

'A Pre-Decided Case'

A Critique of the Maruti Judgment of 2017

**People's Union for Democratic Rights (PUDR)
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THE MARUTI COMPANY, as Maruti Suzuki India Limited is popularly known, occupies 50.4% of the passenger car market in India, significantly ahead of its nearest competitor. At present, one of the company's most important manufacturing plants is located in the Industrial Model Township (IMT) at Manesar in Haryana where the company occupies about 600 acres of land. Moreover, a large number of units at the Manesar Township are Maruti's ancillaries and vendors. Given not just the company's geographical dominance in the area but its overall importance and power, its pioneering role in the automobile industry, and not the least, its market share, it would not be an exaggeration today to state that the Maruti automobile company dominates IMT Manesar, serving as a role model of sorts in the 'model' township. Neither is it surprising that developments at Maruti have strongly influenced the entire industrial hub.

In the half decade since 2012, this role of Maruti is being more openly acknowledged through the circulation of a peculiar phrase – used, commonly, both by managements and workers' unions. The phrase – '*Maruti bana denge,*' broadly translated as, 'doing' or 'making' Maruti – has come to be used particularly in the context of factories or units where workers organise against management or where labour and capital conflicts emerge. It can be understood, depending on one's perspective, as a warning, threat, or promise.

So what exactly does 'doing Maruti' mean? For the workers in the township today it draws meaning from the concerted struggle of the Maruti workers' union at the company's Manesar plant especially from 2011-12. The struggle included forming and registering the union, fighting for better working conditions and wages, protesting the unfair labour practices, remaining undaunted in the face of the management's attack in connivance with the police and Labour Department criminalising them. It is this dogged persistence in organizing and carrying on labour struggle that this phrase 'doing Maruti' evokes for workers. For the managements in different units in Manesar, the phrase 'doing Maruti' evokes the way in which the Maruti management put down the strong workers' organisation and union especially by implicating them in the case related to the violent incident that took place in the plant on 18 July 2012. The way in which the Maruti management was able, through the police and judiciary, to implicate, penalise and thus silence a large number of combative workers is conjured up by the phrase when it is used by managements and owners of factories.

As many as 148 Maruti workers were arrested in connection with the incident of violence at Maruti's Manesar unit on 18 July 2012 that led to the death of one HR Manager Awanish Dev. On 10 March 2017, the Additional Sessions Judge Rajinder Pal Goyal at the Gurugram Sessions Court pronounced judgment in the case convicting 31 accused (13 with life imprisonment), and acquitting 117 others after 5 years. It is this judgment – together with the nature of the police investigation, trial and prosecution of workers that preceded it – that has given confidence and impunity to company managements across this industrial belt to blatantly deny workers' their legitimate rights to unionise. When used by managements across Manesar today, the phrase operate as an implicit and explicit threat and warning to workers, evoking fundamentally the victory of capital over labour abetted by the state.

PUDR has been engaged with the question of labour and working conditions and workers' political organisation in the Maruti Company for over 16 years and has brought out three reports on these issues during this period. The critical focus of the present report is the nature of investigation, trial and judgment, and how all of these came to define the management's version of 'doing Maruti.' It argues that the judgment and the nature of investigation and prosecution cannot be understood independently, but only in the context of the long term and contemporary history of capital-labour conflict and workers' struggles at Maruti. The report draws attention to the grave implications of the judgment, not just for workers at Maruti, or in the automobile industry alone, but for rights and struggles of labour across the country.

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THE HISTORY OF MARUTI

The Company

Maruti Suzuki India Ltd. was initially established as Maruti Udyog Ltd. at Gurgaon in Haryana in 1981 and its first car, "Maruti 800" was rolled out in 1983. In 2006 another unit of the company was started in Manesar. According to the company's Annual Report 2016 -17 it produced 15,80,000 cars in this year. There is thus an enormous increase in the production capacity, compared to the modest figure of 1,00,000 cars per annum in the year 1989.

What started as a public sector enterprise with Suzuki Motor Corporation of Japan having only 10% of the shares, was completely privatized by 2007, and the name formally changed to include Suzuki. This period, especially from around the year 2000 till the present, has seen growing number of anti-worker policies adopted by the company including intensification of work, deteriorating working conditions, contractualisation of work force, forced 'Voluntary Retirement Scheme' (VRS) and arbitrary transfers, suspensions, dismissal of workers. The company has had a record of having the lowest employee costs among all automobile companies. It has ensured this substantially through its policy of increasing the numbers of contractual workers. The Gurgaon plant of the company was initially run mainly with permanent workers and had around 4800 permanent workers in the year 2000-2001. However, more than half of them had been thrown out by 2007. There were less than 40% permanent workers at the Manesar unit from the beginning, the rest being contractual, trainees and apprentices. The percentage of permanent workers has further gone down since the infamous 2012 incident. The nature of contractualisation has also changed in the last decade. While earlier, there was some scope for contract workers to become permanent with some years of service, now most workers are hired for short periods of about 6-7 months.

Their contracts can be renewed conditionally but there is little possibility of their ever becoming permanent.

Owing to these kinds of policies the company's profits have shown a steady growth, having escalated 14 times in the last 20 years, as has its sales and number of employees. However, the remuneration to employees as a proportion of profit that had risen for a while has lately shown a steady decline, and the percentage of regular employees shown a similar trend. These statistics illuminate some of the core problems at Maruti.

Workers Struggle at Maruti

What makes the Maruti story distinct is the astonishing history of struggle of its workers from the year 2000 till today.

The first milestone of Maruti workers' struggle is the agitation of the years 2000-2001 under the leadership of Maruti Udyog Employees Union, when they protested against a new incentive scheme that linked the incentive paid to the workers to the sales made by the company and their attendance record. The agitation started with sloganeering, wearing black badges, gate meetings, hunger strikes and tool-down strike and ended with a historic *dharna* of about 4000 workers at Udyog Bhawan, New Delhi from 13 December 2002 to 8 January 2001, braving Delhi's bitter winter. The



Year	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Sales (in Rs Million)	289585	358490	347059	426126	426448	486055	563504	669094
Volume (in thousands)	1018	1271	1134	1171	1155	1292	1429	1569
Profit (in Rs. Million)	24976	22886	16352	23921	27830	37112	53643	73377
Employee Cost (Rs Million)	5456	7036	8013	10696	13681	16066	19987	23310
Regular Employees	-	-	-	9421	12547	12785	13259	14178
Contract/Temp. Employees	-	-	-	9490	7677	9691	11902	15191
Regular employees in total employees (%)	-	-	-	49.82	62.04	56.88	52.7	48.28
Income to Employees as proportion of Profit (%)	21.84	30.74	49	44.71	49.16	43.29	37.26	31.77

management responded by arbitrarily charge-sheeting, transferring, suspending and dismissing active union members, implicating them in false cases, forcing a lockout by making signing of a 'Good Conduct Undertaking' a precondition for entering the factory, and ultimately, disbanding the union. Throughout this struggle the state's Labour Department and the police openly helped the company to suppress the struggle. The legislature failed to intervene in favour of the workers, even though it was still a 50% government controlled company.

At least 25 workers including the secretary, president and other active members of the union were dismissed without inquiry on grounds as frivolous as shouting slogans. A new pocket union of the management called Maruti Udyog Kamgar Union (MUKU) was floated.

The major gain of this phase of struggle was that it made the unfair labour practices of the prestigious company known to the world at large.

After the 2001 agitation, the atmosphere in the company became extremely hostile. Falsely charging and, dismissing workers, deducting salaries on trivial grounds, intensification of

work and arbitrarily changing production targets and other measures to intensify work pressure became routine. Forced VRS policies that amounted to back-door retrenchment were brought in and by 2007 about 2500 permanent employees had lost their jobs from Maruti's Gurgaon plant due to termination and VRS. All sorts of tactics were used by the company to pressurize workers to ensure this end. The management could do all this in the absence of a representative union. The shift in policy to have lesser permanent employees was clearly visible.

The second phase of the struggle was witnessed at the Manesar plant between 2011 till the fateful day of 18 July 2012. For the workers at Manesar plant getting a union formed itself was a herculean task. Till mid 2011 they were represented by the management controlled MUKU of the Gurgaon plant. No elections of this union were held till 2010, and as the demand for an independent and representative workers' union gained momentum at Manesar, the management announced union election. Workers however boycotted the election. In June 2011, they filed an application at the Labour Department, Haryana for registration of their union Maruti

Suzuki Workers Union (MSWU) and also started a sit-in strike occupying the Manesar unit. About 2000 workers sat inside the unit in protest for 13 days. Apart from the main demand of right to unionize, one of their demands was regularization of temporary and contract workers.

Confrontation between the management and the workers continued for next few months. Apart from the series of suspensions and terminations, routine harassment of workers, and arrest of two active workers by police, illegal lockout was enforced by the management once again by making signing of a 'Good Conduct Undertaking' for entering the plant mandatory. Very few workers signed it and the rest continued their agitation outside the factory gate and on one occasion around 6000 workers from other factories joined their protest. During this period the Labour Department actively prevented the registration of the union. A compromise was reached on 30 September, but when the workers arrived at the Manesar plant to re-join work on 3 October, 2011, about 1100 contract workers were denied entry. Permanent and the contract workers again started a sit in inside the plant demanding reinstatement of contract workers.

