IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 2 of 2022
With
R/CRIMINAL APPEAL NO. 1710 of 2022
With
R/CRIMINAL APPEAL NO. 1917 of 2022
With
R/CRIMINAL APPEAL NO. 1710 of 2023
With
R/CRIMINAL APPEAL NO. 2106 of 2023
With
R/CRIMINAL APPEAL NO. 727 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
JAHID @ JAVED KUTUBUDDIN SHAIKH & ORS.

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APPEARANCE:

CRIMINAL CONFIRMATION CASE NO.2 OF 2022:

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for the Appellant- STATE

MR SOMNATH VATSA WITH MR ARJUN M JOSHI, ADVOCATES for

Justice A.Y.Kogje
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Respondent(s) No. 1 (Original accused No. 1),
Respondent(s) No. 3 (Original accused No. 3),
Respondent(s) No.13 (Original accused No.13),
Respondent(s) No.21 (Original accused No.32),
Respondent(s) No.29 (Original accused No.45),
Respondent(s) No.36 (Original accused No.70).

MS NITYA RAMAKRISHNAN, SENIOR ADVOCATE assisted by MS STUTI RAI and MR ARJUN M. JOSHI, ADVOCATES for the;
Respondent(s) No.34 (Original accused No.63).

MR HRIDAY BUCH (2372) with MR KHALID G SHAIKH, ADVOCATES for;

Respondent(s) No. 9 (Original accused No. 9),
Respondent(s) No.10 (Original accused No.10),
Respondent(s) No.11 (Original accused No.11),
Respondent(s) No.12 (Original accused No.12),
Respondent(s) No.19 (Original accused No.28),
Respondent(s) No.27 (Original accused No.42),
Respondent(s) No.28 (Original accused No.44),
Respondent(s) No.33 (Original accused No.60),
Respondent(s) No.35 (Original accused No.69).

DR YUG MOHIT CHAUDHARY with MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI, SIDDHARTH SHARMA and MR KHALID G SHAIKH, ADVOCATES for;

Respondent(s) No. 2 (Original accused No. 2),
Respondent(s) No.14 (Original accused No.14),
Respondent(s) No.16 (Original accused No.16),
Respondent(s) No.23 (Original accused No.37),
Respondent(s) No.30 (Original accused No.47),
Respondent(s) No.37 (Original accused No.75).

MR S. NAGAMUTHU, SENIOR ADVOCATE assisted by MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI and MR KHALID G SHAIKH, ADVOCATES for;

Respondent(s) No. 7 (Original accused No.7),
Respondent(s) No.18 (Original accused No.27).

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MR TEJAS BAROT, SENIOR ADVOCATE assisted by MR KHALID G SHAIKH, ADVOCATES for;

Respondent(s) No.31 (Original accused No.49).

MR MIHIR DESAI, SENIOR ADVOCATE assisted by MS SANSKRUTI YAGNIK and MR KHALID G. SHAIKH for;

Respondent(s) No. 4 (Original accused No. 4),
Respondent(s) No. 5 (Original accused No. 5),
Respondent(s) No. 6 (Original accused No. 6),
Respondent(s) No. 8 (Original accused No. 8),
Respondent(s) No.15 (Original accused No.15),
Respondent(s) No.17 (Original accused No.18),
Respondent(s) No.38 (Original accused No.78).

MR ABHAY THIPSAY, SENIOR ADVOCATE assisted by MR ASHUTOSH ABHAY THIPSAY, MR ABHINAV SEKHRI, MS SOWJHANYA SHANKARAN, MS DEEKSHA DWIVEDI, MS ARSHIYA GHOSE, MR GAGANJYOT SINGH, MR RONITH JOY, MR VISHVESH ACHARYA, MR UTKARSH DAVE and MR PIYUSH M. VALA, ADVOCATES for;

Respondent(s) No.20 (Original accused No.31),
Respondent(s) No.22 (Original accused No.36),
Respondent(s) No.24 (Original accused No.38),
Respondent(s) No.25 (Original accused No.39),
Respondent(s) No.26 (Original accused No.40),
Respondent(s) No.32 (Original accused No.50).

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CRIMINAL APPEAL NO.1710 OF 2022:

MR SOMNATH VATSA with MR ARJUN M. JOSHI, ADVOCATES for;

Appellant(s) No. 9 (Original accused No.13),
Appellant(s) No.23 (Original accused No.45).

MR MIHIR DESAI, SENIOR ADVOCATE assisted by MS SANSKRUTI YAGNIK and MR KHALID G. SHAIKH, ADVOCATES for;

Appellant(s) No. 1 (Original accused No. 4),

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Appellant(s) No. 2 (Original accused No. 5),
Appellant(s) No. 3 (Original accused No. 6),
Appellant(s) No. 4 (Original accused No. 8),
Appellant(s) No.11 (Original accused No.15),
Appellant(s) No.13 (Original accused No.18),
Appellant(s) No.30 (Original accused No.78).

DR YUG MOHIT CHAUDHARY with MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI, SIDDHARTH SHARMA and MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No.10 (Original accused No.14),
Appellant(s) No.12 (Original accused No.16),
Appellant(s) No.17 (Original accused No.37),
Appellant(s) No.24 (Original accused No.47),
Appellant(s) No.29 (Original accused No.75).

MR S. NAGAMUTHU, SENIOR ADVOCATE assisted by MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI and MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No.14 (Original accused No.27).

MR ABHAY THIPSAY, SENIOR ADVOCATE assisted by MR ASHUTOSH ABHAY THIPSAY, MR ABHINAV SEKHRI, MS SOWJHANYA SHANKARAN, MS DEEKSHA DWIVEDI, MS ARSHIYA GHOSE, MR GAGANJYOT SINGH, MR RONITH JOY, MR VISHVESH ACHARYA, MR UTKARSH DAVE and MR PIYUSH M. VALA, ADVOCATES for;

Appellant(s) No.15 (Original accused No.31),
Appellant(s) No.16 (Original accused No.36),
Appellant(s) No.18 (Original accused No.38),
Appellant(s) No.19 (Original accused No.39),
Appellant(s) No.20 (Original accused No.40),
Appellant(s) No.26 (Original accused No.50).

MR HRIDAY BUCH(2372) with MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No. 5 (Original accused No. 9),
Appellant(s) No. 6 (Original accused No.10),

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Appellant(s) No. 7 (Original accused No.11),
Appellant(s) No. 8 (Original accused No.12),
Appellant(s) No.21 (Original accused No.42),
Appellant(s) No.22 (Original accused No.44),
Appellant(s) No.27 (Original accused No.60),
Appellant(s) No.28 (Original accused No.69).

MR TEJAS BAROT, SENIOR ADVOCATE assisted by MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No.25 (Original accused No.49).

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for Respondent-State

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CRIMINAL APPEAL NO. 1917 of 2022:

MR MIHIR DESAI, SENIOR ADVOCATE assisted by MS SANSKRUTI YAGNIK and MR KHALID G. SHAIKH, ADVOCATES for;

Appellant(s) No. 1 (Original accused No.20),
Appellant(s) No. 4 (Original accused No.30),
Appellant(s) No.10 (Original accused No.74).

MR HRIDAY BUCH with MR KHALID G. SHAIKH, ADVOCATES for;

Appellant(s) No. 2 (Original accused No.21),
Appellant(s) No. 6 (Original accused No.43),
Appellant(s) No. 8 (Original accused No.59),
Appellant(s) No. 9 (Original accused No.66).

MS DEEKSHA DWIVEDI with MR VISHVESH ACHARYA and MR PIYUSH VALA, ADVOCATES for;

Appellant(s) No. 3 (Original accused No.22).

DR YUG MOHIT CHAUDHARY with MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI, SIDDHARTH SHARMA and MR KHALID G SHAIKH, ADVOCATES for;

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Appellant(s) No. 5 (Original accused No.35).

MR ASIM PANDYA, SENIOR ADVOCATE assisted by MR KHALID G. SHAIKH, ADVOCATE for the;

Appellant(s) No. 7 (Original accused No.46).

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for Respondent-State

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CRIMINAL APPEAL NO. 1710 of 2023:

MR SM VATSA with MR ARJUN M JOSHI, ADVOCATE for;

Appellant(s) No.1 (Original accused No.26),

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for Respondent-State

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CRIMINAL APPEAL NO. 2106 of 2023:

MR SOMNATH M. VATSA WITH MR ARJUN M JOSHI, ADVOCATE for;

Appellant(s) No.1 (Original accused No.63)

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for Respondent-State

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CRIMINAL APPEAL NO. 727 of 2024:

MR SOMNATH VATSA WITH MR ARJUN M JOSHI, ADVOCATES for;

Appellant(s) No. 1 (Original accused No. 1),
Appellant(s) No. 3 (Original accused No. 3),
Appellant(s) No. 5 (Original accused No.32),
Appellant(s) No. 6 (Original accused No.70).

