

Towards an Effective Witness Protection Program

Bipin Adhikari

It has been more than two years and there is still no satisfactory resolution to the horrific riots of February-March 2002 in the Indian state of Gujarat.

The riots followed an attack by Muslims on a train carrying Hindu activists, killing at least 58 people. In a retaliatory killing spree by Hindus, often led by activists of the Vishwa Hindu Parishad and the Bajrang Dal - allies of the ruling Bharatiya Janata Party hundreds of Muslims were slaughtered, tens of thousands were displaced, and their properties were destroyed.

The Supreme Court of India, however, has been able now to set a new benchmark for riot cases, which have a notoriously poor conviction rate in India and elsewhere.

In a landmark ruling, the Indian Supreme Court recently overturned a state High Court verdict in the *Best Bakery case*, in which 21 Hindus had been acquitted for burning 14 Muslims to death after fearful witnesses recanted earlier allegations. In a clear indictment of the state government of Gujarat, the Indian Supreme Court ordered that the *Best Bakery case* be re-tried in Maharashtra as

Gujarat was still not "congenial and conducive" to a fair trial. By transferring the case to a more neutral venue in neighboring Maharashtra state, the Supreme Court rebuked both the Gujarat High Court and the local justice system, stating that the judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agenda. The Supreme Court directed the state governments of Gujarat and Maharashtra to give adequate protection to witnesses and victims, ordered the appointment of a new public prosecutor, and ordered fresh police investigations into the case.

Since the public prosecutor had acted more as a defence counsel during the trial in Vadodara, the apex court took the extraordinary step of allowing the complainants to have a role in the selection of the public prosecutor who will conduct the retrial. "Though witnesses or victims do not have any choice in the normal course to have a say in the matter of appointment of a public prosecutor," it felt constrained to make an exception "in view of the unusual factors noticed in this case." The apex court thus directed the state government to consult victims and witnesses before appointing a new public prosecutor for the fresh trial in Maharashtra. The judges of the Supreme Court have also made scathing comments on the partisan role of the state, the police and the judicial machinery for their attempts to deny legitimate rights and justice to the victims of the riots.

In the trial of the *Best Bakery*, most of the key witnesses turned hostile and the 21 accused were acquitted on June 27, 2003. But one eyewitness, Zahira Sheikh, who watched many members of her family

killed, revealed on July 7, 2003, that she and other witnesses were forced to change their testimony after receiving threats from a local legislator of the ruling party. Based on Zahira's accusation, the Indian National Human Rights Commission (NHRC) had petitioned the Supreme Court to move key trials out of Gujarat. Quashing the High Court's acquittal of all the 21 accused persons of the charge of killing 14 persons, the bench directed that the case be re-investigated under the direct supervision of the Gujarat police.

The Supreme Court, writing a 70-page judgment for the bench, told the state governments of Gujarat and Maharashtra to give adequate protection to witnesses and victims "so that they can depose freely without any apprehension of threat or coercion from any person."

Holding that fair trial was still not possible in Gujarat, the bench said: "Keeping in view the peculiar circumstances of the case and the ample evidence on record, glaringly demonstrating subversion of justice delivery system with no congenial and conducive still prevailing, we direct that retrial shall be done by a court under the

The decision of the Supreme Court of India on the Best Bakery Case gives new dimension to criminal jurisprudence. Basically, on the one hand one bench of the Supreme Court monitored prosecution in riot cases while another bench decided on the judicial side the correctness of the high court order. This indeed is a notable shift in handling riots cases.

jurisdiction of the Bombay High Court."

Questioning the seriousness with which the Gujarat government has been pursuing the *Best Bakery case*, the Supreme Court said that the state had appealed against the trial court's acquittal only after the Indian National Human Rights Commission moved the Supreme Court last August. Even then the memorandum of appeal it originally filed before the High Court was "an apology." It made improvements only after the Supreme Court expressed its unhappiness over the perfunctory manner in which the appeal was presented.

This decision of the Supreme Court of India was welcomed by the human rights community because, for justice to be done for victims of the Gujarat riots, what was necessary was impartial investigations and protection of witnesses so that they can testify without fear. In previous reports on the 2002 Gujarat riots Human Rights Watch had identified the failure to prosecute even known abusers and a lack of political will, both in Gujarat state and at the national level, to identify those who planned the attacks. In many cases, charges have been dropped or dismissed by lower courts in a failure of due process.

The decision of the Supreme Court of India on the *Best Bakery Case* gives new dimension to criminal jurisprudence. Basically, on the one hand one bench of the Supreme Court monitored prosecution in riot cases while another bench decided on the judicial side the correctness of the high court order. This indeed is a notable shift in handling riots cases. ■

[Adhikari is a lawyer. He may be accessed at human_rights_nepal@yahoo.co.uk]