I., Rane as a witness, even though such serious allegations were made against the Police, will be clear when we consider the evidence in detail.

45.84 The foundation for the firing at Samadia Building is laid in the affidavit and evidence of Jamadar Adsul. He has alleged in his affidavit that throughout the night until the morning of May 8, 1970 a Muslim mob continued to attack Habsan Alli and that he and the six constables with him dispersed them time and again, that the said mob had assembled near Samadia Building and that at about 11-30 a.m. P.S.I., L. R. Deshpande came there with S.R.P. men and the Gas Squad and went towards Samadia Building. Adsul's evidence with respect to these night attacks on Habsan Alli has already been discussed and disbelieved in chapter 44 (paragraphs 44.63 to 44.66). In evidence he sought to lay another foundation for this incident. He has stated that he learnt subsequently that prior to collecting at Samadia Building the Muslim mob had set fire to the southern door of the Neelkantheshwar Temple. We have seen in chapter 43 while dealing with the incident of the attack on the Neelkantheshwar Temple that no door of this temple was at any time set on fire, but what was set on fire was the door on the southern side of the Dharamshala of the temple. We have also seen in that chapter that the only witness in support of this case of the attack on the Neelkantheshwar Temple is Madan Keshav Raut, the gardener of the temple (N.H.W. 41). His evidence has been discussed in detail in that chapter and it is unnecessary to repeat the discussion here except to reiterate that Madan Raut has shown not the slightest regard for truth. In his affidavit Madan Raut has alleged that at about noon on May 8, 1970 Muslim mobs started throwing stones at the temple and

at that time Aiyya Doraiswami, the 'pujari of the temple' went to the Town Police Station and brought with him two police vans and that immediately after the policemen got down from the vans, the mob dispersed and the persons in the mob went to Samadia Building and from there they started throwing stones at the Police and the Police then fired tear-gas shells whereupon the Muslims entered Samadia Building and closed the doors and windows and the Police then surrounded the building, brought out the Muslim rioters, arrested them and took them away. His cross-examination revealed that the stoning of the temple as also the setting fire to the door of the Dharamshala took place on May 7, 1970. He thereafter tried to make out that a second attack was launched on the temple on May 8, 1970.

45.85 It is impossible to ascertain any correct facts from the farrago of lies and contradictions in the evidence of this witness. One thing, however, clearly emerges even from his evidence, namely, that there was no such attack on the Neelkantheshwar Temple on May 8, 1970. There is no entry in the Riot Diary of Doraiswami ever having gone to the Control Room. The relevant entry in the Riot Diary for May 8, 1970 (Ex. P 368) is entry No. 46. The said entry states that a message was received at the Control Room from Bhiwandi Mobile at 10-10 a.m. on May 8, 1970 that two houses near the Shiv Mandir (that is, the Neelkantheshwar Temple) were on fire and asking for help to be sent there. In the column in the said entry for giving details of action taken it is stated that P.S.I., Rane was sent there with a police party and that on his return to the Control Room he reported that the said fire was old and smouldering and that he had been informed by P.S.I., L. R. Deshpande who had gone ahead that a Muslim mob was attacking the Hindu locality. It then sets out the number of rounds and gas shells fired and the number of persons arrested. There is no mention in the said entry of any attempt to set fire to the Neelkantheshwar Temple or of any attack on it. As mentioned below, the attack on the temple was also trotted out by P.S.I., L. R. Deshpande to justify the opening of fire and the arrest of Muslims from Samadia Building. The persons arrested from Samadia Building and Masjid Chawl were taken to the Town Police Station in police vans. They were made to get down from the vans near the corner of the New Fish Market and taken on foot to the Town Police Station. At the corner of the New Fish Market the party of prisoners and Police came across Addl. I.G.P., Modak. Modak seeing some P.S.Is. along with S.R.P. men and constables bringing in such a large party of prisoners inquired what had happened. So far as Modak recollected these P.S.Is. were L. R. Deshpande and S. A. Rane. The P.S.Is., one of whom was L. R. Deshpande, informed him that in the morning information had been received in the Control Room that there was an attempt to set fire to the Neelkantheshwar Temple and that thereupon they were directed to proceed to the spot (G.W. 3/16/161-2, 50/180). L. R. Deshpande has denied that he gave this information to Modak. We have seen that P.S.I., L. R. Deshpande's conduct and

attitude during the disturbances have not been free from blemish and I do not accept his word as against the word of Addl. I.G.P., Modak who has given evidence in a very frank and straightforward manner. In his affidavit and evidence P.S.I., L. R. Deshpande has given quite a different story from what he had told Addl. I.G.P., Modak. According to L. R. Deshpande, at about 11 a.m. on May 8, 1970 he was ordered by the Control Room to go to Sutar Alli as some trouble was reported to be going on in that area and, therefore, he went there along with the Gas Squad commanded by P.S.I., S. A. Rane, and when they were passing Tanaji Vyayam Shala some S.R.P. constables stopped their vans and reported that Muslims were throwing stones and acid-bulbs at the Police from Samadia Building and that the Police had surrounded the building and that thereupon he and Rane went to assist them. According to him, the police party at Samadia Building about which he received the above information was the party headed by Jamadar Adsul. According to Jamadar Adsul, when Deshpande with the S.R.P. men and the Gas Squad proceeded towards Samadia Building, he followed them along with two S.R.P. men and four policemen of the Thana Police Headquarters. S.R.P.C., Gadhave who accompanied L. R. Deshpande in the van does not make mention of any information being received by them on the way from any constable or of their thereupon proceeding to Samadia Building. According to him, L. R. Deshpande asked him and other S.R.P. men to go along with him in the police van and they straight went to Samadia Building. P.S.I., Rane in his affidavit makes no mention of his at any time having gone to Samadia Building or of his having been asked by the Control Room to look into the two fires near the Shiv Mandir. There is thus not only no unanimity amongst the various police witnesses, but also direct contradictions amongst them as to why they went to Samadia Building.

45.86 This lack of unanimity and contradictions, *inter se* continue and are met with at each stage of the incident. Unlike in the case of every other firing incident, in this case alone we do not have the exact number of police parties on the scene. What the respective strengths of the police parties were is equally uncertain. According to L. R. Deshpande, three police parties went to Samadia Building, namely, the Gas Squad of P.S.I., S. A. Rane, the police party of L. R. Deshpande and the police party of Jamadar Adsul, and that in all there were 50 to 60 men from the police force at this spot. According to Jamadar Adsul also, there were three police parties, namely, his own police party consisting of himself and six constables, L. R. Deshpande and his police party of 20 policemen and Rane and his Gas Squad of 18 policemen. However, I.G.P., Rajadhyaksha has deposed that according to the orders then in force, the Gas Squad sent to Bhiwandi consisted of 11 persons, namely, P.S.I., Rane, 2 head constables and 8 constables. According to S.P., Bhawe, four police parties went to the scene, namely, (1) Jamadar Adsul with five policemen from the Thana Headquarters and five S.R.P. men from Group I,

Poona, (2) P.S.I., Rane with 18 policemen from Greater Bombay, 8 of them being armed policemen and the remaining 10 being from the gas squad, (3) P.S.I., L. R. Deshpande with 20 S.R.P. men from Group III, Jalna, and (4) P.S.I., L. K. Deshpande of S.R.P. Group I, Poona, with 32 S.R.P. men from the same group (P.W. 4/381/827). Along with his written arguments Mr. Rane, Counsel for the Executive Magistrates and the District Police Officers, filed a statement giving statistical information about each firing incident. The firing near Samadia Building is, however, the only incident in respect of which the said statement does not give the strength of the police parties.

45.87 Which police party went first on the scene is also a matter of equal confusion and contradictions. According to P.S.I., L. R. Deshpande, he went to Samadia Building and found Jamadar Adsul there along with his constables. This would make Adsul's party the first to reach Samadia Building. Adsul in his affidavit, however, has stated that when L. R. Deshpande along with S. A. Rane and the Gas Squad came to Habsan Alli and proceeded towards Samadia Building, he followed them along with six constables. According to Adsul's affidavit, therefore, the first police party to reach the scene would be L. R. Deshpande's and the Gas Squad. Adsul was examined as a witness after L. R. Deshpande. In order to bring his evidence in conformity with that of L. R. Deshpande, Adsul stated in cross-examination that P.S.I., L. R. Deshpande came to Samadia Building after Adsul's party had reached there and that the statement in his affidavit to the contrary was a mistake. According to L. R. Deshpande and Adsul, P.S.I., Rane and his Gas Squad and P.S.I., L. R. Deshpande and his police party had set out together in separate police vans and reached Samadia Building together. The said entry No. 46 in the riot diary, however, states that P.S.I., L. R. Deshpande had gone ahead and it was he who informed P.S.I., Rane that a Muslim mob was attacking a Hindu locality.

45.88 We will now see what the position was when these police parties reached the spot. According to L. R. Deshpande's affidavit, when they went to Samadia Building they found a mob of 300 to 400 Muslims throwing stones and acid-bulbs, Jamadar Adsul was present there along with some policemen, after giving a warning, Adsul ordered S.R.P.C., Shinde (Buckle No. 552) to open fire and Shinde fired two rounds from his .303 rifle, then P.S.I., S. A. Rane ordered the Gas Squad to fire tear-gas shells and the Gas Squad accordingly fired tear-gas shells at the mob and thereupon the mob started running away, and the police party chased the mob and arrested some persons. According to Jamadar Adsul's affidavit, he followed the parties of P.S.I., S. A. Rane and L. R. Deshpande and saw a Muslim mob of 100 to 125 persons collected near Samadia Building and throwing stones, Rane, therefore, fired tear-gas shells and thereafter Adsul ordered Shinde to fire two rounds in the air which Shinde did; then chased the rioters and arrested them. According to the affidavits of both L. R. Deshpande and Adsul, only two rounds in

all were fired, namely, the two rounds fired by S.R.P.C., Shinde, in addition to tear-gas shells. The report in the Riot Diary (Ex. P 368), however, mentions that Shinde fired two rounds and S.R.P.C., Gadhave (P.W. 54) fired one round and P.S.I., Rane fired six tear-gas shells. The statement of firing incidents (Ex. P 26) also shows two rounds of .303 rifle fired by Shinde, one round of .410 musket by Gadhave and six gas shells. Strangely enough, neither Adsul nor L. R. Deshpande make any mention of Gadhave opening fire. The F.I.R. given by Adsul (Ex. P 210) also mentions only the two rounds fired by Shinde. The affidavits of L. R. Deshpande and Gadhave mention both stones and acid-bulbs as having been thrown at the police party, while Jamadar Adsul's affidavit states that "stones, etc." were being thrown. In the witness-box he improved upon this by stating that by 'etc.' he meant acid-bulbs. He further deposed that he considered acid-bulbs to be very dangerous weapons, but just like his affidavit his F.I.R. also does not make any mention of any acid-bulbs having been thrown, and when faced with this lacuna both in his F.I.R. and his affidavit he was forced to admit that he forgot to mention these "very dangerous weapons" through oversight.

45.89 Though according to L. R. Deshpande, he was informed that Jamadar Adsul's party had surrounded Samadia Building, in his evidence he has stated that when he went there Adsul and his party had not surrounded the building, but they were standing near the Khutala Mosque not doing anything in particular, while the mob was indulging in throwing stones and acid-bulbs at them, the distance between the mob outside Samadia Building and Adsul's party being about 30 to 35 feet only. He has further deposed that the rioters were collected not only in the open space outside Samadia Building but were also on the galleries and terrace of Samadia Building and that these persons collected on the galleries and terrace were also throwing stones and acid-bulbs at the Police. Adsul has denied that when L. R. Deshpande's party came there his party was standing doing nothing. He deposed that at that time they were trying to arrest some rioters and when there was heavy stone-throwing, he ordered Shinde to open fire. According to him, the distance between his party and the mob collected in the open space was about 25 to 30 paces. He has also deposed to the Muslims having collected on the galleries and terrace of Samadia Building and of these Muslims throwing missiles at the police parties. He has said that Shinde opened fire one or two minutes before the other police party came on the scene. He has explained that he asked Shinde to fire in the air because the doors of the rooms of Samadia Building were open and women and children were inside the rooms and had he asked him to fire at the mob, the bullets might have hit any one of these women and children.

45.90 It stands to reason that if so many stones and acid-bulbs were thrown at the police parties both by the mob collected outside Samadia Building and by the rioters standing on the galleries and

terrace on the said building, then there must have been a stockpile of stones, acid-bulbs, and acid bottles in the said building. Strangely enough, the Police did not find any weapon or missile, except a .12-bore gun and some cartridges referred to later, either on the terrace or any of the galleries or any other part of Samadia Building or on any of the rioters. It also stands to reason that with so many stones and acid-bulbs thrown from all sides at the police parties the open space would have been littered with stones and smashed acid-bulbs. Strangely enough, the Police have not taken charge of a single stone or broken acid-bulb or any broken pieces of glass. It is also strange that not a single member of any police party was injured by the stones and acid-bulbs thrown at them either by the mob in the open space or from the galleries and terrace of Samadia Building. Realizing the damaging effect of this fact, Adsul tried to make out in the witness-box that after they had gone to the Town Police Station and before he had given his F.I.R. some policemen complained to him that they had received some injuries and that he looked at their injuries and found that they were of a very minor nature on their arms and fingers and did not require any medical attention or treatment, and these policemen were therefore not sent to the Bhiwandi Municipal Dispensary for treatment and that he himself was hit on the chest by one or two stones, but his injuries also did not need any medical attention. Needless to say, his F.I.R. makes no mention of either his having been hit with a stone or of any other constable having received any injury.

45.91 S.R.P.C., Gadhave's affidavit makes interesting reading. He has stated that he was asked by L. R. Deshpande to accompany him in the police van along with some other S.R.P., men. His affidavit then continues [P.W. 54/1(2)/975(1-2)] :

"When we reached Samadia Building, we saw a mob of 200 to 300 Muslims assembled in the building. They were throwing stones and acid bulbs at the Police who were there already. We got down from the vehicle and went near the building. The other policemen went in a hurry and when I was near the building; the persons in the building started throwing stones and acid bulbs at me. I shouted at them to stop throwing acid-bulbs and stones at me, but they continued to do so. With a view to protecting my life I fired one round at the mob which was on the terrace of the building. At the same time the Police started arresting those persons. I noticed that P.S.I. Deshpande and some S.R.P. men had arrested a large number of persons."

Thus, according to Gadhave's affidavit, there was no mob of Muslims collected near the open space and the Muslims were all inside the building. It will be recalled that according to L. R. Deshpande, what the S.R.P. constables who stopped him at Tanaji Vyayam Shala had informed him was that the Muslims were throwing stones and acid-bulbs at the police party from Samadia Building and that the Police had surrounded the said building.

45.92 Jamadar Adsul' F.I.R. (Ex. P 210) states :

"From the morning of 8-5-70 Muslim persons from the mob were pelting stones and *they had assembled in Yatimkhana building*. So at 11-30 hrs. P.S.I., Shri L. R. Deshpande of Bhiwandi Town Police Station came there with a police party. *We raided the place when they pelted stones towards us. To bring them under control I ordered S.R.P. Constable V. G. Shinde, 552 of S.R.P. Group I, to fire two rounds in the air.* Accordingly he fired two rounds in the air. Nobody was injured. At that time *the gas squad party of P.S.I., Shri Rane of Naigaum Headquarters, Bombay, fired tear-gas, when the mob came under control. They were arrested and brought to the police station.*"

Thus, according to Adsul's own F.I.R., there was no mob collected outside Samadia Building and what had happened was that on learning that the Muslims had collected in Yatimkhana Building, the Police raided the building, and as they were met with stones, two rounds were fired in the air and tear-gas shells burst to bring the Muslims "under control", and after being thus brought "under control" the Muslims were arrested.

45.93 The strangest of all is P.S.I. S. A. Rane's affidavit, which has already been referred to. This affidavit states that Rane reached Bhiwandi with his gas squad at 4 a.m. on May 8, 1970 and remained at the Town Police Station in reserve till 4 p.m. when he was sent along with P.S.I. Bagul to Nizampura. At Nizampura 4th Mohalla the Police opened fire as also burst tear-gas shells and Rane sets out elaborately the details of that incident. Had he fired any tear-gas shells at Samadia Building, he would have equally described that incident or at least mentioned it in passing, instead of stating that he remained in reserve at the police station till 4 p.m. on May 8, 1970. Realizing that if Rane were called as a witness his affidavit would completely demolish the police case, he was kept out of the witness-box.

45.94 In order to substantiate the case that tear-gas shells were fired, reliance was placed upon the affidavit of Abdul Rehman Abdul Sattar (Affidavit No. 17), one of the persons arrested from Masjid Chawl. He has stated that he was in his room on the day in question when some S.R.P. men broke open the door of his room, arrested him, his brother, brother-in-law and father and severely beat them up and took them to the Town Police Station along with other arrested Muslims. His affidavit further states that after he was brought out of the building, a policeman fired a shot from his rifle which hit the wall and some smoke came out of the shell and that he became unconscious and when he regained consciousness after some time, he found that some portion of his body had been discoloured and had lost pigmentation and the skin had peeled off. It was submitted that this smoke was tear-gas. According to this affidavit assuming it was a tear-gas shell which was fired, it was fired after the persons were arrested and not before. It is, however, not the case of the Police that they fired any

tear-gas shells after they arrested the Muslims. From this affidavit I am not prepared to hold that any tear-gas shells were fired, particularly when the one person who should have mentioned it, namely, P.S.I., S. A. Rane, has not done so in his affidavit. Gadhav's affidavit also makes no mention of any tear-gas shells being fired. It also makes no mention of anyone else opening fire. On the contrary, according to his affidavit, all the other policemen rushed into the building in a hurry and he alone was left outside the building.

45.95 Corroboration for the police version of what happened at Samadia Building is sought from two other witnesses, namely, Fire-Station Officer, Vaidya of the Bombay Fire Brigade (P.W. 14) and Madan Keshav Raut, the gardener of the Nilkantheshwar Temple (N.H.W. 41). Vaidya has deposed in his examination-in-chief that on May 8, 1970 at about 11 a.m. when their fire-engine was stationed near Hanuman Bavdi he saw a mob at a distance of about 300 to 400 feet and some persons throwing stones from a four-storeyed building. He has deposed that the mob was also throwing stones and that the Police made a cane charge. He has stated that as one proceeds west from Hanuman Bavdi, there is an open space, then an open gutter and then the said building and that when he saw the said mob he was on the Mamlatdar Office Road and that he did not see any temple near the building from which stones were thrown and that he did not know whether the Police opened fire or fired tear-gas shells or what happened thereafter (P.W. 14/6/435-6, 8/437). If what Vaidya witnessed was the incident we are discussing, then he saw not only the throwing of stones from the building, but also the mob in the open space and the Police making a cane charge. Nobody, however, has deposed about a cane charge or a lathi-charge. In fact, L. R. Deshpande and Adsul were emphatic that they did not make a cane charge or a lathi-charge. In the witness-box, when asked about this portion of Vaidya's evidence, Dy. S.P., Diwate was honest enough to doubt whether the building he had referred to could be Samadia Building. He has stated that Samadia Building could be seen from near Hanuman Bavdi and therefore Vaidya could have seen the stone throwing from Hanuman Bavdi, but he could not say whether he could have seen the rest of the incident (P.W. 66/95/1158). Local inspection has shown that the only place on the Mamlatdar Office Road from which Samadia Building or a part of it is visible is a right turn in that road after passing Hanuman Bavdi and even from that place all that can be seen of Samadia Building is the terrace, a part of the second floor and a small portion of the first floor. Whichever incident Vaidya was referring to, he was obviously not referring to the incident in question. It is pertinent to note that Vaidya has described this building as a four-storeyed building, while Samadia Building is a three storeyed building.

45.96 Madan Raut (N.H.W. 41) has claimed to be an eye-witness to what happened at Samadia Building. On this point, as on every other point, he has proved to be an inveterate and incorrigible liar

and the allegations made by him in his affidavit on this point are not worth the paper they are written on. In cross-examination he stated that on May 8, 1970 he was throughout in his room. He was asked whether it was possible to see what was happening in or near Samadia Building from his room and his answer was :

“From 7 a.m. to 12 noon I am on duty gardening and doing the work of a supervisor in the Dharamsala.”

The question was repeated and then he answered it by admitting that from his room it was not possible to see what was happening in or near Samadia Building. He was then asked to explain how he could relate what had happened in and near Samadia Building on May 8, 1970 when he could not see Samadia Building from his room. His explanation was that when he had first deposed that he did not leave his room on May 8, 1970, what he had meant was that he did not go outside the temple compound. As we have seen, the temple compound is circumscribed by a wall eight feet in height. He had, therefore, to admit that even from the temple compound one could only see the top half of Samadia Building. He then changed his answer to say that he saw what was happening near Samadia Building from the ventilator above the southern door of the Dharamsala. He further deposed that he did not at any time open the door to see what was happening and that from the ventilator he could see not only the whole of Samadia Building but also the open space adjoining it (N.H.W. 41/7-8/2026-7). Local inspection has, however, shown that the ventilator of the said door slopes downwards and that the open space outside Samadia Building and Masjid Chawl cannot be seen from the said ventilator and that the view of Samadia Building and Masjid Chawl from the open door of the Dharamsala across the open space is blocked by the Khutala Mosque and a power-loom factory except for a very small portion of the open space near one side of Samadia Building.

45.97 Three witnesses called by the M.T.M. have deposed to the Muslim case. They are Ali Mohamed Jamal Mehta (M.T.M.W. 6/1-13/1739-46), Mira Hafiz Khuda Bux (M.T.M.W. 7/1-3/1747-50) and Abdul Gani Ibrahim Mehta (M.T.M.W. 8/1-3/1751-3), all residents of Samadia Building.

45.98 According to Ali Mohamed Jamal Mehta, who was working as an accountant in Lotus Silk Mills, Kumbharwada, on May 8, 1970 he was in his room when at about 11 a.m. from the gallery he saw two S.R.P. men standing near Muslim huts on the eastern side of Neelkantheshwar Temple. They threw something on a Muslim hut and about two to three minutes later the said hut and the three to four other adjoining huts caught fire. Thereafter he heard the sound of police firing. He went inside his room and saw about ten to fifteen policemen coming up to his room. Thereupon he closed the door of his room. The Police, however, burst into his room, started beating him and his made relatives and arrested all of them. Ali

Mohamed appeared to be an honest witness because when asked whether he saw the Police fire tear-gas shells, he replied that he did not know as he had closed the door of his room. He also stated that after his release from the jail he saw some black marks which looked like burn marks on the entrance door of the Neelkantheshwar Temple Dharamshala. He further stated that there was a Muslim hut about half a foot from this gate, running parallel to the compound wall of the temple upto the corner, and that the said hut had not been set on fire, and that the Municipal Council had demolished it in the beginning of 1971. He has further deposed when asked that no property had been set on fire near the said gate and that the huts which were set on fire by the S.R.P. men were beyond the open gutter at a distance of about 400 feet from Aziz Bolinjkar's Building opposite the Panjrapole Building at Teen Batti.

45.99 Mira Hafiz Khuda Bux has deposed that at about 11 a.m. on May 8, 1970 while he and the members of his family were in the house as the curfew order was in force, he saw about ten S.R.P. men come from Neelkantheshwar Temple. They opened fire in the air, broke open the window of the Khutala Mosque and entered it. On seeing the Police open fire, Mira Hafiz closed the door of his room and bolted it from inside. Some time thereafter the Police broke open the door and beat all of them and arrested them. The affidavit of Abdul Gani Mehta also mentions how S.R.P. men entered the building, broke open the door of his room and arrested every male inside. Thus, out of these Muslim witnesses only Ali Mohamed has deposed about the setting fire to the Muslim huts by the S.R.P. men and Mira Hafiz about the S.R.P. men entering the Khutala Mosque by breaking open its window.

45.100 Jamadar Adsul's evidence about the arson to the Muslim huts makes interesting reading. He has admitted that these Muslim huts were burnt down; but stated that he did not see them on fire at the time when he went to Samadia Building because he did not pass by them and that he came to learn five or six days later that they had been set on fire. Adsul was patrolling in Habsan Alli area from about 5-30 p.m. on May 7, 1970 till the evening of May 9, 1970. These huts were set on fire some time during this period and if Adsul wants us to believe what he is stating, one wonders what kind of patrolling Adsul was doing not to have noticed, if not the actual act of arson, at least the fire to these huts. The evidence of Ali Mohamed does not, however, clearly establish that any S.R.P. man set fire to these huts. He does not state that the S.R.P. constable threw anything lighted or flaming on the huts. Further, the location of the huts mentioned by him would show that these were the huts referred to in Chapter 43 while discussing the rioting at Lendi Bridge, which were set on fire, in the evening of May 7, 1970. The fire to some of the properties appears to have flared up again on May 8, 1970 as shown by entry No. 46 of the Riot Diary for May 8, 1970. Ali Mohamed might have seen one of these fires flaring up

at the time the S.R.P. men were passing by and from the subsequent conduct of the S.R.P. men presumed that one of them had set fire to the said huts.