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DR YUG MOHIT CHAUDHARY with MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI, SIDDHARTH SHARMA and MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No. 2 (Original accused No.2)

MR S. NAGAMUTHU, SENIOR ADVOCATE assisted by MS PAYOSHI ROY, MR MOHAMMED HASAN NIZAMI and MR KHALID G SHAIKH, ADVOCATES for;

Appellant(s) No. 4 (Original accused No.7)

MR MITESH AMIN, SPECIAL PUBLIC PROSECUTOR assisted by MR. AMIT PATEL, SPECIAL PUBLIC PROSECUTOR and MR KSHITIJ AMIN, SPECIAL PUBLIC PROSECUTOR for Respondent-State

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 07/07/2026

ORAL JUDGMENT
(PER: COURT)

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1. Introduction

1.1 Confirmation Case No.2 of 2022 is arising out of judgment dated 18.02.2022 by Additional Sessions Judge (Special Designated Judge for Speedy Trial of Serial Bomb Blast Cases) in Sessions Case No.38/2009 and others. The trial was conducted for several sessions cases clubbed together. Each of the Sessions Case arose from several charge-sheets filed after due investigation in connection with several FIRs registered at various Police stations both at Ahmedabad and Surat. The details of each are given at the relevant place in the judgment. Suffice it to mention here that 20 FIRs were registered in Ahmedabad on account of Serial Blasts at various locations under the respective Police stations, whereas 15 FIRs were registered for planting bombs at various locations within Surat city under several jurisdiction of separate Police stations. The bombs/explosives planted in Surat had remained

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unexploded.

1.2 The series of lethal explosions that took place in quick succession in a span of few hours is an outcome of planning and execution which was over a period, connected through a series of Training camps and meetings. These serial Blasts and Planting were a part of conspiracy hatched, which in itself is a part of yet larger conspiracy hatched to set such serial Blasts in various parts of the Country almost simultaneously, to cripple the Nation in every possible manner.

1.3 The Court may take note of the fact that indeed in a proximate period, the Nation witnessed similar type of serial Blasts, be it in Jaipur, Bangalore, Mumbai or Kolkata. Therefore, the incident of serial Blasts in Ahmedabad and planting of explosives is a result of conspiracy which in turn is a part of larger conspiracy.

1.4 It is the case of the State that the accused persons believed that the Muslims had suffered loss of lives and damage to properties as an aftermath of the Riots in Gujarat, following the incident of Sabarmati Train Burning known as Godhra Riots. Moreover, due to demolition of Babri Masjid and such other incidents, the accused had intention to take revenge and therefore, got together under the aegis of the banned organization SIMI.

1.5 The accused organized and got together at Vagamon in Kerala, in December, 2007, where the group of accused were imparted with physical and weapon training and, through lectures/debates, indoctrinated with the idea of 'Jihad', not only to take revenge, but also to establish Islamic Rule in India and for that purpose, to resort to terrorist attacks on the general public, including mass killings.

1.6 The Terror camp at Vagamon was registered as R.C.

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No.4/2010 NIA/DLI and was tried by the Special NIA Court at Ernakulam vide S.C. No.2/2011/NIA (Exh.9421), which resulted in conviction of several accused, who are also accused herein. Some of the accused tried herein have also been acquitted by Special NIA Court.

1.7 The second in sequence is the 'terror camp' in the forest of Pavagadh in Halol in Gujarat in January, 2008. Here also, there was physical and weapon training and also training in bomb-making. In this camp also, there were religious speeches inciting sentiments (Takrir) to get revenge for the losses suffered by Muslims and also to establish Islamic rule. To achieve this objective, it was decided to spread Anarchy by attacking public at large of Hindu community to achieve objective of Jihad.

1.8 Therefore, the accused persons belonging to different State and cities of M.P., U.P., Maharashtra, Karnataka, Gujarat had gathered at same time to attend these camps. They traveled together through public and private modes of transport and preparation was made to stay at selected and isolated spots both at Vagamon and Pavagadh for their designed activities.

1.9 Once having conspired and decided to achieve this common object to cause large-scale deaths and injuries to the Hindu community, and of damaging Government, public and private properties thereby terrorizing the citizens, the accused, at this stage of execution, identified Ahmedabad, Baroda and Surat to be the places to cause serial blasts.

1.10 Accordingly, series of meetings were conducted with different work being assigned to different accused i.e. (a) to identify rented premises for the meetings, (b) to procure articles like metals, nuts, ball-bearings, nails, bags, cycles, vehicles like car to be used for planting and causing explosion, (c) to identify crowded places by recce to plant

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such bombs, (d) to procure articles for assembling bombs like alarm clocks, circuits, wire, wooden planks etc. (e) to assemble the bomb, (f) to transfer the bombs in a camouflaged manner for planting, and (g) to actually plant the bombs. Therefore, the accused persons worked in unison, responsible for their own task.

1.11 To enhance the impact, the accused selected the place of explosions at two Government Hospitals as places for explosions and planted bombs with high explosives, including LPG cylinders, in a car stolen from Mumbai. In order to cover up their tracks/lead and mislead the investigation, the accused changed the registered number of the vehicle. The explosion at the hospital was timed and the vehicle was parked near the Trauma centre to cause maximum damage. The timing of the explosion at Government Hospital almost coincided with the time of arrival of injured persons from other blasts being brought to the Hospital in ambulances and, in fact, the explosion took place as planned, thereby affecting treatment facilities available to the injured of the other blasts which had occurred in other parts of the city.

1.12 Even in Puna Hospital, two cars packed with bomb and explosives were parked near the Hospital; one opposite to Puna General Hospital and the other at Baroda Prestige below Doctor House, where the bomb did not explode and four live bombs were recovered from these two places, making the intention of the accused very clear.

1.13 From the investigation papers, the Court has found that the Surat Bombs did not explode due to faulty mechanism, due to which from the battery source, sufficient current did not carry to ignite the detonator, leading to recovery of bombs in un-exploded condition from various hidden locations within Surat between 27-07-2008 to 09-08-2008. The resultant effect is gruesome murder of 56 citizens completely

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innocent and clueless about such an attack and 240 citizens seriously injured carrying the fear and scar for rest of the life, along with damage to public, Government and private property and thereby throwing the City and the State completely out of gear for several weeks, if not months together, creating a permanent fear in the heart of the citizens only made to suffer on religious grounds. It is with great restraint that the Court has to but-observe, it is not a mere coincidence that the deceased persons belonged to Hindu religion.

1.14 In the present trial, therefore, 547 number of Sessions cases were jointly tried, wherein 78 accused persons (along with 2 deceased accused) were charged, out of whom 28 accused persons and one approver was acquitted after being tendered pardoned, whereas 49 accused persons were convicted, of whom 38 were awarded capital punishment and 11 were sentenced to imprisonment for life.

1.15 Hearing on confirmation was commenced by learned Additional Advocate General with the assistance of learned Special Counsel; Shri Amit Patel with the reading of charge framed vide Exh-32 and also vide Exh-122. The Court has dealt with separately the issue of framing of two charges vide Exh-32 and Exh-122 respectively considering the orders passed under applications made by both the prosecution and the defence for consolidating the trial in connection with all the FIRs registered at Ahmedabad and Surat under Sessions Case No.38 of 2009, 547 Sessions Cases were consolidated.

1.16 It is submitted that first charge was vide Exh-32 pertaining to Ahmedabad blast, whereas second charge was Exh-122 pertaining to both the FIRs of Ahmedabad and Surat. 64 accused were charged vide Exh-122, whereas 34 accused were absconding and subsequent charges were framed as and when absconding accused came to be arrested

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during subsequent period. Accordingly, Exh-799 is the charge framed against Accused Nos.65, 66, 67 and 68.

Exh-956 is the charge framed against Accused Nos.69 and 70.

Exh-1300 is the charge framed against Accused No.71.

Exh-1847 is the charge framed against Accused No.72.

Exh-1935 is the charge framed against Accused No.73, 74.

Exh-6944 is the charge framed against Accused No.75.

Exh-7245 is the charge framed against Accused Nos.76, 77 and 78.

However, learned Additional Advocate General has focused on the charge bearing Exh-122, which according to the prosecution is complete charge.

1.17 Attention is drawn of this Court to the order passed by Hon'ble Supreme Court in the petition preferred after first charge came to be framed on 11-01-2010 for the purpose of transferring of the trial from Gujarat against 62 accused, which initially were the proceedings before Special Designated Court, was stayed, but stay subsequently came to be vacated and in this connection, reference was made to the decision of Hon'ble Apex Court in case of ***Jahid Shaikh & Ors. v/s. State of Gujarat & Anr.*** reported in ***2011 (7) SCC 762***.

1.18 At the stage, when first charge was framed on 11-01-2010 against 62 accused persons, the petition came to be filed before the Apex Court for transfer of the trial out of Gujarat and initially, by order dated 15.02.2010, proceedings were stayed. Later on in the judgment reported in 2011 (7) SCC 762, the petition filed by the Defence before the Hon'ble Apex Court came to be rejected making clear for the Special Designated Court to proceed ahead with the trial. In Para-42, Hon'ble Apex Court has held that the allegations made on the basis of which the transfer was sought outside State of Gujarat were more speculative then

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real. However, an option was kept open that in future, during the course of the trial, in case an apprehension raised by the defence, would prove to be real during the course of the trial, then they would be entitled to move afresh application before Hon'ble Apex Court with a relief to transfer the trial. However, there does not appear to be anything on record to indicate that subsequently any grievance was raised with regard to the conduct of trial or apprehension voiced by the defence on the basis of which transfer of trial was sought at any stage later on.

Summary of Witnesses Examined by Prosecution.

1.19 Learned Additional Advocate General has thereafter given outline with regard to the trial by submitting that in all 35 FIRs were registered, 20 FIRs registered at Ahmedabad and 15 FIRs registered at Surat. Outline is with regard to number of witnesses examined for various issues arising during the course of trial. The prosecution had proved death / murder of 56 citizens and injury to 240 citizens and damaged to private and public properties.

1.20 The prosecution has examined 29 prosecution witnesses to give exhibit to First Information Reports registered at respective Police Stations.