On 13 October they were forced to vacate the premises through an order by High Court. The management used all possible tactics to foil the agitation. Most vocal leaders were allegedly bought over, police was deployed at the factory, water supply, canteen facilities were discontinued, and attempts were made to divide the workers of different categories. Despite this the workers persevered and finally their union could get its registration number by 1 March 2012. On 18 April a charter of demands pertaining to working conditions, wages etc. was presented by the union to the management. Negotiations on this charter of demands were continuing till the day of the July incident.

One of the striking features of this phase of struggle at Manesar plant is the unprecedented unity between the permanent and contract

workers. While the union from the beginning itself took up issues of the contract workers, the latter actively contributed to the struggle. Another important feature was the imaginatively planned structure of the union. The union had 95 coordinators, each representing about 30 workers, and were assigned the task of facilitating communication between workers and the union.

The third significant phase of the Maruti struggle is the present one following the 18 July 2012 incident and crackdown on workers. While union members have in each phase paid a price, in the form of suspensions, transfers or termination, the life imprisonment of union members and active workers in this third phase of struggle has so far been the heaviest price. It is remarkable that the huge setbacks in the form of a prolonged court case and the adverse judgment and conviction have still not demolished the fighting spirit of Maruti workers. Four of the active workers of the Manesar union, who were sacked after the 18 July incident, have organized themselves as Provisional Committee and are working in association with the present MSWU. Together they forced the management to hold the union elections in 2014, fielded their own panel of 12 candidates, 11 of whom won.

Working in a situation where the company is continuously trying to thwart them, the present MSWU has been also helping the accused and convicted workers with the court case. Workers at the Manesar plant donated money from their salaries to raise Rs. 9 lakhs to be given to the family of one of the convicted workers at the time of his sister's wedding. Recently families of all the workers convicted to life imprisonment were given some money collected through donations from the workers. This show of solidarity makes it clear that these workers understand the significance of a union and the challenge it can pose to the management.

After the judgment the Maruti Suzuki Mazdoor Sangh an umbrella organization of Maruti Suzuki unions (Suzuki Bikes, Belsonica,

FMI, Maruti Power Train, Maruti Gurgaon, Maruti Manesar) was formed. According to the Provisional Committee members some of the gains of the Maruti Manesar struggle are: 1) Unions got formed in the following companies. Power Train, Suzuki Bike, Perfetti Van Melle India Ltd, Nerolac, Munjal Showa etc. 2) Union elections were held in 2011 in Gurgaon unit after 2000, 3) All India Automobile Industry workers meeting was held in Gurgaon, 4) Workers from 17-18 companies participated in the protest against the judgment. The Manesar struggle may not be the sole cause of formation of unions at these plants, but it is true that amongst the workers in the belt there seems to be renewed efforts towards collective struggle. The union has in the face of enormous odds been able to inspire larger labour solidarities in the area. As a result of this, when an accident occurred at SPM Autocomp Systems Pvt. Ltd. on 6 April 2017, around 30 union leaders from neighbouring factories reached there in support of the protesting workers. Moreover encouraged by the Maruti workers many units in IMT Manesar has seen struggles for formation of unions, a recent example being the case of workers at the AISIN automobiles company.

The Maruti workers' continuing struggle after 2012 has to be seen in the context of changes in the working conditions that the company brought about. Some of these conditions did improve slightly. For instance the time for assembling of a car has been increased from 45 seconds to 51-52 seconds. The numbers of workers and workstations have also been increased, reducing the work pressure. Arbitrary production targets and keeping back the workers after the scheduled hours is also not the norm any longer. After the wage appraisals of 2012 and 2015, wages for the permanent workers have risen threefold and additionally, they are entitled to a share of the profits.

A closer look at some of these apparent gains shows, however, that these are part of a strategy intended to ensure a more vulnerable and pliant work-force, and to deter workers

from organising successfully. These measures have to be seen as a response by capital to the past history of workers' struggle. One of the major changes has been in the composition of the workforce, where the management has increased the ratio of contractual to permanent workers significantly. A rift has been sought to be created between the permanent and the contractual workers, aimed at creating resentment amongst the latter.

Presently, contract workers are called 'temporary workers' (TW) further categorised as Type I (TW-I) and Type II (TW-II). TW-I are hired for 7 months. After that a few among them are hired as TW-II workers, but again for only 7 months. For the Power Plant MPT, the period for TW-II is of 12 months. The wages are revised slightly to about Rs. 20,000, but after the completion of TW-II period, their work with the company is terminated.

The company has another category of contract workers called Company Trainees (CT) who could later become permanent. But after 2012 the number of CTs has been reduced drastically. The Student Trainee (ST) is another category of worker, created as part of the 'Skill India' plan of the government. All workers categorised as 'trainees' are paid less than others, even though they often do identical amount of work. Their terms of employment are also very precarious.

The dismal living conditions of the contract workers at Maruti i.e., the majority of the workforce, add to the precarity of their lives. They live in the villages surrounding the plant. Generally four or five workers share a small room with a monthly rental of 4500-5000 rupees. One bath/toilet has to be shared between 8-10 rooms. Drinking water has to be procured from the plant or bought at Rs 7 for 20 litres. While the TW get meals in the plant for a monthly deduction of Rs. 500, the CW have to buy food at Rs 52 per meal in the plant canteen. The working hours are 8 hours and 45 minutes to 'compensate' for 45 minutes of lunch break.

The Manesar plant has now only about 1688 regular/permanent workers, while 130 are CT, 430 are ST and 1800 are TWs, making the majority contractual. Since there is very little scope for contractual workers to become permanent, they have very little interest in getting organised. On the other hand as the permanent workers are paid much higher salaries, they tend to not take active interest in the union, as they have more at stake. In these conditions, unionisation at the plant has become more difficult. The union is still persisting though.

Further the company has also stopped recruiting permanent workers from nearby areas now and has started hiring workers from distant states. It provides buses to ferry permanent workers from their houses from as far as 80 kilometres away. This is seen by the workers as a strategy to make them go home every day, spending lesser time together. Together these two factors make it difficult for them to solidarise and organise.

For the companies and the state, it seems to be imperative that IMT Manesar be cleared of any impediments to profits, since the Manesar-Bawal belt is one of the investment regions selected for development in the first phase of

the ambitious Delhi-Mumbai Industrial Corridor. The Maruti management is playing a key role in controlling labour in the area, curbing a potential threat to profits by active intervention and example, as well as building solidarities of capital. For instance, earlier, Maruti would penalise its vendor companies, if they could not deliver on time on account of a workers' strike, but now, the Maruti management extends help to the vendor company for breaking the strike. The company's influence on the area, its power, is extended by the Corporate Social Responsibility project, under which it adopts villages, builds roads, urinals, electricity connections, liquor shops, temples, and it has also built an ITI (Industrial Training Institute). According to some workers, the company supplies car, food, furniture, etc. to the police. By doing this the company has ensured that workers cannot get much local support. Maruti's hegemony extends not just to other companies, or over labour in the area, but to state institutions like the police, Labour Department, other branches of the executive, and also, quite crucially, the judiciary. A close reading of the judgment in the following chapters illustrates this.

FACTS OF THE CASE

Incident of 18 July 2012 & its Aftermath

In the morning of 18 July 2012, an altercation took place between a worker Jiyalal and a supervisor Sangram Kishore Majhi at the Manesar unit of Maruti. The workers alleged that the supervisor insulted the worker using casteist abuses while the supervisor alleged that the worker had slapped him. Jiyalal was suspended on the same afternoon without any inquiry. The union members demanded revocation of suspension.

After that there were prolonged meetings and negotiations between the union members and 9 management personnel including

Awanish Dev. Two labour officials were also there. Workers of the shift that got over at 3 pm, remained on the premises at this time.

No one can clearly recount what happened thereafter. It appears that at around 7 pm some workers rushed out of the meeting hall and announced that their leaders were being beaten up. This made many other workers rush in. In the melee, a number of people from the managerial staff and some workers were injured. The HR manager, Awanish Dev was amongst those injured. It was around the same time, that a huge fire broke out in the campus engulfing parts of the factory, including the room where the negotiations were taking place.

This led to the death of Awanish Dev due to asphyxiation.

According to the workers several bouncers in company uniform were also present that day. The workers claim that bouncers attacked them and almost 30 workers got injured, two of them seriously. However all the injured workers went to private doctors for treatment, fearing arrests as the police had unleashed a spate of arbitrary arrests of workers immediately after the incident.

A Special Investigating Team was set up to investigate the case. It filed a charge sheet in October 2012 against 148 workers. Sixty five other workers were made accused in the case, and later declared 'proclaimed offenders' as they could not be caught. The case went to the Court of Sessions in 2013. During the five year long trial, 102 prosecution and 16 defence witnesses were examined.

The demand of the workers for an independent probe into the incident was never accepted.

In our last report on Maruti (*Driving Force: Labour Struggles and Violation of Workers Rights in Maruti Suzuki India Ltd.*, PUDR, July, 2013) we documented in detail the incident of 18 July 2012 in the Manesar unit in which a confrontation between the management and the workers led to the unfortunate death of a manager, Awanish Dev. After the incident 546 permanent workers and around 2000 contract workers and apprentices were terminated without any inquiry for allegedly participating in the violence. The report also gave an account of the immediate aftermath of the incident – the arbitrary arrests by the police in collusion with the Maruti management, harassment of the family members of the accused workers, torture of the arrested union leaders, violation of many procedural norms related to arrests and custody and most importantly police crackdown on all the protests held in Haryana in solidarity with the arrested and sacked workers.