45.101 Mira Hafiz has not been cross-examined about the breaking open of the Khutala Mosque. Mohamed Husein Momin, one of the trustees of the said mosque, lodged his F.I.R. (Ex. P 501) on June 21, 1970 about the damage to the said mosque in which he has stated that there was an attack on the said mosque at about 1 p.m. on May 8, 1970 and the photo-frames and other articles in the said mosque were damaged in the attack. This F.I.R. does not carry the matter any further because Mohamed Husein did not reside in either Samadia Building or Masjid Chawl nor was he present at the time of this attack on the Khutala Mosque. Further, we have seen that several F.I.Rs. and police statements mention the time which suits the officer concerned and not the time mentioned by the witness. By the time this F.I.R. was lodged on June 21, 1970 Samadia Building had become very famous. As a result of the application (Ex. P 556) made by the women residents of Samadia Building and Masjid Chawl about the looting of their property on the morning of May 8, 1970 by the S.R.P. men, an inquiry had been ordered by the D.M. and was being carried out. In view of this, the time mentioned in the F.I.R. becomes even more suspicious. The Khutala Mosque was a sore point with the Hindus of Bhiwandi by reason of the encroachments made by its trustees on the adjoining reclaimed land of the Khutala Tank. As the evidence and the panchnama (Ex. P 557) show the police parties including the S.R.P. men looted cash, ornaments and watches, and smashed crockery, glassware, furniture, radios and other household articles in Samadia Building and Masjid chawl. When these policemen and S.R.P. men turned dacoits and looted property their motive was to cause wrongful gain to themselves, but when they turned vandals and broke, smashed and damaged property it could only be out of a feeling of hatred and spite against the Muslims. These policemen and S.R.P. men were, therefore, not likely to spare the Khutala Mosque.

45.102 All the three Muslim witnesses have deposed that no Muslims had assembled outside Samadia Building and that no missiles were thrown on the Police, but leaving aside the Muslim evidence, the evidence of the police witnesses themselves makes it clear that the entire story deposed to by them is false. S.R.P.C., Gadhav's affidavit and Jamadar Adsul's F.I.R. clearly show that there was no mob in the open space outside Samadia Building and that the Police raided the said building. There could not have been any missiles thrown on the police party from the terrace or galleries of Samadia Building since no one was injured and no missiles were taken charge of by the Police and no missiles found anywhere in either of the said two buildings. S.R.P.C., Gadhav's firing "at the mob which was on the terrace of the building" was nothing else but firing in the air.

45.103 There were three or four Hindu power-loom factories situate on the ground floor of Masjid Chawl. If Muslim rioting mobs from Samadia Building were assembling in the open space and time and again attacking Habsan Alli in the night as alleged by Jamadar Adsul or had assembled in the morning to make another attack or were so bold as to attack the Police with stones and acid-bulbs from the open space and the galleries and terrace of Samadia Building, they were hardly likely to spare these factories. These factories would therefore have been looted and the power-looms damaged, if not set on fire. The strongest argument against the Police case is that no damage whatever was caused to any of these factories or power-looms—a strange behaviour indeed for rioters who were assembling time and again bent on attacking Hindu properties in Habsan Alli. It should be borne in mind that the Khutala Mosque was a sore point with the Hindus. Except for the said factories on the ground floor of Masjid Chawl, Masjid Chawl and Samadia Building were both completely tenanted by Muslims. Some Hindu properties in Habsan Alli had been set on fire, some tiles of the roof of the Neelkantheshwar Temple Dharamshala broken and the Dharamshala door attempted to be set on fire the previous evening. Amongst the Hindus at least it was common talk that the Muslims had attacked the Shiv Jayanti procession and naturally Hindu rumour-mongers were making out that all the rioting had been on the part of the Muslims, just as Muslim rumour-mongers were making out that all the rioting was on the part of Hindus. The truth of the matter, therefore, appears to be that P.S.I., L. R. Deshpande and Jamadar Adsul, both of them from the Bhiwandi Town Police Station, suspected that the residents of Samadia Building and Masjid Chawl were concerned in the arson to the Hindu properties in Habsan Alli, the stoning of the roof of the Neelkantheshwar Temple Dharamshala and the attempt to set fire to the door of the Dharamshala, and decided to teach these Muslims a lesson, and did so. The Police first opened fire in the air to cow down the Muslims and then rushed into the buildings to arrest the residents.

45.104 It is also not possible to accept that P.S.I., S. A. Rane and his Gas Squad were present at the scene. It is no doubt true that Addl. I.G.P., Modak has referred to his being there along with P.S.I., L. R. Deshpande when he made inquiry about what had happened on seeing the prisoners being brought in. L. R. Deshpande has admitted having had a conversation with Modak. Rane, however, might have been present there because, as directed, he was then waiting in reserve at the Town Police Station and on seeing such a large party of prisoners being brought in might have out of curiosity come out of the Town Police station to find out what had happened and on seeing him there Modak might have thought that he too was with the police party which had made the arrests. If gas shells were fired it would imply that there were rioters in the open space, but

every circumstance brought on the record is against the presence of any rioter in the open space. The mention of the despatch of P.S.I., Rane and his party and the firing of the gas shells in the Riot Diary does not carry the matter any further because entries in the riot diary do not inspire any confidence and when a matter is in dispute, the statements in these entries cannot be accepted unless corroborated by other independent, reliable evidence.

The arrests from Samadia Building and Masjid Chawl

45.105 The three Muslim witnesses mentioned above, namely, Ali Mohamed Jamal, Mira Hafiz Khuda Bux, and Abdul Gani Ibrahim Mehta have graphically described how the S.R.P. men burst into Samadia Building, imperiously banging on the doors with the butts of their rifles, in some cases breaking down doors and how they brought out all the residents and beat up all the males. They have described how they were beaten and the severity of their beatings. These witnesses have also described the injuries received by them as a result of these beatings. Ali Mohamed Jamal, a flabby, oversized man working as an accountant in Lotus Silk Mills, Kumbharwada, and looking as unlike a rioter as can be, had suffered injuries to his abdomen, back and left shoulder and the fifth finger of his left hand was fractured. He was present when S.P., Bhawe was in the witness-box on April 19, 1971 and was being cross-examined about the Samadia Building incident and had at that time showed to the Commission the marks of injuries on his person. He had not till then regained the use of his fractured finger. Mira Hafiz Khuda Bux, a wizened, old man of 70, with a very feeble voice and a chronic asthmatic patient who could hardly stand and had to be given a chair, had a contusion above his left eye-brow. Abdul Gani Ibrahim had injuries on his back, trauma of the left arm and sores on both buttocks and left thigh. Two other persons, namely, Jan Mohamed Haji Mohamed Usman (the deponent of affidavit No. 600), a resident of Samadia Building, had injuries on the back of his head, to his right ear and right knee joint and trauma to the joint of the left wrist, and Hafiz Jameel Ahmed (the deponent of affidavit No. 601), a resident of Masjid Chawl, had an injury on his head which required suturing and an external trauma to the left shoulder joint with swelling and restricted movements. The injuries on all of them except Mira Hafiz Khuda Bux have been noted in the prison records when these persons were medically examined at the time of their admission into the prison. The prison doctor had opined in each of these cases that the injuries were caused by a hard and blunt substance. The prison records show that about 24 persons out of the 86 persons arrested in this incident had suffered injuries (P.W. 4/230/732-3).

45.106 Jamadar Adsul has stated that in order to make arrests he and his police party went inside Masjid Chawl, while L. R. Despande and his party went inside Samadia Building. It is pertinent to note here that Adsul does not mention what P.S.I., S. A. Rane and his

party were doing at that time. Adsul has stated that all the persons arrested were from the open space and from the galleries and terrace of Samadia Building and the galleries of Masjid Chawl and that he arrested 10 to 15 persons from the galleries of Masjid Chawl. He denied that he entered any of the rooms in Masjid Chawl (P.W. 49/6/960-2). Since he did not go inside Samadia Building his deposition about what took place inside that building is irrelevant. L. R. Deshpande has, however, deposed that the doors of the rooms in Samadia Building were open and apart from arresting persons from the open space and from the galleries and terrace of Samadia Building, they also arrested some persons who ran into the rooms of Samadia Building. Contrary to what Adsul has deposed, L. R. Deshpande stated that no one from the mob had run inside Masjid Chawl and that the policemen entered Masjid Chawl to arrest persons who were standing on its galleries. He has admitted that these persons had not indulged in any stone-throwing or in throwing of acid-bulbs. He also admitted that there is no prohibition in law against a man standing on the verandah or gallery of his house (P.W. 49/6/960-2 ; P.W. 42/8/910-1).

45.107 So far as the injuries received by the arrested persons are concerned, L. R. Deshpande has categorically deposed that none of the police parties made a lathi-charge or a cane-charge on the mob and that there was no hand-to-hand fight between the Police and the rioters. L. R. Deshpande's explanation was that these injuries were suffered as a result of the force used by the Police against those who obstructed the Police or resisted arrest and that about 20 persons must have obstructed the Police or resisted arrest. When near the Town Police Station Addl. I.G.P., Modak was inquiring about the prisoners brought in, four or five prisoners stepped forward and complained to him that the Police had beaten them and dragged them and showed him the bruises on their arms and necks. Modak asked the Sub-Inspectors who were with the prisoners as to what had happened and they told him that these prisoners had received injuries in the melee in the course of which a hand-to-hand fight took place between the mob and the police party. In the course of telling Modak about what had happened in the Samadia Building the Sub-Inspectors mentioned that they had fired tear-gas shells and opened fire besides making cane-charges (G.W. 3/16/161-2). When asked about this conversation deposed to by the Addl. I.G.P., L. R. Deshpande at first stated that he had told the Addl. I.G.P. that the Police had made a cane-charge. He suddenly realized that he had earlier deposed that no cane-charge or lathi-charge was made by any police party and he changed his answer to say that he did not state this to Modak, but only gave him the information about the force used in effecting arrests. He further denied that he had told Modak that a hand-to-hand fight had taken place between the mob and the police party. He, however, admitted that some of the accused persons had complained to the Addl. I.G.P. that the Police had beaten them. Between Modak and L. R. Deshpande I would any day accept Modak's word.

L. R. Deshpande had to explain to the Addl. I.G.P. the injuries suffered by the prisoners and the obvious explanation he could think of at that time was that they had received injuries in the course of the cane-charges and a hand-to-hand fight. His statement that he also informed Modak that force was used in effecting arrests is a clear afterthought because Modak has not mentioned that any such information was given to him.

45.108 L. R. Deshpande has also explained what this resisting of arrest and using force against people so resisting arrests meant. He has said that the prisoners resisted arrests by trying to get free from the grip of the policemen and trying to run away and the policemen would, therefore, hit them with their canes to prevent them from doing so. He admitted that none of the prisoners while trying to escape or resist arrest had assaulted anyone in the police party (P.W. 42/8/910-3). Hafiz Jameel's case is, however, an eye-opener on this part of the case. L. R. Deshpande has deposed that he personally arrested three or four persons including Hafiz Jameel and he was not required to use any force against any of them. When asked about Hafiz Jameel he specifically mentioned that he was arrested outside Samadia Building as he was trying to run away, but he did not resist arrest and he was not beaten at any time. The injuries suffered by Hafiz Jameel which have been set out above and which required suturing of the scalp speak for themselves. Obviously L. R. Deshpande was unable to explain how Hafiz Jameel came by his injuries (P.W. 42/10/914). After all the accused were arrested they were collected in the open space and searched. It was alleged by L. R. Deshpande that four live cartridges and an empty cartridge of .12-bore gun were found on the person of Hafiz Jameel. The gun was found inside Masjid Chawl from his room. In his affidavit L.R. Deshpande has stated that when they found the cartridges he interrogated Hafiz Jameel and Hafiz Jameel told him that he had a .12-bore gun and some cartridges in his room and led L. R. Deshpande to his room and produced the gun and some cartridges which were seized. Perhaps the injuries suffered by Hafiz Jameel were the result of L. R. Deshpande's "interrogation" or the punishment for his temerity in possessing a gun and cartridges for which he was singled out for an extra special treatment by the Police as compared to other prisoners. Hafiz Jameel, however, possessed a licence under the Arms Act in respect of this gun. This licence was valid for the whole of India. When the question first came to be canvassed before the Commission during the cross-examination of Addl. I.G.P., Modak, it was stated to the Commission that Hafiz Jameel was being prosecuted because the licence was valid only for U.P. and did not entitle him to carry this gun to Bhiwandi. The Commission asked to see the licence. On a subsequent occasion the licence (Ex. P 121) was produced and it showed that it was valid for the whole of India. The Commission was then informed that he was being prosecuted under section 27 read with section 20 of the Arms Act, 1959, for

being in possession of fire-arms under suspicious circumstances and with intent to use them for an unlawful purpose and under section 30 of the said Act for breach of condition 12 of the said licence which required a licensee to report any change of his ordinary residence, either to the authority which had granted the license or in the event of the licence having been renewed by some other authority on a previous occasion of the change of ordinary residence, then to such authority; the licensing authority in the case of Hafiz Jameel being the D.M., Allahabad. As it was to be expected the prosecution against Hafiz Jameel failed [P.W. 42/1(9)/914(4-5), 10/914; G.W. 3/49/179, 92/204; Exs. G-121 & G 124].

45.109 The above evidence clearly establishes that the Police did enter rooms in Samadia Building and Masjid Chawl and arrest persons therefrom and use force on them without any cause. Since it has been clearly proved that there was no mob outside in the open space the question of any rioters running inside the Samadia Building or Masjid Chawl does not arise. Since there were no stones or acid-bulbs or any other missiles thrown on any police party from any gallery or terrace of the Samadia Building, the question of any rioters having collected on the terrace and galleries of the said building does not arise. Admittedly the residents of Masjid Chawl were doing nothing except standing on the galleries and watching what was happening. Nonetheless Jamadar Adsul and his party went in and arrested them from the said building. The false explanation given by L. R. Deshpande to Additional I.G.P., Modak when the prisoner complained about the beatings they had received clearly shows that he had a guilty conscience. In these circumstances I find that the allegations with respect to the beatings given to these prisoners have been proved.

45.110 The record shows that almost every male resident, including a juvenile named Hanif, was arrested from Samadia Building and Masjid Chawl, the only exceptions being young boys and women. Jamadar Adsul's F.I.R. (Ex. P 210) charges the arrested 86 persons with setting fire to Hindu houses, looting Hindu properties and throwing stones and fire-balls at the police party both in Habsan Alli and from Samadia Building. All these persons were committed to the sessions and were acquitted by the Sessions Judge (Ex. G 398). Ten of them were also made accused in the Bhiwandi Conspiracy Case being accused Nos. 79, 82, 83, 88, 89, 94, 96, 97, 105 and 107. After the conspiracy charge was withdrawn these accused persons along with some others were discharged on the application of the prosecution as there was no evidence of any overt act against them (P.W. 61/135/3711-2).

The looting of Samadia Building and Masjid Chawl

45.111 On May 10, 1970 Asmabi Khalil Ahmed Momin, a resident of Samadia Building, lodged a complaint at the Town Police Station (Ex. P 226) that on May 8, 1970 some persons in khaki uniform came and arrested all her relatives as also her neighbours and thereafter

searched her house and stole property consisting of four bangles, earrings and some cash, and damaged her glassware. The complaint also mentioned the names of ten of her neighbours whose properties were damaged or looted by these persons. On May 19, 1970 ten women from Masjid Chawl and Samadia Building made a written application (Ex. P 556) to the same effect to the Inspector, Town Police Station. Copies of the said application were sent to the D.M., Thana, and the S.P., Thana. This application charged the S.R.P. men and policemen with forcing the said women to hand over the keys of their cupboards and trunks and taking away cash, gold and silver ornaments therefrom and with smashing their household articles such as crockery, furniture, sewing machines, clocks and radios, and with even snatching away some ornaments from their persons — all under the guise of carrying out searches. The said application mentioned that one of the S.R.P. men had left his helmet behind and that the number on the said helmet was 1270/8-11-65, the date '8-11-65' being the date on which the said helmet was issued to the S.R.P. man. The said application also charged the Police with forcing open the adjoining primary school No. 10 and damaging the furniture, frames and photographs in it. The said application contained a list of the losses suffered by 15 women. A copy of this application was handed over to D.M., Capoor at the Inspection Bungalow by some Muslim leaders including Yusuf Momin and Gulam Mohamed Momin. Capoor thereupon accompanied them, met the applicants and looked at whatever they wanted to show him and told them that he would cause an inquiry to be made. He immediately wrote to the S.P. to hold an inquiry (P.W. 59/56/1034). The inquiry so promptly ordered by the D.M. on going to Samadia Building and Masjid Chawl and seeing what the women wanted to point to him clearly showed that the damage as alleged by these women in their said application had been caused. Thereafter as ordered by S.P., Bhave on May 22, 1970 a panchnama (Ex. P 557) was made by P.I., M. Y. Patil of the Bhiwandi Town Police Station of the rooms in question (Ex. P 557). The said panchnama records the damage caused to the furniture and articles in 18 rooms. Statements were thereafter recorded of various persons and identification parades held at which no one could be identified. The entire inquiry, however, really turned upon the question of the identity of the S.R.P. men and policemen concerned. The question before the Commission, however, is not of the identity of these S.R.P. men or policemen but whether the facts alleged in the said F.I.R. and the said application are correct. From L. R. Deshpande's evidence we do know that S.R.P. men went inside the rooms in both these buildings and arrested persons who were in them. Though both L. R. Deshpande and Adsul have been very careful not to say that they carried out any searches, Modak has deposed that in the course of his conversation with L. R. Deshpande, Deshpande told him that the Police had entered Samadia Building and searched it (G.W. 3/16/162). Both the buildings must obviously have been searched for both L. R. Deshpande and Adsul say that

they did not find anything incriminating in the buildings except the cartridges and the gun referred to above. The damage recorded in the panchnama clearly shows that it was not and could not be any normal damage caused at the time of a search. The panchnama records smashed crockery, glassware, radios, tape-recorders and a tricycle ; boxes and trunks forced open ; and flour, rice and foodgrains scattered all over. It also records that several almirahs were broken open and that the doors of some rooms were broken. The havoc which this panchnama describes could not have been caused by these women themselves, everyone of whose male relatives was arrested, in order to substantiate a false allegation against the Police and the S.R.P. men. They could have ill-afforded any such self-inflicted damage, nor is any such suggestion made by anyone. The F.I.R. of Asmabi was filed at the earliest on May 10, 1970. It describes the persons responsible for the damage as persons in khaki uniform who had arrested all her male relatives. D.M., Capoor himself saw the damage when he came to Samadia Building and it was this which prompted him to direct S.P., Bhawe to make an immediate inquiry. The helmet found in one of the rooms of Samadia Building proves the presence of the S.R.P. men and even otherwise their presence and the presence of the policemen in the rooms has been admitted by L. R. Deshpande. The damage recorded in the panchnama clearly proves that the policemen and the S.R.P. men smashed household articles and furniture, broke open boxes, trunks and cupboards and it follows therefrom that they looted cash and ornaments, and it also clearly shows that the doors of some of the rooms had been broken open and thus bears out the allegation made by the Muslim parties about the Police breaking down doors and entering the rooms.

45.112 It was next submitted by the Muslim parties that the inquiry conducted in pursuance of this application was not proper. There were some defects in this inquiry, but even if they were not there the result would not have been any different. Ordinarily, it is not possible for a private person when a number of men in uniform are lined up to identify any one of them. Their uniforms being the same would give to a layman an appearance of uniformity in their appearances, except where the person concerned has some marked physical characteristic or some special mark of identification. Both Bhawe and Dy.S.P., Saraf have admitted this position (P.W. 4/339/808 ; P.W. 61/96/3667). The failure of the women to identify any of the S.R.P. men, therefore, cannot mean that the acts alleged by them did not take place. There is, as mentioned above, overwhelming evidence to show that they did take place.

45.113 We will now turn to the inquiry itself. A number of statements were recorded, some of which were exhibited (Exs. P. 558 to P 562). On May 28, 1970 the statements of two of the S.R.P. constables who were in the police party were recorded. They denied the charges made against the police party. Further investigation was thereafter transferred by S.P., Bhawe to M. D. Patil, Inspector, Local Crime Branch Thana. On June 18, 1970, 8 constables out of the police party

were shown to the women in question, but they were unable to identify any of them. Their further statements were thereupon recorded. On June 20, 1970 statements of some other persons were recorded. Thus, the identification parades were not held in respect of all the police constables and S.R.P. men who were present at the spot. Holding such identification parades would, however, have been meaningless for the reasons mentioned above. The investigation was handled from time to time by different officers whose names have been mentioned by Dy.S.P., Saraf. In the course of the investigation, D.I.G. (C.I.D.) (Crime) directed the Commandants of various S.R.P. Groups from which S.R.P. men had come to Bhiwandi to make an inventory of the helmets issued to all S.R.P. men deputed for bandobast to Bhiwandi during the period May 6, 1970 to May 9, 1970. The Commandant S.R.P.F. Group II, Poona, reported on July 3, 1970 that A.P.C. S. L. Ningade (Buckle No. 164), had lost his helmet near Jaitunpura where he was injured in the riots on May 7, 1970 and removed to the Thana Civil Hospital. The Commandant, Group VIII, Marol, reported on July 8, 1970 that A.P.C., Annarao Vyankatrao Birajdar (Buckle No. 5942), had lost his helmet near the Control Room in Bhiwandi, probably in the first week of June 1970. The Commandant, Group No. VII, Dhond, reported on October 14, 1970 that A.P.C., B. R. Bobade (Buckle No. 584), had lost his helmet bearing the said number 1270. Bobade was recruited in Group I at Poona but subsequently transferred to Group VII at Dhond and was allotted buckle No. 584, but he continued to retain the said helmet No. 1270. Bobade's statement (Ex. P 562) was recorded on October 30, 1970 and according to it, on May 8, 1970 he had started from Dhond along with his Company for duty at Bhiwandi. He first came to Thana and was given fixed-point duty at Ovala village along with one head constable and three other constables. He was at Ovala till June 15, 1970 and then posted at Kapurbavdi till July 3, 1970 and thereafter he noticed that his helmet was missing, but he did not make any report, oral or in writing, about it. Thus, according to his police statement, Bobade was not in Bhiwandi at the relevant time. This, however, does not necessarily mean that helmet No. 1270 was with Bobade on the day in question. Helmets can get mixed up in barracks and when several men wear the same size helmets the interchanging of helmets may not even be noticed. The papers in this case were sent by D.I., Savant, who was the last officer to conduct the investigation, to D.I.G. (Crime) for scrutiny and further orders. The case has, however, not yet been finalised (P.W. 61/96/3666 ; P.W. 4/336-9/803-7).

Conclusions on the Samadia Building incident

45.114 It will be convenient to summarize the conclusions reached by the Commission in respect of the Samadia Building incident.

- (1) There was no rioting Muslim mob in the open space outside Samadia Building.
- (2) There were no Muslim rioters collected inside Samadia Building or Masjid Chawl.

- (3) There were no Muslim rioters standing on the terrace or galleries of Samadia Building or the galleries of Masjid Chawl.
- (4) No stones, acid-bulbs or any other missiles were thrown on any of the police parties by any Muslims.
- (5) Enraged at the Muslims in general for attacking the Shiv Jayanti procession and believing that all the rioting was on the part of the Muslims and suspecting that the residents of Samadia Building and Masjid Chawl were responsible for the arson to the Hindu properties in Habsan Alli, the stoning of the roof of the Neelkantheshwar Temple Dharamshala and the attempt to set fire to the door of the Dharamshala the police parties raided these two buildings and arrested almost all the male residents therefrom.
- (6) P.S.I., S. A. Rane and his Gas Squad were not with the police parties.
- (7) None of the Muslim huts near the open gutter were set on fire by any S.R.P. man or policeman.
- (8) After arresting the male residents of these two buildings the S.R.P. men and policemen forced open the trunks and cupboards of the residents of these two buildings, and looted therefrom gold, cash and ornaments, and smashed crockery, glassware, furniture and other household articles.
- (9) Some S.R.P. men broke into the Khutala Mosque and damaged the furniture, photo-frames and photographs in it.
- (10) The fire opened by the Police outside Samadia Building was not justified.
- (11) No tear-gas shells were fired near Samadia Building.

The police firing at Gaibi Nagar

45.115 To the north of Bhiwandi-Kalyan Road is situate a factory known as G. G. Dandekar Machine Works Ltd. G. G. Dandekar the founder of this factory, died in or about 1961. In about December 1966 the controlling interest in this company was purchased by Kirloskars and since that time the chief executive of that company has been Col. Kidar Nath Koshal (C.W. 36) who had then just retired from the army. The area of G. G. Dandekar Machine Works Ltd. comprises about 35 acres. Within that area are chawls, godowns and the staff's residential quarters. The whole area is known as Dandekar Wadi. To the east of Dandekar Wadi is the Hindu locality of Nhavipada, to the further east of which is a mixed locality known as Piranipada and to the north of Nhavipada and the north-east of Dandekar Wadi is the Muslim locality of Gaibi Nagar which extends almost to Kacheripada Road to the north. In May 1970 there was no compound wall round Dandekar Wadi. There, however, used to be a fencing most of which had fallen down. A compound wall and a new fencing were erected after May 1970. Exhibit P 1195 is a sketch of Dandekar Wadi and the adjacent areas and the wall shown by a red line and the

barbed wire fencing shown in red crosses and lines and some other structures shown as new in the sketch did not exist in May 1970. Nhavipada and Gaibi Nagar are both situate within the revenue limits of Nagaon village.

45.116 As there was no place for Addl. I.G.P., Modak to put up in the Inspection Bungalow, a request made to Col. Koshal in the morning of May 8, 1970 to help out by providing accommodation for him. Col. Koshal agreed and accordingly the guest-house of Dandekar Wadi, next to Col. Koshal's bungalow, was made available to Modak.