1.21 To prove 56 deaths in the Bomb Blast incident, 20 relatives of the deceased have been examined as prosecution witnesses, 67 witnesses, who are Medical Officers performing postmortem, 45 panch witnesses for the inquest panchnama and 3 prosecution witnesses for establishing identity of dead bodies.

1.22 26 prosecution witnesses were examined for recovery of articles from dead bodies of the deceased in the Bomb Blasts, 19 prosecution witnesses have been examined for the purpose of recovery

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of articles from injured persons, 46 prosecution witnesses have been examined for the purpose of panchnama of the scene of offences and 2 prosecution witnesses have been examined for damage to the vehicles. 65 prosecution witnesses have been examined for the purpose of establishing incident as they were bystanders.

1.23 60 prosecution witnesses are the witnesses, who are examined for establishing the preparation made by accused persons like procuring of various articles and materials used in the offence like cycle etc. 24 prosecution witnesses are Police Personnels, who have recorded FIRs and handed over investigation to the Police Officers. 97 prosecution witnesses have been examined, who are Police Officers, who have reached the scene of offence at the earliest and have participated in drawing of inquest panchnama of which 40 prosecution witnesses are for the incidents in Surat.

1.24 67 prosecution witnesses are panch witnesses, who are examined to prove the panchnama purportedly drawn under Section 27 and Section 8 of the Evidence Act, both for the incidents at Ahmedabad and Surat. 36 prosecution witnesses have been examined, who have stood as panch witnesses to the panchnamas drawn for various purpose like drawing of hand writing samples of the accused, panchnama of the places from where cars have been stolen from Bombay and kept at Surat or Bharuch before being used for planting bombs, Toll Plaza witnesses for the purpose of traveling of same cars towards Ahmedabad and some prosecution witnesses to identify Cyber-Cafe, which was used for the purpose of communication during commission of offence.

1.25 30 Scientific Officers, 28 FSL Officers, 2 Explosive Experts, 8 Executive Magistrates, who have performed Test Identification Parade, 10 prosecution witnesses for drawing of maps, 11 prosecution witnesses

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for the purpose of bringing on record sanctions granted for prosecution under Section 45 of UAPA / Section 196 of Cr.P.C., 12 prosecution witnesses for grant of sanction under Section 7 of Explosive Substance Act, 1 prosecution witness for sanction under the Arms Act and 41 Investigating Officers have been examined as prosecution witnesses.

1.26 This case consists of a confirmation of the death sentence and also, the appeals by convicts against their respective convictions. The confirmation case was opened by Additional Advocate General and the Special Public Prosecutor followed by submissions of the Defence counsels, which was in support of their appeals as well as opposing the confirmation. Learned Special Public Prosecutor thereafter responded to the arguments of the Defense Counsels and thereafter, again Defense Counsels were permitted to respond to the submissions made by learned Special Public Prosecutor. The entire day to day proceedings are recorded in the 'order sheet'.

1A. Confirmation Cases: Statutory Provisions, Procedure, Scope of High Court

1.27 Death penalty as a form of punishment has been a subject of constant discussion. Although many countries have abolished death penalty as a sentence, it continues to be a statutorily valid form of punishment in India. The 35th report of the Law Commission in the year 1967 dealt with the question on whether death penalty should be retained as a punishment which was answered in the affirmative. The 187th Law Commission Report in the year 2003, addressed the procedural flaws in imposing the death penalty however, it was not abolished. The 262nd Law Commission Report in the year 2016 advocated for abolishment of death penalty for all offences except

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terrorism related offences. However, such recommendations have not been adopted by the Legislature. Moreover, the Criminal Law (Amendment) Act, 2018 had introduced death penalty as a punishment for certain offenses such as, rape of a female under the age of 12 years.

1.28 It is to be noted that "Safeguards guaranteeing protection of the rights of those facing the death penalty" were approved by Economic and Social Council resolution 1984/50 of 25 May 1984. Among the many safeguards provided, one such safeguard was that "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." However, the application of death penalty in India is governed by the 'rarest of the rare' doctrine as laid down in the case of Bachan Singh v. State of Punjab [1982 (3) SCC 24]. Various legislations such as, The Indian Penal Code, 1860 (Bharatiya Nyay Sanhita, 2023), Unlawful Activities Prevention Act, 1967, Arms Act, 1959, etc are substantive laws which lay down death penalty as a form of punishment. However, the power to impose the death penalty is laid down by the Code of Criminal Procedure, 1973 (Bharatiya Nagarik Suraksha Sanhita, 2023). Section 28 of the CrPC (Section 22 BNSS) provides that the High Court may pass any sentence authorised by law and that the Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law which is subject to confirmation by the High Court. Hence, it appears that a restriction on the power of the Court of Session has been put by way of confirmation by the High Court. Additionally, another limitation has been put by Section 354 of CrPC (Section 393 of BNSS), wherein in the judgment by which such death penalty is imposed, special reasons for awarding such a sentence are to

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be mentioned.

Procedure of Confirmation by High Court:

1.29 The submission for confirmation by the High Court of the death sentence passed by the Court of Session is provided for under Chapter XXVIII of IPC (Chapter XXX of BNSS) particularly, Section 366 to Section 371 CrPC (Section 407 to Section 412 BNSS).

1.30 Under Section 366 CrPC (Section 407 BNSS) a sentence of death penalty passed by the Court of Session shall be submitted to the High Court and cannot be executed unless it is confirmed by it. The submission to the High Court for confirmation of the sentence is mandatory even in cases where the accused has not preferred an appeal against the judgment. Further, this section provides that such a person who has been sentenced to death penalty shall commit the convicted person to jail custody under a warrant.

1.31 Upon looking at this section, it thus appears that a judgment of a trial court cannot be executed unless confirmed by a higher forum which ensures safeguards against any arbitrary sentence that might have been passed.

1.32 Further, upon looking at Section 407 of BNSS it appears that the word 'shall be submitted to High Court' has been replaced with 'shall forthwith be submitted to High Court' which ensures that there is no inordinate delay in such cases as such a sentence often results in mental agony to the convicted person.

1.33 Further, Section 367 CrPC (Section 408 BNSS) empowers the High Court to make a further inquiry or to take such additional evidence which is bearing upon the guilt or innocence of the convicted person or can direct to make such an inquiry or take additional evidence.

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This ensures that any facts or evidence which might have been left out inadvertently or any such facts or evidence which have newly come to light can be considered in order to arrive at a just decision.

1.34 Further, Section 368 CrPC (Section 409 BNSS) provides for the power of the High Court in cases which have been submitted to it under Section 366 CrPC (Section 407 BNSS), namely:

i) It may confirm the sentence, or

ii) It may pass any other sentence which is warranted by law, or

iii) It may annul the conviction and convict the accused of any offence of which the Court of Session might have convicted him, or

iv) It may order a new trial on the same or an amended charge, or

v) It may acquit the accused person.

1.35 Hence, it appears that the High Court is not bound by the view of the Sessions Court and is free to come upon a conclusion after reappraisal and reassessment of the entire facts and law so as to satisfy itself beyond reasonable doubt that a case has been made out against the accused persons so as to justify the infliction of a death penalty.

1.36 Further, upon looking at the proviso to Section 368 CrPC (Section 409 BNSS), it appears that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. However, in the case of Emperor vs Narayan Ramchandra Jarag reported in (1948) 50 BOMLR 151 the Court has observed as under:

"The powers of the High Court in dealing with confirmation cases under this section are not affected by the provisions of S. 386 of the Code. The fact that an appeal has been referred by the accused cannot affect the exercise of those powers. It would make no difference even if the appeal

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preferred by the accused is technically heard before the final orders are passed in the confirmation case. Where both the confirmation case and the appeal arise from the same order of conviction, the uniform practice of the High Court has been to hear both the confirmation case and the appeal preferred by the accused together and to deal with the merits of the case on the basis that all material questions of fact and law can be agitated by the accused. This practice is fully justified by the provisions of the Criminal Procedural Code, 1973."

1.37 Further, Section 369 CrPC (Section 410 BNSS) provides that such confirmation or any new sentence passed by the High Court shall be made, passed and signed by at least 2 judges.

1.38 Thereafter, Section 371 CrPC (Section 412 BNSS) provides that such order of confirmation or any other order made by the High Court, the proper officer of the High Court shall without delay send a copy of order under the seal of the High Court and attested with his official signature to the Court of Session. Hence, upon reading this Section along with Section 413 of CrPC, it appears that the Court of Session is the executing court for effecting such orders passed by the High Court under Section 368 CrPC (Section 409 BNSS).

2. Overview of incidents of Ahmedabad and Surat

2.1. On 26/07/2008, about 22 (twenty-two) in total incidents of bomb blast had taken place in various areas of Ahmedabad City at various places at different times and one live bomb, without having exploded, was found out at 1 (one) place. One bomb was planted in the bus of AMTS at Kalol of Gandhinagar District; this live bomb was found out in front of the gate of Arvind Mills at Khatraj Village. In connection with each of those incidents, total 20 complaints were registered on that day in the police stations having jurisdictions of the concerned areas. All the facts of those complaints including the details

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like date, time and place of complaints and the persons who registered the complaint and other details of complaints are as under.

Details of Incidents of Bomb Blasts That Took Place in Ahmedabad City and at Kalol.