Intimidation and Arrests of Workers

An FIR (No. 184/2012, P.S. Manesar, Haryana) was registered on the day of the incident at 11 pm, against 55 named and 500-600 unnamed workers at Manesar PS, on the basis of a complaint filed by Deepak Anand, General Manager Vigilance, and Prosecution Witness (PW) 29. The named accused included all the union members and the active sympathizers. On 19 July, the police called the labour contractors at Gate no. 2 of the plant at about 12:30 p.m. These labour contractors apparently in their statement before the court gave the names of 89 workers to the police. Over the next few days, families of the workers were severely harassed by the Haryana police, while trying to locate the union leaders. On 2 August the union members surrendered and by the end of the month a total of 147 had been taken into custody. Workers were beaten by in police custody, made to sign on blank papers. There were allegations of third degree torture of the union members.

The Manesar unit reopened on 22 August 2012, but 546 permanent workers were arbitrarily terminated. On 24 January 2013, one of the most active members among the terminated workers, Imran Khan, was arrested – under the category of 'unnamed accused.'

Issues Concerning Bail

According to the response to an RTI by the Public Information Officer and Assistant Police Commissioner, Police Headquarters Gurugram, most of the accused workers excepting one or two, were arrested in July-August 2012. Bail began to be granted only in February 2015, barring in case of Imran Khan, who was granted bail in February 2013 by the High Court. Between February and May 2015, 111 had been granted bail, after spending more than two and a half years in prison. All these workers were at the end acquitted. Four of those who got bail by July-August 2016, after a stay of four years in prison were also later acquitted by the court. (See Table 2)

Details of arrest and bail of the acquitted workers			
Bail Release Date	No. of workers	Date of arrest	Approx. Custody Period
17 March 2015	79	18 and 19 July 2012	2 years 8 months
05 May 2015	18	19 July to 26 September 2012	2 years 8-10 months
16 April 2015	2	25 July to 15 August 2012	2 years 8-9 months
13 April 2015	6	19 July to 17 August 2012	2 years 8-9 months
12 February 2013	1	24 January 2012	One year (High court)
23 February 2015	2	19 July 2012	2 years 7 months
23 March 2015	1	19 July 2012	2 years 6 months
11 August 2016	3	19 July to 29 August 2012	3 years
12 May 2015	2	21 July and 8 August 2012	2 years 9-10 months
09 April 2015	1	09 August 2012	2 years 8 months
21 July 2016	1	28 July 2012	4 years

As per the judgment of the convicted workers other than those who got life imprisonment, one was granted bail between August 2015 and 21 others got bail only in August- September 2016. Nine of the convicted workers remained in prison throughout.

Judgment

The Sessions Court at Gurgaon pronounced its judgment on the case after 5 years. While the judgment, was delivered on 10 March 2017, the quantum of punishment was announced on 18 March 2017, by Justice R.P.Goyal. Thirteen accused (Ram Mehar, Sandeep Dhillon, Ram Bilas, Sarabjit, Pawan Kumar, Sohan Kumar, Pradeep Gujjar, Ajmer Singh, Jiya Lal, Suresh Kumar, Amarjit, Dhanraj Bhambi, and Yogesh Kumar) were pronounced guilty (u/s 302, 307, 436, 427, 325, 452, 201/120-B/34 of Indian Penal Code (IPC) and given life imprisonment for murder. Four others were held guilty mainly for voluntarily causing hurt, trespass and unlawful assembly and were given a punishment of 5 years in jail. These 4 workers had already completely 3-4 years in jail and

this period was to be deducted from the 5 years sentence awarded to them. They were later granted bail by the High Court. The remaining 14 were held guilty of causing grievous harm and were released as they had already served their sentences.

While the judgment lists the period of incarceration already undergone by the 31 convicted in the case, it is silent about the same undergone by 117 workers who have been acquitted. The Court has held that they were wrongly implicated, but has done nothing to compensate them for this.

An appeal against the conviction was filed in Panjab and Haryana High Court Chandigarh in May 2017.

Complaint by Workers

A counter complaint was filed by one of the union members, Amarjit to the Judicial Magistrate, about bouncers hired by the company having assaulted Awanish Dev and having started the fire. Jiya Lal, Ram Mehar, Sarabjeet, Ajmer etc. were witnesses in that complaint. In this complaint the workers had

claimed that the management official S.B. Siddique directed the bouncers to break Awanish Dev's legs by taking him to the room

and then set the room on fire. This complaint was dismissed by the Judicial Magistrate.

CRITIQUE OF THE JUDGMENT

The prosecution's narrative of the events is based on the First Information Report (FIR). Describing the incident of 18 July 2012, the FIR states that "A worker, Jiya Lal slapped one supervisor Ramkishore Maji at around 8.30am. The supervisor complained to the authorities. The company management suspended Jiya Lal for indiscipline. Jiya Lal instigated the union that he had been wrongly suspended and thereafter the union instructed the A shift workers not to leave the premises, after their shift got over at 3 pm and that "they will have a decisive battle with the management today." Deepak Anand the main complainant in the FIR named 55 workers, and gave details like the post of the union office bearers and exact site of work of some of them. The FIR further states, that "At around 7 pm these workers together with another 500-600 workers, as per their plan, forcibly entered the office with *belcha, lathi, lohe ke sariye* (iron rods) and *danda* etc. and beat up members of the management whosoever was available to them with the intention to kill, put the office, company complex ... on fire and vandalized these. A number of persons were trapped inside the office due to the fire, and were escorted out by the police... As the fire was brought under control by fire brigades, a charred unrecognizable body (of a man) was found inside. It seems that he was badly beaten by the workers, fell down and died due to the fire. That our investigation has shown that the company GM HR Awanish Dev's whereabouts are still unknown and our apprehension is that this is his dead body".

There are several anomalies in each and every part of the prosecution's version and the trial. All of these have been discussed in detail in the following sections.

First Information Report

In the FIR, PW 29 gave names of 55 accused, including 13 active members of the union and other details.

A close scrutiny of the judgment and other case papers indicates that he could not have known who the attackers were because:

- He was on the ground floor at the time of the incident that occurred on the first floor.
- The court accepted that he saw the incident through the CCTV cameras located outside the building near the main gate on the ground floor. However the CCTV cameras were said to have got burnt in the incident. So it cannot be ascertained as to what exactly did he see through the camera. Also the police did not even collect the residues of the burnt camera. So there actually is no proof that the cameras were indeed burnt.
- He could not identify any worker except Jiya Lal in court and in fact admitted in his cross examination that none of these workers worked under him and he did not know any of them prior to the incident.

Which means the FIR was not actually his spontaneous complaint, but made through collective efforts with others. This seems likely as

- The official time of recording of FIR is 11 pm, but it reached the Metropolitan Magistrate's (MM) office after a gap of about 5 hours in the morning at around 5am.
- Another witness, Nitin Saraswat, Assistant Manager HR Department, (PW 101), gave two lists of workers to the SHO, one consisting of the names of 55 workers who were named in the FIR and the second

one having names of another 89 workers. In his cross examination he also admitted that the lists were prepared by him at 3 am on 19 July 2012, by retrieving these names from the Gurgaon office. He also could not identify the workers either in the PS or in court.

- Given the fact that the list containing names of 55 accused was prepared two hours before the FIR reached the MM office, the possibility of the FIR being prepared after the lists were procured cannot be ruled out.

Arrests

The procedures followed by the police in arresting the accused and their description of it were full of shortcomings.

- On 19 July 2012, the labour contractors (PW 40, 41, 42, and 43) were called to the plant by the police and in their statement u/s 161 CrPC gave the names of 89 workers. But these 89 workers had already been arrested by various Investigating Officers (IOs) on that day between 8am to 11 am, much before their names were given to the police by the labour contractors. It should also be noted that their names were neither there in the FIR, nor being given by anyone else and they were not identified by any of the PWs. Thus these workers were implicated and arrested illegally at the behest of the company.
- These labour contractors named the workers in alphabetical manner. Workers with names starting from A to G were named by Yadram (PW 43), those from G to P by Virender (PW 40), those from R to S by, Ashok Rana (PW 41) and the ones with names starting from S to V were named by Rakesh (PW 42). This is possible only if all of these workers allegedly involved in the attack were standing in alphabetical order or the labour contractors could spot them alphabetically. It is impossible that the

labour contractors hire the workers or remember their names in alphabetical order.

- These labour contractors also failed to identify any of the accused in court.
- The defence demanded that the illegal arrest of these 89 should be seen as part of the larger case, where the pattern of police complicity with Maruti management is visible. But the plea was rejected even though the judge agreed that the 89 workers were arrested by the IOs before they were named by the labour contractors. He observed that their arrest by IOs is a violation of the law of the land without any justification (para 469). The judge also observed these accused remained in illegal custody up to February, March or April 2015 (para 449) and wondered how can these lost years could be compensated (para 472), lost because of “negligence” by the police. He however did not pass any strictures against the IOs as demanded by the defence.

What seems to have happened was that of the two lists of workers prepared by management mentioned above, one was given to the labour contractors by the police and another was used to prepare the FIR. Thus right from the beginning the Maruti management dictated the case to the police.