45.117 As Modak had not taken an escort with him when he left Bombay, he picked up an escort from the Thana Police Headquarters consisting of one armed head constable and four armed constables, namely, A.H.C., Farid Nabi Mullani (P.W. 45) and A.P.Cs., S. T. Shirsat (P.W. 56), W. G. Kudalkar, D. T. Deshmukh and R. D. Salunke, all four armed with .410 muskets. This escort was on guard duty at the Dandekar Wadi guest-house.

45.118 The case of the Executive Magistrates and the District Police Officers is that at about 1 p.m. the Muslims from Gaibi Nagar attacked the Hindu houses in Nhavipada and set some of them on fire. A number of Hindus from Nhavipada thereupon took shelter in Dandekar Wadi. The Muslim mob then advanced towards Dandekar Wadi to set fire to the factory, armed with various weapons and instruments of arson. The Muslims attacked Dandekar Wadi and started throwing stones and other missiles at the police party. The police thereupon opened fire. Sixty-one rounds were fired. The Muslim mob ran away taking away the injured and the killed along with them.

45.119 According to the Muslim parties the residents of Nhavipada, with a view to attack the Muslim localities of Gaibi Nagar and Piranipada, removed their women and children to Dandekar Wadi and thereafter armed with kerosene tins and lighted torches along with the police party at Dandekar Wadi guest-house advanced towards Gaibi Nagar. The Police fired towards Gaibi Nagar locality to drive out the Muslims and the Hindus started setting fire to the Muslim houses in Gaibi Nagar.

45.120 A.H.C., Mullani lodged his F.I.R. (Ex. P 197) at 11-30 p.m. that night at the Bhiwandi Town Police Station. It was recorded by P.S.I., L. R. Deshpande and registered as C.R. 200/70. The case was investigated by the Special Investigation Squad and 9 Muslims were arrested and sent up for trial. On January 17, 1972 six of them were acquitted and the remaining three convicted by the Fourth Additional Sessions Judge, Thana. The three Muslims who were convicted went in appeal to the High Court, being Criminal Appeal No. 44 of 1972, and the State also went in appeal, against the acquittal of the six accused, being Criminal Appeal No. 569 of 1970. On January 19, 1973 a Division Bench of the Bombay High Court consisting of Deshpande and Lentin, JJ., allowed the appeal

of the three Muslims who had been convicted and dismissed the appeal of the State. The High Court disbelieved the entire prosecution evidence. The High Court observed in its judgment (Ex. G 400) :

“Finally, we are constrained to observe that in this case the investigating agency has chosen to place before the Court a one-sided picture and that casualness appears to have held sway.” The High Court felt that false witnesses had come forth or were put up in order to give false evidence implicating the accused. The High Court held that there was no Muslim mob within the precincts of Dandekar Wadi and that the police firing took place, not inside Dandekar Wadi, but from the outskirts of Dandekar Wadi and into Gaibi Nagar. An application for leave to appeal to the Supreme Court, being Criminal Application No. 826 of 1973, was dismissed by the High Court on October 3, 1973.

45.121 The evidence led before the Commission has not brought on the record any facts which could persuade the Commission to take a different view from that which was taken by the High Court. If at all, the further facts brought on the record of the Commission only go to strengthen the conclusions reached by the High Court.

45.122 With these prefatory observations we will now examine the evidence led before the Commission. Two police witnesses who have deposed about this incident of police firing are A.H.C., Farid Nabi Mullani (buckle No. 250) (P.W. 45/1-12/926-36), and A.P.C., Shantaram Tanaji Shirsat (buckle No. 657) (P.W. 56/1-12/991-4). It will be better to let A.H.C., Mullani tell his story in his own words. In his affidavit he has stated [P.W. 45/1(2)/926(1-2)] :

“On 8-5-1970 at about 1300 hrs. a number of Hindus from Nhavipada came to Dandekar Wadi compound and told us that Muslims had burnt their houses. They requested for protection. They had come to Dandekar Wadi for shelter. We saw riotous Muslim mob of about 500 persons coming towards Dandekar Wadi. On the way they set fire to some houses. The mob surrounded Dandekar Wadi area from 2 sides and started throwing stones at Dandekar Wadi. Some members of the mob were carrying lighted torches. As they approached nearer they started throwing torches, acid-bulbs and stones at houses in Dandekar Wadi and at us. Their intention to set fire to the houses in Dandekar Wadi was clear. They were also likely to attack the Hindus who had come to Dandekar Wadi for shelter. As the situation was serious I shouted at the mob that I would open fire if they did not disperse. But the mob continued to advance towards us. I, therefore, ordered Constable Shirsat and Constable Deshmukh to open fire at the mob. They fired one round each on the mob. I noticed that one person was injured. But the riotous mob continued to advance towards us. I advanced towards the mob along with my constables but the members of the mob threw lighted torches and cylindrical hand-bomb like articles at us. One such article fell near Constable Shirsat and there was a sort of explosion. Constable Kudalkar fired 2 rounds at the mob.

The mob retreated slightly but continued to throw stones etc. at us. We advanced towards the mob and went on firing as the members of the mob continued to throw stones etc. at us. The mob used to retreat slightly and throw stones etc. at us. We had, therefore, to fire a number of rounds. We were facing the mob for about 45 minutes. The mob thereafter dispersed and ran towards Gaibi Nagar. In total Constable Shirsat fired 11 rounds, Constable Deshmukh fired 15 rounds and Constable Salunke fired 6 rounds and Constable Kudalkar fired 14 rounds at the mob. I fired 15 rounds. A number of persons were injured in the firing. I received an injury on the knee due to stone-throwing. I then went to the Bhiwandi Town Police Station and gave information about the incident."

45.123 A.P.C., Shirsat's affidavit is in substance the same as the affidavit of A.H.C., Mullani. The only additional fact which emerges from A.P.C., Shirsat's affidavit is that when one of the cylindrical hand-bomb like objects fell near him, its splinters struck and damaged his wrist watch and the watch stopped. For gallantry displayed by them in dealing with this mob, the Police Department gave a cash reward of Rs. 1,000 to A.H.C., Mullani and a cash reward of Rs. 250 to each of the other four constables.

45.124 Four Muslim witnesses were examined by the Bhiwandi Relief Committee in support of the Muslim case. They are Zohra Peer Mohamed (B.R.W. 48/1-3/1569-70), Habbu Nabi Bax Banarsi (B.R.W. 55/1-2/1588-9), Abdul Hai Abdul Kadir (B.R.W. 56/1-2/1590-92) and Mohamed Husain Yakub (B.R.W. 57/1-2/1593-4), all residents of Gaibi Nagar. Zohra Peer Mohamed has deposed that between about 11 a.m. and noon when she had just cooked lunch but they had not yet partaken of it she heard a noise and shouts coming from Dandekar Wadi, and about 50 Hindus along with some constables armed with guns came to Gaibi Nagar and started throwing stones. Some of them were carrying kerosene tins and others were carrying lighted torches. On seeing them she closed the door of her room. After some time her house was set on fire and to save themselves she, her husband and children came out of the house, her husband leading them and she walking behind him and the children following her. As soon as her husband came out of the gate he received a bullet wound from a shot fired by a policeman and fell down dead. Habbu Nabi Bax Banarsi has deposed that at about 11 a.m. he heard gun shots being fired from Dandekar Wadi. He also heard the sound of firing coming from the side of Malaysia Sizing behind the Remand Home in the adjoining locality of Kacheripada. While the police firing was going on he saw two Hindus whose names he has mentioned in the affidavit with about 40 other villagers from this locality with kerosene tins and lighted torches in their hands setting fire to Muslim houses. He and his family fled in the afternoon to Islampura for safety and when he returned after the curfew was relaxed he saw that his house had been partially burnt. At the eastern extremity

of Gaibi Nagar is a Dargah of a Muslim Pir who was known as Gaibi Pir and from whom this locality has been named. Abdul Hai Abdul Kadir has deposed that at about 10-30 a.m. he heard some commotion near the said Dargah and after some time people came pouring into the locality and he saw smoke and fire near the said Dargah and he learnt that villagers from Bhader and Nagaon villages had attacked the residents of Gaibi Nagar and Bhader. After some time these villagers marched to the Muslim houses situate in the fields near the Remand Home and Abdul Hai heard the sound of gun fire and saw smoke rising in the sky. He has further stated that the Police terrorized the residents of Gaibi Nagar by indiscriminate firing in which a number of Muslims died and that simultaneously about 50 villagers who had gathered in the houses of three Hindus of the Nhavi community (whose names he has mentioned in the affidavit) started setting fire to Muslim houses with lighted torches after sprinkling kerosene on the houses. According to him, the Muslim population of Gaibi Nagar was about 5,000 and the entire Muslim population fled to different places of safety by about 2 p.m. on May 8, 1970. He has further deposed that there were no houses of Hindus in the locality except five houses belonging to some Nhavis, none of which were damaged. The evidence of Mohamed Husain Yakub is in substance the same as that of Abdul Hai.

45.125 There is another witness who claims to have personally seen the whole incident. He is Col. Kidar Nath Koshal, the chief executive of G. G. Dandekar Machine Works Ltd. He was summoned and examined by the Commission (C.W. 36/1-22/3468-79) and a third version of what happened that morning emerges from his evidence. He has deposed that at about 10 a.m. he saw a house in Nhavipada close to his servants' quarters on fire. He went towards the servants' quarters and saw a number of Hindus, most of them from Andhra Pradesh, coming into the compound of Dandekar Wadi. He also saw some Maharashtrian agriculturists and Gujarati families with their belongings coming into the compound. The Andhriles were coming from the side of Nhavipada, while the Gujaratis and the Maharashtrians were coming from behind the Zenith Gas Works which is to the east of Dandekar Wadi on the Bhiwandi-Kalyan Road. At that time some persons from Gaibi Nagar started attacking the supervisors' quarters on the extreme north-east of Dandekar Wadi compound just opposite Gaibi Nagar. As there was a distance of about 100 yards between him and the mob he could not see whether these rioters were carrying anything in their hands. They were shouting "Allah Ho Akbar". Meanwhile a jeep carrying a head constable and four constables came there in front of the Zenith Gas Works. Koshal ran up to the head constable and told him to go to the persons from Gaibi Nagar and request them not to enter the compound and also request the persons from Nhavipada to leave the compound and go back to their houses. The head constable

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accompanied by a constable went towards Nhavipada up to the well which is outside the boundary of Dandekar Wadi, but the mob from Gaibi Nagar threw some stones at them. They also threw a missile which made a noise. This missile struck a constable's watch and broke it. The head constable and the constables thereupon returned to the compound and the mob from Gaibi Nagar started advancing towards their workers' quarters. The mob consisted of 300 to 400 persons, some of them carrying dry grass and a few carrying lighted torches. The head constable called out to the other constables and the entire police party went towards the attacking crowd in the direction between the workers' quarters and Gaibi Nagar and Koshal heard a lot of noise including the sound of firing. He stood on the compound wall of his bungalow which is about two feet high and as a result thereof he could see what was happening. When the police firing started, he lay down on the ground to take cover behind the said wall and looked over it. He also sent one of his chowkidars to the workers' quarters to ask the workers to get back into their houses. The head constable and a constable, from a position near the wall inside Dandekar Wadi, started firing in the direction of Gaibi Nagar, while the three other constables went in the direction of the staff quarters firing on the mob which was advancing towards these quarters and at the same time was throwing stones and other missiles at the said quarters. As a result of the police firing, within about 20 minutes the situation became quite, the Muslim mob returned to Gaibi Nagar and the constables chased it. They ran after the mob right up to the boundary of Dandekar Wadi and Koshal could not see whether they entered Gaibi Nagar because there were 400 to 500 houses in Gaibi Nagar touching the compound of Dandekar Wadi and the houses hid the constables from view.

45.126 There is thus considerable divergence between the version of the two constables on the one hand and of Col. Koshal on the other and a sharp cleavage between these two versions on the one hand and the version of the Muslim witnesses on the other. We will now analyse the evidence to see which version is the correct one.

45.127 The first question is with respect to the time when this incident took place. According to the affidavit of A.H.C., Mullani and A.P.C., Shirsat, the incident took place at about 1 p.m. A.H.C., Mullani had been to the Town Police Station at about 3-30 p.m. to give a report. This report is entered in entry No. 90 of the Riot Diary for May 8, 1970 (Ex. P 368). In the said entry the time of the incident is mentioned as 1-30 p.m. According to the Muslim witnesses, it took place between 11 a.m. and noon. According to Col. Koshal, the incident commenced some time after 10 a.m. and the whole incident was over by about 11-30 a.m. The constables would, however, mention a later time in order to cover up their not reporting the matter earlier.

45.128 We will now turn on the main point of controversy between the parties, namely, whether there was any attack at all on Dandekar Wadi. According to the affidavits and the oral evidence

of both Mullani and Shirsat, the Muslim rioters were carrying lighted torches, acid-bulbs, stones and cylindrical hand-bomb like objects which made a noise when they exploded. Neither the report made by him at the Control Room (Ex. P 368, entry No. 90) nor his F.I.R. (Ex. P 197), however, mentions any cylindrical hand-bomb like objects, but only mentions stones, iron bars, lighted torches and acid-bulbs. His firing report mentions neither lighted torches nor any cylindrical hand-bomb like objects. He has admitted that the said firing report was given to justify the police firing and that the facts that the members of the mob were carrying lighted torches and cylindrical hand-bomb like objects and had thrown them at the police party were important facts. The only explanation he could give for forgetting these important facts was that it was through oversight. If what the two constables say were true, stones, acid-bulbs, burnt-out torches and cylindrical hand-bomb like objects would be strewn all over the compound of Dandekar Wadi. Not a single one of these articles has, however, been taken charge of. The only explanation which Mullani could give was that his ammunition had run low and only five rounds were left with him and, therefore, he wanted to keep alert and ready for another attack on Dandekar Wadi.

45.129 After Mullani had given his report at the police station, he was sent to the spot with Sub-Inspector Salvi and a police party to collect the dead bodies. Even at that time none of these articles were taken charge of. Strangely enough, even the fragments of exploded cylindrical hand-bomb like objects were not taken charge of at any time. Col. Koshal has stated that they did not sweep the compound of Dandekar Wadi and that the stones and broken acid-bulbs which were lying there must have been swept away in the rains. In his police statement Col. Koshal has not mentioned that any acid-bulbs were thrown, though he has mentioned stones, bombs and missiles. He admitted that he had himself not seen bombs used, but had heard a noise like that of an explosive which might be either the noise of bombs or of crackers. This is surely a strange statement from an ex-army officer, who was in the E.M.E. (Corps of Electrical and Mechanical Engineering). Col. Koshal has further mentioned that one of his supervisors complained to him that he was hit by a bomb, but later on Col. Koshal ascertained that it was not a bomb or any dangerous missile, but was a missile which consisted of a metal tube attached to a bamboo stick with Hessian cloth shoved into it along with some powder. No such missile was, however, taken charge of or handed over by Col. Koshal to the Police. Col. Koshal alleged that in the afternoon out of curiosity he along with one of his chowkidars and a constable from the guest-house guard party went to Gaibi Nagar to see whether there was any chance of danger to them in the future. They passed by a house very close to Dandekar Wadi and saw several missiles lying in the courtyard of that house. These missiles consisted of stones, acid-bulbs and tube-like missiles of the type thrown at the supervisor and they were lying haphazardly

in the courtyard. On seeing these missiles they decided not to go further and returned to the guest-house and Col. Koshal reported this fact to the police party. He has further alleged that five or six days after May 8, 1970 he had gone to Gaibi Nagar and had seen a number of acid-bulbs and two large jars of acid collected and kept near the police guard. We do not find in the evidence of the police witnesses any mention of any such missiles either lying in the courtyard of a house in Gaibi Nagar or of any such acid-bulbs or two big jars near the police guard within five or six days of the incident, nor does Col. Koshal's police statement make any mention of any of these facts. It was alleged in the prosecution against the nine Muslims that D.L. Shinde took a search of the house of one of the accused on May 15, 1970 and took charge of some cylinders, a knife, iron bars and torches. It is not necessary to go into the details of this panchnama except to mention that the Division Bench of the Bombay High Court in its said judgment (Ex. G 400) has referred to it as a "so-called panchnama" and has observed, "This so-called panchnama hardly conforms even to the barest standards or rules by which panchnamas are made". The Division Bench has further stated that its aforesaid observations applied to all other panchnamas produced in that case.

45.130 If so many dangerous missiles were thrown at the Hindus taking shelter in Dandekar Wadi and at the police party and at the supervisor's quarters and other buildings, one would naturally expect at least some persons to have been injured and at least some property to have been set on fire by the lighted torches thrown at them. No damage whatsoever, however, was caused to any property inside Dandekar Wadi, a fact admitted by Col. Koshal. Three persons are alleged to have been injured. According to Col. Koshal, one of his supervisors informed him that he was hit by a bomb. Col. Koshal, however, admitted that he did not see any injury on the said supervisor. According to Mullani, he had received an injury on his right knee, namely, a contusion with swelling 2" by 2" and A.P.C., Deshmukh had an abraded contusion on his right elbow 2" by 1". Once again it will be sufficient to quote from the judgment of the High Court. The High Court observed :

"There is nothing beyond their bare word to substantiate this claim of theirs, more so as the medical evidence on record indicates that these injuries, which were minor and superficial, could also have been caused by a fall."

45.131 Thus, there was neither any damage to any property nor injury to any person.

45.132 The largest number of rounds were fired and the highest number of casualties took place in this firing incident. According to the two constables the rioters took away the persons injured in the police firing and left them lying in the fields. The improbability of this portion of their evidence will be apparent when we examine further their evidence and the other evidence on the record. P.S.I.

Parashram Yeshwant Salvi (P.W. 33) of the Shahad Police Station, who was subsequently transferred to the Special Investigation Squad, was deputed by Dy.S.P., Diwate to go along with A.H.C., Mullani and a police party and bring in the dead bodies. On July 31, 1970 P.S.I., Salvi made a report with reference to which the High Court observed in its said judgment (Ex. P 400) as follows :

“The opening paragraph of this report is revealing and goes a long way in demolishing the case of the prosecution that any incident had taken place at Dandekar Wadi itself or that firing took place in Dandekar Wadi itself.”

The opening paragraph of the said report referred to by the High Court is as follows:

“On 8th May 1970 at 17-30 p.m. Shri Diwate, S.D.P.O., ordered me to go with P.H.C., Mullani in Gaibi Nagar where he has opened fire and he will show the dead bodies. I therefore went to Gaibi Nagar at about 18-00 hours with S.R.P. Party and police van and Shri Mullani, P.H.C., showed me the dead bodies. I saw them. *Some bodies had bullet injuries and some bodies were burnt and some bodies had received beating.....*”.

45.133 . In his examination-in-chief Mullani sought to make out that five dead bodies were found in the compound of Dandekar Wadi and three bodies close to it. His evidence on this point was as follows (P.W. 45/3/927) :

“We reached Gaibi Nagar at about 8 p.m. We found five dead bodies in Dandekar Wadi compound, one dead body in a burning house and two dead bodies in open fields. These two dead bodies were found in open fields close to Dandekar Wadi compound. Dandekar Wadi is adjacent to Gaibi Nagar. The burning house was also adjacent to Dandekar Wadi compound. The other dead body was not found inside the burning house but lying outside the house at a distance of about three feet. All these bodies were of Muslims. The burning house near which one of the dead bodies was found was also a Muslim house.”

In cross-examination he at first stated that they did not go either to Nhavipada or to Gaibi Nagar. He was ultimately made to admit, at least so far as the time was concerned, that he had made a mistake in saying that they reached Dandekar Wadi at 8 p.m. and that they had actually returned to the Town Police Station at about 8 p.m., P.S.I., Salvi has, however, told us where actually these eight bodies were found. He has deposed that Mullani took him to the place where he said he had opened fire and that they saw a dead body lying there. They came across the other bodies while they were moving about thereafter. He has further deposed that all the eight dead bodies were lying in open fields at different spots. He has further deposed that they reached Gaibi Nagar at about 6 p.m. and were in that locality searching for dead bodies till about 9 p.m. When they saw a dead body with a bullet-wound lying at the spot where Mullani said he had opened fire, they sent for a charpoy to take it to the

police van. This took about 15 to 20 minutes. Thereafter they came across the second body about 15 to 20 feet away from the spot where the first dead body was found ; this body also had a bullet wound. The third body was lying at a distance of 20 to 25 feet from the spot where the second body was found. They could not properly notice the injury on it as the light was failing. By the time they came to the fourth body, it had become completely dark. The other four bodies were found later, all lying in the open field [P.W. 33/1(1)/579(1), 5/580, 7-10/581-4, 18/587]. On P.S.I., Salvi's evidence, there can be no doubt that all the eight dead bodies, which were taken charge of by the Police, were lying in the open fields in Gaibi Nagar and not one of them was found in the compound of Dandekar Wadi, a surprising fact if the Police had actually opened fire in Dandekar Wadi. There are, however, enough admissions on the part of the police constables and of Col. Koshal which would clearly show that the firing took place not at Dandekar Wadi but in Gaibi Nagar. Mullani has deposed that they pushed back the Muslim mob up to Gaibi Nagar. He has further deposed (P.W. 45/5/932) :

“As the mob was retreating, the persons in the mob were throwing stones at us. So we would open fire at the mob. Then the mob would retreat further and simultaneously throw stones at us. So we were compelled to open fire again. We had 410 muskets with us which require to be re-loaded after each round is fired. In the manner prescribed above, I fired in all on 15 occasions at different places.”

Each of these constables on guard duty at the guest-house had been issued 20 rounds. Mullani has admitted that their ammunition had run low and only 5 rounds were left with him. Since the total number of rounds which these five constables were carrying was 100, the other constables had also only a few rounds left with them. The conclusion we are forced to come to, therefore, is that this police party kept on firing indiscriminately and stopped firing only when they found that their ammunition was running low.

45.134 On May 9, 1970 P.S.I., R. K. Patil of the Bhiwandi Taluka Police Station was patrolling along with S.P., Scott of the State Traffic Branch. When they went to Gaibi Nagar they noticed a dead body lying in a field. They also found another dead body in a house in the same locality. After drawing up the inquest panchnama they took charge of both these bodies. This house was in a cluster of 10 to 15 houses all of which were deserted as their residents had run away leaving their belongings behind. Some of these houses had their roofs burnt and others their roofs damaged. He has deposed that this was a predominantly Muslim locality and these were Muslim houses. He has further deposed that S.R.P. pickets were posted there. Since there is no entry in the Riot Diary of any arson to Gaibi Nagar obviously none of these S.R.P. men had cared to report these fires to the Control Room, P.S.I., Patil also did not report this act of arson to the Control Room and the explanation he gave was that he presumed

that some other police officer must have reported it. There was no one at the spot to identify these two bodies. P.S.I., Patil has, however, alleged that these two persons had died in the police firing at Kacheripada near Malaysia Sizing and that one of them was Mobin Ahmed Mokeef Ahmed Ansari, the report of whose autopsy is Exhibit P 1328. The case of Mobin Ahmed will be dealt with separately, but it may be mentioned here that according to the Muslim parties also, Mobin Ahmed died at the time of the police firing near Malaysia Sizing, though not in the police firing itself but because he was throttled to death by a Hindu rioter. If, therefore, one of these two dead bodies was of Mobin Ahmed, that person did not meet his death in the police firing at Gaibi Nagar. As pointed out in the subsequent discussion on Mobin Ahmed's death, there is very unsatisfactory evidence to show that one of these two bodies was in fact that of Mobin Ahmed and was not that of someone else. In any event, there is no basis at all for saying that the other dead body was of a person who had died in the police firing at Kacheripada. There appeared to be two reasons for saying that the two persons had died in the police firing at Kacheripada. The first reason is that had it been said that they had died in the police firing at Gaibi Nagar, it would have clearly shown that A.H.C., Mullani and his police party had opened fire inside Gaibi Nagar and even fired into the houses in Gaibi Nagar; and the second reason is to lend support to the case of the Police that the Muslims on whom the Police opened fire near Malaysia Sizing had come from the side of Gaibi Nagar. In the circumstances I find that one of these two Muslims also died in the police firing at Gaibi Nagar and that it is very doubtful whether the other Muslim was Mobin Ahmed Mokeef Ahmed Ansari and it is more likely that he was someone else and also died in the police firing at Gaibi Nagar.