Details of Incident No.1 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
In the vehicle parking area in front of Trauma Centre of Civil Hospital and near the main gate of Trauma Centre	26/07/2008, during Hours 19-30 to 19-45	Shahibaug I-C.R. No.236/2008	Senior P.I. J.N. Parmar, Shahibaug Police Station

2.2. Brief facts of the complaint of the complainant J.N. Parmar, Senior P.I., Shahibaug Police Station, Ahmedabad City is such that, in the evening on 26/07/2008, upon receipt of the urgent messages regarding bomb blasts that took place in various area of Ahmedabad City, the complainant had reached while patrolling, at Camp Hanuman Temple since it was Saturday and there happens to be a huge crowd of people coming for darshan at Camp Hanuman Temple. Meanwhile, at about half past seven to quarter to eight, in front of the Civil Hospital Trauma Centre, upon receipt of the news that some bomb blasts took place in front of the Trauma Centre of Civil Hospital, he along with the staff members of the van had immediately reached in front of the Civil Hospital Trauma Centre. Upon seeing there, the vehicles lying in the parking area in front of the Trauma Centre were burning and the

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wreckage of the burning vehicles was lying in scattered condition within the circumference of about hundred meters and near the wall towards the East side from the main gate of the Trauma Centre, in the open space near the road, the dead bodies of the humans were lying in burnt and half-burnt conditions with body parts lying in scattered condition detached from the body. There were total-6 dead bodies of males. This place was crowded with people. They were screaming and shouting. It is revealed from the on-duty doctor of the Trauma Centre and staff members that two bomb blasts had occurred there at two different places; one at the vehicle parking area and other near the wall towards East from the main gate of Trauma Centre and as this bomb blasts occurred, many persons who were present at these places had sustained fatal physical injuries and they were immediately taken to the hospital for treatment, who are under treatment. Thus, on 26/07/2008, during 19-30 to 19-45 Hours, some anti-nationals with an intention to instigate communalism and spread terror and chaos, by hatching a criminal conspiracy for committing an act of sedition, causing serious injuries to many persons and death of six persons on the spot and damage to many vehicles on large scale and that they have escaped after committing the crime.

Details of Incident No. 2 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Khadia(1) Beside M.Narandas & Co. Medical Shop (2) ahead of Gokhale Pan House, Raipur Chakla (3) In front	26/07/2008, at 18-30	Khadia I- C.R. No.71/2008	Hitesh Rameshchandra Rana

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Area and place of incident	Date and time of incident	Police Station registering the offence and Crime Registration No.	Complainant
1	2	3	4
of shop named Milan Kirana Stores, Sarangpur Chakla			

2.3 Complainant Hitesh Rameshchandra Rana, resident of Ahmedabad had given complaint before the Second Police Inspector of Khadia Police Station. Brief facts of the complaint are such that, on 26/07/2008, complainant's son Snehal aged 11, had gone to take tuition in Sarangpur Golwad. He had gone to take him and while he was walking towards home along with him, meanwhile, at about half past six in the evening, while they were passing through Raipur Chakla, a bomb blast occurred beside the medial shop of Narandas. Therefore, while he was trying to run away taking his son Snehal, beside the shop of Vadilal Fountain, while approaching Gokhale Pan House, one other bomb blast had also occurred there immediately. On account of this bomb blast, some pellets had entered on the portion of right thigh and left ankle of the complainant which caused him to bleed and his son Snehal had sustained injuries due to such pellets of this bomb on the portion of his right wrist and heel, near knee, on the hip, on the left knee, thigh, on the left and right sides of the chest and on the right hand, feet and near the private part as well as on the hip region of other leg, which caused him to bleed profusely. Many persons had sustained physical injuries in the surrounding area and near the shop of M.Narayandas. At this time, a resident of Pol, Ashokbhai Bhikhabhai Rana had made the complainant and his son Snehal sit in the rickshaw with the help of other persons and brought them to V.S. Hospital and got them admitted in Ward no.15.

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When the complainant was made to sit in the rickshaw from Raipur Chakla, at that time, it was revealed that one bomb blast had also occurred in the Sarangpur Chakla and many persons had been injured, wherein (1) Ankit Shaileshkumar Modi (2) Vishal Ambrishkumar Raval (3) Amrutlal Asharam Nagar (4) One unknown male aged about 50, all these have died. Whereas, (1) Hemant Ashokbhai Rana (2) Dharmendra Ramanlal Gajjar (3) Rupalbhai Jitendrabhai Gandhi (4) Jitendrabhai Somabhai Modi (5) Aditya Rakeshbhai Jani (6) Thanaram Nathaji Ghanchi (7) Rajubhai Ukabhai Bhagora (8) Nainesh Dhimantbhai Dalal (9) Bhupendra Basnsilal Thakor (10) Hasumatiben, wife of Jagdishbhai Bhagwanbhai Kadia (11) Paresh Chandulal Mistri (12) Indiraben, wife of Ishwarbhai Somabhai Modi (13) Ankit Atulkumar Patel – have sustained injuries. Thus, on 26/07/2008, at about 6-30 o'clock, by hatching a conspiracy to disturb public administration and violate communal harmony, some unknown persons had, for serving their ulterior motive, committed an act of terrorism with an intention to cause losses of lives and property of the people, by planting the bomb in different cycles, effected two bomb blasts in Raipur Chakla and one bomb blast in Sarangpur Chakla at short intervals, caused death of the above-mentioned five persons and caused simple as well as serious injuries to aforementioned persons.

Details of Incident No. 3 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Outside Sarangpur Darwaja, on the road in front of shop of Janta Pan House	26/07/2008, during 18-30 to 18-45	Kalupur I- C.R. No.123/2008	Asudomal Thakordas Luhana (Sindhi)

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2.4 On July 26, 2008, between 6:00 PM and 6:45 PM, Asudomal Thakordas Luhana reported a bomb blast outside his cabin shop in Ahmedabad. Two individuals, Bacchan and a friend, who were smoking cigarettes near a bike in front of the shop.

2.5 There was a sudden blast, similar to a tire exploding, followed by heavy smoke. He then saw a bicycle with clothing pieces and small iron pellets scattered nearby. It was subsequently learnt that this was part of a series of bomb blasts across Ahmedabad. The complaint alleges that unknown individuals planted a bomb on the bicycle to spread fear, disrupt law and order, and incite communal disharmony, causing injuries and attempting to kill the victims.

Details of Incident No. 4 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
In public at Narol Circle, behind Hanumanji Temple	26/07/2008, during 18-15 to 18-30	Danilimda I- C.R. No.140/2008	Bhimcharan Ramdasbhai Manohar (Marathi)

2.6 On July 26, 2008, between 6:15 PM and 6:30 PM, Bhimcharan Ramdasbhai Manohar reported a bomb blast at Narol Cross Roads in Ahmedabad. He had parked his motorcycle behind the Hanumanji Temple and was standing nearby after having coffee when the explosion occurred.

2.7 Manohar sustained minor injuries to his left hand and left leg from flying debris, and a small child was also injured. An ambulance (108 Emergency Service) transported the child and two other injured individuals, including Navinbhai Kantibhai Bharwad, to the hospital.

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The complaint alleges that the bomb blast was a pre-planned conspiracy intended to spread terror and cause loss of life, resulting in injuries to multiple people.

Details of Incident No. 5 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Sarkhej Vasna Road, between Sarkhej to Amber Tower	26/07/2008, at 19-00	Sarkhej I-C.R. No.181/2008	Mansang Becharji Thakor

2.8 On July 26, 2008, at approximately 7:00 PM, Mansangji Becharji Thakor, the driver of AMTS Bus No. GJ-1-VV-8390, reported a bomb blast inside his bus. The bus was traveling between Chinubhainagar Odhav and Sarkhej with 30-40 passengers.

2.9 Earlier, the conductor had found a large purse on a seat behind the driver. Thakor instructed him to either return it if someone claimed it or deposit it at the Sarkhej Control Point.

2.10 The blast occurred in the evening, in the same area where the purse had been found. The explosion caused significant damage to the bus, including a broken metal sheet and roof, and resulted in fatal injuries and bleeding among the passengers. Thakor immediately drove to the Sarkhej Police Station. The complaint alleges a pre-planned conspiracy.

Details of Incident No. 6 and Gist of Complaint

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Area and place of incident	Date and time of incident	Police Station registering the offence and Crime Registration No.	Complainant
1	2	3	4
Govindvadi Vegetable Market Road Isanpur	26/07/2008, During 18-15 to 18-30	Isanpur I- C.R. No.190/2008	Amthabhai Govabhai Rabari

2.11 On July 26, 2008, at approximately 6:00 PM, Amthabhai Govabhai Rabari and his wife, Champaben, were at the Govindwadi Vegetable Market in Ahmedabad when a bomb blast occurred. Amthabhai had just handed a bag of vegetables to his wife near Abhimanyu Complex when the explosion happened.

2.12 Champaben sustained a serious injury to her throat, which began bleeding, while Amthabhai received injuries to both legs, hip, and left leg from debris. Other individuals in the market also suffered various injuries. An ambulance (108 emergency service) transported Amthabhai, his wife, and other injured persons to L.G. Hospital for treatment. The complaint states that this "cycle blast" was orchestrated by a terrorist group as part of a pre-planned conspiracy to spread terror and harm public life and property.