The fact that the 89 workers were falsely implicated was subsequently proved as the court also acquitted all of these workers in the judgment. Thus these workers spent close to three years in prison for nothing. While acquitting them, the judge commented “Who will compensate the lost years?” Whom is the judge questioning – the police, the company, the company lawyers or himself? He should also know that it is not just three most productive years of all these and 28 other workers who were acquitted, which are ‘lost’; their very survival has been jeopardized. Even after the acquittal the company did not take them back and the other companies are also not ready to

employ them due to this tainted past. They are forced to take up odd underpaid jobs and are earning almost one fifth or so of what they would have been earning if they were not falsely framed. Emotional and economic losses of these workers and their families and the loss of reputation they have suffered in incalculable.

The argument of the defence that arrest of 89 people without being named suggests that the investigation itself was tainted, was also rejected by the judge, who termed this as negligence and did not see this as conspiracy on part of the police (Para 547). The police were also let off simply by stating that they had a lot of explaining to do. While the judge had no choice but to acquit these 89 workers citing dishonest investigation by the police, yet these same arguments are not applied in the case of the 31 workers who were convicted.

□ The narrative of the police about how the arrests were made is absolutely unbelievable. For example the SI Ghanshyam (PW 60) in his statement says on being informed by the SHO, went to the KMP Highway along with EHC Ravinder on 19 July and found 12 accused standing under the flyover along with the weapons of offence (para 252). They neither tried to run away on seeing the policemen nor offer any resistance and could be easily taken into custody by just two policemen. Similarly, on the same day SI Braham Prakash (PW 61), along with two police officials arrested 15 to 16 accused from gate number 4 of the plant (para 252). It is incredible that the workers after beating up the management officials, remained near the plant with the weapons, waiting to get arrested. Similarly many other police officers like ASI Ravi Dutt (PW 48), SI Ram Phal (PW 62), SI Mohd. Usman (PW 58) all arrested large groups of workers who were standing with the alleged weapons and did not run on seeing them. The striking similarity in the arrest narratives of all the policemen cannot be missed.

□ If this narrative is to be believed than their not running away from the police only shows that they were innocent and hence did not fear the police. The most obvious question is who would carry their weapon of offence along with them after committing a crime?

It should also be noted that there are no independent witnesses to the arrests.

Weapons of offence

Deepak Anand specifically named the weapons of offence as *belcha, lathi, danda, lohe ke saria* in the FIR, but changed these later to 'door beams' and 'shockers' in his statement u/s 161 of CrPC before the police recorded on 19 July 2012, and in the court. The two sets of weapons are absolutely different and the latter are parts of the cars. It's impossible that a person employed in the company would mistake parts of the cars as *belcha, lathi, danda* etc.

Actually the narrative was changed overnight. This was done because it would not have been possible to explain how the workers could bring so many *lathis, sarias, and belchas*, inside the premises, when they are checked before entering the factory and hence these would have been recovered from them at that time. So the weapons had to change to the ones available within the premises for the prosecution to weave its story.

In a criminal case weapons of offence are the most important evidence and change in these means that the case itself is being changed – and this is what the prosecution did. When the defence raised this point, the judge covered it up by saying that Deepak Anand in his complaint had used the word 'etc.' with the names of the weapons. And this word denotes the fact that there were other weapons involved in the offence. It is surprising that an employee of the company would include door beams and shockers in the term 'etc.' rather than naming them first instead of *sarias, belchas* and *lathis*.

Here it is also important to note that the Principal Investigation officer, DSP Om Prakash (PW 99), in his cross examination confirmed that he “did not notice any *lathi, danda* or *saria* in the plant.

The judge accused the defence of not confronting PW 29 on his statement to the magistrate made on 19 July 2012, but only on his complaint. While it can be accepted that as the statement is more elaborate than the complaint, there can be extra information in the statement, but quite obviously if there are conflicting facts in the initial complaint and the statement made later, then it is the statement, which would be seen as manipulated and would be challenged. What was the defence supposed to do? Ignore the contradictions, the changes made in the statement to suit the prosecution’s purpose?

Blocking of the staircase

According to the prosecution story, the workers put the rooms on the first floor (room M1 and the conference room) on fire, blocked the staircase so that the management people would not be able to come down and would be burnt in the fire. There is no evidence of blocking of staircase by the workers as is claimed by the key eyewitnesses. In fact some of the witnesses quoted the time of blocking of staircase as earlier than the time of occurrence of the incident.

One of the witnesses ASI Ghanshyam stated that he along with 6-7 persons was deputed near the staircase. He remained there throughout the incident. They did not allow anyone to go upstairs (para 364). This testimony refutes the charge against the workers that they blocked the management personnel from exiting.

In fact the judge also shares the defence’s doubts about blocking of staircase and says, “In so far as blocking of staircase by the accused is concerned, there is no clear cut evidence that who out of the workers had blocked the staircases. If the stair cases were blocked, then how the PWs had escaped from the first floor

and there were no burn injuries to PWs, if they were stopped from coming on the ground floor” (para 580). Then in para 626 again he clearly says that the PWs have only mentioned about two people standing near the staircase and not ‘blocking’ them.

Fire

According to the prosecution’s version, around 500-600 armed workers forcibly entered the conference room, assaulted the management staff and put the office, company complex, the Time office and the office record files on fire. Ram Mehar, Pardeep Gujar and Dhanraj were heard saying that the office should be set on fire and the management members be burnt alive and Jiya Lal, Ishwar, Narse, Sohan Kumar set the conference room on fire. Fire was first seen in the room adjacent to M1 room and later M1 room was also gutted. Several vehicles, the CCTV room, security room, and control room were burnt. The fire could only be put off by several fire brigades. Completely burnt body of Awanish Dev was found later from room M1. There are some important anomalies in this account.

- None of the PWs could identify any of the accused having lit the fire. Six PWs gave statements regarding the fire and its origin. These were Vikram Verma CGM Productions (PW1), Vikram Khazanchi, Vice President, (PW 2), Pradeep Kumar Roy, Vice President, (PW 3), Birendra Prasad, Vice President (PW 5), Salil Bihari Lal, DGM (PW 8), Vikram Sarin, GM Production, (PW 10), Chander Pal, Labour Inspector, (PW 31).
- Out of these, PW 1, PW 2 & PW 10 did not see how the fire started and hence did not name any one who started it.
- The other three categorically named Jiya Lal, Narse, Ishwar & Sohan Kumar, as having lit the fire. In that case they would have been able to identify these accused, but they couldn’t. Most interesting case is that of PW 8 who not only claimed to

Box 1 - The murder or death of Awanish Dev

The main witnesses amongst others who deposed about the attack on Awanish Dev were PW 1, PW 2, PW3, PW5, and PW10. According to them Awanish Dev was attacked inside M1 room, his arms were held by Yogesh and Amarjit, and he was assaulted by Ram Mehar, Sarabjeet, Ajmer, Ram Bilas and Pradeep on his legs. Thereafter room M1 was set on fire. Thirteen union members have been charged with murder and awarded life imprisonment on account of this. A scrutiny of the case papers however suggests that it has not been proved that these 13 accused actually assaulted him.

There are several inconsistencies in the statements of the witnesses mentioned. These are related to who all and how many people assaulted Awanish Dev as they have given different names and numbers of the assailants. If verbal accounts become the basis of conviction, than they should be foolproof, but they weren't.

Secondly post mortem of Awanish Dev was conducted on 19 July. And the post mortem report records that Awanish Dev was hit on non-vital parts of the body – on arms and legs. He died due to asphyxiation (as smoke filled his lungs) and not due to injuries or burning. So even if the eyewitness accounts with all the shortcomings are to be believed, injuries on non-vital organs indicate that the assaulters did not have an intention to kill him. It should also be noted that the fire was allegedly started outside M1 room, while the assault on Awanish Dev took place inside M1 room. So at the most the charge against the workers could be that of causing grievous hurt and not murder. However the judge concludes that “for sustaining the conviction, under section 307 IPC, the injuries need not be on the vital parts of the body” (para 377).

The statements of the witnesses were recorded between 24 July to 26 July, 6 to 8 days after the incident, and much after the post mortem report was out. The description of the assault in these statements matches the post mortem report. Delay in recording statements is a serious matter that creates doubts about their authenticity. But here the delay was condoned.

Awanish Dev was known to be sympathetic to the cause of the workers and helped them get their union registered. In April May 2011 Awanish Dev was admitted to Max hospital and the workers had visited him there. Even at the time of the incident the union had submitted a demand notice and Awanish Dev was supporting them on that. On the issue of demand letter apparently, Awanish Dev had offered to resign, but the management had not accepted his resignation. So it seems illogical that the workers would want to harm someone who favoured them. The judge asked the workers to prove Awanish Dev's sympathies with them by bringing his resignation letter. They could not have produced it because Awanish Dev gave his resignation papers to the company and not the workers.

It is also important to look at the allegations against these 13 convicted workers. Sandeep Dhillon and Dhanraj are only accused of exhortation, Suresh and Pawan of extortion and attack on other management persons. Jiya Lal and Sohan Kumar have unproven allegations of lighting the fire against them. Ram Mehar, Sarbjeet, Ajmer, Ram Bilas, Pradeep, Yogesh and Amarjit have allegations of beating up Awanish Dev, but are backed only by contradictory accounts. But at the end all thirteen accused are said to be responsible for everything from beating Awanish Dev, for setting the first floor rooms on fire and for putting the CCTV room and server on fire (para 579).