45.135 The foundation of this incident is the arson to Hindu properties in Nhavipada. The oral evidence on the point clearly reveals that neither the two constables nor Col. Koshal have told the truth to the Commission. Before we, however, come to the oral evidence, let us compare the damage to Hindu properties in Nhavipada with the damage to Muslim properties in Gaibi Nagar and Piranipada. In the list of incidents filed by S.P., Bhave as also Dy.S.P., Diwate (Exs. P 18 and P 1517 respectively), only two incidents with respect to Hindu properties are mentioned, both of which took place on May 8, 1970, namely, (1) the arson to 12 Hindu houses at 9 a.m., registered as C.R. No. 143/70 of the Bhiwandi Taluka Police Station (Ex. P 344) and (2) the stone-throwing at the houses of two Hindus at Nagaon and the setting fire to their haystack at 10 a.m., registered as C.R. No. 148/70 of the Bhiwandi Taluka Police Station (Ex. P 347). The main complaint in the first incident (Ex. P 344) is by one Shantabai Shamu Chaugule. In her said complaint she has stated that on May 7, 1970 when the disturbances broke out she and her family left their room and went to a jungle

and hid there and that the next morning they went to their mother-in-law's place in Kacheripada. They returned to their room on May 9, 1970 and found that the room was burnt down. With reference to this complaint, S.P., Bhave has deposed that the 12 Hindu houses referred to in the said list of incidents were really 10 zopadpattis and a two-room zopadpatti chawl. The said chawl belonged to a Muslim, Gulam Mohamed. Shantabai lived in one of the rooms in the said chawl and the only other tenant of the said chawl was a Muslim. The other zopadpattis belonged to Hindus and were occupied by Hindus. He has further deposed that the burning of eight of these zopadpattis was separated from Exhibit P 344 and included in other offences as they were at some distance from Gulam Mohamed's chawl (P.W. 4/355/816). So far as the second incident is concerned, the complaint (Ex. P 347) is by one Datta Narayan Diwekar. He has alleged that at about 10 a.m. on May 8, 1970 two Hindus and a Muslim came to his house, abused him, entered the house, beat him and his mother, threw stones at the house, broke some tiles of the roof, took away some articles and rice from the house, and burnt some fresh paddy kept on a mango tree as fodder for the cattle. In the said complaint there is no mention of any arson to his house. He has given the motive for this assault as a complaint lodged by his mother against the assailants about a fortnight previously. Bhave has admitted that this was not an incident of a communal nature, but a case of private vendetta, taking advantage of the disturbed situation (P.W. 4/292/777).

45.136 On May 8, 1970 P.C., Bhivsen Tanaji Bachhav (Buckle No. 2837), then attached to the Bhiwandi Town Police Station, had reported to S.P., Bhave that the house in which he was residing in Nhavipada, namely, Bandu Kumbhar's Chawl, had been set on fire. Since in the course of evidence it transpired that the said chawl had not been set on fire, the Commission summoned P.C., Bachhav and examined him (C.W. 43/1/3543-4). He admitted having given this information to Bhave. He also admitted that his house had not been set on fire and had not been burnt down. He said that he had given this wrong information to Bhave because while passing through Nhavipada at about 10-45 a.m. on May 8, 1970 he saw that the houses in the vicinity were on fire and there was a thick pall of smoke and he could not, therefore, see his house and so he took it that it had also been set on fire. His house was situate in that part of Nhavipada known as Pirani Pada. He has given the names of nine Hindus including Datta Narayan Diwekar, the complainant in C.R. No. 148 of 1970 (Ex. P 347). As we have seen the house of Datta Narayan Diwekar had not been set on fire. There is no complaint about the arson to the other houses mentioned by Bachhav. Bachhav had admittedly made a false report to his superior. For the above reasons it is not possible to place any reliance upon Bachhav's evidence.

45.137 Dy.S.P., Diwate, when asked about the arson to Hindu houses in Nhavipada, deposed that the arson consisted of fire to

two one-storeyed houses, one hut, two cattle sheds and three haystacks (P.W. 66/9/1111). There does not appear to be any specific complaint about these acts of arson ; but even accepting what Dy.S.P., Diwate states to be true, in comparison with it, the arson to Muslim properties in Gaibi Nagar and Pirani Pada is staggering. In Pirani Pada two houses of Muslims were looted and set on fire and four Muslims killed. In Gaibi Nagar about 168 Muslim houses and huts were set on fire. In the other localities of Nagaon about 18 Muslim houses and huts were set on fire. These offences form the subject-matter of C.R. Nos. 121, 147 and 162 of 1970 of the Bhiwandi Taluka Police Station (Exs. P 342, P 246 and P 350 respectively).

45.138 The residents of the Hindu houses in Nhavipada which are alleged to have been set on fire are said to have taken shelter in Dandekar Wadi and in support of this the evidence of Addl. I.G.P., Modak and Col. Koshal have been relied upon. Modak went to the guest-house in Dandekar Wadi in the afternoon of May 8, 1970. At that time he saw about 200 refugees—men, women and children—taking shelter in the main factory building. He inquired about them from A.H.C., Mullani, the P.Cs. and Col. Koshal and they told him what had happened and that they were making arrangements for them (G.W. 3/120/1188). Col. Koshal has also deposed that a number of Hindus from Nhavipada took shelter in the compound of Dandekar Wadi and that he made arrangements for them and kept them in Dandekar Wadi for about three days. The fact that Hindus took shelter in Dandekar Wadi, however, does not prove that these were the residents of houses in Nhavipada alleged to have been set on fire. We have seen that after the disturbances broke out panic gripped the people of Bhiwandi and both Hindus and Muslims left in large numbers, some set out for their villages or other towns where they had relatives, others took shelter in safer localities or in compounds, mosques and temples. For example, a number of Hindus took shelter in and near the compound of Bhausahab Dhamankar's house. The huge compound of Dandekar Wadi must have also seemed a safe shelter to the Hindus. As we have seen Col. Koshal had himself stated that not only the Andhrites who resided in Nhavipada but also a number of Maharashtrians and Gujaratis from other localities had taken shelter in Dandekar Wadi. Since Nhavipada was a small Hindu locality adjoining a large Muslim locality it would be natural for the inhabitants of Nhavipada to feel afraid for their safety and to seek shelter elsewhere. If as many as 10 houses were set on fire as P.C., Bachhav is seeking to make out, surely Mullani would have either telephoned or contacted the Control Room or one of these Hindus who took shelter in Dandekar Wadi would have done so. No message has, however, been sent to the Control Room and no help of the fire-brigade asked for. Col. Koshal has deposed about seeing at 10 a.m. a house in Nhavipada close to his servants' quarters on fire. There are several features about Col. Koshal's evidence some of which have already been referred to which makes one doubt the

veracity of what he has deposed. He has alleged in his evidence that he saw three persons setting fire to that house by lighting dry grass and throwing it on the thatched roof of the house. His police statement, however, makes no mention of this house. But assuming he saw a fire in Nhavipada, it would appear from the time which he mentions that it was the fire to the cattle fodder of Dattu Narayan Divekar, the complainant in C.R. No. 148/70 of Bhiwandi Taluka Police Station (Ex. P 347), which act of arson took place about this time.

45.139 Except for the fact that Mullani went to the police station at 3-30 p.m. to give his report and was called again to lodge his F.I.R. which he did later in the night, the police guard stayed at the guest-house. Col. Koshal was throughout that day in Dandekar Wadi. Yet there is no indication whatever in their evidence about how and when such a large number of Muslim properties were set on fire and gutted. The guest-house is next to Col. Koshal's bungalow. The distance between Col. Koshal's bungalow and Gaibi Nagar is only about 600 feet as shown by the sketch of Dandekar Wadi and adjacent area (Ex. P 1195). About 400 to 500 houses in Gaibi Nagar touch the boundary of Dandekar Wadi. Pirani Pada is also not very far away. Smoke and flames rising from Gaibi Nagar would easily be visible from the guest-house or Col. Koshal's bungalow. It is also pertinent to note that Col. Koshal's bungalow is situate on a higher level than the adjoining areas. This would further facilitate the seeing of what was happening in Gaibi Nagar, particularly by a party of police guard whose duty was to keep their eyes and ears open. According to Col. Koshal, the first time he saw any smoke coming out of Gaibi Nagar was at about 7-30 p.m. or 8 p.m. He has deposed that as he was very busy at that time he did not bother about it and that he saw the next morning that the wall of the corner house in Gaibi Nagar and about four or five houses very close to the boundary of Dandekar Wadi had been burnt. How Col. Koshal could reduce 168 houses and huts into just five or six houses is beyond one. How he could not have seen any flames or smoke coming out of Gaibi Nagar before 7-30 p.m. is equally beyond one. His statement that he saw smoke coming out of Gaibi Nagar at about 7-30 p.m. or 8 p.m. and did not bother about it as he was very busy at that time speaks for itself and furnishes us with a clue to his mentality and the weight to be attached to his evidence. The real reason why he did not bother about it is clear. He did not bother about it because he knew these were Muslim houses which were on fire.

45.140 P.S.L. Salvi has deposed that he went to Gaibi Nagar with A.H.C., Mullani at 6 p.m. and by that time half the houses in Gaibi Nagar had burnt down and the remaining houses were deserted. He has further admitted that all these houses on fire were Muslim houses. Though he sought to make out in the beginning that some of the Hindu houses were also on fire when he went there, he finally admitted that none of the Hindu houses were on fire. Mullani pretended to have noticed the fire to houses in Gaibi Nagar only when he reached

Gaibi Nagar along with P.I., Salvi. At first he tried to make out that this was at 8 p.m., but ultimately admitted that 8 p.m. was the time when they reached the Town Police Station with the dead bodies. Step by step he had to admit that the houses on fire in Gaibi Nagar were Muslim houses. The attitude of P.S.I., Salvi and A.H.C., Mullani to these burning houses is a study in callousness. They were at the spot for about three hours. They informed no one about the burning houses. One may well accept Salvi's explanation that he thought that someone else must have informed the Control Room and sent for a fire-engine ; but when no fire-engine came there, there was nothing to prevent him from informing the Control Room. There was also nothing to prevent him from reporting about this arson when he returned to the Control Room. He has done neither of these things. He has admitted that there was a party of 15 to 20 S.R.P. men near the houses on fire. We have seen that none of them has reported this act of arson. It is not likely that none of them saw this incident take place. It is more likely that none of them wanted to see it. In order to cover up his indifference and default. Salvi deposed that these S.R.P. men were trying to put out the fires. He had to admit that there was no pond, tank, well or hydrant in that locality. Faced with this position he was unable to describe how and in what fashion the S.R.P. men were trying to put out the fires and finally realizing the futility of persisting in such a hopeless lie, he admitted that none of the S.R.P. men were trying to put out the fires in the burning locality.

45.141 The real test of whether Mullani, Shirsat and Col. Koshal are speaking the truth lies in the injuries to the eight dead Muslims who, according to the Police, were all killed in the police firing. Mullani has categorically stated that they did not make a lathi-charge or a cane-charge since nobody in the police party was carrying a cane or a lathi. He has further said that they did not charge the Muslim mob with the butts or the barrels of their muskets. Thus logically the only injury the eight Muslims would have suffered would be from bullets. The post mortem reports on the eight bodies (Exs. P 448 to P 455) however, reveal a position wholly irreconcilable with the evidence of these three witnesses. One of the eight died of shock and haemorrhage due to a fractured skull. He had no bullet injury (Ex. P 448). The second also had a fractured skull and fractured ribs. He too had no bullet injury (Ex. P 449). The third, who was shot through the head, died of a bullet injury (Ex. P 450). The fourth was shot through the chest. He also died of a bullet injury (Ex. P 451). The fifth (Ex. P 452) had a bullet injury on the chest and acid burns on his hands and right leg. The sixth had second degree burns on the face, forehead, head, the hairs on his hand and head and the cuticle of his arms, chest, neck, thighs, loins and buttocks were destroyed. He died of shock as a result of these burns. He had no bullet injury (Ex. P 453). The seventh also had severe and extensive third degree burns on the face and upper part of his skull, all over his body, face

and head and his nose and lips were completely burnt. He also died as a result of shock and asphyxia and had no bullet injury (Ex. P 454). The eighth died of a fractured skull and had no bullet injury (Ex. P 455). Thus, out of the eight, only three died of bullet injuries of whom one had also acid burns, three died of fractured skulls as a result of severe beating, and two died of extensive burns. The inquest panchnamas of these bodies (Exs. P 456 to P 463), made by a sub-inspector in the Special Investigation Squad, very significantly do not mention any burns on any of the bodies. Such extensive burns as two of the corpses had were not such injuries which could have escaped being seen at the time of making the inquest panchnama. The only conclusion one can draw from this omission is that the police officer making the inquest panchnama did not desire it to be known that any of them had died as a result of burn injury. As we have seen not a single one of these bodies was found in Dandekar Wadi. All were found in Gaibi Nagar. There can be no more convincing evidence than the injuries suffered by these Muslims and the places where their bodies were found to show that the story put forward by A.H.C., Mullani, A.P.C., Shirsat and Col. Koshal is a complete fabrication. In the course of his cross-examination an admission slipped out of Mullani that in driving away the Muslim mob they went up to Gaibi Nagar. He thereafter tried to cover it up by saying that they did not go beyond the outer compound of Dandekar Wadi. His statement does not carry any conviction. Shirsat went one better and said that they did not chase the Muslim mob at all and that when the mob threw stones at them they fired at the mob and when the mob stopped throwing stones they stopped firing and that the mob thereafter ran away. Col. Koshal has said that the Muslim mob went back to Gaibi Nagar and the constables chased it and in chasing it went right upto the boundary of Dandekar Wadi. He has further deposed that he could not see whether the constables entered Gaibi Nagar because there were 400 to 500 houses in Gaibi Nagar touching the boundary of Dandekar Wadi and these houses hid the constables from view. The houses could only hide the constables from his view if the constables had gone beyond the houses. There is something peculiar about Col. Koshal's police statement. It is said to have been recorded by D.I. S. S. Shinde of the Special Investigation Squad on June 23, 1970. While S.P., Bhawe was in the witness-box and questions were being asked to him about the Gaibi Nagar incident, the Commission inquired whether Col. Koshal's police statement had been recorded. Dy.S.P., Saraf who at that time used to remain present at almost every hearing made a statement to the Commission that Col. Koshal's police statement had not been recorded, a fact at which the Commission expressed surprise. A few days later Dy.S.P., Saraf made another statement to the Commission that he had made a mistake in informing the Commission that the police statement of Col. Koshal had not been recorded and that it had in fact been recorded. It may be mentioned that a room was made available for D.I. Shinde near the canteen in Dandekar

Wadi for the purpose of interrogating witnesses and recording their statements.

45.142 At first it was taken that all the bodies found in Gaibi Nagar were those of Muslims killed in police firing and the only offence registered was against the Muslims charging them with rioting and other offences (Ex. P 197). Subsequently when the post mortem reports were received it transpired that all the eight Muslims were not killed in police firing and, therefore, another case was registered in respect of those who had not died in police firing, namely, C.R. No. 453 of 1970 of the Bhiwandi Taluka Police Station (Ex. P 332, P.W. 66/93/1157). No one was arrested in the complaint filed in respect of the death of the remaining Muslims or in the complaints filed by the Muslims about arson to their houses and all these cases were classified as 'A' summary, that is, as being true but undetected. We have already seen what happened to the case against the nine Muslim accused. It only remains to be mentioned that one of these nine accused was also made an accused in the Bhiwandi Conspiracy Case but when the charge of conspiracy was withdrawn he along with some other accused persons was discharged on the application of the prosecution that there was no evidence of any overt act against him (P.W. 61/135/3711-2).

45.143 The evidence before the Commission leaves no doubt that the whole police version of this firing incident is false and that no Muslim mob attacked any Hindu houses in Nhavipada or Dandekar Wadi. The police firing, therefore, was not justified. There can also be no doubt from the evidence on the record and particularly the nature of the injuries suffered by the eight dead Muslims and the places where their bodies were found that the firing took place inside Gaibi Nagar and that the arson to Gaibi Nagar and the police firing formed part of a chain of events and that by opening fire this party of constables drove out the Muslims from Gaibi Nagar and facilitated the burning of their houses by Hindu rioters. The tragedy is that A.H.C., Mullani and the four constables with him should have received cash rewards for their so-called gallantry on their own self-bruited story of how they prevented arson to Gaibi Nagar while many a member of the Police Force who honestly and faithfully discharged his duty remained unrewarded because of his lack of inventive ability.

The first police firing at Kacheripada and the arson to Malaysia Sizing Works

45.144 The firing which took place at Kacheripada (also known as Nagaonpada) at about 11 a.m. on May 8, 1970 and the arson to the Malaysia Sizing Works (popularly known as Malaysia Sizing) and other Muslim properties in the locality constitute another very seriously disputed incident of the disturbances. Exhibit P 568 is a sketch of the Malaysia Sizing and the adjoining area. Malaysia Sizing is one of the biggest factories in this locality. It is situate in a large

compound in which there are several other power-loom factories as also the godown, garage and the workers' quarters of Malaysia Sizing. To its south is a 20 feet road on the other side of which is another compound in which are situate several houses and factories. To the east of the said other compound is an open space followed by some other factories and houses. To the west of Malaysia Sizing is the Remand Home and thereafter the Mamlatdar's office and the Taluka Police Station and to the south of the said other compound is Kacheripada Road which leads to Gaibi Nagar. On the other side of Kacheripada Road is a row of shops behind which is Dandekar Wadi. To the north of Malaysia Sizing are about 25 to 30 Hindu houses. In this incident 44 rounds of .303 rifles, one of .410 musket and 2 of .455 revolver (out of which one misfired) were fired. Two Muslims are said to have died in this police firing and 69 Muslims were arrested. Malaysia Sizing, its workers' quarters, godown and garage, another power-loom factory next to it, several power-loom factories and shops in the compound opposite and some other Muslim properties in the block of houses to the east were set on fire. The exact damage to Hindu properties is difficult to understand or ascertain.

45.145 According to the Police, fire was opened near Malaysia Sizing by four different police parties. The police witnesses to this incident of firing are P.C., Shantaram Dhaktu Pawar (buckle No. 2508) of Bhiwandi Taluka Police Station (P.W. 51/1-3/967-9), P.S.I., Balkrishna Dhondu Sanaf, Reader to the S.D.P.O., Bhiwandi [P.W. 44/1(5-6)/921(3-4), 8-9/924], A.P.C., Shantaram Ramji Lambe (buckle No. 813) of Bhiwandi Town Police Station (P.W. 52/1-3/970-72) and A.P.C., Ananda Ramkrishna Nikam (buckle No. 5) of the Bhiwandi Town Police Station (P.W. 53/1-3/973-4).

45.146 P.C., Pawar has stated in his affidavit that on May 8, 1970 he was at the Taluka Police Station. At that time some Hindu men, women and children came to the Taluka Police Station and reported that the Muslims were coming to attack the Hindu houses in Kacheripada. Thereupon the Police Station Officer ordered him and P.Cs., Pawaskar and Wagh to go to Kacheripada. The three constables took their .303 rifles from the police station and went upto the compound of Dandekar Wadi. They saw a large mob of about 500 to 600 Muslims proceeding from the side of Gaibi Nagar towards Kacheripada. The members of this mob set fire to some houses by throwing fire-balls at them. The three constables advanced towards the mob and thereupon the members of the mob started hurling stones, brick-bats and fire-balls at them. The constables warned the Muslims that they would open fire if they did not disperse and on their refusing to disperse the constables opened fire. Pawar fired 10 rounds and Pawaskar and Wagh fired 9 rounds and 7 rounds respectively. The Muslims thereupon dispersed, some of them running towards Kacheripada. The three constables then returned towards Kacheripada and while returning they saw P.S.I., Sanaf and other policemen chasing the said mob.

45.147 At about 10-40 a.m. on May 8, 1970 P.S.I., Sanaf was sent by the Control Room in an open truck along with an S.R.P. section of ten men armed with lathis to patrol from Vanjarpatti Naka to Quarter Gate Mosque. He has stated in his affidavit that at about 11-30 a.m. when they came near the Inspection Bungalow P.C., Pawar reported to them that arson and looting were going on near Kacheripada. Sanaf's party thereupon went to Kacheripada at about 11-45 a.m. and saw a large Muslim mob throwing stones, brick-bats and fire-balls at Hindu houses and also at the Police. After warning the rioters he fired two rounds from his .455 revolver, one of which misfired. The rioters started running away and the Police chased them. Other policemen had also come to Kacheripada and the police parties surrounded the rioters and arrested in all 69 Muslims. He has further stated that a house belonging to one Mallayya Wani was set on fire by fire-balls thrown at it.

45.148 A.P.C., Lambe has stated in his affidavit that on May 7, 1970 after the disturbances broke out he was posted along with H.C., Sawant and two other policemen to protect the police lines. While they were at their picket duty, at about 11 a.m. on May 8, 1970 they heard shouts coming from behind the police lines in Kacheripada. Some Hindu women and children came running to the police lines and told them that the Muslims had assembled to attack Hindu houses in Kacheripada. They therefore went towards Kacheripada and saw a mob of about 150 Muslims. The Muslim rioters were throwing brick-bats, stones and acid-bulbs at Hindu houses. The constables also heard reports of police firing. The mob then started advancing towards Lambe and his party by throwing brick-bats and acid-bulbs at them. After warning the mob Lambe fired one round from his .410 musket. P.C., Shinde who was with him fired nine rounds from his .303 rifle. Two persons were injured in this firing, but according to Lambe they were removed by the members of the mob. Lambe and his party thereupon went back to the police lines on protection duty. He has deposed in cross-examination that he was at a distance of 25 to 30 paces from Malaysia Sizing when he opened fire.

45.149 A.P.C., Nikam has stated in his affidavit that at about 11 a.m. on May 8, 1970 he had gone to the Taluka Police Station when he heard cries coming from the side of Kacheripada. Constables Pawaskar and Wagh thereupon took their rifles and went towards Kacheripada. These were P.Cs., Pawaskar and Wagh who went to the spot along with P.C., Pawar. Nikam also took a .303 rifle from the police station and went towards Malaysia Sizing. He went near the Remand Home when he saw a large Muslim mob carrying sticks and fire-balls and throwing stones at Hindu houses. As soon as the mob saw him it started throwing stones at him also and began advancing. With a view to save his life he fired nine rounds at the mob. He also heard reports of police firing and after P.S.I., Sanaf arrested the Muslims and took them away he returned to the police lines for patrolling.

45.150 When he returned to the Town Police Station at 1 p.m. Sanaf gave his report at the Control Room. His report stated that the mob was setting fire to houses and pelting stones and throwing soda-water bottles at the inhabitants of Kacheripada and therefore he fired one round from his revolver and arrested 69 persons (Ex. P 368, entry No. 72). He also lodged his F.I.R. which was registered as C.R. No. 193/70 (Ex. P 190). P.C., Pawar also gave his report at the Control Room at 1-30 p.m. (Ex. P 368, entry No. 73).

45.151 Two dead bodies were recovered from Gaibi Nagar on May 9, 1970 by P.S.I., R. K. Patil and S.P., Scott of State Traffic Branch. One of these bodies was found lying in a field in Gaibi Nagar and another in a house. Both of them had bullet injuries. These were bodies of Muslims and it is alleged by the Police that they had died as a result of the police firing near Malaysia Sizing [P.W. 32/1(5)/575 (3), 8/578].

45.152 On the face of it the evidence of the above four police witnesses would show that this police firing was justified. If, however, we look more closely into their evidence and read it along with other evidence which has come on the record of the Commission, the result is startling. According to P.C., Pawar, some Hindu men, women and children came to the Taluka Police Station and reported that the Muslims were going to attack the Hindu houses in Kacheripada and thereupon the Police Station Officer directed him and P.Cs., Pawaskar and Wagh to go to the spot. There is, however, no entry in the Station Diary of the Taluka Police Station (Ex. P 1511) of any report being received of a Muslim mob coming to attack Hindu houses in Kacheripada. On the contrary, all the entries in the said Station Diary, until the entry made at 2-15 p.m. on May 8, 1970, except for the entries relating to the change of Police Station Officers, state, "There is no report during the last two hours". Thus, no report at all of any rioting or apprehended attack was received at the Taluka Police Station according to this Station Diary. No message about this Muslim mob coming to attack Hindu houses in Kacheripada was sent by the Taluka Police Station to the Town Police Station, for there is no entry in the Riot Diary for May 8, 1970 of any such message having been received. P.S.I., Sanaf stated that he proceeded towards Malaysia Sizing because P.C., Pawar reported to him near the Inspection Bungalow that arson and looting were going on in Kacheripada. Pawar, however, does not mention that he gave any such information to Sanaf. Pawar's evidence is that he and the other constables went straight towards the compound of Dandekar Wadi. They could not have, therefore, passed the Inspection Bungalow, and according to Pawar, it was only when he was returning towards Kacheripada after opening fire that he saw Sanaf and his party chasing the mob. Lambe and his party went upto 25 to 30 paces of Malaysia Sizing and opened fire and then returned to the police lines for protection duty. Lambe makes no mention of any other police party, though he does state that he heard sounds of police firing. Neither Lambe

nor any of the other constables who were with him nor A.P.C., Nikam have given any report to the Control Room in respect of the fire opened by them. There is also no unanimity about the strength of the Muslim mob. According to Pawar, the mob consisted of 500 to 600 Muslims. According to Lambe, it consisted of 150 Muslims. P.S.I., Sanaf and Nikam have not mentioned the strength of the mob. All the four police witnesses are agreed that the Muslim mob was throwing fire-balls. According to Sanaf, one house only, namely, the house belonging to Mallayya Wani, had been set on fire by these fire-balls. According to Pawar, the mob had set fire to more than one house, though he has not specified even the approximate number of these houses. The Police have, however, not taken charge of a single fire-ball. It is inconceivable that the Police would so act if so many fire-balls as alleged were thrown and particularly when there were four police parties and they could arrest as many as 69 Muslims. Surprisingly enough no weapons or missiles of any kind were found with any of the arrested persons.