Details of Incident No. 7 and Complaint

Area and place of incident	Date and time of incident	Police Station registering the offence and Crime Registration No.	Complainant
1	2	3	4
Maninagar cross roads, in front of Pandits shop and in the lane in front of it.	26/07/2008, During 18-30 to 18-45	Maninagar I- C.R. No.203/2008	Harshadbhai Chandubhai Halani

2.13 Complainant Harshadbhai Chandubhai Halani, resident of

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27/2, Padmavati Park Society, Beside Gor No Kuvo, Canal road, Maninagar East, Ahmedabad City has given complaint before the Senior Police Inspector of Maninagar Police Station. Brief fact of the complaint is such that, on 26/07/2008, in the evening, the complainant and his nephew Hardik Ghanshyambhai Thakkar and his friend Kanubhai Jayantibhai Thakkar and Vimalbhai, four persons were standing under the tree situated in front of the Pandit Pan Shop situated at Maninagar Cross Roads and after giving order at the tea-stall, they were sitting on the motorcycle parked there. At that time, one old-type cycle was standing on its stand under the tree and something like tiffin was hung on it. Hardik, nephew of the complainant, was standing at the support of that cycle. Meanwhile, the tea was served and they had tea and while they were talking. At that time, at about half past six to quarter to seven, from the tiffin hung on the front portion of the cycle, with support of which the nephew Hardik was standing, suddenly there was an explosion with enormous sound and smoke started fuming out suddenly. As the glass, iron nails, and pellets flew due to blast, the complainant had sustained injuries due to being hit by the pieces of wreckage on the portion of his left hand, back and body and the nephew Hardik was hit by pieces of debris thrown out of the explosion, on the portion of his left wrist and right leg, throat, left eye and the other two friends Kanubhai and Vimalbhai had also sustained injuries due to being hit by pieces of wreckage. Immediately after this bomb blast occurred, within a span of two seconds, one other bomb blast occurred in the lane on the front side with enormous explosion, wherein, it came to be revealed that one Chirag Chandravadan Shah had died. As this incident took place, crowds of people started gathering. Friend Milanbhai immediately took the complainant for treatment at L.G.Hospital. Thus, during half past six to

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quarter to seven o'clock in the evening on 26/07/2008, as there occurred a sudden bomb blast with enormous sound at both the above places simultaneously and as the complainant and his nephew and other friends of the complainant had sustained injuries and that Chirag Shah had sustained injuries and died due to this bomb blast, the complaint against the unknown persons who escaped after planting bomb in the cycles.

Details of Incident No. 8 and Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Maninagar Jawahar Chowk Cross Roads, in public on the road opposite to the shop of Lakshmi Jewelers of Shivani Avenue	26/07/2008, at 18-30	Maninagar I- C.R. No.204/2008	Mayurbhai Dhirajlal Solanki

2.14 Complainant Mayurbhai Dhirajlal Solanki, resident of Prakashnagar Society, Maninagar, Ahmedabad had given complaint before Maninagar Police Station. Brief facts of the complaint is such that, at about six o'clock in the evening on 26/07/2008, the Complainant had left from home for walking and at about half past six in the evening, he was standing near a shop named "My Idea" near Shivani Avenue Complex near Jawahar Chowk Cross Roads and while he was trying to go towards the side of Jawahar Chowk Cross Roads, one big blast took place on the road ahead of "Lakshmi Jewelers" situated in Shivani Avenue Complex and people started running around. After some time, he saw that one bomb kept in the cloth on the cycle had exploded and

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the glasses of the Wagon R Car bearing No.GJ-1-HM-5102 parked beside the cycle had broken and blasted rear two tires of the car. As the complainant was at a distance of about 40 feet from the place of bomb blast, the complainant had minor injury on the portion of his chest. During the same time period when this incident had occurred, various incidents of bomb blasts had occurred at Maninagar AMTS Bus Stand, Maninagar Cross Roads, Isanpur Govindwadi Narol Circle and other areas of the City as well as near the L.G. Hospital. Thus, at about half past six o'clock in the evening on 26/07/2008, one old-type cycle in unclaimed condition was on its stand at the above place, wherein the bomb blast occurred with enormous explosion, due to which, an environment of fear had been created, thus an FIR came to be registered to hold an investigation.

Details of Incident No. 9 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Maninagar on the public road near the AMTS Bus Stand	26/07/2008, at 18-45	Maninagar I-C.R. No.205/2008	Jagdishbhai Bheraji Mena

2.15 On July 26, 2008, at approximately 6:45 PM, Jagdihsbhai Bheraji Mena**,** who works at Pravinbhai's tea stall near the Maninagar AMTS Bus Stand in Ahmedabad, reported a bomb blast.

2.16 He had gone to deliver tea in the nearby vegetable market and upon his return, a massive explosion occurred at the AMTS Bus Stand. Mena sustained injuries on his right hand (fist to wrist) and face with broken glass and pellets. He observed an AMTS bus near the stand with numerous holes in its metal body and broken glass, and an old

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bicycle with a bent front wheel lying flat between the bus and the stand. A cloth bag and a broken piece of plastic were found near the cycle, indicating where the bomb was planted. It was also noted that similar bomb blasts had occurred in other parts of Maninagar and the city. Mena's employer, Pravinbhai Bherusing Darbar, brought him for medical treatment. A investigation into the incident has been requested.

Details of Incident No. 10 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Maninagar Near the L.G. Hospital Compound Inside Gate No.2	26/07/2008, at 19-45	Maninagar I- C.R. No.206/2008	Krushnakant Mangaldas Chaudhari

2.17 On July 26, 2008, at approximately 7:45 PM, Krushnakant Mangaldas Chaudhari, a Building Surveyor on duty at Maninagar L.G. Hospital in Ahmedabad, reported a bomb blast that occurred near the hospital.

2.18 Earlier in the evening, around 6:45 PM, multiple bomb blasts had occurred in Maninagar and other areas of the city, bringing injured patients to L.G. Hospital. Deputy Municipal Commissioner M.S. Patel had instructed staff to gather near the garden in front of the laboratory. While he was there, a powerful explosion erupted from a car parked near L.G. Hospital Gate No. 2, accompanied by fire. The blast propelled numerous small iron and glass fragments, hitting Chaudhari on his right ear and rupturing his left eardrum, causing deafness. The hospital wall was also damaged, and a car and motorcycle nearby were burned. Driver Shashikant Ganpatrao Patil and Parmar sustained minor injuries. The

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complaint notes that these simultaneous blasts in Maninagar and the city area were caused by bombs planted on old bicycles. A legal inquiry into the matter has been requested.

Details of Incident No. 11 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Narol Circle, on the public road in front of Mittal Chambers	26/07/2008, at 18-30	Vatva I- C.R. No.218/2008	Kadarbhai Karimbhai Ajmeri

2.19 On July 26, 2008, at approximately 6:30 PM, Kadarbhai Karimbhai Ajmeri, a cutlery vendor, reported a bomb blast at Narol Circle in Ahmedabad, opposite Mittal Chambers. He was working at his cart on the footpath when a blast occurred behind it, causing him to sustain bleeding injuries to his lower back.

2.20 Upon observing, he saw an old bicycle with smoke emanating from a bag hanging on its handlebars. Two other individuals nearby were also injured: Javedhusen Ramzanbhai Rangrej sustained injuries to his right back, lips, and leg, while Mithunbhai Dhanabhai Rabari was injured on his left elbow. At the same time, another blast was heard near the Hanuman Temple at Narol Circle. The complaint alleges that an unknown person planted the bomb on the bicycle to spread fear, causing injuries to the complainant and others.

Details of Incident No. 12 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**

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1	2	3	4
In front of Diamond Pan Corner near Sardar Patel Diamond Market at Bapunagarand ahead of Shreeji Ice-cream shop in front of tea-stall in public at Nikol Chowky	26/07/2008 , During 18-30 to 19-00	Bapunagar I-C.R. No.220/2008	Ramesh Chhaganbhai Chandpara (Patel)

2.21 On July 26, 2008, between 6:30 PM and 7:00 PM, Rameshbhai Chhaganbhai Chandpara reported two successive bomb blasts in the Bapunagar Sardar Patel Market area of Ahmedabad.

2.22 Chandpara was at the Diamond Market and went to retrieve his motorcycle parked near Diamond Park Corner when a bomb exploded from a bag on a bicycle about ten feet away. He sustained bleeding injuries to his right arm and back from iron pellets. Other individuals were also injured.

2.23 As the injured were being taken to the nearby Dhanvantari Hospital, a second, bigger blast occurred from a bag on another bicycle parked near a motorcycle, close to Shreeji Ice-cream shop on the north side of Dhanvantari Hospital. This blast also hurled iron pellets, injuring more people. Chandpara estimated that 10 to 15 people sustained injuries of varying degrees, and one person died at the scene.

2.24 The complaint alleges that unknown persons, with malicious intent and as an act of terrorism, planted two bombs on different bicycles, which exploded at gradual intervals, causing injuries and one fatality.

Details of Incident No. 13 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**

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1	2	3	4
New HariNarayan Park Complex, opposite Jyoti Mobile shop, Hatkeshwar Road, Amraiwadi	26/07/2008, at 18-45 hrs	Amraiwadi I- C.R. No.273/2008	Unarmed Police Constable Pushpkant Keshavlal, Buckle No.9561, Amraiwadi Police Station.

2.25 On July 26, 2008, at approximately 6:45 PM, Unarmed Police Constable Pushpkant Keshavlal (Buckle No. 9561) of Amraiwadi Police Station reported a bomb blast near Hatkeshwar Circle in Ahmedabad. While on patrol with fellow constable Maheshkumar Swarupsinh, he learned of the explosion.

2.26 Upon reaching the scene, in front of the New Harinarayan Complex Jyoti mobile shop where vegetable carts are typically located, they observed a crowd, a bicycle with a torn cloth bag hanging from its steering, and scattered pieces of cloth and pellets on the ground. Police Inspector and staff were notified and arrived at the spot. It was learned that Hiraben Revabhai Parmar was injured in the blast and had been taken to the hospital by a 108 ambulance. The complaint alleges that a terrorist group conspired to plant a country-made bomb on the bicycle to spread chaos, disturbance, and fear, intending to cause death and physical injury to people like Hiraben Revabhai Parmar.