While it is true that Awanish Dev was incapacitated, who did it is not proved. It is also true that the building caught fire, and Awanish Dev died due to asphyxia as he could not escape but it has not been proved who lighted the fire and similarly there is no proof for the allegation that the staircase was blocked, even as per the Court's own judgment.

having set the material on table on fire, but also had conducted an inquiry against Jiya Lal in the morning of the incident. Even he wrongly identified a worker Pawan as Jiya Lal.

The judge just mentions that the witnesses did not or wrongly identified the accused and leaves it there, thus ignoring and condoning the non-identification (para 519). While pronouncing the thirteen accused as guilty of murder, the judge states that Jiya Lal and Sohan put the office on fire (para 527), even though there is no evidence how the fire occurred.

The defence argued that the fire and the assault are separate incidents and that the fire was lit by the management and the security staff in select areas, everything that got burnt was insured and the cost of all that got burnt was less than the cost the company would have incurred in implementing the demands of the workers.

These arguments and assertions may or may not be true, but what cannot be disputed is the fact that of the nearly forty public witnesses produced by the prosecution, all of whom were in the factory at the time of the fire, not a single witness could correctly name and identify any accused worker, that they had seen lighting the fire.

- If the management officials were caught on the first floor, while the rooms were on fire, they should have sustained burn injuries or there should have been some evidence of the fire on their body, clothes etc. But there was nothing. The defence also argued that no one except the deceased sustaining any burn injuries indicates that the fire occurred after the injured management officials and the workers had left the scene.
- Another point raised by the defence was that no inflammable material was recovered from the spot and such a big fire cannot happen with just match sticks. The FSL team that inspected the spot also did not mention in its report about finding any inflammable material from there. On this

the judge said that it is for the accused to explain with what material they put the M1 room on fire (para 586).

Thus the Maruti incident is a special criminal case where the accused have to explain how they committed the crime for which they are pleading not guilty, rather than the prosecution proving the case beyond reasonable doubt.

- It was pointed out by the defence that the fire could be accidental or could be due to electric short circuit. The judge rejected this possibility. As mentioned earlier Maruti workers, Amarjit and others had filed a case before the Judicial Magistrate in which they had claimed that the company had placed bouncers on the premises on the day of the incident who actually beat up Awanish Dev, lit the fire, that there was earlier enmity between Awanish Dev and the managerial staff and that Awanish Dev had even offered to resign.

Most astonishingly for rejecting the argument that the fire could be man-made, the judge used the counter complaint of the workers (para 633). He said that because the workers in their complaint had alleged that the fire was lit by bouncers, so it must be a man-made fire.

The judge said "Amarjit failed to explain in his complaint ... who were the bouncers who had set the M1 on fire. It means that in the absence of explanation by complainant Amarjit and his colleagues (union members) it were they who had set M1 room on fire" (para 586). And at another place he said "it cannot be said that the accused had not lit the fire or that the accused were not present (para 509). The filing of complaint by Amarjit and dismissal thereof by the learned JMIC (Judicial Magistrate I Class) and dismissal of revision by the learned Additional Sessions Judge is fatal to the case of defence and which adds to the credibility of prosecution".

Effectively the court is saying that as the workers could not prove their version, hence they must have caused the fire, injuries and the

death. That the X version of the workers has not been proved hence Y version of prosecution, which incidentally also could not be proved, must be true.

One of the statements of the judge in this regard needs special mention. He says, "Neither the small discrepancies in the FIR or in the statements of the witnesses do not belie the incident of firing (*sic*) by the accused person" (para 509). Never mind that the conviction is based on these very statements.

Bogus recovery of a matchbox cover:

According to the prosecution story during an inspection of the site in the afternoon of 19 July 2012, Dr. Rajesh Soni, Additional Director, Forensic Science Laboratory (FSL), found one matchbox cover and one door frame from inside the M1 room, which were both seized by PW 99 and Head Constable Satpal.

On this issue the following points are worth noting.

- It is unbelievable that in a room where everything, including the body of the deceased was charred, a matchbox cover survived unburnt. Also it was only the cover of the matchbox with no matchsticks.
- The PW in his statement had said that after removing the dead body of Awanish Dev from M1 room he had visited the said room in the morning after sunrise with 4-5 employees of the company and a photographer. How is it that none of them found the matchbox cover or the door frame at that time? These do not even appear in the photographs or the video of the site made.
- When something is recovered a memo is made which has signatures of the person who finds it. But here the recovery memo does not have signatures of Dr. Soni or any other independent witness for example any employee of the company. This means there was no independent witness to the seizure.

- Neither Dr. Soni nor the police lifted finger prints from the matchbox cover or the door frame recovered.
- Dr. Soni never gave a report of his visit. He was also not made a witness during the trial. Thus the identity of Dr. Soni remained elusive throughout. Apart from the verbal account of PW 99, there is no proof of his having visited the site and found these items.

All of these factors point to the possibility that these items were not really recovered from the spot and were subsequently planted. This could have been done to build a story of matchbox being used to light the fire and the door beam being used for attack. If these items were not planted then the police would have tested the matchbox cover for fingerprints to prove its story.

And quite cleverly the prosecution got witnesses to refer to the matchbox cover and it was produced as evidence, but did not actually say that the matchbox was used to light the fire. So in the case the matchbox is both there and not there.

The judge's line is exactly the same in this regard. He says "No doubt that the recovery memo of the matchbox is a matter of doubt because there was only matchbox cover. It was neither burnt nor it consisted of match sticks but it did not mean the accused did not light the fire, did not cause injuries to the management officials, did not cause the death of Awanish Dev". He says that the prosecution has not claimed that the matchbox was used to cause fire. That the matchbox cover did not burn is a vague argument and it happened probably because it was thrown at a place where it did not get burnt whereas the matchbox and sticks got burnt (para 511). And he further says that any irregularity or lapse on the part of IO cannot affect the prosecution case. He relied on the evidence of PW 5 who had stated in his cross-examination that the accused put the papers on fire using a matchbox,

even though he had changed his statement (para 515).

Recoveries

The prosecution story is that all the accused 148 workers were carrying the weapons, and some of them carried these out of the factory to their respective homes, located as far as 200 km away from the factory – in Gurgaon, Kishangarh or Kurukshetra district, among others. They are supposed to have hidden them there so that these could be recovered by the police 6-7 days after the incident. Several questions arise about these supposed recoveries.

- How were the weapons transported to the site of the violence? In the Maruti Manesar plant, door beams are used in the weld shop and the shockers are used in assembly. The distance between the two places is about 300 to 400 metres and these places are guarded by security staff. How could hundreds of workers pick up the alleged weapons from these places and bring to the site of incident without being noticed? The prosecution could not produce a single person who could testify to having seen the workers do so or carry them. On the contrary Shobhit Mittal, AGM, (PW 7), categorically stated in his cross-examination that he had not seen any worker carrying these from the weld shop or assembly shop and neither had any of the security guards complained to him about this (para 329, and para 537).
- Why was there a delay in reporting the supposed 'theft' of these materials by the Maruti management? This is particularly curious given the scale of this 'theft' and the importance of these objects for the prosecution's version of events. No FIR was filed by the company regarding this, as PWs and police personnel testified (SI Ram Kumar, PW 51, PW 61/ PW 99, para 330 – 333). It was only on 4 October 2012, over two and a half months after the incident

that Rajiv Kaul, DGM Materials (PW14), first informed the police that precisely 205 shockers and 1593 door beams were missing from the stock. He however still did not hand over the stock registers. Why did the police unquestioningly accept the management's belated recovery of memory about the 'theft', and add the charge of 'theft with intention to cause death/hurt' (Section 382 of IPC) to the list of offences of the accused workers?

- Is there any proof that the door beams and shockers 'recovered' from accused workers actually belonged to the Maruti company? Investigating officers themselves admitted that it could not be proved as they do not have any identification marks. Such beams can be purchased easily in the automobile manufacturing hub of Manesar. However, when the defence argued that the FSL examination had not conclusively proved that the weapons belonged to Maruti, the judge responded tangentially by saying that several items recovered from the accused had blood stains – an answer that was not remotely connected to the question!
- If the items recovered from accused had blood stains why was no forensic examination conducted to ascertain whether these stains belonged to those injured?
- Why was no attempt been made to segregate the evidence, i.e. to establish which particular beam or shocker was supposed to have been used by which particular worker? (para 85).
- Why were there no independent witnesses to any of the recoveries? Most recoveries of weapons were made in the private rented houses of the workers, but the police did not make the effort to speak to their landlords or get any proof that these houses or sites of recovery were connected to the accused. Thus in the case of Ram Bilas (para

88) and also Joginder, Krishan, Amit Nain, Vinod and Mahavir (para 93) among many others there were no independent witnesses to the recoveries and disclosure statements. Further, no fingerprints taken from these recovered weapons, which could connect the accused with the weapons.

- Apart from the weapons, 'blood stained uniforms' and identity cards were also allegedly recovered from the 13 workers convicted for life from their rented houses, lockers etc. Here too there were no

independent witnesses' testimonies to the recoveries (paras 88, 89 and 95). If, as the police allege, the uniforms of union members Ram Bilas, Ram Mehar, Sandeep Dhillon, Pawan Kumar, Sohan Kumar's were blood-stained at the time of recovery, why was there no effort made to match the blood on the uniforms with any of the management or the deceased manager?