45.153 The most startling fact, which emerges, however, is when we turn to the damage by arson to properties in this locality. Factories, houses, workmen's quarters and godowns belonging to as many as 30 Muslims were set on fire and gutted. If any Hindu property was set on fire or damaged, one would expect a panchnama of such damage to be relied upon in the prosecution against the 69 Muslims. Dy.S.P., Saraf has deposed (P.W. 61/77/3646-7) that three panchnamas were relied upon in the charge-sheet in C.R. No. 193/70 (Ex. P 190) as giving the description of the properties which were the subject-matter of arson by the 69 Muslim accused and the panchas concerned in the making of these panchnamas were mentioned in the list of witnesses given along with the said charge-sheet. These three panchnamas are (1) the panchnamas dated May 15, 1970 of the damage to the house of Rajmal Lakashiya Kodam, the damage to the said house as stated in the said panchnama being "a small portion of the roof appears to be slightly burnt"; (2) the panchnama dated May 16, 1970 of the arson to the chawl of Murad Ali which contained a Muslim laundry, a Muslim shop and a Hindu 'kirana' shop; and (3) the panchnama dated May 16, 1970 of the arson to the chawl of Isak Seth, a small block of which was tenanted by a Hindu and all the other blocks by Muslims. Thus, except for a small portion of the roof of the house of Rajmal Lakashiya Kodam, which had the appearance of being slightly burnt, the other panchnamas were really of arson not to any Hindu properties, but to Muslim properties. There were some other Hindu properties which were set on fire in the compound opposite the Malaysia Sizing compound and in the block of houses to its east. Two of them were Hindu factories, namely, the power-loom factories of Gopalsheeth and Bechanram Gupta in the compound opposite the Malaysia Sizing compound. In between these two factories was the power-loom factory of Niyaz Ahmed Siddiki and on the other side of Bechanram Gupta's power-loom factory were Muslim

shops. The Muslim shops and Niyaz Ahmed Siddiki's power-loom factory were set on fire and burnt down and S.P., Bhave has admitted that it was possible that the two Hindu power-loom factories caught fire from these fires. He has further deposed that the buildings in which Gopalsheth's power-looms and Bechanram Gupta's power-looms were housed belonged to a Muslim. Another Hindu property which was set on fire was a chawl belonging to one Narottam Tambakhuwalla. It consisted of zopadpattis, but except for a few zopadpattis all the zopadpattis were occupied by Muslims (P.W. 4/349/813). Another building belonging to Murad Ali in the said block of houses housed the power-looms of two Hindus, namely, Ashwinikumar and Shaligram Gupta. A portion of that building was set on fire and a complaint in respect thereof was lodged by Ashwinikumar (Ex. P 275). The Hindu parties and the Police have sought to link the arson to these properties with the incident in question. These properties had nothing to do with the alleged arson at the time of the police firing near Malaysia Sizing because if it had, the panchnamas in respect of these properties would have been made part of the evidence in the prosecution against the 69 Muslims. Instead, a separate offence was registered in respect thereof as C.R. No. 349/70 (Ex. P 295) and was ultimately finalized as 'A' summary, that is as true but undetected.

45.154 The case of the Muslim parties was that the Police came to Malaysia Sizing along with a mob of Hindu rioters, opened fire and arrested the Muslims while the Hindu rioters set fire to Muslim properties. Two witnesses were examined by the M.T.M. in support of the said case. The first witness was Ajaz Abdul Hai Khan, a partner in Malaysia Sizing Works (M.T.M.W. 10/1-12/1759-64, 13/1799-1800). Ajaz Ahmed resided on the first floor of a building situate in the compound opposite the Malaysia Sizing. On May 7, 1970 his factory was closed. On May 8, 1970 twenty-five of his workmen, who lived in the workmen's quarters behind the factory in the Malaysia Sizing compound, came to work. According to his affidavit, at about 11 a.m. on May 8, 1970 he heard shouts of "Maro, Kato, Phunko" (Beat, Kill, Burn) and within about half an hour a Hindu mob came near his factory. Along with some other Muslims whose names he has given, he climbed upon a tree and from there onto the roof of his house, while the remaining Muslims sought shelter inside Malaysia Sizing. Ajaz Ahmed watched what was happening. He saw six armed policemen and behind them a large Hindu mob armed with spears, knives, sticks, stones, tins, acid-bulbs, soda-water bottles and bombs coming to Malaysia Sizing. Some of the policemen were firing near the door of the compound and some other policemen were firing behind the boiler. After five minutes the mob entered the compound and some of the Hindu rioters went into his factory and others into his office room. His factory and office were looted and then set on fire. His workmen who were taking shelter inside Malaysia Sizing were beaten by the Police and taken into custody. Thereafter the Hindu rioters looted his residential house and set fire to the building and

the shops and the laundry. They then looted and set fire to the other houses. After the mob went away he and the others who were with him on the roof ran away to Nagaon Village and hid themselves and when night came, went to Nizampura. On May 18, 1970 he handed over a written complaint to the Inspector, Bhiwandi Town Police Station (Ex. MTM 4). Both in the said complaint and in his affidavit he has mentioned the names of five Hindus who resided behind his factory. Among these five names were the names of Rambhau Punaji Karanjikar (N.H.W. 40), also known as Rambhau Phoolwala because he ran a florist shop at the S.T. Stand, and his son Sakharam. Rambhau's landlord Bhiku Havaladar also resided in the same building as Rambhau. Bhiku Havaladar was a retired peon and supplied meals to undertrial prisoners and persons in the police lock-up. No discrepancies or contradictions have been brought out in the cross-examination of Ajaz Ahmed and his evidence remains unshaken. An astonishing thing is that the case put to him in cross-examination by Mr. Pradhan on behalf of the Maharashtra Pradesh Jan Sangh and the Nagarik Hitarakshak Mandal was completely contradictory of the case put to him by Mr. Rane on behalf of the Executive Magistrates and the District Police Officers. Mr. Pradhan put to him that at about 10 a.m. on May 8, 1970 Muslims threw burning rags at Hindu houses on Kacheripada Road from the compound of Malaysia Sizing and from Malaysia Sizing. He had denied this suggestion and stated that in the Malaysia Sizing locality and round about it no damage was suffered by any Hindu, while 4,000 to 6,000 Muslims were ruined. It was further put to him by Mr. Pradhan that when the Muslims who were throwing these burning rags were arrested by the Police, simultaneously there was an explosion in Malaysia Sizing and as a result thereof the factory caught fire. Mr. Rane put to him that after the 69 persons were arrested and taken away by the Police a Hindu mob came and set fire to Malaysia Sizing Works and Malaysia Sizing factory. Both these suggestions were denied by him. There is thus a complete inconsistency in the case put forward by the Hindu parties and the Police. According to the Hindu parties, Malaysia Sizing caught fire because of an explosion which took place, which explosion happened at the time when the Police were arresting the 69 Muslims. According to the Police, it was set on fire by a Hindu mob after the 69 persons were taken away. Ajaz Ahmed's brother Ashfaq Ahmed was one of the persons who were arrested. He was remanded to custody and sent to the Thana District Prison and the prison record shows that at the time of his admission into the prison he had an abrasion on his right nostril $1\frac{1}{2}'' \times \frac{1}{2}''$ and another abrasion on the joint of his right knee $\frac{1}{2}'' \times \frac{1}{2}''$. His injuries were opined to have been caused by a hard and blunt substance. To the prison doctor he complained about having been beaten by the Police (P.W. 4/231/735).

45.155 The other witness examined by the M.T.M. was Arjun Bansilal Dhobi, a Hindu worker of Malaysia Sizing, who lived in a hut adjacent to Malaysia Sizing. He has stated that on May 8, 1970 he

and two others, namely, Birbal and Makhanlal, who lived with him, were in the hut cooking their meals, when at about 11-30 a.m. a Hindu mob suddenly started throwing stones. As the stones began to fall on the hut, they got frightened and took shelter in Malaysia Sizing. A number of other Muslims had also taken shelter there. Within about five minutes he heard the sound of firing and a mob of Hindus and some policemen raided the building and arrested all of them. They were all taken in a police van to the Taluka Police Station. After some time the policemen took down the names of those who were arrested. At about 5 p.m. a policeman shouted out his name and those of Birbal and Makhanlal and asked them to follow him. The policeman took them upto the gate and asked them to go away. They returned to Malaysia Sizing and found that the factory as also their hut were completely gutted. After some days he went in a lorry to Thana from where he went to Bombay and then to his native place. He returned in the first week of July 1971 and again started working in Malaysia Sizing. His cross-examination was mostly directed to show that he was put up by Ajaz Ahmed to make his affidavit. The case of the Hindu parties which was put to Ajaz Ahmed was also put to Arjun Dhobi and he denied it. Mr. Rane however, put to him that he was not in Malaysia Sizing at about 11-30 a.m. on May 8, 1970 and that he was not one of the persons arrested. He has denied this also. He was cross-examined in an attempt to show that he was not in the service of Malaysia Sizing. This attempt failed when various records of Malaysia Sizing were produced. His evidence on the main point, however, remained unshaken and no discrepancies or contradictions were brought out either in his evidence or between him and Ajaz Ahmed.

45.156 In support of their case the Hindu parties examined two witnesses. They were Rambhau Punaji Karanjikar *alias* Rambhau Phoolwalla (N.H.W. 40/1-19/2007-20, 20-21/2031-2) and Narayan Babu Pawar (N.H.W. 39/1-11/2000-6). This is how Rambhau has described in his affidavit what happened on May 8, 1970 :

“The next day, that is on the 8th at about 12 O'clock in the noon, Muslims had collected in a crowd near the Malaysia Sizing Factory which is situated near our home. There started a volley of burning rags soaked in kerosene and of stones from the said Sizing Factory towards our house. There are about 15 to 17 houses there belonging to we people. Saving ourselves from the volley of stones, we used to remove the burning rags soaked in kerosene thrown on our houses and were trying to see that the houses did not catch fire. Just then there were big explosions in the building of Malaysia Sizing Factory. S.R.P. men and the Police rushed there and made firing there and arrested the persons found there. The building of the Sizing Factory was gutted in the fire caused by the said explosions. Then peace was restored at about 1-20 p.m.”

45.157 Rambhau was named as an accused in the complaint filed by Ajaz Ahmed and other Muslims about the arson to their factories.

Neither Rambhau nor any of the other Hindus implicated by these Muslims complainants were at any time arrested (P.W. 61/77/3647). Rambhau had some injuries on his person. According to him, he had joined the Shiv Jayanti procession and some of these injuries were received by him when the procession was attacked and the other injuries were received by him on May 9, 1970 at about 3 a.m. when another Muslim mob attacked their locality. According to the Muslim parties, these injuries were burn injuries received by him when he along with other Hindu rioters was setting fire to Malaysia Sizing and other Muslim properties. The question of Rambhau's injuries will be dealt with when we come to the second police firing at Kacheripada. It need only be mentioned here that Rambhau's evidence about how and when he received his injuries is of a most dubious type.

45.158 Four police statements of Rambhau are recorded. His first police statement was recorded on May 19, 1970 by D.I., Lankar in C.R. No. 177/70 (the Bhiwandi Conspiracy Case). His second police statement was recorded on June 14, 1970 by P.S.I., M. B. Pandit of the Special Investigation Squad. It related to the incident of May 9, 1970. His third police statement was recorded on August 27, 1970 by D.I., K. D. Wagh of the Special Investigation Squad and it dealt with the incident we are discussing. His fourth police statement was recorded on October 21, 1970 by D.I., G. U. Kulkarni of the Special Investigation Squad. His said third police statement was recorded as a suspect in C.R. No. 328/70 (Ex. P 277) which related to the arson to Muslim properties in Kacheripada and his aforesaid fourth police statement was recorded as a suspect in C.R. No. 477/70 (Ex. P 334) which related to the murder of Mobin Ahmed Mokeef Ahmed Ansari. The police statement we are concerned with, therefore, is his said third police statement and all that he has stated in the said police statement about the happenings of May 8, 1970 is :

“On 8-5-70 I was resting in my house as I was in great pain. I did not go out of my house the whole day but I learnt that there was trouble in our locality and that there was police firing. I heard reports of police firing at noon.”

Though in his affidavit he had mentioned that a Muslim mob had collected in Malaysia Sizing at noon on May 8, 1970, in cross-examination he said that it was at 10 a.m. He then changed his answer and said that he did not know what the time was. He had to admit that from his house he could not see even the wall of Malaysia Sizing and had, therefore, not seen any mob and that one of his neighbours had given him the information that a mob had collected in Malaysia Sizing. He further deposed that his neighbour did not tell him what the mob was doing but at that time two burning rags fell in the open space near his house and that apart from these two burning rags no other missiles or rag fell on or near his house. He further stated in cross-examination that the said two burning rags got extinguished by themselves. He was faced with the statement in his affidavit that they used to remove the burning rags thrown at their houses. The only explanation

he could give was that he extinguished the two burning rags and no one helped him to do so. Though he has said in his affidavit about the explosion in the Malaysia Sizing Works, the police rushing there and opening fire and arresting the Muslims and the Malaysia Sizing catching fire because of the explosion, according to the said third police statement he did not know anything about this incident. In cross-examination he stated that he had not left his house even once on May 8, 1970. If he was in his house and if he could not see the wall of Malaysia Sizing from his house, he could not have witnessed any of the happenings alleged in his affidavit. Since it was the case of the Muslim parties that he was one of the arsonists to the Muslim properties in Kacheripada, his statement that he had not left his house even once was challenged by showing him that in his affidavit he had stated that when the Muslim attack started on an extensive scale, they had sent the women and children to the Remand Home. His answer was that the said statement was not correct and that he was unable to walk and that it would have been impossible for him to take the women and children to the Remand Home after the attack started.

45.159 Narayan Babu Pawar (N.H.W. 39) has alleged in his affidavit that at 10 a.m. on May 8, 1970 several Muslims gathered in Malaysia Sizing and started throwing burning rags soaked in kerosene at their houses, but they prevented the locality from catching fire and as a result of their hue and cry S.R.P. men came there, arrested the Muslims and took them away. He too claims to have received acid injuries when the Muslim mob is alleged to have attacked their houses again on May 9, 1970 at about 3 a.m. The treatment taken by him and the injuries suffered by him are as much matters of confusion and doubt as in the case of Rambhau. They will also be dealt with in the discussion on the second police firing at Kacheripada. He has alleged in his affidavit that on May 7, 1970 he and others in their locality had sent their families to the Remand Home. His police statement recorded on June 4, 1970 by P.S.I. M. B. Pandit does not mention any such fact. Though in his affidavit he has purported to set out what happened in Malaysia Sizing as if he had witnessed the incident, in cross-examination he stated that he had not gone to the locality of Malaysia Sizing on May 8, 1970 and had not even gone there either on May 9, 1970 or May 10, 1970 and that he did not see any policemen or S.R.P. men come to Malaysia Sizing on May 8, 1970 and that all that he heard and saw was a van and, therefore, he thought that the Police had come. None of the facts which he has alleged in his affidavit about the incident of May 8, 1970 are to be found in his police statement. He was unable to explain either this omission in his police statement or the insertion of these facts in his affidavit. He had gone to the office of the Nagarik Hitarakshak Mandal and given instructions for drafting his affidavit to advocate Mr. Kunte. He stated that he did tell Mr. Kunte that the S.R.P. men had arrested several Muslims and took them away because he saw them arrest the Muslims and take them away. At

one stage of his cross-examination he stated that he alone was extinguishing the burning rags. At another stage he said that two or three other persons, whose names he did not know were helping him - 45.160 In the light of what is stated above, it is impossible to place any reliance upon the evidence of either of these two witnesses. There is no attempt whatever made on the part of the Police to show how so many Muslim factories and properties were set on fire. No report about the arson to these Muslim properties was at any time made to the Control Room, no information given to the Town Police Station or the Taluka Police Station, at any time, nor any attempt made to extinguish any of these fires. After P.S.I., Sanaf gave his report at the Control Room he was asked by the S.P., Thana, to take four S.R.P. men and go to Kombadpada. From Kombadpada he returned to the Town Police Station at about 3 p.m. and learnt from some unknown person that an air gun was lying in Gaibi Nagar. He therefore went there along with P.C., M. S. Pawar, took charge of the air-gun under a panchanama and deposited it in the Town Police Station. While proceeding to Gaibi Nagar he could not have failed to notice the arson to Malaysia Sizing and the other Muslim factories and properties. He nonetheless stated that he came to learn only in the evening of May 8, 1970 that Malaysia Sizing had been burnt. P. C., Lambe along with H. C., Sawant and P. C., Shinde and another constable continued doing picket duty at the police lines until May 11, 1970. They could not have failed to notice this fire. P. C., Nikam was patrolling throughout the rest of that day in the police lines area. He too could have never failed to notice this fire. There was another police party consisting of A.H.C., S. V. Savant (P.W. 26) and P.C., B. B. Dhane (P.W. 27) and P.C., Shinde who was given patrolling duty between the Inspection Bungalow, the Taluka Police Station and the police lines. None of them could have failed to see the fires to Malaysia Sizing and other Muslim properties. Nonetheless A.H.C., Savant alleged that he saw the burnt-down Malaysia Sizing only on May 12, 1970 and that he came to know only on May 8 or 9, 1970 that the said factory belonged to a Muslim because the constables in the police lines were saying that Malaysia Sizing belonging to a Muslim had been set on fire. A.C., Dhane also alleged that he saw the burnt down building only on May 9 or 10, 1970. There was also a road patrol on the Bombay-Agra Road from Vanjarpatti Naka to Dhamankar Naka (P.W. 66/129/1180). It equally could not have failed to notice the fires to these Muslim properties.

45.161 The strongest argument against the police case is the absence of any significant damage to any Hindu property in the vicinity of Malaysia Sizing and the conspiracy of silence on the part of the police officers and policemen concerned about the arson to Malaysia Sizing and other Muslim properties.

45.162 On May 9, 1970 P.S.I., R. K. Patil of the Bhiwandi Taluka Police Station along with S.P., Scott of the State traffic Branch took

charge of a dead body from a field in Gaibi Nagar and another dead body from a half-burnt house in the midst of other half-burnt houses in Gaibi Nagar. P.S.I., Patil has alleged that these two persons had died in the firing near Malaysia Sizing [P.W. 32/1(5)/575(3), 2/576, 4/577, 8/578]. It is also alleged that one of these two was Mobin Ahmed Mokeef Ahmed Ansari.

45.163 Mobin Ahmed's case will be dealt with next. The question whether these bodies were those of two of the Muslims who died in the police firing at Kacheripada or in the police firing at Gaibi Nagar has already been dealt with in Paragraph 45.134 while dealing with the Gaibi Nagar incident. As held there, one of these two Muslims had died in the police firing at Gaibi Nagar and it is very doubtful whether the other Muslim was Mobin Ahmed and that it is more likely that he was someone else and had also died in the police firing at Gaibi Nagar.

45.164 Out of 69 Muslims who were arrested 5 were juveniles. The juveniles were acquitted on May 4, 1971 by the Juvenile Court, Bhiwandi, and the other 64 Muslims by the Sessions Court, Thana on April 14, 1972 (Ex. G 398). Four out of the said 64 Muslims were also made accused in the Bhiwandi Conspiracy Case. After the charge of conspiracy was permitted to be withdrawn by the Court these four accused along with some others were discharged on the application made by the prosecution that there was no evidence of any overt act against any of them (P.W. 61/135/3711-2).

45.165 In the light of what is stated above, it is not possible to accept the police evidence. It is clear that there were no fire-balls or any other missiles thrown at any Hindu house or at the police party nor was there any mob of Muslim rioters collected outside or inside Malaysia Sizing. This police firing was, therefore, not justified. On the contrary, there are strong reasons to believe that this police firing took place, the said 69 Muslims were arrested, and the arson to Malaysia Sizing and other Muslim properties was committed in the manner deposed to by Ajaz Ahmed and Arjun Bansilal Dhobi.

The death of Mobin Ahmed Mokeef Ahmed Ansari

45.166 Mumtaz Ahmed Mokeef Ahmed Ansari and his brother Mobin Ahmed were two of the persons who had taken shelter in Malaysia Sizing. Mumtaz Ahmed was one of the 69 persons who were arrested. He was remanded to jail custody and was in the Thana Jail from May 8, 1970 until July 14, 1970. After he was released on bail on July 20, 1970 he submitted a complaint written in English alleging that his brother Mobin Ahmed had been murdered in Malaysia Sizing and Malaysia Sizing set on fire by some Hindus. Thereupon his police statement was recorded by D.I., G. U. Kulkarni of the Special Investigation Squad on August 14, 1970 and an offence of murder registered as C.R. No. 477/70 (Ex. P 334). Copies of the said complaint were also sent to S.P., Thana, D.I.G., (Crime) and

the I.G.P. Between July 20, 1970 and July 22, 1970 eight other Muslims made similar complaints. All these complaints were in English though several of them were signed in Urdu (P.W. 61/745/3643-4). Mumtaz Ahmed's complaint (Ex. P 334) alleged that a mob of about 100 Hindus with eight or nine policemen attacked Malaysia Sizing at about 11 a.m. on May 8, 1970 throwing stones at the building and setting fire to the said building, godown and other factories and that every one who had taken shelter was rounded up and taken to the compound and that at about that time some Hindus beat Mobin Ahmed. In the said complaint Mumtaz Ahmed has mentioned the names of nine Hindus including Rambhau Phulwala (N.H.W. 40) and his son Sakharam as being in the Hindu mob. It was further alleged in the said complaint that after Mobin Ahmed fell down Rambhau Phulwala throttled him and that thereafter the Police picked up his body, put it in the police van and took away the body and all the other Muslims who were rounded up to the police station. In cross-examination it was also put to Rambhau that he had strangled Mobin Ahmed. Rambhau denied this suggestion (N.H.W. 40/14/2017).

45.167 According to the Police, Mobin Ahmed was one of the two Muslims who died in the fire opened near Malaysia Sizing. Neither the Muslims nor the Executive Magistrates and District Police Officers have led any evidence to show where and how Mobin Ahmed died or where his body was found. The only evidence which has been produced by the Police is the post mortem report (Ex. P 1328) on the body of Mobin Ahmed and a photograph taken at that time. On August 17, 1970 Mumtaz Ahmed identified this photograph as that of his brother and this photograph along with an enlargement thereof was produced before the Commission by Dy.S.P., Saraf. In the said post mortem report it is mentioned that the body was sent from "Garib Nagar" presumably Gaibi Nagar and that it was brought by a constable named P.C., Nalage. This post mortem examination was carried out on May 9, 1970. Apart from the mention of the place "Garib Nagar" in the post mortem report there is no other evidence that this was one of the two bodies taken charge of by P.S.I., Patil from Gaibi Nagar. What is surprising, however, is the injuries shown on this body as disclosed by the said post mortem report. Mobin Ahmed had two bullet wounds, one on his chest and the other on his back. The bullet had clean passed through the body and the entry wound on the chest and the exit wound at the back showed gun powder particles in and around the wounds. This clearly indicates that the shot was fired from a close range—hardly the normal distance from which the Police open fire on a rioting mob and a position inconsistent with and contradictory of the evidence given by the police witnesses in respect of this firing incident. Apart from the said bullet wounds, there were acid burns on his right hand, left hand, right shin and calf and right temple and the skin had peeled off from these parts. In the said post mortem report it was

opined that death was due to the said bullet injury. The post mortem report also shows that his eyes were swollen and his tongue protruding, a common feature when the death is by throttling or strangulation. In cross-examination Dy.S.P., Saraf was asked if he had obtained any medical opinion whether the unnatural features mentioned in the said post mortem report, namely, the swollen eyes and the protruding tongue, were indicative of strangulation. Saraf's reply was that the investigating officer D.I., G. U. Kulkarni had not obtained a formal medical opinion, but he had informally discussed the case with Dr. Mahajan of the Bhiwandi Municipal Dispensary and had shown him the photograph and the said post mortem report and Dr. Mahajan had opined that the death was due to a bullet injury. No record was, however, kept of this informal discussion (P.W. 61/85/3656-7).

45.168 In the absence of any direct evidence it is not possible to come to any finding how Mobin Ahmed met with his death. A Commission of Inquiry cannot proceed in the same manner as the Special Investigation Squad, Bhiwandi, has done in several cases and pin a charge of murder on anyone on such flimsy evidence. One thing, however, seems clear on the said post mortem report. The acid burn injuries on the body of Mobin Ahmed, his swollen eyes and protruding tongue clearly show that he did not die in any normal police firing and that apart from being fired upon he was also the victim of other violence and that acid was thrown at him. This post mortem report is one more circumstance which casts serious doubts upon the veracity of the version put forward by the police witnesses in respect of the police firing at Kacheripada.

45.169 Mumtaz Ahmed was one of the accused in the Bhiwandi Conspiracy Case. After the Judicial Magistrate permitted the withdrawal of the conspiracy charge Mumtaz Ahmed along with three other accused persons in C.R. No. 193/70 (Ex. P 193) and some other accused persons were discharged on the application made by the prosecution as there was no evidence of any overt act against any of them (P. W. 61/135/3711-2). Neither Rambhau Phulwala nor his son nor anyone else out of the other persons mentioned in the said complaint of Mumtaz Ahmed were at any time arrested. On the contrary, the case was classified by the Special Investigation Squad as 'B' Final (that is, as being maliciously false) on November 21, 1970 and an order to that effect obtained and a notice to show cause why he should not be prosecuted for lodging a false complaint got issued against Mumtaz Ahmed on November 30, 1972.