Details of Incident No. 14 and Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Near Hatkeshwar Circle, opposite Tejendra Complex, behind	26/07/2008, at 18-40 hrs.	Ramol I-C.R. No.321/2008	Dalsing Dhanraj Paswan.

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electric DP			

2.27 Complainant Dalsing Dhanraj Paswan, Mahavirnagar, Tarachand Ni Chali, Amraiwadi, Ahmedabad has given complaint before the Police Inspector of Ramol Police Station. Brief fact of the complaint is that, the complainant is doing business by keeping the fruit cart near the Telephone DP in front of Tejendra Complex at Hatkeshwar Circle and by his side son-in-law, Sanjay Amrutlal Paswan and Murarilal Agrawal are also doing business by keeping fruit cart. At about six o'clock on 26/07/2008, son of the complainant Omprakash and Babloo came to the fruit cart and at about half past six, the complainant was going to get bananas from the banana warehouse near the Jain Temple at Bhaipura Road. At that time, while coming near the road divider, there was a sudden blast behind the complainant and, therefore, when he saw after running near the cart, Sanjay Ramjilal Paswan and Murarilal Agrawal were lying down in wounded and bleeding condition, behind the DP, one cycle was lying with broken carrier. As someone called up Ambulance by dialing 108, before that, while they were taking the injured for treatment in the auto rickshaw, the complainant had heard a sound of blast near Archana School. Thus, at about 6-40 pm on 26/07/2008, at the above place, some unknown person had, with an intention to cause death and cause damage to public, planted a bomb in the cycle and caused an explosion, causing serious injuries to the son-in-law of the complainant, Sanjay Ramjilal Paswan and others.

Details of Incident No. 15 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4

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Hatkeshwar Opposite Bage Firdosh Police Line Vibhag-2, beside Kailashdham Society, in the Municipal Garbage Container	27/07/2008, at any time before 8-42 pm	Ramol I-C.R. No.322/2008	D.A.Desai, Senior Police Inspector, Ramol Police Station

2.28 On July 27, 2008, at 8:42 AM, D.A. Desai, Senior Police Inspector of Ramol Police Station**,** received a call from Ladubhai Contractor reporting a bomb in a garbage container at Kailashdham Society, Hatkeshwar Bage Firdos Line Vibhag-2. This report came amidst a series of serial bomb blasts that had occurred in Ahmedabad on July 26, 2008.

2.29 Upon immediate investigation, a timer bomb wrapped in paper was discovered in the garbage container. The area was cordoned off to prevent casualties. The timer was carefully detached, revealing two electric detonators and pellets. The bomb was seized for further investigation. The timer clock on the bomb was set for 12:00 (presumably PM). The complaint alleges that terrorist groups, with the ulterior motive of causing loss of life and property, spreading fear and terror, and intending further casualties, planted this bomb as part of a pre-planned conspiracy.

Details of Incident No. 16 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Odhav Rajendrapark in the vegetable market situated along the canal, in front of new Kamdar Post Office, on the public road.	26/07/2008, at 18-45 hrs	Odhav I- C.R. No.338/2008	Shivprasad Bhagwan Behra

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2.30 On July 26, 2008, at approximately 6:45 PM**,** Shivprasad Bhagwan Behra reported a bomb blast near the Rajendrapark Canal in Odhav, Ahmedabad, where vegetable carts are located. He had arrived at the vegetable market to buy potatoes and had parked his bicycle next to a smaller, unattended bicycle.

2.31 While his potatoes were being weighed, a loud blast occurred, kicking up dust. Pieces of cloth were seen near the unattended bicycle, and people dispersed in fear. Behra's own bicycle was knocked over. The seat of the unattended bicycle was blown off, and its rear carrier and fan were crushed. Small iron pellets were found scattered in the vicinity. The police arrived shortly after. The complaint alleges that an unknown person planted a bomb under the seat of the unattended bicycle with the intention to kill people, disrupt internal peace, and commit Sedition, as part of a larger conspiracy involving multiple blasts in Ahmedabad to spread fear among the public.

Details of Incident No. 17 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Odhav Khodiyarnagar cross roads on the National Highway No.8, opposite Mayur Dairy.	26/07/2008 at 18-45 pm	Odhav I- C.R. No.339/2008	Raju Asharam Kushwah

2.32 On July 26, 2008, at approximately 6:45 PM, Raju Asharam Kushwah, a "pakodi" (pani puri) vendor, reported a bomb blast in front of his cart near Khodiyarnagar Cross Roads in Odhav, Ahmedabad. He was serving customers, and the area was crowded with vegetable carts.

2.33 A large explosion occurred to the left and front of his cart,

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causing a dust cloud. He observed that the blast originated from a cloth bag, from which small pellets, apples, bananas, and potatoes were thrown. The bag itself was torn to pieces. The complaint alleges that lethal bombs were concealed within the cloth bag, hidden beneath items like potatoes, apples, and bananas. It further states that a terrorist organization, taking advantage of the crowd, conspired to kill people, disrupt the country's economy, and disturb internal peace, executing simultaneous bomb blasts across Ahmedabad to spread fear among the public.

Details of Incident No. 18 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
In public, in front of Kuldevi tea-stall on Thakkarnagar Approach Road	26/07/2008, during 18-30 o'clock to 18-45 o'clock	Naroda First C.R. No.400/2008	Shaileshbhai Nanubhai Patel

2.34 On July 26, 2008, at approximately 6:30 PM, Shaileshbhai Nanubhai Patel reported a bomb blast at the Kuldevi tea-stall on Thakkarnagar Approach Road in Ahmedabad. He was having tea after visiting Shanidev Temple on Krushnanagar Cross Road.

2.35 He observed a fair-complexioned boy, aged 26-27, wearing a black shirt and jeans, approach with a bicycle carrying two to three plastic bags on its steering. The boy placed the cycle on its stand and walked away towards Thakkarnagar Approach. Immediately, a sudden explosion occurred. Patel ran for safety towards India Colony, feeling a blow to his ear. Initially, he thought it was an electrical DP blast.

2.36 Upon looking back, he saw a black smoke cloud at the tea

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stall. The blast appeared to have originated from the plastic bags on the abandoned bicycle. The explosion was powerful, throwing one person about 25 feet towards National Highway No. 8, another person was lying injured at the blast site, a third near an STD booth by the tea-stall, and a fourth (an older man) towards the road from India Colony. Several other people were also injured, and some were transported to the hospital by auto-rickshaw.

2.37 The complaint alleges that antisocial elements, acting as anti-nationals, conspired to destabilize the government's economy and spread fear and terror. The unknown perpetrator brought the bomb in plastic bags on the bicycle with the intention to kill others, and fled after causing fatal injuries to the mentioned persons and others.

Details of Incident No. 19 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Naroda Bhagol, on the road in front of tea-stall named Paramshakti tea-stall situated under Mayur Restaurant	26/07/2008 during 18-30 to 18-45 hrs	Naroda I- C.R. No.401/2008	Mahobatsinh Udesinh Dabhi

2.38 On July 26, 2008, between 6:30 PM and 6:45 PM, Mahobatsinh Udesinh Dabhi, an employee at Paramshakti Tea-Stall under Mayur Restaurant at Naroda Bhagol, Ahmedabad, reported a bomb blast. Approximately 15 to 20 people were present at the tea stall, with several cycles parked nearby.

2.39 A large explosion occurred, causing customers and passersby

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to scatter. Dabhi sustained bleeding injuries to the right side of his back and his right leg (above and below the knee) from flying debris. A customer named Prabhatbhai Bodabhai Bariya also suffered a bleeding injury to his right hand. Dabhi observed a bicycle lying on the road with a blue plastic bag hanging from its steering, from which the blast originated. Dabhi sought treatment for his injuries, and Prabhatbhai Bodabhai Bariya received treatment at Dr. Babubhai Vyas's clinic in Naroda Gam.

2.40 The complaint alleges that anti-nationals conspired to spread terror and fear by planting the bomb in the blue plastic bag on the bicycle. This act was a pre-planned conspiracy with the intention to kill the complainant and others in public.

Details of Incident No. 20 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Near the gate of Arvind Mills, Khatraj	26/07/2008, at 19-30 o'clock	Kalol I- C.R. No.200/2008	R.V.Nandasana, P.I. Kalol Police Station.

2.41 On July 27, 2008, Police Inspector R.V. Nandasana received a call at 7:45 PM from the Security Officer of New Arvind Mill, Udhamsing Dogra, reporting a suspicious cloth-wrapped box outside the main gate, believed to be a bomb. Upon arrival at 8:30 PM, Dogra explained that an AMTS bus had arrived earlier, and after passengers disembarked, someone threw the box out, shouting about a bomb. Given recent bomb blasts on AMTS buses in Ahmedabad, a bomb was suspected.

2.42 The bomb disposal squad arrived at 10:00 PM. Police Sub-

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Inspector M.D. Parmar and his team, with a sniffer dog, examined the box and confirmed it was a bomb. They diffused and opened it, finding various items including: a "Giants XL" shirt, a torn T-shirt with a "made in Vietnam" tag, a blue polythene bag, a broken "Govardhan Agmark Pure Ghee" box, a crescent moon-shaped wooden box with iron pellets, a polythene bag with yellow sticky substance, Gujarat Samachar newspaper pages, a ruled notebook paper, a "Prince Company Alarm Watch" with "23" on its glass, a "BPL Company Pencil Power Shakti" battery, a 9-volt Dura Cell battery, a red "Armstrong" battery connector, and two detonators with white wires.