- As with the weapons in the case of some workers, uniforms etc. too were recovered in the absence of the workers, based on their

Box 2 - The tale of the Wandering Tailors

All the accounts of the recoveries were curiously alike. All the policemen who effected the 'recoveries' of door beams and shockers ensured that these be wrapped in cloth, the same stitched by tailors, and marked by the police as evidence on the spot. By strange and convenient coincidence, the policemen were all carrying large lengths of cloth for this purpose. Even though the recoveries are alleged to have taken place in far-flung areas, the policemen concerned were in every instance able to summon tailors who coincidentally happened to be loitering about near each of these places, at that exact time, to stitch the cloths in which the recovered weapons were wrapped. Many paid the tailors out of their own pocket, generously and selflessly, and did not seek any reimbursement. All these policemen had by coordinated coincidental and collective amnesia, forgotten to keep a record of the tailors, and thus did not have any contact details for them.

The images conjured up by these recovery tales – of numerous resourceful policemen lugging about heavy bundles of cloth across the countryside on the off chance of making recoveries of large automobile parts that could have been used as weapons in the Maruti incident – is one which stretches the motto of 'being prepared' to new levels.

A few examples of these tailor-made recovery tales are given below:A

PW 60 SI Ghanshyam – "... I left the accused in the custody of HC Satpal and EHC Ravinder and then called the tailor who was found roaming in Sector 8, on his cycle. I returned back to the place of the apprehension of the accused within 10-15 minutes with tailor. I paid the charges of the tailor from my own pocket. I did not seek reimbursement from the government. As the tailor did not give me the receipt, as he was not having the same. Despite my possessing the plain paper, I did not take the step for preparation of receipt. The tailor was not joined in the investigation. I made no reference of the said facts in my case diary."

PW 49 ASI Brahmpal Singh - "The cloth used by me for making the sealed parcel was already with me in my investigation bag. It was 5 metres in length. A tailor was called there to prepare the sealed parcels. He was paid Rs. 50 for his labour. I did not obtain any receipt for paying the labour. I do not know his name, parentage and address. I did not mention this fact in my case diary."

'disclosure statements' which were extracted under torture.

Some of the acquitted workers have actually told the press, that in their cases the claims of recoveries were absolutely untrue (*The Hindu*, 25 September 2017).

The net result is that there is no proof that the accused workers were connected to the weapons and they in turn were connected to the assault. When this basic point was raised in court by the defence, the judge chose to overlook it by implying that the absence of evidence of any connection between weapons, the assault and the accused, did not mean that such a connection was not there (para 560).

It would not have been at all difficult for the prosecution to manufacture the evidence needed to fill these gaps and substantiate its story pertaining to the recovery of the weapons or the other objects, as it was acting in collusion with the company. But the prosecution did not bother to do so because of its overconfidence, which was not really misplaced.

These 'recoveries' rest on such weak and shaky evidence, that they closely resemble figments of imagination, as though they were not made at all. In this situation the possibility of the evidence having been planted cannot be ruled out. In fact it has been accepted by the judge. His lofty words in this connection while acquitting 117 workers are worth noting:

"I am not in line with the learned Public Prosecutor because if the theory put forward by the learned Public Prosecutor is accepted by the court then perhaps the police and investigating agencies would be the masters of fate of many innocent people because many innocent people may be trapped or recoveries may be planted. Only those recoveries may be of help to the prosecution if those are corroborated by other evidence available on record. This may be the evidence of independent witness, it may be FSL evidenceThe discovery from the accused as per his disclosure statement may be admissible to the extent of discovery but not that portion of

his disclosure statement which inculpates him because that portion has to be proved by some other admissible evidence." (para 174)

Strangely these same standards were not applied by the judge himself while convicting other workers on the basis of discoveries made in the same fashion.

Medical Evidence

The prosecution story hinged on the murderous assault allegedly carried out with door beams and shockers by the workers on 18 July 2012 on members of the management intending to kill them. However the charge murderous assault is not really substantiated by medical evidence. Also the medical evidence was gathered in private hospitals on the panel of the company. This makes the neutrality of the evidence suspect.

□ It is clear from the Medico Legal Certificates (MLC) that the injuries of all management personnel, the key PWs, were on non-vital parts. This is substantiated by the statements of several doctors (para 61, 62, 74, and 76) and also the X ray reports. In most of the cases the injuries were simple, and the discrepancies in the accounts of the witnesses and the MLCs indicate that the witnesses gave an exaggerated account of their injuries. In fact, some of the PWs who claimed they had been attacked sustained no injuries medically. They only complained of pain (para 55, 63).

In a criminal case if a witness exaggerates the extent of the assault on him, he is considered to be unreliable.

□ Five of the doctors Dr. Amit Kumar (PW 74), Dr. Baljit Kaur PW (46), Dr. Hazari Lal (PW 44), Dr. Vikas Gupta (PW 77), Dr. Swetam Kumar (PW 79) clearly stated that the injuries could have been caused by falling on hard or uneven surface. The judge rejected this alternative view of the injuries by saying that "direct evidence cannot be substituted for opinion evidence" (para

628), even though there is no conclusive evidence that the injuries were caused by the weapons indicated by the prosecution. Only one doctor said that the injuries of 6 persons whose MLCs he examined, could have been “caused by shockers and beams.” What cast his credibility into doubt was that he said this without having seen any x-rays of the injuries and on being questioned by the defence, he accepted that the same injuries could have been caused by a fall on a hard surface.

- While examining the nine doctors who had treated most of the management personnel, the police did not show them the weapons of offence, did not ask them whether these injuries could be caused by shockers or beams and also did not ask them which potential weapons could have caused such injuries.

Several police witnesses, including IOs and part IOs of the case, admitted that not a single door beam/shocker recovered from the accused was sent for FSL examination. It seems that the prosecution avoided forensic examination because they did not have any blood stains, or any other evidence that would support the prosecution’s case that they had been used to assault the management officials. Here it is also important to mention that the shockers could cause puncture wounds, because of their sharp edges, and none of the injured sustained such wounds.

Thus, the prosecution has failed to connect the alleged weapons of offence with the alleged injuries caused to the witnesses.

- The testimonies of the injured PWs are suspiciously similar in language and content. They alleged that several accused assaulted each one of them with door beams and shockers, with the intention to cause injuries to head. But all the witnesses identically warded off the attack using their hands and miraculously managed to escape injuries to heads or other vital parts. The similarity of their statements extends to

ridiculous extents – thus while supposedly warding off attack, many of them are believed to have raised their “left” hand/arm and successfully prevented workers from murderously assaulting them, but getting fractures in their arms.

Actually as the statements were recorded several days after the incident, it cannot be ruled out that these ‘warding off’ statements were a result of thought out strategy to cover up the fact that there were no injuries of vital organs.

- Some of the police officials did not visit any doctors after the incident, and yet submitted Medico Legal Certificates on the basis of which workers were additionally charged with injuring policemen in pursuit of their duty (Sections 332 and 353 IPC).

The judge accepted that the MLCs are bogus, but at the same time commented, “Merely because their MLCs are bogus that does not mean that the injuries of all PWs (eye witnesses) are bogus” (para 564). That bogus MLCs and wrong claims of injuries by policemen are signs of compromised investigation and could be a conspiracy to frame the workers, is ignored by the judge.

- It is important to contrast this with how workers’ injuries were treated. During the incident of 18 July, workers were also injured (para 627). Their names were not disclosed by prosecution and no workers were taken for medical examination. More importantly some workers had complained about severe torture in police custody after their arrest in late July - early August. In fact Dr. Deepak Mathur (PW 45) who examined them on 21 September 2012, almost a month after the arrest, had confirmed in court that they were still in pain due to those injuries. This allegation of custodial torture, and medical evidence were ignored, despite the fact that it had a bearing upon investigation and indicated the bias of the police.

Thus, for the court, the management personnel's complaint of pain, their own description of violence perpetrated on them, counted as truth, while workers' complaints of violent torture in state custody, substantiated by medical evidence, did not.

Alleged unlawful assembly and Criminal Conspiracy

'Criminal Conspiracy' in IPC is designated as a crime under section 120 B. "When two or more persons agree to do, or cause to be done (1) an illegal act or (2) an act which is not illegal by illegal means" – such an agreement is designated a 'criminal conspiracy.' Under Section 149 of the IPC, every member of an 'Unlawful Assembly' is considered guilty of an offence committed in pursuance of a common object.

According to the prosecution, all the accused, had, on the date of occurrence – as part of a 'criminal conspiracy' and pursuing their 'common object' – assembled in the plant, attacked the management officials, set the first floor rooms, ground floor, CCTV room, server room on fire, inflicted injuries on management officials and killed Awanish Dev (para 205). All 148 accused workers were initially charged under section 149 IPC. Finally, one of the charges against those 13 convicted for murder is 120 B IPC and one of the sections under which the rest of the 18 convicted workers were convicted is 149 IPC.

Was the imposition of these sections justified? Could the prosecution actually prove that workers had hatched a 'conspiracy' and had a 'common object'?