The second police firing at Kacheripada

45.170 A.H.C., Shripat V. Savant, buckle No. 44, (P.W. 26) and P.C., Bhimrao B. Dhane, buckle No. 2549 (P.W. 27), both of Bhiwandi Town Police Station, and P.C., Shinde were patrolling the Kacheripada area between the Inspection Bungalow, Taluka Police Station and the Police Lines in the night of May 8, 1970 until the

morning of May 9, 1970. According to the Police, at about 3 a.m. P.C., Dhane fired one round from his .410 musket on a Muslim mob. No one was injured in this firing. The details of this firing incident are to be found in the affidavits of A.H.C., Savant (P.W. 26/1-5/499-501, 11-3/502-5) and P.C., Dhane (P.W. 27/1-4/507-9, 6/510-2). According to their affidavits, at about 3-10 a.m. while they were behind the Police Lines they heard shouts coming from a neighbouring Hindu locality and thereupon went towards the house of Rambhau Phoolwala. They saw a mob of 50 to 60 Muslims throwing stones and acid-bulbs at some Hindu houses. Two or three members of the said mob were carrying lighted torches and the persons in the mob were shouting "Kato, Jalao" (kill, burn). Savant warned the mob that he would open fire unless they dispersed. The mob, however, did not disperse but continued to throw stones and acid-bulbs. Savant thereupon ordered P.C., Dhane to open fire and Dhane fired one round from his .410 musket. The constables then made inquiries and found that Rambhau Phoolwala, Narayan Pawar and Madhukar Shinde had received acid burns. They asked these injured persons to go to the hospital and themselves continued to patrol the area till morning. Dhane rang up the Control Room at 3-10 a.m. and gave information about the fire opened by him (Ex. P 369, entry No. 4). He went to the Town Police Station in the morning and lodged his F.I.R. (Ex. P 211).

45.171 The Muslim parties have disputed that any such incident took place.

45.172 The said entry in the Control Room Diary recording the information given by P.C., Dhane only mentions that stones were thrown and does not make any mention of acid-bulbs. At first Dhane could not explain this omission, but ultimately said that he had not informed the Control Room about acid-bulbs having been thrown. He, of course, could not explain why he should have chosen to mention the stones and not the acid-bulbs, the throwing of which would be a much more serious matter and in which three persons are alleged to have been injured. Both these constables were residents of the locality. Savant was residing by the side of the Court house and Dhane was a neighbour of these three persons, though, according to him, he came to stay there after the disturbances and during May 1970 was staying in Vetalpada. They have both disclaimed that they knew these three Hindus or their names. According to Dhane's evidence, strangely enough out of all the Hindu houses in that locality these constables selected only the houses in which these three persons were residing for the purpose of going in and inquiring whether anyone had suffered acid burns. Neither of these two constables saw any of these three persons outside their houses, but found each of them inside his own house. According to Dhane, he asked all the three injured persons their names, wrote them down on a piece of paper, had that paper with him when he gave his F.I.R., and destroyed that paper three or four days later. We would therefore,

naturally expect these names to feature in his F.I.R. What we, however, find in his F.L.R. is, "Shankar Phoolwala and one other Hindu received burn injuries due to acid-bulbs thrown by them" (that is, the Muslims). According to the said entry in the Control Room, on receiving the telephone call from Dhane, P.S.I., Deolekar was asked to proceed to the spot and ascertain the facts. He returned and reported that he did not find anyone there. According to these constables, they expected a police officer to be sent to the spot when Dhane rang up the Control Room. Yet they did not care to wait for him and admitted that they had gone away elsewhere to patrol when Deolekar came to the spot. Though they asked these three injured persons to go to the dispensary, those persons said that they would take some first-aid treatment. One would have expected the police statement of A.H.C., Savant to have been recorded in the offence which was registered. His statement was, however, not recorded at any time.

45.173 Two of the persons alleged to have been injured in this throwing of acid-bulbs were examined by the Nagarik Hitarakshak Mandal as witnesses. They were Narayan Babu Pawar (N.H.W. 39/1-11/2,000-6) and Rambhau Punaji Karanjikar *alias* Rambhau Phoolwala (N.H.W. 40/1-19/2,007-20, 21-2/2,031-2), both of whom have already featured prominently in the discussion on the first police firing at Kacheripada. According to the affidavit of both these witnesses, when the Muslims attacked their locality, they all started running towards the Remand Home and both of them received acid burns when they were hit with acid-bulbs while so running. Narayan Pawar went and took shelter in the Hanuman Temple and, according to him, he was so frightened that for three whole days he stayed there and thereafter went in a truck to the Nanavati Hospital at Bombay for treatment. According to Rambhau Phoolwala, he fell down unconscious when an acid-bulb hit him and he learnt later that the Police had come there and opened fire and that thereupon the Muslim rioters had run away [N.H.W. 39/1(2)/2,000(1-2); N.H.W. 40/1(3)/2,007(2-3)]. The affidavits of these two witnesses are in complete contradiction to what the two constables have stated for according to the two constables these two and the third Hindu alleged to be injured, namely, Madhukar Shinde, were in their houses and not outside.

45.174 These are, however, not the only suspicious circumstances about how and where the injuries said to have suffered by these two witnesses were caused. According to Rambhau's affidavit, he had joined the Shiv Jayanti procession and was in the front part of it and in the disturbances at Old Thana Road he was hit by some stones and received acid-burn injuries on his right arm from the shoulder to the wrist. He started running, fell down and received a cut from a broken soda-water bottle lying on the road. His hand was bleeding and he was in great pain. He went to the Bhiwandi Municipal Dispensary and the doctor treated his injuries and asked

him to go home. There is, however, no mention in the records of the Bhiwandi Municipal Dispensary of any treatment to him (P.W. 66/157/3900). Though he has alleged that he thereafter went to Bombay for treatment, he was unable to produce any record or certificate to substantiate his statement. He has further alleged that in the interval before he went to Bombay, for about three or four days he applied ink and tamarind water to his injuries. It is strange that this man, who was so seriously injured by acid as to have become unconscious, did not take any treatment for three or four days except apply ink and tamarind water.

45.175 As mentioned while discussing the first police firing at Kacheripada, four police statements of Rambhau have been recorded. Some of them mention the acid burn injuries received by him, but there is no unanimity amongst these police statements about the parts of his body which received the acid burns. The incident which is alleged to have happened in the early hours of May 9, 1970 is mentioned in his second police statement recorded on June 4, 1970 by P.S.I., M. B. Pandit of the Special Investigation Squad. The said police statement does not mention that any person in the Muslim mob was carrying any weapon. Rambhau was unable to explain this omission, except to say that he had mentioned this fact to the police officer recording the statement. He has deposed that when the incident in question took place, he was awake and sitting out on his 'ota' because the acid burn injuries received by him on May 7, 1970 were smarting and that he saw this Muslim mob come up shouting, "Maro, Kato, Allah Ho Akbar". In his said second police statement, however, he has stated that he was asleep and woke up when the Muslim mob came on the scene. In his affidavit he has alleged that he could clearly see everything because there were lights on the road and near their house and he has even described the weapons which the persons in the mob were carrying, namely, acid-bulbs, stones and iron bars which had been made pointed like spears. In cross-examination, however, he has stated that there was neither moonlight nor any street light, but that there was a flood light put up on the Court house which lit up the whole area and that he had also kept the lights on in his own house. Dy.S.P., Diwate has, however, stated that no flood light had been put up in the Court house or its compound (P.W. 66/157/3900). In his said second police statement, however, Rambhau has stated that because it was dark he did not know how many rioters were there nor who they were and did not know who had thrown the acid-bulb at him.

45.176 Narayan Pawar deposed that the Muslim mob came from the locality of Gaibi Nagar. He further deposed, in contradiction of what Rambhau had alleged, that it was dark and, therefore, he could not see the persons in the mob. When asked how if it was so dark, he could see that those persons had come from Gaibi Nagar, his reply was that it was because they were shouting "Allah Ho Akbar"! The Gaibi Nagar locality is close to Kacheripada. Pawar has admitted

that he could see Gaibi Nagar from his house. He has further stated that on May 8, 1970 he was throughout at home. On that day at about noon the Police fired 61 rounds in Gaibi Nagar and the Muslim houses in Gaibi Nagar were set on fire and the Muslims all ran away. Yet Pawar stated that he did not see or hear anything on that day. According to him also, he was standing outside his house when the Muslim mob came at about 3 a.m. on May 9, 1970, but in his police statement recorded by P.S.I., M. B. Pandit on the same day as Rambhau's namely, June 4, 1970, he has stated that he was sleeping and woke up when the rioters came and started shouting. There are a number of other contradictions between his evidence, affidavit and his police statement. He has also not taken any treatment for his acid burns. He stated that along with him several persons had taken shelter in the Hanuman Temple. When asked whether any of these persons was known to him, he immediately changed his answer to say that he alone had taken shelter in the said temple and that the other persons had taken shelter in the Remand Home. He further deposed that because he was injured by acid these persons who were sheltering in the Remand Home used to come to the temple to apply burnol to his injuries, but he did not ask any of them to take him to the hospital (N.H.W. 39/16-9/2017-20, 20/2031).

45.177 According to the Muslim parties, both Rambhau and Narayan were amongst the persons who set fire to the Malaysia Sizing and had received burn injuries while committing the said act of arson. It is not necessary for the Commission to determine how these two got their injuries or whether their injuries were acid injuries or burns or whether they were actually two of the arsonists to the Malaysia Sizing, but in the light of the evidence discussed above one thing is certain, namely, that no acid-bulbs were thrown that night and Rambhau and Narayan did not receive their injuries at the time and place alleged by them. It is also clear that the story of their receiving acid burns in the early hours of May 9, 1970 from acid-bulbs thrown by the Muslim mob has been concocted between them and the two police constables in order to cover up the real time and place where they received these injuries and the nature of these injuries. That the Police opened fire that night, however, appears from the evidence of Ansar Khan Bhikha Khan (M.L.W. 1/5/1660), a resident of Chavan Colony. He has deposed that on the night of May 8/9, 1970 he heard shouts of commotion and firing coming from the side of Kacheripada.

45.178 On the evidence I, therefore, find that there was a Muslim mob on the scene. This Muslim mob began stoning Hindu houses in Kacheripada and when it failed to disperse on being asked to do so, A.H.C., Savant ordered P.C., Dhane to open fire. This police firing was, therefore, justified.

The police firing near the Telephone Exchange

45.179 This firing incident took place at about 11 p.m. on May 8, 1970 and the policeman concerned was Bhanudas Janba Kolsure

(Buckle No. 546) of 'F' Company, S.R.P. Force, Group III, Jalna (P.W. 9/1-9/397-402). On May 8, 1970 he was given a .410 musket and taken to the Telephone Exchange near the municipal office and was told to guard the Telephone Exchange. Two district policemen with lathis were already posted there. According to his affidavit, at about 11 p.m. that night he heard shouts. He therefore came out on the road and saw a mob of 100 to 150 persons approaching the municipal office from the side of the Vegetable Market (Mandai). Some of them were shouting "Office Jala Do" and "Police Ko Maro". He saw that some persons in the mob were carrying spears and lathis. He shouted out to them and ordered them to disperse, but stones and acid-bulbs were hurled at him. He again shouted out a warning that he would open fire unless they dispersed, but as they continued advancing he fired one round and the mob dispersed. He was unable to state whether anyone was injured in this firing. He lodged his F.I.R. (Ex. P 202) the next morning. He also gave his firing report (Ex. P 428) that morning. In his cross-examination he has stated that he was at a distance of 50 yards from the mob when he opened fire, this being the nearest the mob came up to him, and as at that time the municipal lights were off, he could not make out whether it was a Hindu mob or a Muslim mob, though some persons in the mob were carrying torches. He has further deposed that the two district policemen were at that time behind the municipal office and he was all alone when the mob came. According to him, there was a regular fusillade of acid-bulbs and stones which continued for about half an hour during which period he dodged these missiles, all the while standing on the road even though some of the stones hit his boots and his shins as a result of which he got a swelling on one of his shins. He has further stated that the acid-bulbs and stones which missed him fell about 10 to 15 paces behind him, that is, they fell at a distance of about 160 to 165 feet or more. He has admitted that he would be unable to throw a stone 150 feet and that in the course of their S.R.P. training the farthest they could throw a hand-grenade was 35 yards. Even though he stood all alone on the road dodging this fusillade of acid-bulbs and stones, he did not call out to the two district constables to come to his help, the strange explanation he gave for this being that they could not leave their posts. Though in his affidavit he had mentioned that some persons in the mob were carrying spears and lathis and in his cross-examination he has stated that some of them were carrying torches, neither his F.I.R. nor his firing report mention these facts nor does the F.I.R. mention the fact that acid-bulbs were thrown at him.

45.180 It is obvious that this constable has allowed his imagination to run riot. What he deposes is palpably absurd and what must have happened is that on seeing a mob in the distance and hearing shouts, this constable must have shouted out to it to disperse, whereupon some persons in the mob must have thrown a few stones in his direction and thereupon this constable must have fired one round

in the direction of the mob to frighten away the mob, which he succeeded in doing. In the circumstances, however, grossly exaggerated the story which this constable has told in the witness-box, the firing must be held to be justified.

The arson to Chauhan Colony

45.181 A number of unauthorized hutments or zopadpattis were constructed in or about 1962 on the Government land near the compound of the Court house. These hutments were known as Chauhan Colony. A part of the land on which these hutments were situate was allotted to the Police in about 1964 for the construction of residential quarters. Though a request was made to the Collector to hand over vacant possession of the land, vacant possession was not given by reason of the existence of the hutments on this land. On one occasion the Collector tried to obtain vacant possession, but could not do so as the Government issued a stay order. All these zopadpattis, except a few, belonged to and were inhabited by Muslims. During the disturbances the entire colony was burnt down.

45.182 According to the Police the colony consisted of about 121 huts and on May 8, 1970 at about 8 p.m. 33 huts belonging to Muslims were set on fire and burnt down and on May 9, 1970 at about 11 a.m. the remaining 88 huts were set on fire and burnt down. There were thus no hutments left and the Police took vacant possession of the plot and two S.R.P. Companies which were stationed in Bhiwandi after the disturbances started camping there (P.W. 4/275/764).

45.183 According to the Muslim parties the colony consisted of about 300 to 350 Muslim huts out of which about 7 to 8 were Hindu huts, and the rest Muslim huts in which about 2,500 Muslims resided, the Hindu residents being about 50 to 60. The dispute about the number of huts is immaterial. It is difficult to count the number of huts in such a large hutment colony. Both parties are making an estimate and the truth, as usual, lies in between. The Muslim parties have further alleged that the huts were not set on fire by any Hindu rioters, but by the Police taking advantage of the disturbed situation in order to obtain vacant possession of the said land.

45.184 In supopr of their aforesaid allegations the Maharashtra State Muslim League has examined two witnesses, namely, Ansar Khan Bhikha Khan (M.L.W. 1/1-8/1654-63) and Abdul Gaffoor Mohamed Miskin (M.L.W. 2/1-3/1664-6), both of whom have made an affidavit jointly with three other Muslims. The foundation for these allegations is laid in the said affidavit by stating that on or about May 5, 1970 there was an exchange of words at the water tap between the residents of Chauhan Colony and while Abdul Gaffoor was trying to pacify them, Inspector Pradhan, who was passing by in a jeep, got down from the jeep, assaulted him and told them if they stayed for two more days in the zopadpattis, their huts would be set on fire. Inspector Pradhan has denied these allegations

and has stated that on the day in question he was throughout at the Town Police Station and had no occasion even to go past Chauhan Colony (P.W. 38/20/875). This alleged incident implies that Pradhan had made up his mind to remove the zopadpattis by setting fire to them. In view of the attitude taken by the Government in prohibiting the Collector from demolishing these zopadpattis and taking possession of the said plot of land, this would have been an extremely bold step on the part of Inspector Pradhan to have ventured upon. The suggestion, however, was that Pradhan wanted to take advantage of the disturbances. This implies that Pradhan knew in advance that disturbances on such a large scale were going to break out on May 7, 1970. Neither the appearance of Inspector Pradhan in the witness-box nor his actions which have come before the Commission in the course of the evidence in any manner give the least ground for believing that he possessed this gift of prescience. The demeanour of neither of these two witnesses has in any manner impressed me and I disbelieve their evidence with respect to this incident.

45.185 Turning now to the actual incident of the arson to the Chauhan Colony, it was alleged in the said joint affidavit that on May 8, 1970 at about 2-30 p.m. two policemen came to the huts and set fire to a 'bardan' (a rag of Hessian cloth) hanging on the hut of Mahomed Ismail Suleman by applying a lighted match to it. Ansar Khan thereupon went there with three other persons and on seeing them, the policemen ran away and the residents of the colony put out the fire. On May 9, 1970 at about 11 a.m. three policemen, whose buckle numbers were said to be 2543, 1952 and 1982, came to the colony and set fire to the hut of one Kashinath who had left the previous day. Ansar Khan tried to extinguish the fire with the help of Mastan Mehboob Shaikh, one of the deponents of the said joint affidavit, when the policeman, whose buckle number was 1982, came up to him and pressing his rifle into his ribs said that they should go away or they would be shot. Thereupon they left; the fire spread and the entire colony was reduced to ashes. The affidavit states that the burning of the colony was witnessed from the Inspection Bungalow by the then Union Home Minister Mr. Y. B. Chavan who had that morning paid a visit to Bhiwandi. In cross-examination it has emerged that several residents of Chauhan Colony had left the colony out of fear in the evening of May 7, 1970, while the remaining residents left it in the morning of May 8, 1970. According to Ansar Khan, the only inhabitants then left in Chauhan Colony were the five deponents of the said joint affidavit and they stayed behind because their belongings were lying in the huts and as they did not feel afraid, they acted as caretakers and watchmen. According to Abdul Gaffoor, however, not a single person stayed behind in Chauhan Colony after the morning of May 8, 1970 and he saw the arson to Chauhan Colony in the morning of May 9, 1970, not because he was there as caretaker or watchman as alleged by

Ansar Khan, but because he had taken refuge in Siddique Compound, just opposite the Court house along with others and had at that time come out of the Siddique Compound and was sitting on the road, obviously undeterred by the operation of the curfew order. Ansar Khan claimed that he had personally seen the buckle numbers of the policemen and said that he could repeat them in the witness-box. The buckle numbers mentioned by him in the witness-box were, however, 1982, 1992 and 2543; while the joint affidavit mentioned the buckle numbers as 1982, 1952 and 2543. He further said that while giving instructions for drafting his affidavit he had not mentioned buckle No. 1952, but had mentioned buckle No. 1992. He deposed that it was he alone who saw these buckle numbers because the other four deponents of the said affidavit were standing at a distance and that when they were driven away by the constables the first thing he did was to take a diary and a pen from his pocket and write out these numbers in the diary. He produced before the Commission the diary in question (Ex. ML 1). The diary he produced was a pocket diary for 1965. The figures were written throughout in the diary in Arabic numerals, but the words were in Urdu script. Each date of this diary contained space for making entries for three days and on the page for the dates 15th, 16th and 17th November 1965 it was written in Urdu with English numerals :

“Police Nos. 2543, 1992, 1982 who set fire to the huts on 9 May 1970 at 11 a.m. The day was (sic). The day was Saturday.”

As shown by the photographic enlargement of the said page (Ex. ML 1A) the word ‘May’ is written over the word ‘June’. As we have seen from the entry reproduced above, the word ‘Friday’ was struck out and the sentence is written again to say that the day was Saturday. At first Ansar Khan denied that there was any overwriting or scoring out in the said entry and said that the so-called overwriting and scoring out were merely the result of the trembling of his hand when writing this entry. He was asked by the Commission to look at the said entry through a magnifying glass and again answer the question. On looking through the magnifying glass he realized that the overwriting and scoring out were so clear and apparent that it was no use persisting in his false denial and admitted that the word ‘May’ was written over the word ‘June’ and that the word ‘Friday’ was scored out. The explanation for this overwriting and scoring out then given by him was that the words ‘June’ and ‘Friday’ were first written due to confusion arising out of fright and that he corrected the said mistakes the next morning, that is, on May 10, 1970, when he looked at the said entry. Though Ansar Khan denied it, the said photographic enlargement also showed that the word ‘May’ has been written over the word ‘June’ in a different ink from the rest of the said entry. He deposed that six or seven days after May 8, 1970 he had twice gone to the Town Police Station to lodge a complaint, but on account of rush of people he came back

and that eight or ten days after May 9, 1970 he came down to Bombay to report these incidents at the office of the Maharashtra State Muslim League and that prior to his going there one of the other co-deponents, Ansar Husein, had already reported the matter to the Muslim League in Bombay. Ansar Khan deposed that he knew Gulam Mohamed Momin, Shabir Ahmed Ansari and Ibrahim Maddu personally and that he knew that Shabir Ahmed Ansari was at that time in jail. He also stated that he knew Murtaza Fakih, but not personally. He has, however, not made any complaint either to Gulam Mohamed Momin or to Ibrahim Maddu or to Murtaza Fakih. His explanation for this was that he "did not feel like complaining to them". Ansar Khan further stated that about two or three days after May 8, 1970 he had informed Mohamed Ismail Suleman about the 'bardan' hanging outside his hut having been set on fire. Mohamed Ismail Suleman has lodged a complaint (Ex. P 1508) at the Town Police Station on May 27, 1970 in which he has stated that his hut was burnt at 11 a.m. on May 9, 1970. There is not a word about setting fire to the 'bardan' hanging outside his hut or to any attempt to set fire to his hut on May 8, 1970.

45.186 It was submitted by the Muslim parties that there were some Hindu Huts in this colony and that both Hindu and Muslim huts were located so close to one another that it was impossible to burn down Muslim huts and not at the same time burn down Hindu huts and, therefore, no Hindu rioter could have set fire to the Muslim huts. This argument is without any substance because it proceeds on the assumption that one of the Hindu inhabitants of this colony set fire to it. As, however, appears from the F.I.R. (Ex. P 304) filed by a Hindu resident of this colony, Kisan Chandrabhan Wankhede, all the Hindu residents of this colony had left it at about 8 p.m. on May 7, 1970 out of fear and run away into the jungles of Nagaon. This would be a very natural thing for them to do since they were just a handful of Hindus in the midst of a large number of Muslims. Other rioters setting fire to this colony would only know or think of it as a Muslim hutment colony and would not know whether there were any Hindu huts in it and if so, how close they were to the Muslim huts.

45.187 The three constables with the said buckle Nos. 1982, 1992 and 2543, namely, P.C., Chandrakant A. More (P.W. 113), H.C., Rajaram B. Malewadkar (P.W. 108) and P.C., Shankar K. Ambavade (P.W. 112) were examined as witnesses. P.C., More (buckle No. 1982) was attached to the Tarapore Police Station in Palghar Taluka in May 1970 and went to Bhiwandi on bandobast duty on May 5, 1970. From May 7, 1970 till the morning of May 9, 1970 he performed fixed-point duty in Gauripada. Thereafter he was kept as a reserve at the police station until May 14, 1970 after which date he assisted Revenue Officer Deshpande in preparing panchnamas until May 22, 1970 when he returned to Tarapur (P.W. 113/1-6/3732-3). H.C., Malewadkar, whose buckle number at the relevant time was 1992

was attached to the Bhiwandi Town Police Station and was the Section Duty Head Constable for the section which included the zopadpattis behind the Court house. As such Section Duty Head Constable he used to go to the zopadpattis every two or three days. He has deposed that on May 8 and 9, 1970 he was on duty as reserve at the Bhiwandi Town Police Station and that on May 9, 1970 he went with P.S.I., Dhamapurkar of Greater Bombay Police to show him three points, namely, Gaibi Nagar, Kalyan Road and Hanuman Tekdi. From May 17, 1970 he was engaged in making panchnamas. He produced his notebook (Ex. P 1348) to show his movements on May 8 and 9, 1970. It was suggested that there was a discrepancy between his movements as recorded in the entry for May 8, 1970 and in the entry for May 9, 1970, inasmuch as in the entry for May 8, 1970 he had mentioned that he had shown some points while there was no mention of showing any point in the entry for May 9, 1970 and all that the said entry mentioned was that he performed patrol duty along with P.S.I., Dhamapurkar. I am unable to see any such distinction as is sought to be made out by the Muslim parties. The entry for May 8, 1970 mentions that he showed the points because the task allotted to him at the Town Police Station was to reach point-duty policemen, who had obviously come from outside Bhiwandi, to certain points and accordingly he had to take them to those points and show them those points (P.W. 108/1-7/3682-4). P.C., Ambavade (buckle No. 2543) was attached in May 1970 to Dhundalwadi Police Outpost, Kasa Police Station, Dahanu Taluka. By an order dated May 15, 1970 passed by S.P., Thana (Ex. P 1509), Ambavade along with some constables from other police station was temporarily deputed for duty at the Bhiwandi Town Police Station. Accordingly, he left Dhundalwadi and reported at Bhiwandi on May 17, 1970 at 1 p.m. For the first two days he was kept as reserve at the Town Police Station and then from May 19, 1970 to May 31, 1970 he assisted H.C., Malewadkar (P.W. 108) in preparing panchnamas of Muslim properties which were burnt down during the riots. These properties included the said zopadpattis in Chauhan Colony. Ambavade has further deposed that at the time of preparing the panchnamas they were in their uniforms. Ambavade has also produced his notebook to show that he was in Dhundalwadi till May 16, 1970 and reported for duty at Bhiwandi on May 17, 1970 (P.W. 112/1-5-3730-1, 6-7/3734-5).