2.43 Around 12:30 AM, Dr. M.S. Dahiya, Deputy Director of Forensic Science, and his assistant, Shri Hingrajiya, also examined the device, confirming it was an explosive. Dr. Dahiya stated that an explosion would have caused catastrophic damage, shattering the bus and resulting in unimaginable loss of life, especially among innocent children, men, and women, leading to widespread chaos. He further added that if the blast occurred during a shift change, thousands of lives and properties would have been lost. All 13 items were seized via a Panchnama in the presence of witnesses Mohanji Bhalaji and Ganeshji Gandaji between 10:30 PM and 2:00 AM.

2.44 The complaint highlighted that similar serial bomb blasts had recently occurred in various areas of Ahmedabad (Civil Hospital, Maninagar, Narol, Isanpur, Bapunagar, Sarkhej), causing widespread fear, terror, and significant loss of life and property. The accused individuals, acting in collusion, had conspired to execute such blasts, intending to cause mass casualties, provoke communal riots nationwide, and inflict economic and social destruction. Their aim was to jeopardize national safety and internal security, instigate an internal war, and spread

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fear. The accused, with accomplices, are deemed to have waged war against the country, illegally obtained and used explosives, and engaged in a criminal conspiracy to spread communal disputes, chaos, and destroy national peace, tranquility, and law and order. The complaint sought action against these individuals.

2.45 From 27/07/2008 onwards on various dates, total-15 incidents of planting of bombs were reported at different places in the Surat City and the complaints in respect of each of such incidents were registered on the same day at the respective Police Stations having jurisdictions. Entire facts of all of such complaints like date, time, place, etc. are as under.

The details as to the incidents regarding planting of bombs which were recovered in the city of Surat are as under:

Details of Incidents of Bomb Planting in Surat City.

Details of Incident No. 1 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Opp. Nupur Hospital, in the divider on the left side of the road towards East, City Light Road, Surat	27/07/2008, during 11-20 to 15-45 Hours	DCB II- C.R. No.3019/2008	R.S.Patel, P.I. Umara Police Station, Surat City.

2.46 Brief fact of the complaint given by the complainant R.S.Patel, Police Inspector, Umara Police Station, Surat City is such that, on 27/07/2008, the complainant along with Police Sub-Inspector Bhagora and staff were in patrolling in Umara Police Station pursuant to

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the bomb blasts occurred in Ahmedabad City. At that time, at about 11-15 am information was received that one device like radio is lying in unclaimed condition near the road opposite Nupur Hospital, City Light Road. Therefore, upon examining into the grass of the road divider, one crescent moon-shaped article like box fitted with cello tape from all the four sides with edges of the wire left outside of it. As the said article was a bomb, the complainant had immediately diffused the bomb and took away to a safe place in the open compound situated on the left side of Umara Police Station so that the safety of general public is not put at risk and the higher officers were informed in this regard. The bomb disposal squad was called on the site and two panchas were called at the site at Umara Police Station and in their presence, the Scientific Officer Shri N.D. Patel and bomb disposal squad had examined it. One crescent moon-shaped box was affixed with blue-coloured cello tape using one red-coloured cello tape one red-coloured battery with plastic wire was affixed on the top of the tape. Its edges were attached with the wire that was passed through two holes kept on one side of the wood. The head of the bomb disposal team cut the cello tape and separated the battery and cut the packing material from its middle portion. The content of the said articles were described with detonating cap. Some nails have been fixed on the vulcanized sheet on the wooden structure. The scientific officer has stated that the said bomb is an ANFO bomb.

2.47 Further, as per the facts of the complaint, the parts found out from the said bomb, wherein galvanized sheet is fitted on the crescent moon shaped wooden structure stitched in white coloured cloth and from the sticky material (ANFO), which is in the plastic bag, a small portion for the sample was collected in small plastic transparent box In the meanwhile, as the weighing scale arrived, upon weighing the wooden

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structure with galvanized sheet, it came to be 0-334 grams and the white sticky material weighed 1004 grams and the bag with iron pellets weighed 1.180 grams. Thus, some unknown accused persons had, for violating the peace and tranquility of Surat City, by preparing the hand-made live ANFO bomb, planted the bomb at the above place by hatching a criminal conspiracy for causing harm to the public life and for spreading the fear, with an intention to cause losses to the lives and property of the public.

Details of Incident No. 2 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Sitapur Cross roads, opposite Puna General Hospital, Ambika Park, Opposite Saurashtra Hardware shop, Surat	27/07/2008, during 20-25 to 22-05 Hours	Kapodra II- C.R. No.175/2008	M.R.Chavda, P.I., Kapodra Police Station, Surat City

2.48 Brief fact of the complaint given by the complainant M.R. Chavda, P.I., Kapodra Police Station, Surat City is such that, on 27/07/2008, the complainant and Police Sub-Inspector and staff were on patrolling in the police station area pursuant to the bomb blasts occurred in Ahmedabad, information was received that a bomb is found at Sitanagar Cross Road, Opposite Puna General Hospital, opposite Ambika Park Shopping, in front of Saurashtra Hardware shop, in the black coloured Wagon R Car No.GJ-6-CD-3569, which was parked facing towards the Saurashtra Hardware shop. As it was found to be suspicious, immediately the officers of the bomb disposal squad were

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called on the site and the Bomb Disposal Officer Shri Sumanbhai V. Chaudhari and his team members arrived and checked this Wagor R car and since the doors of this Wagon R car were closed, they had broken the glass and opened its door and brought out the articles found out from the back side portion of dickey. At that time, FSL Officer N.D. Patel had arrived. As per the preliminary opinion of the Bomb Disposal Officer and FSL Officer, the articles found out from the car were the explosive substances. Two Panchas (1) Ramvinodsinh Ramvirsinh Rajput (2) Bharabhai Chaturbhai were called and made aware of the fact. The khakhi coloured hard board box brought out of the car contained steel box battery, electronic items, etc., and blue-coloured circular tin box beside the box and one polythene bag full of nuts and bolts and pellets. All of which were recognized as the articles for preparing the bomb by the FSL Officer, Bomb Squad Officer and their team members. As this material was explosive, the higher officers were informed of the fact of the incident and as it appeared prudent to taken the said explosive material to a safe place as per the officers of the bomb disposal squad and FLS Officer so that the safety of general public is not put at risk, the above explosive material and Wagor R car were taken to the open space beside Umara Police Station. Upon examination by the FSL Officer,

(1) One Khakhi coloured hard board box containing the articles.

(2) Detonator was found from one black-coloured plastic bag.

(3) Small steel containers, 10 in number, in two plastic bags,

(4) White coloured coils, total 83 in number, in one plastic bag.

(5) Three Prince Company Alarm Clocks, .

(6) One yellow-coloured multimeter for checking the wires.

(7) Total 123 round-shaped plastic containers without lids.

(8) Total 16, H.W. Hi Walt Company’s nine volt batteries,

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(9) Four Duracell Company Nine volt batteries.

(10) One Big size cello tape of Wonder Company.

(11) Medium size cello tape, (1).

(12) Small size cello tape, (1).

(13) 3-Black-coloured insulating tape.

(14) 2 - Red coloured insulating tape.

(15) Blue coloured insulating tape, (1).

(16) Bowl of yellow material, (3).

(17) One old used bowl of steel,

(18) Yellow coloured paste of ANFO Nitrogen (ammonia nitrate) in one plastic bag, weighing about one kilogram.

(19) Rajasthan Patrika paper.

(20) Vartahar named Marathi newspaper.

(21) One plastic bag containing black radium letters, including letter A-1 in number, B-1, C-1, D-1, E-1, F-1, G-1, H-1, J-1, K-1, L-1, M-1, N-1, P-1, Q-1, R-1, S-1, T-1, O-1, V-1, X-1, Y-1 and Z-1 in number and one other plastic bag with black radium English letters like 1-3 in number 2-3, 3-3, 4-3, 5-2, 6-3, 8-3, 9-3, 0-2 in number.

(22) Battery junction 15 in number, out of which 13 of red coloured and two of black coloured.

(23) An ICE with one timer.

(24) Total six Adapter for checking multimeter devices, 2 black coloured, 2 pink coloured, 2 violate coloured and 1 grey coloured.

(25) Diode to be placed on electric circuit with small bulbs, 24 in number,

(26) Pencil Cells of BPL Company, total 2.

(27) Parrot green coloured nylon string having length of 25 feet.

(28) One thin wire coil having length of about 27 feet.

(29) One brown coloured old cloth.

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(30) Red and yellow coloured wired adapters, 2 in number.

(31) About 100 ML of petrol in one plastic bottle.

2.49 Muddamal collected, as per the instruction of the FSL Officer, various samples were collected for analysis.

2.50 After putting the above samples of the Muddamal in separate plastic containers and applying lids on it and tying them with strings with the slips containing signatures of the complainant and panchas and sealing it Moreover, in one white plastic polythene sack, in plastic bag, there were total 9 marble-shaped pellets, weighting about 500 grams, and iron nuts and bolts of various sizes, weighing about 16 kilogram 680 grams. Out of both of them, samples of 500 grams each were taken out in two plastic containers and slips with signatures of the complainant and panchas were applied to it and it was sealed one blue coloured metal sheet container having brown coloured paste, which is found to be mixture of ammonium nitrate and fuel oil, it weighed 16 kilogram 500 grams, out of which, about 500 grams of paste was taken out as sample in one plastic container and it was sealed and seized as per the details of the Panchnama. Moreover, Wagon R car No.GJ-6-CD-3569 with Engine No. F10-AN 436018 and Chassis No. MA 3 EED 81 S 005 12064-7 and the explosive materials and the samples collected were seized after drawing the panchnama. Thus, for spreading the fear, some unknown persons have, by hatching a conspiracy, kept the articles like ANFO paste, detonator, etc., to make explosive hand-made bomb in one Wagon R Car No.GJ-6-CD-3569 and left it on the public road and escaped.