□ Prosecution stated that many workers of the morning shift (A shift) had stayed behind in the plant on 18 July even after their shift got over, indicating their common intent and plan. The judge observed that if a worker remains at his work place beyond office hours then he could be charged under section 452 IPC because it is believed that his intention is to commit an offence (para

590). He categorized the incident to be that of a criminal conspiracy with common intent (para 577, 637). It should be noted that 117 workers who were also made out to be involved in this 'criminal conspiracy' were later acquitted.

The fact of the matter was that these workers stayed back because their union was negotiating to revoke the illegal suspension of Jiya Lal, a co-worker. The presence of workers in their factory in solidarity with a fellow worker does not in itself indicate conspiracy.

□ The conspiracy theory is not really substantiated by the accounts of the PWs (PW2, PW5 etc.) who admitted in court that the situation was peaceful in the factory prior to 7 pm and no efforts were made to remove the workers from the factory, meaning that even the administration did not consider their presence as a threat. It was also stated that the police had been called in as a dispute was going on between labour and management, but clearly instructed not to intervene. Rajesh Kumar Malhotra, Department Manager, Manufacturing and Production (PW 6), admitted that work in shift B was going on smoothly up to around 7 pm (page 131 of evidence). None of the PWs apprehended trouble till 7 pm (Gopal Thapa, Dy. Manager, PW15, PW10 etc.), indicating that though the workers had stayed in the premises after the shift, they were sitting there in a peaceful manner and such an assembly cannot be called unlawful.

□ After 7 pm, what or who triggered the unrest has not been clearly established by the prosecution which claimed that the workers from the first floor, mostly union members, called out from the window and asked the larger body of workers assembled below to come upstairs. However PWs differ widely about who called out to the workers. While Vijay Veer Singh, Deputy Manager (PW 4), assigned this role to Pradeep (para 307), Deepak Anand said that

Box 3 - Non identification of accused workers

In a criminal trial when the witnesses name some accused they are required to identify them in court. In a case where there are several witnesses it is always possible that some of the witnesses will not be able to identify the accused, but that cannot be the case with most witnesses. In this case however, a large number of main eyewitnesses, i.e., the managerial staff, the labour contractors and the policemen who arrested the accused and whose accounts became basis of conviction literally unsubstantiated by any other evidence, failed to identify or wrongly identified the accused. This raises serious suspicions about the naming of the accused workers by these PWs.

Some of the glaring examples of these have been listed here. Though some of these examples are there at several places in the report, listed at one place they highlight the brazenness of the condoning of such immense falsity.

Witness	Description	Non or wrong identification
Labour contractors	Named 89 workers in their statement u/s 161 of Cr.PC	Failed to identify them.
Deepak Anand (Complainant)	Named 55 workers in the FIR	Failed to identify them. Failed to identify his own alleged assailants - Pradeep Naveen and Ramesh.
P.K.Roy and Birender Parshad (Vice Presidents)	Accused Jiya Lal and Sohan Kumar of setting the conference room on fire	Failed to identify them.
Dinesh Kumar (Labour cum conciliation officer), Mohinder Singh (Deputy Manager), D.C. Sharma (Supervisor), Amitabh Verma (AGM)		Failed to identify their own assailants.
LK Gupta (GM)	Named Sandeep Kumar and Sandeep as 'shouters', Bhagat Singh and Joginder as assailants of Mr. Tarun Akku, Pardeep, Mandeep, Bhagat, as his assailants	Did not identify anyone except Jiya Lal.
Rajesh Bhardwaj (AGM), Ashok Kumar (Supervisor), Manoj Yadav (Supervisor), Amit Gupta (Department officer), Rakesh Sehdev (Senior Manager)		Failed to identify their own assailants.
Salil Bihari (DGM HR Department)	Conducted inquiry against Jiya Lal in the afternoon on the day of the incident and had accused him of lighting the fire	Wrongly identified another worker Pawan as Jiya Lal. He also wrongly identified accused Ajmer as Suresh.

Gopal Thapa (DM)	Named Kamal as his assailant	Wrongly identified Subhash as Kamal
Ravi Datt (ASI)	Arrested 21 accused on 19 Aug 2012	Could identify only two of those he arrested - Vijay Pal and Sohan Lal
Ram Phal (SI)	Arrested 19 workers	Could identify only four.
Ghanshyam Das (SI)	Arrested 14 workers	Could not identify anyone.
Ram Kumar (SI), Hans Raj (Retired Inspector), Murari Lal (ASI), Babu Ram (SI), Devender Singh (ASI), Ajay Singh (SI), Joginder Singh (SI)	Arrested workers	Could not identify anyone.
Rajpal (SI)	Said to have made recoveries from Amarjit, Suresh Kumar, Ajmer and Sandeep	Could not identify anyone
Rajbir Singh (Inspector)	Had handed over the custody of accused Amarjit, Ajmer, Pardeep, Pawan, Ram Bilas, Ram Mehar, Sandeep, Suresh, Sohan and Sarbjeet to the IO	Could not identify anyone
Nitya Nand (ASI)	Was witness to disclosure statements and recoveries from accused Krishan, Jiya Lal and Gajender	Could not identify anyone
Brahampal Singh (ASI), Vinod Kumar (SI), Rakesh Kumar (ASI), Arun Kumar (Constable), Kanwar Bhan (SI)	Dealt with the accused during the course of investigation	Could not identify anyone.
Richhpal Singh (ASI)		Wrongly identified accused Pardeep as Sarbjeet and Partesh as Pardeep

The judge condoned and justified the non-identification by police officials saying, "The fact that the Investigating Officer did not identify the accused in the court after their arrest does not mean that they were not the accused. Perhaps the IOs have their faint memory or they remained busy in law and order duty and in the investigation of other cases. More over some of the accused have changed their appearance" (para 545). In para 474, the judge gives the name of 19 workers who were not identified by any witnesses and 3 workers who were wrongly identified. It's true that all of these were ultimately acquitted by the court. It is also true that non - identification also became basis of acquittals of some of the accused for example Kamal Singh (para 476). But we should also remember that some of the accused who have got life imprisonment were also either not identified (Jiya Lal, Sohan Kumar) or wrongly identified (Jiya Lal) by key witnesses.

The conclusion the judge finally drew is that "PWs have properly identified the accused and they have not identified some of the accused..."

And thus, the crime was supposedly 'solved' and the workers could be convicted for it. The judgment deems nothing can be fatal to the prosecution's case, only the workers become fatalities

it was Amarjeet's doing (para 273) and PW1, PW 2 and PW 8 said it was Ram Bilas (para306).

- The company has also not indicted the security in charge for any lapse on his part (statement of PW2), even though there were 300 private security personnel and this was a serious security lapse.

The prosecution actually failed to prove the existence of any agreement between the workers, prior planning or common intent to substantiate its charge of criminal conspiracy, but the charge of criminal conspiracy stayed for the 13 workers convicted for life imprisonment.

The site of recording Prosecution Witness Statements

The complicity of the police with the management is evident from the site of recording of statements of the PWs. Recording was not done at the police station but in the 'Japanese Hostel,' which is held in lease by Maruti Suzuki India Ltd. (MSIL) (para 390, 391; TOI, City- Gurgaon, Feb 23, 2011). The MSIL was given 'charge of operations' of this place for 10 years from 2007. A private property controlled by MSIL can hardly be a neutral or official site.

But the judge defended the police and said that the IO had to complete his investigation in time and 'sometimes the IO goes to the place of

Box 4: External factors influencing the judgment

The judgment should be seen in the light of the large quest for foreign investment evident in the state's policies and the thrust towards going to any extent to make the atmosphere conducive for that. The Maruti case investigation and judgment show how the legal fraternity shares this commitment. Not surprisingly, when asked why his office demanded the death sentence for the convicted Maruti workers, the special public prosecutor, Anurag Hooda, who represented the state, said "Our industrial growth has dipped, FDI has dried up." Vikas Pahwa, a lawyer for Maruti echoed this and argued in court for strict punishment with the comment that "Government of India is promoting 'Make in India', and with this kind of volatile environment and industrial unrest no country would come forward and invest in India". Judge KC Puri of Punjab and Haryana High Court, in response to some Maruti workers' appeal for bail, stated on 22 May 2013, "The incident is most unfortunate occurrence which has lowered the reputation of India in the estimation of the world. Foreign investors are not likely to invest the money in India out of fear of labour unrest." Thus, according to the public prosecutor, the lawyer for the company and the judge, the workers' larger crime, was that they were responsible for industrial unrest that would harm the possibility of foreign investment. This was considered a justifiable basis for denying them bail and demanding the harshest punishment of death, because their demands made investors uncomfortable.

The same understanding of the judiciary seems to have informed the judgment and the goal of creating ease of doing business appears to have been one its important determinants. In this perspective unionization and workers' assertion of labour rights are seen as the biggest hurdles in achieving it, and hence could be sacrificed as collateral damage.

The judgment is a signal to capital about the manner in which workers unrest would be dealt with, and an assurance to investors. It is also a signal to workers warning them against collective action.

Thus, the Maruti case can easily be regarded as an intrinsic element of the ongoing conflict between capital and labour. What is perceived as a law and order issue has much deeper political-economic connotations.

the witness depending upon his convenience to record evidence (para 552). The judge even suggested that the management was under some kind of threat from the workers, disregarding the fact that at the time large numbers of workers had been arrested and others were on the run, and there was massive police deployment.