45.188 I accept the evidence of these three constables. Their evidence has not been shaken in cross-examination and nothing has been suggested against their testimony except a so-called discrepancy in the aforesaid two entries in the notebook of H.C., Malewadkar which has failed to impress me. The reason why these three constables have been selected by the Muslim parties for making the said allegations against them seems reasonably clear on the record. H.C., Malewadkar and P.C., Ambavade have made the panchnamas in respect of these zopadpattis on May 20 and 21, 1970. They have also

made panchnamas of other burnt down Muslim properties in the neighbouring localities. They were in their uniforms and there was enough time for someone to have remembered or written down their buckle numbers. Further, H.C., Malewadkar frequently visited this colony in his capacity as Section Duty Head Constable. P.C., More was also moving around with Revenue Officer Deshpande assisting him in preparing panchnamas and though we do not have on the record the localities in respect of which those panchnamas were made, nonetheless to whichever localities More went, he must have been there for a sufficiently long time preparing panchnamas for someone to remember and write out his buckle number.

45.189 The last argument urged by the Muslim parties in support of their case was that there was so much police bandobast in and around the locality in which these zopadpattis were situate that no act of arson to Chauhan Colony could have been committed without the Police immediately coming to know about it, and the fact that not one of these police officers or men noticed these huts on fire until Dy.S.P., Diwate saw them from the Inspection Bungalow at about 10-45 a.m. on May 9, 1970 clearly proved that these huts had been set on fire by some policemen and that the other policemen on picket and patrol duties in the locality connived at it. This is an amazing argument for the Muslim parties to advance since it is their own case that in a number of incidents where Muslim properties were set on fire the Police though present turned a blind eye and gave the Hindu rioters a free hand. No attempt has been made to show why Chauhan Colony should be an exception to the general rule alleged by the Muslim parties. S.P., Bhave has deposed about the police bandobast near Chauhan Colony. These huts were by the side of the Bombay-Agra Road and were visible from the road. There was a mobile police patrol on the Bombay-Agra Road. There was also a picket of five armed policemen posted in the compound of the Court house on 24 hour duty from May 7, 1970 onwards after the riots broke out. The names of these constables were H.C., S. V. Sawant, Buckle No. 44 (P.W. 26), P.Cs., B. B. Dhane, Buckle No. 2549 (P.W. 27), R. N. Shinde, Buckle No. 147, G. B. Yadav, Buckle No. 327, and S. R. Lambe, Buckle No. 813. Except R. N. Shinde, who was from the Thana Police Headquarters, all the rest were from the Bhiwandi Town Police Station. The said armed picket was also asked to patrol from the police lines to the Court house to the Inspection Bungalow and back and in the course of their rounds these five armed constables would pass by Chauhan Colony. No one was, however, arrested by them while setting fire to these zopadpattis nor was any complaint lodged by any of them about this act of arson. In the morning of May 9, 1970 Dy.S.P., Diwate was at the Inspection Bungalow because the then Union Home Minister, Mr. Y. B. Chavan had come to Bhiwandi. At that time Diwate noticed the fire to Chauhan Colony and rang up the Control Room at 10-50 a.m. and sent for a striking force and fire-engines. As we have already seen, entries in the Control Room Diary

and Riot Diaries cannot be described as models of accuracy and in the relevant entry in the Riot Diary the telephone message is said to be from an unknown person. A striking force and two fire-engines of the Bombay Fire Brigade were despatched to the spot. The striking force did not make any report to the Control Room when it returned (P.W. 4/276/765, 278/767, 316/789 ; Ex. P 369, entry No. 28). Two of the said armed constables from the armed police picket-patrol party, namely, A.H.C., S. V. Savant (P.W. 26) and U.P.C., B. B. Dhane (P.W. 27) were called as witnesses on behalf of the Executive Magistrates and the District Police Officers. After their performance in the witness-box the other constables in the said picket were wisely not called in evidence. Both Savant and Dhane were attached to the Bhiwandi Town Police Station, Savant for four years prior to May 1970 and Dhane for one year prior to May 1970. They both tried to make out in the witness-box that they were at a different place while the Chauhan Colony was set on fire. Dhane said that he had gone to the Town Police Station to give a report of a police firing and Savant said that he was at the police lines and that he left the police lines on learning that a hut near Vetalpada had caught fire. Ultimately he was forced to admit that he went to Chauhan Colony on seeing a big blaze and found that the hutment dwellers had gathered there. He admitted that he did not ask any one of them what had happened or who had set the huts on fire. He was unable to give any explanation why he did not make any inquiries even though these huts came within his beat. Dhane had also no explanation to offer why he too did not give any information about this act of arson nor make any inquiries. There were a number of Muslim huts and properties including Malaysia Sizing Works which came within his beat. Both Savant and Dhane were cross-examined in respect of each of these properties and in respect of the arson to each of them they have pretended ignorance and were finally forced to admit that they knew that these were Muslim properties and could give no satisfactory explanation for not giving any report or information to the Control Room about the fires to these properties (P.W. 26/1-13/499-505-6 ; P.W. 27/1-7/507-12).

45.190 The conduct of these two constables and the other three constables who constituted the said police patrol is reprehensible, but nonetheless on a par with their conduct in respect of the other Muslim properties set on fire in Kacheripada and Vetalpada on the Bombay-Agra Road. From this, however, it does not follow that the Chauhan Colony was set on fire by some police constables. The total neglect of duty shown by these armed policemen was not motivated by the fact that there was a conspiracy by the Police to set fire to the Chauhan Colony in order to obtain vacant possession of the land for constructing residential quarters for the Police, but was a result of their indifference to what happened to the Muslims and their properties.

45.191 There is also no warrant for saying that some of the huts in Chauhan Colony were set on fire on May 8, 1970 and the others at 11 a.m. on May 9, 1970. There is no report or entry in the riot

diary of any fire to any hut in Chauhan Colony on May 8, 1970, nor has anybody deposed that he saw any of these huts on fire on that day. Dy.S.P., Saraf has also admitted that there is no evidence to show that any Hindu huts or any huts in Chauhan Colony were set on fire on May 8, 1970 (P.W. 61/81/3654). The only reason for saying that these huts were set on fire at 11 a.m. on May 9, 1970 is that Dy.S.P., Diwate saw this fire from the Inspection Bungalow, but he in fact saw it prior to 10-50 a.m. because he telephoned the Control Room at 10-50 a.m. This act of arson, however, must have been committed in the morning after Diwate and the other officers went to the Inspection Bungalow to receive the Union Home Minister otherwise they would have seen the fire on their way to the Inspection Bungalow. It is not likely that this colony could have been set on fire in two stages because had some of the huts been set on fire the previous day, the fire would have soon spread and engulfed the whole colony.

45.192 In addition to Chauhan Colony there were other plots of land belonging to the Government on which zopadpattis had been constructed ; for instance, in a part of Gaibi Nagar in Nagaon Village, in Kamba Village, near Katai Village and in Village Temghar. These zopadpattis were also burnt down during the disturbances and the Government took possession of the plots of land on which these zopadpattis stood (P.W. 4/379/825). No allegation however, has been made in respect of any of these plots of land that the Police or any authority deliberately set fire to these zopadpattis, taking advantage of the disturbed situation, in order to obtain vacant possession of the said plots.

45.193 For the reasons mentioned above, I disbelieve the Muslim case that the arson to Chauhan Colony was committed by some police constables and I hold that it was committed by Hindu rioters. I also hold that the personnel of the foot police patrol on the Bombay-Agra Road consisting of S. V. Savant, Buckle No. 44 (P.W. 26), P.Cs., B. B. Dhane, Buckle No. 2549 (P.W. 27), R. N. Shinde, Buckle No. 147, G. B. Yadav, Buckle No. 327, and S. R. Lambe, Buckle No. 813, were guilty of gross dereliction of duty in not preventing this act of arson and in not rushing up to the scene the moment this act of arson took place and in not reporting the matter to the Control Room.

The firing at Khoni Village

45.194 As shown by entry No. 34 in the Riot Diary of May 9, 1970 (Ex. P 369) a telephonic message was received on May 9, 1970 at 11-16 a.m. at the Control Room that houses in Rasulabad in Khoni Village were on fire. S.P., Bhave thereupon directed C.P.I., Tikale (P.W. 38) to proceed to Rasulabad along with a striking force and a fire-brigade vehicle. On the way to Khoni, Tikale noticed a mob of 25 to 30 Muslims armed with sticks, axes and spears proceeding towards Khoni village. Tikale stopped his vehicle and ordered the mob to disperse. The mob became defiant. Tikale therefore fired one round from his .38 revolver at the mob. This had the desired effect

and the mob dispersed and ran away. Tikale and his men chased the mob, but could not arrest anyone. Nobody was injured in this firing. The fire to the houses was then extinguished. On return to the Bhiwandi Town Police Station at about 2 p.m., Tikale reported to the Control Room what had happened and also lodged his F.I.R. It was registered as Bhiwandi Town C.R. No. 214/70. Later the case was transferred to the Bhiwandi Taluka -Police Station as it fell within the jurisdiction of that police station and the complaint was re-registered as Bhiwandi Taluka C.R. No. 230/70 (Ex. P 353). [P.W. 36/1(15)/844(9), 6/845, 15/849].

45.195 The evidence shows that a mob of Muslims armed with deadly weapons was proceeding towards Khoni Village, very probably to take revenge for the burning of the Rasulabad Mosque and the Muslim houses and the murder of Muslims in Rasulabad on May 7, 1970. Tikale apprehended imminent danger to property and person and opened fire to disperse this unlawful assembly. The firing had a deterrent effect in that the mob dispersed without causing any damage. This police firing was thus justified.

45.196 This incident also shows the communal bias of C.P.I., Tikale. His affidavit does not mention whether the houses on fire belonged to Hindus or Muslims. His F.I.R. is equally silent on this point, but it conveys the impression that the said Muslim mob had set fire to the houses, for it states "I was advised to proceed to Rasulabad and do bandobast there as an unruly mob has started setting fire to houses there"; thus conveying the impression that these were Hindu houses. The report made by him at the Control Room set out in the said entry No. 34 of P 369, while it mentions the community of the mob which he dispersed, does not mention whether these houses on fire were Hindu houses or Muslim houses. It is only in his cross-examination that the fact has emerged that Bhave had told him to proceed to Rasulabad and extinguish the fires to Muslim houses and that the fires which he extinguished with the help of the fire-engine were to Muslim houses. This clearly shows that the telephonic message to the Control Room was that the Muslim houses were on fire. Nonetheless P. I. Mane who made the said entry No. 34 has only stated "Received a phone message about fire to houses in Rasulabad" without mentioning that these were houses of Muslims.

The raid on the Ambassador Hotel and the miracle of the bombs that multiplied

45.197 The Ambassador Hotel, belonging to a Malbari Muslim, occupied the whole of the ground floor of a one-storied building near Dhamankar Naka. On May 9, 1970 at about 12-15 p.m. 29 Malbari Muslims were arrested from the Ambassador Hotel by C. K. Mullani (P.W. 28), Police Jamadar, Security Branch, Thana, who at the relevant time and until his retirement was officiating as P.S.I. in that Branch. It was alleged by Mullani that he also seized from the Ambassador Hotel two country-made bombs and 53 fire-balls.

Mullani made a report in respect of these arrests at 12-48 p.m. at the Control Room (Ex. P 369, entry No. 47). The entry in the Riot Diary merely states "P.S.I. Mullani arrested 29 persons at Dhamankar Naka. An offence at C.R. No. 209/70 has been registered". The F.I.R. in C.R. No. 209/70 (Ex. P 205) lodged by P.S.I., Mullani is said to have been lodged at 4 p.m. that afternoon and was recorded by P.S.I., Mullani himself (Ex. P 173). The said F.I.R. states :

"On 9th May 1970 I was accompanying Shri Scott, S.P., S.T.B. While patrolling we saw a mob of Muslims in Hotel Ambassador near Dhamankar Naka. *Since there was a reliable information that the aforesaid mob of Muslims was likely to assault Hindus, I along with panchas raided the said hotel.*"

The F.I.R. then sets out the names of the 29 arrested Muslims who are all described therein as being residents of Dhamankar Naka. The F.I.R. then continues :

"*The above persons were found sitting in the Hotel. I search the Kitchen room and the hotel in the presence of panchas. I found the following articles near the kitchen door :—*

- (1) One gunny bag containing 53 stones. The stones were covered with pieces of gunny.
- (2) Two country-made bombs were found in a soiled towel which was hidden behind trunks in the store room of the said hotel. The said towel has the Dhobi mark 'T.S.' in one corner. Similar T.S. marking was noticed on the Baniyan worn by hotel owner T. K. Aboo Sher Mohamed.

"Aforesaid articles were sealed in the presence of panchas and were handed over to Writer Head Constable Shri Mokashi for safe custody at Police Station.

"The aforesaid persons have co-jointly collected 53 stones and 2 country-made bombs in Ambassador hotel with intention to assault Hindus. Hence complaint against them for storing unlicensed explosives on behalf of the State."

45.198 We will now turn to the evidence of Mullani. His affidavit states [P.W. 28/1(4)/513(2)] :

On 9th May 1970, at about 12-15 hrs. Shri Scott, Assistant Inspector-General of Police, State Traffic Branch, took me along with him to Dhamankar Naka for patrolling duty. *We received information that a number of persons had assembled in Ambassador Hotel and they were likely to attack Hindus. It was also learnt that they had some explosives and weapons with them. I, therefore, entered Ambassador Hotel with the help of policemen and found 29 Muslims hiding in it. On search I found 2 country made bombs and 53 fire-balls in the Hotel. I drew up the Panchnama and arrested 29 Muslims. I brought the accused and the weapons to Police Station.*"

45.199 We will now turn to Mullani's cross-examination. We will first see what he has to state with respect to the information about the

assembling of Muslims in the Ambassador Hotel with the intention of attacking Hindus. Mullahi had deposed (P.W. 28/10/517) :

"The information that a number of persons had assembled in Ambassador Hotel and were likely to attack Hindus was received by Asst. I.G.P. Scott and was not received by me. We were patrolling in a police van. This van was not fitted with wireless. We had parked the van at Dhamankar Naka. Scott got down from the van and went up to a house inhabited by Hindus. I did not notice Scott either entering the house or talking with any persons on the road. None of the arrested persons told us that they were sitting in the hotel because there was curfew order."

45.200 Next we come to Mullani's cross-examination on the point of the Muslim mob assembled in the Ambassador Hotel with the intention of attacking Hindus. He has deposed (P.W. 28/7/515, 8/518) :

"The front door of the Ambassador Hotel was closed. It was a collapsible door and when the door was closed, one could see what was going on inside the hotel. The door was locked from inside.....

When I went to the Ambassador Hotel I saw the persons whom I arrested through the collapsible door from outside the hotel. These persons were sitting inside the hotel and were chitchatting. At that time the curfew order was in force. Assistant I.G.P. Scott had received information that a number of Muslims had gathered in the Ambassador Hotel. I used the word 'hiding' in paragraph 4 of my affidavit because the door was closed and locked from inside."

45.201 Next we come to Mullani's cross-examination on the point of the arrest of these 28 Muslims. He has deposed (P.W. 28/14/520) :

"When I went up to the hotel, I asked in a loud tone for the manager of the hotel. The manager came up. I asked him to open the door as we wanted to search the place and he unlocked and opened the door. I asked the persons who were in the hotel for their names. I did not ask them whether they were employees of the hotel or were customers. I did not ask them what they were doing in the hotel. They were sitting in the hotel and therefore there was no point in asking what they were doing. I did not ask them for their residential address nor what their occupations were. The situation was such that we had no time to ask them any questions. There was no question of my listening to anything they said because, from what I found in the course of my search, I was certain that these persons had assembled there with a view to attack some place."

45.202 The panchnama of the search of the Ambassador Hotel is Exhibit P 443. It states that the said 29 Muslims were sitting inside the hotel on benches meant for customers and were chitchatting and that behind the rear door of the kitchen 53 stones "covered with Hessian" were found and that in the store-room 2 "hand-bombs" wrapped in paper tied up in a towel bearing a dhobi mark 'T-S' were found and that T. K. Abu Sher Mahomed, described in one place in the said panchnama as the manager and in another as the proprietor

of the Ambassador Hotel, was wearing a shirt with the same dhobi mark. The panchnama further states that the said 53 stones, the 2 "hand-bombs", the towel and the shirt were all taken charge of by the Police. The entry (Ex. P 545) in the Muddemal Register mentions the following articles as having been seized in this search :—

(1) 53 stones wrapped in Hessian cloth pieces and kept in a Hessian cloth.

(2) 2 hand-bombs wrapped in paper.

45.203 All the 29 Muslims were charged under sections 147, 148, 149 and 436 I.P.C. with rioting with deadly weapons and committing mischief by fire. Reading the said entry in the Riot Diary, P.S.I., Mullani's F.I.R. and his affidavit and evidence, and the panchnama and the said entry in the Muddemal Register, one is startled at the manner in which Muslims have been arrested in Bhiwandi during the disturbances and charged with serious offences.

45.204 From the above evidence, both oral and documentary, the following discrepancies and contradictions emerge :—

(1) According to the entry in the Riot Diary, these 29 Muslims were arrested at Dhamankar Naka. The said entry does not mention what these 29 Muslims were doing and what offence they were committing or had committed and does not mention that any weapons or missiles were found with them. According to the F.I.R., and Mullani's affidavit and evidence, they were all arrested from the Ambassador Hotel. According to the F.I.R., while patrolling the police party saw a Muslim mob assembled inside the Ambassador Hotel and since the Police had already received reliable information that this mob was likely to assault Hindus, Mullani, along with the panchas, raided the hotel. According to his F.I.R., the Police had received information that a number of Muslims had assembled inside the Ambassador Hotel and were likely to attack Hindus and that they had explosives and weapons with them and therefore they went to the Ambassador Hotel and saw the Muslim mob inside the hotel.

(2) While the F.I.R. and the affidavit would convey the impression that the information was received by P.S.I., Mullani or by him along with others, his cross-examination shows that he had not received any such information, but the information was received by Asst. I.G.P. Scott and that the manner of receiving the said information was that while they were patrolling, they parked the van at Dhamankar Naka, and Scott got down and went upto a house inhabited by Hindus. They thereafter went with the panchas to the Ambassador Hotel and raided it.

(3) While according to the entry in the Riot Diary these 29 Muslims were at Dhamankar Naka, according to the F.I.R. they had assembled inside the Ambassador Hotel and according to the affidavit they were hiding inside the hotel and were found only when the Police entered the hotel.

- (4) The Muslim mob assembled inside the Ambassador Hotel has boiled down in the cross-examination and the panchnama to Muslims sitting inside the hotel on benches meant for customers and chitchatting.
- (5) The Muslims hiding inside the Ambassador Hotel from the police party so that they might not be discovered have boiled down in the cross-examination to Muslims sitting inside the hotel chitchatting, with the door of the hotel closed and locked from inside, the door being a collapsible grill door from which anyone on the road could see what was happening inside the hotel.
- (6) While according to Mullani's affidavit he had to enter the Ambassador Hotel with the help of policemen, in cross-examination it has transpired that all that had happened was that he went upto the door of the hotel, asked in a loud tone for the manager and, when the manager came up, asked him to open the door as the Police wanted to search the place and the manager unlocked and opened the door. Mullani then took down the names of the persons who were sitting inside the hotel and searched the hotel. No one resisted arrest and no one tried to escape.
- (7) While the message to the Control Room was received at 12-48 p.m. on May 9, 1970 as shown by the said entry in the Riot Diary, the panchnama is said to have commenced at 12-25 p.m. and completed at 1-30 p.m. The message was not given on the wireless because the van in which Mullani along with Asst. I.G.P. Scott and the police party were patrolling did not have a wireless fitted to it.
- (8) While according to the said entry in the Riot Diary no weapons or missiles were found in the said hotel or produced at the Town Police Station, according to the F.I.R. the articles found in the said hotel were a gunny bag containing 53 stones and 2 country-made bombs in a soiled towel with the same dhobi mark as on the shirt of the owner of the Ambassador hotel, all of which were produced at the Town Police Station along with the said shirt.
- (9) According to the panchnama, 2 hand-bombs and 53 stones were found in a gunny bag wrapped with Hessian cloth. In Mullani's affidavit these have become 2 country-bombs and 53 fire-balls, each of which was a stone separately wrapped in gunny cloth. Mullani's explanation for not describing the stones wrapped separately in gunny cloth either as such or as fire-balls in either the panchnama or the F.I.R. was that he did not think it necessary to do so (P.W. 28/7/516).
- (10) While according to the panchnama the Police, along with other missiles, took charge of a towel in which the two bombs were tied up in a bundle and the shirt worn by the proprietor or manager of the hotel, both bearing the same dhobi mark, neither the towel nor the shirt is mentioned either in Mullani's

affidavit or in his evidence or in the entry in the Muddemal Register. There is no explanation of what happened to this towel and shirt, for they are not heard of afterwards.

45.205 As we have seen, there are two Muddemal Registers for the month of May 1970, both of them for the same period. The said entry relating to this seizure (Ex. P 545) is to be found in the first of these two Muddemal Registers (Ex. P 670). It is the last entry on the page and is dated May 9, 1970 and bears serial No. 79. The next entry, which is the first entry on the next page, also bears serial No. 79 and is dated May 10, 1970, while the entry which follows it bears serial No. 80 and is dated May 9, 1970.

45.206 Of all the marvels which have come out of Bhiwandi, one of the strangest is the behaviour of these two bombs seized from the Ambassador Hotel. In order to compensate for the disappearance of the towel and the shirt, the two bombs multiplied into five when they were examined on May 11, 1970 by the Senior Inspector of Explosives. Dy.S.P., Saraf, in charge of the Special Investigation Squad, admitted that he was unable to say how or from where these three extra bombs came and happened to form part of the muddemal of this case (P.W. 61/123/3,703).

45.207 Needless to state that the Judicial Magistrate, First Class, Bhiwandi, discharged all the accused, except the owner of the Ambassador Hotel, on the ground that there was no evidence against them. The owner of the hotel was committed to sessions to stand trial under sections 4(b) and 5 of the Explosive Substances Act, 1908. He was acquitted by the Assistant Sessions Judge, Thana, by his judgment dated December 20, 1971 (P.W. 4/351/813; Ex. P 1351). There can hardly be any doubt that the only crime for which these Muslims were arrested was for being found sitting together chitchatting in a hotel—the presumption of P.S.I., Mullani and the other officers and men with him being that if Muslims are found together, that could only be for rioting and if Muslims are talking with each other, the subject of their conversation could only be the working out of a plan to attack Hindus and their properties. This is as good as admitted by P.S.I., Mullani in the passage from his cross-examination reproduced in paragraph 45.201 above.

45.208 Since P.S.I., Mullani admittedly did not ask the arrested persons for their residential addresses, one wonders how and when all of them came to be described in the F.I.R. as residents of Dhamankar Naka. It is clear that their residence is mentioned as Dhamankar Naka only in order to make out that they were residents of this locality who had collected inside the hotel for an unlawful purpose. It is unbelievable that any such information as alleged was received or that Mullani took any panchas with him. It is inconceivable that Mullani would be so convinced that he would find some missiles and weapons, as to take panchas with him.

45.209 This was a Hindu locality with only some Muslim houses situate behind the Ambassador Hotel (P.W. 28/7/515, 8/516). In

all probability, these Muslims must have been residents of these Muslim houses at the back of the hotel and believing that in numbers lay safety, they took shelter inside the hotel and by way of greater precaution closed and locked the collapsible grill door of the hotel. They did it openly and publicly because this hotel was situate on the main road with its facade facing the main road itself. Unfortunately for them, they did not, foresee that police officers and policemen with the mentality of P.S.I., Mullani and his police party would be passing by.

The raid on Chakkan Khokewalla's shed

45.210 After arresting the 29 Muslims from the Ambassador Hotel, P.S.I., Mullani went to the shed of Chakkan Niyamat Khan, close to the Ambassador Hotel, and arrested 15 Muslims and further, according to him, took charge of 4 fire-balls, a bottle containing acid, 4 knives and a whip from one part of the said shed and 6 more fire-balls from another part of the said shed. The said shed was an open shed and was used for making wooden boxes. For the said reason its owner Chakkan Niyamat Khan was known as Chakkan Khokewalla and the said shed as Chakkan Khokewalla's shed. The wooden boxes made at the said shed were kept on two sides of the shed forming temporary walls. This is another instance which does not redound to the credit of P.S.I., Mullani.

45.211 P.S.I., Mullani reported this matter to the Control Room at 3 p.m. on May 9, 1970. The entry in the Riot Diary (Ex. P 369, entry No. 65) shows that the said report was made from Dhamankar Naka at 3 p.m. It only states that P.S.I., Mullani had arrested 15 persons. An offence was thereupon registered against these 15 persons, being C.R. No. 210/70 on the F.I.R. of P.S.I., Mullani (Ex. P 206) lodged at 5 p.m. that evening. The F.I.R. states that they saw a number of persons sitting inside the shed of Chakkan Seth Khokewalla and that Mullani went at about 2-30 p.m. and took a search of the shed in the presence of the panchas and found the 15 Muslims, whose names are set out in the F.I.R., "sitting together" and that on taking the search he also found the articles listed in the F.I.R. Mullani's affidavit, however, states that on going to the shed 15 Muslims were found hiding there and that on searching the place he found certain articles which he seized under a panchnama [P.W. 28/1(5)/513(3), 12/519]. In cross-examination Mullani admitted that this was an open shed and had no walls. He has stated that he had described these Muslims as hiding inside the shed because on two sides of the shed wooden boxes were kept. He has admitted that such boxes would be normally kept in a factory making wooden boxes. He has further stated that they had received information that several persons had gathered in the shed and that the said information was received not by him, but by Asst. I.G.P., Scott.

45.212 While the said entry in the Riot Diary does not make any mention of any weapons or missiles being found, the F.I.R. states

that the Police took charge of the following articles :—

- (1) 4 glass bulbs filled with acid,
- (2) 1 glass bottle filled with acid,
- (3) 1 leather hunter,
- (4) 4 small knives,
- (5) 1 knife,
- (6) 1 iron blade, and
- (7) 6 stones tied in a gunny bag.

The panchnama of seizure of these articles (Ex. P 444) mentions the same articles as in the F.I.R., except that the four small knives are described as penknives. The affidavit mentions the articles seized as follows :—

- (1) 4 fire balls,
- (2) 1 bottle containing acid,
- (3) 4 knives,
- (4) 1 whip, and
- (5) 6 fire balls.

The entry in the Muddemal Register, which is entry No. 78 in the first of the two Muddemal Registers (Ex. P 670), describes the articles seized as follows :—

- (1) 4 glass bulbs filled with acid,
- (2) 1 small bottle filled with acid,
- (3) 1 leather hunter,
- (4) 4 penknives,
- (5) 1 knife,
- (6) 1 knife blade, and
- (7) 6 stones wrapped in Hessian.

45.213 The bottle and the four bulbs were sent to the chemical analyser and according to his report the bottle contained coconut oil and not acid and the four bulbs contained traces of sulphuric acid (P.W. 29/26/540-1). One of the 15 Muslims was a juvenile. The remaining 14 Muslims were discharged by the Judicial Magistrate, First Class, Bhiwandi, on October 12, 1970. The juvenile was acquitted on May 4, 1971 (Ex. G 398).

45.214 P.S.I., Mullani has deposed to his reason for arresting these Muslims. He has said, "Because 15 persons were sitting in the shed, I thought that they must have gathered there in order to make an attack on Hindus". He thought so, even though he has admitted, "These persons were merely sitting in the shed" (P.W. 28/12/519). In P.S.I., Mullani's eyes, for Muslims to sit together during the disturbances was a crime. The question of the muddemal need not detain us much. The evidence of it is as unsatisfactory and full of discrepancies as in the case of the muddemal of the Ambassador Hotel. From the manner in which all weapons and missiles seized in the disturbances have been dealt with and the Muddemal Register kept, no evidence any of the muddemal seized in these disturbances can inspire any confidence.

The arrests at Sunderbeni Compound

45.215 Sunderbeni Compound is a large compound containing a number of properties, situate opposite the junction of the Bombay-Agra Road and the Bhiwandi-Kalyan Road in the Kap-Kanheri area.

45.216 On May 10, 1970 at about 3 p.m. 109 persons, all of them believed at that time to be Muslims, were arrested by C.P.I., V. S. Tikale (P.W. 36). The police version of this incident has turned out on cross-examination of C.P.I., Tikale to be so false that it would shake the confidence of anyone in the police version of any disputed incident.

45.217 The direct oral evidence on this incident is that of C.P.I., Tikale [P.W. 36/1(18)/844(11), 18/849-51, 25-6/854-5]. The F.I.R. in respect of this incident was lodged by Tikale at 6 p.m. on the same day (Ex. P 212), and was registered as C.R. No. 221/70. The F.I.R. was recorded by Tikale himself.

45.218 From entry No. 77 in the riot diary of May 10, 1970 (Ex. P 370) it appears that Bhalerao, Chief Executive Officer, Thana, gave a message on the telephone to the Control Room that a fire had broken out in Sunderbeni Compound and requested that a fire-engine be sent there. Thereupon C.P.I., Tikale and a striking force were sent to the spot in a police van along with fire-engine No. MRT 1103. We will first see what happened when Tikale reached the spot according to the version set out in his affidavit. The facts as set out in his affidavit are :

- (1) When Tikale entered the Sunderbeni Compound he saw a mob of 300 to 400 Muslims assembled there.
- (2) The Muslim mob was throwing fire-balls, stones, soda-water bottles and acid-bulbs at Hindu houses.
- (3) Some of the Muslims in the mob were carrying sticks, axes and spears.
- (4) In the meantime P.S.I., Shirodkar of Greater Bombay Police came there with reinforcements.
- (5) The two police parties surrounded the Muslim mob and arrested 109 Muslims.
- (6) While returning they noticed a Muslim house on fire.
- (7) The fire was extinguished by the fire-engine which accompanied the police party.
- (8) Tikale learnt that the fire was due to an electric short circuit.
- (9) One of the 109 arrested Muslims was seriously injured and was accordingly sent to the Thana Civil Hospital where he died on May 11, 1970.

45.219 The following facts have, however, emerged in Tikale's cross-examination :—

- (1) Tikale saw the Muslims throw five or six fire-balls only.
- (2) These fire-balls fell on the roof of a building and then slipped down and fell on the ground.
- (3) No damage at all was caused to any Hindu property.

- (4) The only building which was on fire in that locality was a Muslim building known as Hawaii Building.
- (5) Even though the only building on fire in that locality was a Muslim building, in the F.I.R. (Ex. P 212) all the 109 arrested persons (all of them believed at that time to be Muslims) were charged with committing arson to that building.
- (6) These 109 persons (all of them then believed to be Muslims) were charged with arson to the said Muslim building even though, according to Tikale, he at that time thought that the fire to that building was caused by a short-circuit and even though Tikale knew that the said building was a Muslim building.
- (7) There was not just one Muslim mob when the police party under Tikale went to Sunderbeni Compound, but there were two mobs — a Muslim mob and a Hindu mob.
- (8) The Hindu mob numbered about 200 to 300 persons.
- (9) The distance separating the two mobs was only about 30 paces and the two mobs were indulging in throwing stones, soda-water bottles, acid-bulbs and fire-balls at each other.
- (10) No one in either mob was throwing any missile or fire-ball at any building or buildings and whatever missiles fell on any building fell purely by accident.
- (11) No missiles or weapons were taken charge of from any of the arrested persons, for none of the arrested persons were carrying any missile or weapon.
- (12) Even though none of the arrested persons had with him any weapons or missiles and even though there was no damage caused to any property, except the one Muslim house referred to above, and no Hindu property had been set on fire or looted, the F.I.R. mentions that the Muslim mob “armed with spears, daggers, bottles full of petrol and lathis” was looting the property.
- (13) No one from the Hindu mob was arrested, Tikale’s explanation for this being that on seeing the police party enter Sunderbeni Compound the Hindu mob dispersed.
- (14) The 109 arrested persons were not all Muslims, but 5 of them were Hindus.
- (15) Tikale learnt only on May 12, 1971 (on which date his evidence before the Commission commenced) that out of the 109 persons arrested by him five were Hindus.
- (16) The names set out in the F.I.R. show that five of the arrested persons were Hindus.
- (17) According to Tikale, he had recorded the names of the arrested persons at the Town Police Station and while recording the names of the arrested persons he learnt that one of them, Mahomed Halim Ansari, was injured and had an incised wound on his abdomen which had perforated his intestines and on his

inquiring how it had happened Mahomed Halim had replied that a Hindu from the Hindu mob had stabbed him with a sharp weapon.

- (18) Though Mahomed Halim Ansari had stated that someone from the Hindu mob had stabbed him in the abdomen, the F.I.R. of C.P.I., Tikale states that someone from the unruly Muslim mob had caused the injury to him.
- (19) Mahomed Halim Ansari was sent to the Thana Civil Hospital where he died on May 11, 1970.
- (20) The police statement of Mahomed Halim Ansari was not at any time recorded either by Tikale or by any other police officer though he could talk and was able to answer Tikale's inquiry as to how he had come by his injury.
- (21) The only reason for Tikale stating in his affidavit that the fire to the Muslim building was caused by an electric short-circuit was that somebody from the police party told him that the said fire "must have been caused by short-circuiting".

45.220 In cross-examination Tikale admitted that he had made the following mistakes in his affidavit and in his F.I.R. :—

- (1) that the 109 arrested persons were all Muslims,
- (2) that when he entered Sunderbeni Compound there was only one mob, namely a Muslim mob,
- (3) that this Muslim mob was armed with spears and axes,
- (4) that this Muslim mob was looting Hindu properties and throwing fire-balls at Hindu properties to set them on fire,
- (5) that the said 169 Muslims were committing arson and setting fire to the said Muslim property.

45.221 These were strange mistakes for any police officer to have made. From the fact that Tikale has admitted that it was only on May 12, 1971 while he was giving evidence before the Commission that he learnt that five out of the 109 arrested persons were Hindus, it is clear that though there were two mobs (a Hindu and a Muslim mob) about to clash, the police parties deliberately ignored the Hindu mob and arrested only persons from the Muslim mob, letting the Hindu rioters run away. It is further patently clear that Tikale deliberately suppressed in the F.I.R. and in his affidavit the facts that there was also a Hindu mob, that it had set fire to a Muslim property and that one of the Muslims had been fatally stabbed by a person from the Hindu mob. Further, it is equally clear that though Mahomed Halim Ansari, the injured Muslim, was in a position to answer Tikale's questions, his police statement was deliberately not recorded lest he implicate any Hindu or lest from his police statement it should appear that there was a Hindu mob in that locality which had indulged in arson and murder. This conclusion is further supported by the fact that no panchnama of the scene of offence was made by Tikale or by anyone until June 9, 1970 when it was made by the Special Investigation Squad, Bhiwandi, and that no separate offence was

registered by Tikale in respect of the stabbing of Mahomed Halim Ansari and a separate offence came to be registered only when the post mortem notes in respect of the dead body of Mahomed Halim Ansari was received in the Bhiwandi Town Police Station. When these post mortem notes were received, Mahomed Shamin, the son of the deceased, was sent for and his F.I.R. was recorded on June 15, 1970 and an offence under section 302 I.P.C. registered, being C.R. No. 285/70 (Ex. P 240). The papers were then sent to Dy.S.P., Saraf in charge of the Special Investigation Squad, Bhiwandi, for investigation. In the said F.I.R. Mahomed Shamin had stated that his maternal uncle Ajimulla had informed him that someone had stabbed Mahomed Halim in the abdomen with a weapon which resembled a 'gupti' (sword-stick) at about 2 p.m. in Hawai Building and that the assailant was wearing khaki clothes.

45.222 During the course of investigation Ajimulla, the brother-in-law of the deceased, gave a police statement on June 28, 1970 that while he, his father Habibulla and the deceased were in Hawai Building on May 10, 1970, 15 to 20 policemen came there at noon and one of them stabbed the deceased with a sword-stick in his abdomen. He gave a supplementary police statement in which he said that he would be in a position to identify the policeman who had stabbed the deceased. Thereupon an identification parade of the policemen in the police party was held by the Taluka Magistrate on November 7, 1970, but Ajimulla was unable to identify anyone. Ultimately the case was classified as 'A' summary, that is, as being 'true but undetected', and an order to that effect was passed by the Judicial Magistrate, First Class, Bhiwandi, on November 24, 1970 [P.W. 4/63(10-12)/595(5-6)]. Ajimulla had accompanied the deceased when he was taken first to the Bhiwandi Municipal Dispensary and thereafter to the Thana Civil Hospital and neither he nor the deceased had ever complained that the deceased was injured by a police constable. The allegation that Mahomed Halim was stabbed by a police constable appears to be far fetched. It is obvious that he was stabbed by somebody from the Hindu mob when the two mobs clashed. Mahomed Halim might either have been in the Muslim mob or might have been an innocent bystander.

45.223 Support was sought for the statement made by Tikale that there was only one mob, namely a Muslim mob, from the evidence of D.M., Capoor. Capoor has deposed that while he was at the Inspection Bungalow, at about 1 p.m. 15 to 20 persons came there and informed him that a mob had started damaging buildings and was about to commit arson in the Kap area. He immediately took his two personal guards and proceeded to the spot. He also alerted the Police. Seeing Capoor the rioters who had damaged some buildings ran away into the huts beyond the foot-bridge. Capoor also noticed a constable, Anant Pawar, holding the mob at bay single-handed and preventing it from indulging in arson. Meanwhile the police party under Tikale arrived and arrested the rioters. By that time D.I.G. (B.R.), Gokhale

and Dy.S.P., Diwate had also arrived on the spot. In cross-examination Capoor stated that the mob which he saw in Kap area was a Muslim mob and that there was only one mob and not two mobs, that one mob being the Muslim mob. He has further deposed :

“I am positive that there was only one mob. As I was arriving there I saw Tikale’s party come from another direction to the foot-bridge and seeing us the mob started running away and Tikale followed it and dealt with it. It may be that seeing the 15 to 20 persons with me he may have construed them as another mob. When I saw Tikale’s party setting out after the mob, I returned to the Inspection Bungalow. By that time my jeep had arrived.”

Capoor is obviously making a mistake. Entry No. 79 of the riot diary shows that at 2-55 p.m., that is, five minutes after the telephone message about the fire in Sunderbeni Compound was received at the Control Room, another telephone message was received — this time from an unknown person — that some people had collected near Kap Talao and were attempting to set fire to the huts there and requesting for police help and that thereupon Tikale was instructed to proceed to Kap Talao with a fire-engine if he did not find anything at Sunderbeni Compound. It is clear that the first message from the Chief Executive Officer, Thana, was in respect of the fire to the said Muslim building, namely, Hawaii Building, in Sunderbeni Compound and that the second telephone call was in respect of the arson to the huts in the Kap Talao area. It is impossible to imagine that Tikale could mistake Capoor and his two guards and the 15 or 20 Hindus who were with Capoor for a mob of Hindu rioters — and this too in the afternoon. Tikale has categorically admitted that the Hindu mob numbered about 200 to 300 persons and that it was also throwing stones, soda-water bottles, acid-bulbs and fire-balls. Further, the fact that there was a Hindu mob is conclusively proved by the fact that amongst the 109 persons who were arrested, five of them were Hindus.

45.224 As mentioned earlier, the true version of this incident which has emerged in the cross-examination of C.P.I., Tikale is so disturbing as to shake one’s confidence in the veracity of most police witnesses unless there are other circumstances to corroborate their testimony. There is almost nothing which can be said in extenuation of C.P.I. Tikale’s conduct in admittedly filing a false F.I.R. and a false affidavit before the Commission.

The arrests at Quarter Gate

45.225 After the disturbances broke out P.S.I., Madhav Ramchandra Rane, attached to the Dhulia Town Police Station (P.W. 34/1-9/589-94), was sent to Bhiwandi, reaching there at about 10 p.m. on May 8, 1970. Thereafter he patrolled various localities. According to P.S.I., Rane, on May 11, 1970 at about 1-30 a.m. he along with six constables was patrolling in a van S.T. Stand Road between the S.T. Stand and Dhamankar Naka when a boy about 10 or 11 years old signalled to them to stop and shouted out to them that the Muslims were throwing

stones. As the police party proceeded ahead and came to Hanuman Bavdi they heard the noise of stones being thrown and they saw a Muslim mob. The Police party got down from the van and saw about 50 to 55 Muslims, some of them carrying sticks and, therefore, started chasing them. Meanwhile, P.S.I. Ghorpade of the S.R.P. Group, Poona, came from a by-lane with his police party. The two police parties trapped the Muslims from both ends of the lane and arrested 49 Muslims. Rane reported the matter to the Control Room (Ex. P 371, entry No. 8). He also lodged his F.I.R. (Ex. P 213) which was registered as C.R. No. 222/70. Three out of the 49 accused were juveniles and all of them were acquitted by the Juvenile Court, Bhiwandi, on May 4, 1971. The remaining 46 accused were remanded into magisterial custody and sent to Nasik Jail. Out of the 46 persons so remanded, the names of three of them as mentioned in the F.I.R. did not tally with the names as recorded by the Police when they were sent to jail. All the accused persons remanded into magisterial custody were thereafter released on bail. Out of the 43 persons remanded into magisterial custody, one died a natural death. The remaining 42 were acquitted by the Judicial Magistrate, First Class, Ahmednagar, on special deputation at Bhiwandi, by his judgment dated November 16, 1970 in Criminal Case No. 426 of 1970 (Ex. P 544). These 42 persons were charged with forming an unlawful assembly on May 11, 1970 in Quarter Gate area armed with dangerous weapons such as sticks, iron bars and iron pokers with the common object of committing mischief by causing damage to houses in Hanuman Bavdi Haveli and with rashly pelting stones on houses, causing danger to human life in the said area. The Magistrate came to the conclusion that there was no ground for framing any charge against any of the accused. Certain passages from the judgment of the Judicial Magistrate are worth quoting. They are as follows :

“ However, on examining their statements I find that none of these witnesses state that they saw any individual accused pelting stones. The complaint is completely silent of this point. The gravamen of attack in complaint is only contravention of curfew order and nothing more than that. It is dated 11-5-70. Subsequently in the statement dated 2-6-70 complainant adds to his version in complaint and accordingly each witness states the added version. The added version is that while complainant and other police people were patrolling the area, one boy of 10 to 11 years of age obstructed their police van near Hanuman well and shouted ‘ Save, Muslims are pelting stones and are beating ’. Hence police party stopped the van and got down and saw some 50 to 55 people with sticks and iron bars. They were asked to stop but on seeing them they ran towards lane and through the lane. They were chased. By that time S.R.P. Party was coming from front, blocking the way of miscreants and then apprehended them. They are accused 1 to 42 before the Court...

“ Independent witnesses (1) Trilokchand, (2) Shivram, (3) Shantibha and (4) Suresh also do not state that any one from the accused was

pelting stones. Only one man was seen on roof of a house but he is not identified. The boy who was an informant was not traceable and is not examined. This evidence on record shows a group of accused collected and ran away and only a few weapons are recovered. But no name is given as to which weapon is recovered from whom. There is no evidence, even prima facie, of any overt act on the part of any of the accused.

“ Thus the so-called eye-witnesses are in fact not eye-witnesses. No one is found to be in possession of property in the case since it is not shown to have been recovered from any of the accused. The panchnamas are inordinately delayed and property is shown to witnesses by police officer from police station. No injuries are caused to any one accused and no property is shown to have been damaged.... ”

45.226 It may be added that the said entry No. 8 in the Riot Diary does not make any mention of any weapons being seized. The said entry only states that these persons were arrested in Hanuman Bavdi Haveli area for committing a breach of the curfew order. Rane's F.I.R., however, invests these persons with lathis and iron bars. The entry in the Muddemal Register shows six sticks, two iron bars, three iron rods and one 'pahar'. Rane's affidavit, however, only states that some of the members of the mob were carrying sticks. The entry in the Muddemal Register about the weapons alleged to be recovered from the arrested persons is entry No. 152 in the second of the two Muddemal Registers (Ex. P 671). The said entry is, however, dated June 2, 1970 and the panchnama of seizure was also made on the same day and it states that P.S.I., Rane pointed out these articles at the Town Police Station as being the articles seized by him on May 11, 1970.

45.227 After they were released on bail, 33 of these accused made an application dated July 2 1970 (Ex. G 115, entry No. 12) in which they alleged that on May 11, 1970 some S.R.P. men entered their houses and removed cash and articles. The said application was inquired into by the Inspector, Bhiwandi Town Police Station, who recorded the statements of two of the signatories to the application and they have both stated that these applications were made by them because they were arrested [P.W. 4/63(14)/595(7-8), 311/786-7]. There is, however, no evidence before the Commission in support of the allegations made in the said application. Merely from the bare allegations made in an application, no such conclusion can be drawn. Just because S.R.P. men looted Samadia Building and Masjid Chawl it does not follow that every time the Police or the S.R.P. arrested persons they looted cash and ornaments. The truth of the matter appears to be that on seeing a mob of Muslims out on the road and being told that it had indulged in stone-throwing, the police parties arrested 49 Muslims and a more serious case than that of merely committing a breach of the curfew order was thereafter got up against them.

The police firing at Idga Road

45.228 Two hundred policemen from the Satara Police Headquarters, were called to Bombay for bandobast duty in connection with the disturbances. They reported at Bombay on May 9, 1970 at about 9 a.m. Thereafter about 100 of them were asked to proceed to Bhiwandi. They reached Bhiwandi in the evening of May 9, 1970 and Dy.S.P., Diwate asked out of them A.H.C., P. B. Kamble, Buckle No. 338 (P.W. 10) and A.P.Cs., B. R. Khan, Buckle No. 227 (P.W. 11), S. D. More, Buckle No. 69, and A. K. Shinde, Buckle No. 799, to do patrol duty on Idga Road. All of them were armed with .410 muskets. On May 12, 1970 while patrolling Idga Road at about 12-30 p.m. these four constables saw a Hindu mob consisting of 200 to 250 persons coming from Khoni and Katai villages towards Bhiwandi by crossing the river. Some of them were carrying lighted torches, sticks and stones. Kamble shouted out to them to disperse and warned them that if they did not do so, the Police would open fire, but the mob continued to advance towards the police party shouting, "Chala, Chala, Apan Jawu Ya" (Come on, come on, let us forward) and "Chala Lavakar, Chala Lavakar. Police Kai Kartat Te Baghu" (Come on, hurry up, let us see what the Police will do). The mob started throwing stones at the police party. Kamble thereupon ordered A. P. C., Khan to fire one round from his musket at the mob which Khan accordingly did. Kamble also fired one round from his musket at the mob. The mob thereupon dispersed and started running away. When the Police opened fire the mob was about 50 paces from the police party. The police constables ran for about 10 to 15 paces to catch the rioters but did not succeed in arresting anyone (P.W. 10/1-3/406-8 ; P.W. 11/1-4/409-11). Kamble reported the incident to the Control Room (Ex. P 372, entry No. 45). He also lodged his F.I.R. (Ex. P 215) at the Bhiwandi Town Police Station.

45.229 This incident took place at noon. The affidavits of both Kamble and Khan state that it was a Hindu mob. They were cross-examined by Mr. M. D. Pathak on behalf of the Maharashtra Pradesh Hindu Mahasabha to show that they were mistaken, but their evidence remained unshaken. Instead they described the dress of the members in the mob, namely, that they were wearing dhotis and vests, in order to substantiate their statement that it was a Hindu mob. Nonetheless as is usual with almost every police document where the Police have opened fire on a Hindu mob, neither the report given by A.H.C., Kamble to the Control Room nor his said F.I.R. mentions that it was a Hindu mob or that it was threatening to set fire to Muslim properties at Idga Road. Yet another disturbing feature of this incident is that as admitted by both these constables in the witness-box, none of the investigating officers inquired from them whether they would be able to identify any person from the mob nor was any person shown to them for the purpose of identification. The said entry in the Riot Diary shows that the report given by A.H.C.

Kamble was forwarded to P. L. Budjude for taking further action. In the light of the above evidence of Kamble and Khan we are left wondering what further action was taken on this report.

45.230 So far as the question of justification for this police firing is concerned the evidence shows that a mob of Hindus with lighted torches was marching towards the Muslim locality with the intention of setting Muslim properties on fire. When sought to be stopped by the police party they attacked the police party with stones. There was thus imminent danger to the safety of the police party and also to Muslim properties. The fire opened by the police party succeeded in dispersing the mob. This police firing was, therefore, justified.

The police firing at Dargah Road

45.231 The last occasion on which fire was opened in Bhiwandi during the disturbances was on May 23, 1970. P.C., B. E. Patil (P.W. 57) of S.R.P.F. Group I, 'E' Company, was on patrol duty near Sutar Alli, Bhiwandi, along with H.C., M. B. Savant and three other policemen of the same company with effect from 6 p.m. on May 22, 1970 to 6 a.m. on May 23, 1970. While patrolling as the policemen came to the corner of Dargah Road at about 4 a.m. on May 23, 1970, they noticed five Muslims standing on the road. On being accosted, one of them ran away and the Police were successful in arresting the remaining four Muslims. As these Muslims had no curfew passes, the policemen started taking them to the police station. As they proceeded some distance, a mob of 30 to 40 Muslims came from the side of the mosque on Dargah Road and started shouting "Inko Chhod Do" (Let them go). H. C., Savant warned them to disperse. The Muslims, however, became more defiant and one of them threw a bottle containing petrol at the police party. The bottle struck Patil's shoe, but did not break. Patil thought that the bottle contained acid. On being sent to the chemical analyser it was, however, found that the liquid was petrol. The Muslims also advanced to attack the policemen. H. C., Savant thereupon directed P. C., Patil to open fire. Patil accordingly fired one round from his .303 rifle. This had the desired effect and the Muslims started running away. The Police chased them and Patil succeeded in arresting Anis Ahmed Nizamuddin who had thrown the bottle at him. The policemen then brought Anis Ahmed along with the four persons arrested earlier to the police station. Patil lodged his F.I.R. (Ex. P 358). Investigation was carried out by the Police Inspector, Bhiwandi Town Police Station. Anis Ahmed was prosecuted and convicted under section 332 I.P.C. and sentenced to imprisonment. The conviction was upheld in appeal (P.W. 57/1-3/995-6 ; P.W. 4/37/285-6).

45.232 According to Bhave this was not a communal incident. The reasons he has given for this are that this was a purely Muslim locality, the crowd which had assembled had done so only to demand the release of the prisoners who were arrested for committing a breach of the curfew order, these prisoners and the members of the crowd

were all Muslims, and there was nothing to show that any member of the crowd or any of the prisoners had any intention of attacking Hindus or their properties. I find Bhavé's reasoning to be correct.

45.233 The evidence on record shows that the policemen apprehended imminent danger to their lives as the crowd was clamouring for the release of the prisoners and became violent and one of the Muslims threw a bottle containing petrol at the police party. The Police thereupon opened fire in self-defence. The police firing was thus justified.

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