No workers as witnesses

It is also noticeable that not a single worker was made witness by the prosecution, though hundreds of them were present at the time of the incident.

The prosecution argument was that workers would not testify against their fellow workers. However this logic can also hold for the management witnesses who by the same logic would also not testify against other management officials. Yet management witnesses' testimonies were taken, and workers' were not.

The judge also justified this stating that workers would be under pressure from the union (para 555). Logically though, the workers would have more to lose by testifying against the company than from their union leaders who were already imprisoned.

Not making the workers witness amounts to a kind of presumption of guilt. The judge's comment that the quality of witnesses mattered rather than the quantity amounts to an assumption of neutrality and superiority of management's version and unreliability of workers – making the class bias blatant.

In short the case was pre decided in favour of the management. And that is why such shoddy investigation and weak evidence could not hamper the conviction of most active members of the union. This complicity of the judiciary with the management demonstrated by the judgment is a key element behind the confidence of managements when they issue threats of 'doing Maruti' to workers.

IN CONCLUSION

Even though 31 workers have been convicted, 13 with life imprisonment for the 18 July 2012 incident at Maruti's Manesar plant, a close scrutiny of the case papers and the judgment demonstrate that it has not been proved through the investigation and trial that any workers or in particular these 31 workers were responsible for the violence or the fire. The conviction has solely been made on the basis of the verbal testimonies of the management personnel. Of the hundreds of workers present at the site, none was made witness in the case. There is absolutely nothing to prove that the convicted workers actually beat up managers and lighted the fire. Hence the inexplicable delays in recording of statement, non-identification of accused by witnesses, bogus MLCs of the witnesses, not connecting weapons to the accused or to injuries, non-availability of any supporting evidence like finger prints, unbelievable statements of the witnesses were all condoned.

Ignoring the shortcomings in the prosecution's case the judge observed, "there are certain lapses on the part of the Investigating Officers because the injured are stating when they stepped into the witness box that they were attacked by the accused with door beams and shockers and iron rods and they received the injuries and there is a medical evidence to that effect. If there is some lapse on the part of the I.O.s the complainant and the injured cannot be penalized for that. The direct evidence regarding beating of PWs and causing injuries to them with shockers and door beams cannot be brushed aside due to the lapses on the part of police officials" (para 539). While acquitting 117 workers the judge points out several shortcomings in the prosecution's case, to the extent of saying that the evidence could be planted. However in the same case, with the same kind of evidence, he does not apply the same standards while convicting 31 workers.

Hence it can be concluded that the entire trial was farcical, as the outcome was pre-decided. The driving force was to tame the active union members by giving them the harshest possible punishment. The judgment is sending out a strong message to workers throughout the country to accept the dictates of capital as the Maruti case is followed closely everywhere. The judgment is also governed by the economic dimensions of 'development' through investments. Teaching a lesson to Maruti workers was particularly important because of their history of undeterred struggle ever since the establishment of the company. The Maruti incident of 2012 and the case were thus indeed connected to industrial unrest, a part of the prolonged and ongoing conflict between capital and labour. What is perceived as a law and order issue has very deep political-economic connotations.

The sentence of life imprisonment to 13 active union members has so far been the heaviest prize paid by the Maruti workers, who have otherwise also suffered losses like transfers, suspensions and terminations for taking on the management.

The example of Maruti also shows that preventing the formation of the union, its de-recognition and not letting it function are the tools that capital uses to have its way. In this context it is also noticeable that while Article 19(1)(c) of the Indian Constitution gives the right to form association/union - this is one right in which the Supreme Court has long held (starting from All India Bank Employees Association versus North India Tribunal, 1962) that this right does not oblige the employer to recognise the union. In other words, where capital-labour issues are concerned, the judiciary does not seem to believe that constitutional rights can be implemented.

Unlike all other rights Trade Union rights are Group Rights which workers have wrested over a long struggle. For it to be made

infructuous because the Indian Constitution gives individual citizens rights means that constitutionally, workers as a group are disadvantaged and disenfranchised from realising the only right they have to counter the dominance of capital. For it is only by their collectivity that they can hope to at least somewhat counter the structural imbalance of class advantage ranked on the side of managements and capital, and raise their demands against exploitative working conditions, denial of rightful wages etc., that affect each of them individually. The right to form their own genuinely representative unions is thus the only right that makes it possible for workers to demand their basic rights. The risk of losing profits if workers' demands were to be conceded makes capital rally together to deny this right most consistently. That its denial amounts to a gross violation of workers' rights, not just of freedom but also to life with dignity and equality, among others, is not acknowledged by the state.

As the Maruti case judgment discussed here shows, not only do agencies and organs of the state like the police and judiciary, supposed to be guardians of the Constitution and rights of citizens, willfully ignore this violation, but consciously and very deliberately go out of their way to assist the management even when their version is blatantly fabricated. From the registration of FIR, investigation of the events, charge-sheeting, to the actual trial, the way in which the Maruti management, prosecution and the judiciary have dealt with the case shows how anti-worker or anti-union attitudes are inherent in the enforcement and implementation of law.

As we go to press now, the convicted Maruti workers await justice denied to them through a farcical trial and unfair judgment as their appeal remains pending in Punjab and Haryana High Court. The sheer might of state and capital ranked against them can only be countered by the support of civil society.





FARCE AND TRAGEDY

A reconstruction of the official narrative

A clear un-exaggerated summary reconstruction of the official narrative of the case is presented below:

Hundreds of workers cause a violent incident at Maruti's Manesar plant. They steal thousands of door beams and shockers, lug them hundreds of metres inside the plant, all the while remaining invisible. They enter the conference room to carry out murderous assault on the company managers. The alleged victims do not sustain any grievous injuries. Most managers raise their left hand in unison to defend themselves. Workers re-group and set the rooms on fire, prevent managers from leaving in order to kill them, but fail yet again. Miraculously despite the arson none of the more than hundred gathered managers and workers, sustain any burn injuries, although everything else, including the CCTV and attendance records get burnt. The workers asphyxiate the one manager who had been sympathetic to their cause.

Next morning, in course of the second visit to the completely burnt room, a pristine un-burnt matchbox cover and door beam are "recovered". No witnesses appear on record to verify the "recoveries," and even the forensic expert, who "recovered" these items, is not made a witness.

More Wonders Follow:

One manager provides names of 55 accused workers and four labour contractors separately submit names of accused in alphabetical order. Yet most of them fail to identify any of the workers they name. Meanwhile, names of 89 workers land in the lap of the police, who swoop and arrest them even before they were named by anyone. Meanwhile some of the accused workers wait in groups at different locations armed with their weapons of assault waiting to be arrested by not a posse of policemen but a single cop or at most two. Others reach their residences, as far away as Kurukshetra, still armed with the weapons, which they keep along with their blood stained clothes, so that the police could easily recover evidence of crime.

Police Show Ingenuity:

Policemen go to the residence of workers carrying vast lengths of cloth in their bags for packing the recoveries they know they will be making. They are able to find tailors to stitch cloth bags for recovered articles, but cannot find a single witness to the recoveries.

Since to err is human in the midst of this frenetic activity hunting for the accused the police personnel forget one of the most important parts of investigation, namely, recording statements of the key witnesses. Statements of the injured managers are recorded in a Maruti company leased Japanese Hostel, 6-7 days after the incident. The visual memory of a large number of witnesses fails them, so they are either unable to identify workers or wrongly identify, the workers they name, in court.

Accused helping the prosecution:

In the course of trial accused workers file a complaint, in a separate court, that it was the bouncers who actually beat up the management officials and set the premise on fire. The complaint is rejected. But the trial judge goes on to use this plea to prove the accused guilty. For the judge this complaint is proof of their presence at the site. Similarly the workers' claim that the bouncers lit the fire was proof enough that it was not an accidental fire and the fire was in fact lit by workers. Voila! The judge is confident that the accused carried out the crime!

No shred of evidence is required to link the workers to the crime. No forensic examination of the evidence collected or records like the daily diary, stock and attendance register are required to prove the workers' guilt. Verbal testimonies of the management officials outweigh the weightlessness of the evidence. Satisfied with these, bravely undaunted in the face of defence's call for evidence and proof, the judge accomplishes his mission to follow the script and likening himself to Napoleon Bonaparte in his judgment, believes that the word 'Impossible' is nowhere in his dictionary. The end result of his determination is the conviction of 31 workers with 13 getting life imprisonment.



PUDR's earlier reports on Maruti

- **Hard Drive : Working Conditions and Workers Struggle at Maruti (2001)**
- **पूँजी का पहिया : मारुति उद्योग में मज़दूरी के हालात और मज़दूर आंदोलन (2001)**
- **Freewheelin' Capital: illegal dismissals, forced 'voluntary' retirement and contractualisation of workforce at Maruti Udyog Ltd (2007)**
- **बेकाबू सरमायादार : मारुति में गैरकानूनी बर्खास्तगियाँ, ज़बर्दस्ती थोपी गई 'स्वैच्छिक' सेवानिवृति और ठेके पर मज़दूरों का रखा जाना (2007)**
- **Driving Force: Labour Struggles and Violation of Rights in Maruti Suzuki India Ltd. (2013)**
- **शोषण का पहिया : मारुति सुजुकी इंडिया लिमिटेड में मज़दूर संघर्ष और अधिकारों का हनन (2013)**

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