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Details of Incident No. 3 and Gist of Complaint

Area and place of incident	Date and time of incident	Police Station registering the offence and Crime Registration No.	Complainant
1	2	3	4
Varachha Road, Below Baroda Prestage Doctor House, Opposite Sonal Bhel House in the Parking area	27/07/2008, during 22-30 to 23-30 Hours	Kapodra II-C.R. No.176/2008	B.R.Halpati, P.S.I., Kapodra Police Station, Surat City

2.51 On July 26, 2008, following bomb blasts in Ahmedabad, an alert was issued across Gujarat. Police Sub-Inspector B.R. Halpati and his team were on vehicle and person checking patrol in Surat City when they received information about a suspicious Maruti Wagon R Car (No. GJ-6-CD-2908) parked near Sonal Bhel House.

2.52 Upon inspection, they saw a suspicious box and wrapped bunch inside the car. The area was cordoned off, higher officers were informed, and a bomb disposal team was called. The team arrived, broke the car's driver-side glass, and discovered four live bombs, which they immediately diffused on the spot.

2.53 An FSL Officer, Shri Champaneria, arrived and identified the diffused bombs as crescent moon-shaped wooden structures filled with ammonium nitrate paste, along with electric components, pellets, and nuts and bolts. All four bombs were diffused.

2.54 Further search of the car revealed:

- Two bundles of thin wires.
- Five 9-volt batteries (four "H.W. Hi-Watt" and one Duracell).
- An electric circuit with a timer.
- A blue tin box containing 22.5 kg of ammonium nitrate paste.
- Four plastic bags with 15 kg of iron pellets.

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- A plastic sack with 18.22 kg of nuts and bolts.
- 30 detonators.
- A plastic container of Castrol brake oil.
- Three 5-liter plastic carboys containing a total of 15 liters of petrol (two with "Tapti Os Gayatri Crude Products" stickers).
- Gujarat Samachar newspapers dated May 13, 2008, May 12, 2008, and June 30, 2008, and a torn Times of India paper dated June 11, 2008.
- A plastic tin with "Hotel Nyay Mandir, National Highway No. 8, Bharuch" written on it.
- Red, black, and silver radium strips.
- Cello tapes of Power Tech Company and Ambro Company.
- A small black rexine bag with red stripes ("Tyren").
- A black small handbag ("eagle brand").
- A car body cover by Kernict AST Mumbai.
- A VDS Company cutter.
- A rexine pouch labeled "First Aid Kit."
- A cloth bag with "Bagbaan Zaafrani Zarda" written on it.
- Four nylon cloths (yellow, brown, maroon, blue), 48 meters each.
- A white bag and a towel.
- A plastic paper board.

2.55 The seized items were meticulously marked and sealed for investigation, with samples taken. The car itself, a maroon Maruti Wagon R with registration number GJ-5-CD-2908, was sent to FSL, Surat for further investigation.

2.56 Based on the FSL Officer and Bomb Disposal Squad Officer's statements, the articles found—detonators, batteries, ammonium nitrate paste, pellets, nuts, and bolts—were all components

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used to prepare a bomb.

2.57 The complaint alleges that unknown individuals conspired to violate peace, spread fear and terror, by placing these explosive substances in the Maruti Wagon R car in a public area and abandoning it. Offence was registe3red under Section 5(A) of the Explosives Act, Sections 4, 5 of the Explosive Substance Act 1908, and Sections 120(B), 188 of the IPC.

Details of Incident No. 4 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Varachha L.H. Road, at the corner of Old Shakti Vijay Society, under transformer of small substation of Torrent Power Company	27/07/2008, during 20-30 to 21-30 Hours	Varachha II- C.R. No.363/2008	B.M.Patel, P.S.I., Varachha Police Station, Surat City

2.58 On July 26, 2008, amidst the serial bomb blasts in Ahmedabad, Police Sub-Inspector B.M. Patel and his team were patrolling in Surat City when they noticed a gathering near a transformer at Old Shakti Vijay Society, H.L. Road, Varachha. An inquiry revealed a suspicious green plastic bag under the transformer.

2.59 Additional police staff arrived, and the complainant informed the bomb disposal squad and FSL officers, who promptly reached the site. The bomb disposal squad examined the suspicious article and confirmed it to be a hand-made explosive bomb, which they successfully diffused on the spot.

2.60 In the presence of two witnesses and FSL scientific officers

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Shri D.N. Patel and Shri C.C. Patel, the following components were recovered from the diffused bomb:

1. A crescent moon-shaped wooden box with a tin plate and blue cello tape, weighing 390 grams.
2. A transparent plastic bag containing ammonium nitrate with fuel oil, weighing 1.05 kg (including the bag).
3. A transparent plastic bag containing pellets, weighing 1.184 kg.
4. A small red cello-taped battery, identified as a "Duracell Alkaline MN 1604 9v 6 LR61 MAR 2012 Made in EC" battery.
5. A white metal pencil-cell-shaped detonator with "PEL" inscribed on its tip.
6. An electronic circuit with wires.
7. Dainik Bhaskar newspaper dated June 6, 2008, used to wrap the ammonium nitrate and pellets.
8. The entire explosive bomb with its components, originally packed in a green plastic bag with wire wrapped around it.

2.61 The FSL scientific officer, C.C. Patel, requested the battery and electronic circuit for further examination, which were handed over in the presence of witnesses. Additionally, as per FSL Officer N.D. Patel's instructions, 50 grams of ammonium nitrate and 10 pellets were collected as samples. The remaining Muddamal (seized articles), excluding the electronic circuit and battery and the samples, were sealed as per the Panchnama details.

2.62 The complaint alleges that unknown persons intentionally planted this hand-made live explosive bomb under the transformer with the malicious intent to disrupt peace in Surat City, spread fear and terror, and cause harm to public life and property through a conspiracy. Therefore, an offense has been registered under Section 5(A) of the

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Explosive Act, Sections 4 and 5 of the Explosive Substance Act-1908, and Section 120(B) of the IPC.

Details of Incident No. 5 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Near Baroda Prestige Market, Near Samarpan Cloth Centre and Prestage Market Plot No.132, Near Ramzan Ali Building and Opposite Bansari Pan Centre shop situated in Matavadi J.B.Shopping 1, on the edge of road on the Peepal Tree.	29/07/2008, during 13-30 to 15-15 Hours	Varachha II- C.R. No.364/2008	B.M.Patel, P.S.I., Varachha Police Station, Surat City

2.63 On July 26, 2008, following bomb blasts in Ahmedabad, intensified vigilance for unclaimed articles was implemented in the Varachha Police Station area of Surat City. On July 29, 2008, Police Sub-Inspector B.M. Patel and his team, while patrolling the Labheshwar Police Chowky area, discovered two suspicious light green bags: one near the Ramzanali Building at Baroda Prestige Market and another near Samarpan Cloth Centre.

2.64 The bomb disposal squad and FSL officers were also called, who confirmed both articles were hand-made live explosive bombs. The bombs were successfully diffused, and the areas were cordoned off.

From the first diffused bomb, the following articles were found:

1. A crescent moon-shaped wooden box with blue cello tape (344 grams).

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2. A transparent plastic bag containing ammonium nitrate with fuel oil (972 grams with bag).
3. A transparent plastic bag containing pellets (1.156 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A cello-taped electronic circuit.
7. The explosive bomb parts, packed in a green plastic bag, a black plastic bag, samples of 50 grams of ammonium nitrate and 10 pellets were collected as per FSL instructions.

From the second diffused bomb, the following articles were found:

1. A crescent moon-shaped wooden box with blue cello tape (398 grams).
2. A transparent plastic bag containing ammonium nitrate with fuel oil (998 grams with bag).
3. A transparent plastic bag containing pellets (1.172 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A cello-taped electronic circuit.
7. The explosive bomb parts, packed in a green plastic bag, a black plastic bag, Samples of 50 grams of ammonium nitrate and 10 pellets were collected as per FSL instructions.

2.65 Subsequently, news of live bombs at J.B. Shopping, L.H. Road, Matavadi, led the bomb disposal squad and FSL officers to the location. In front of Bansari Pan Centre, near J.B. Shopping, a live bomb was found tied with wire in a light green plastic bag on a Peepal tree. The bomb disposal squad diffused it, and its components included:

1. A crescent moon-shaped wooden box with blue and red cello tape and tin plates (392 grams).

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2. A transparent plastic bag containing ammonium nitrate with fuel oil (994 grams with bag).
3. A transparent plastic bag containing pellets (1.230 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A cello-taped electronic circuit.
7. Other diffused bomb articles, including white, red, and joined white wire pieces, a light green plastic bag, a black plastic bag, iron wires, and Gujarat Samachar daily newspapers (Vadodara Edition dated May 24, 2008, June 18, 2008, and June 29, 2008). Samples of 50 grams of ammonium nitrate and 10 pellets were collected as per FSL instructions.

2.66 Therefore, an offense has been registered under Section 5(A) of the Explosive Act, Sections 4 and 5 of the Explosive Substance Act-1908, and Section 120(B) of the IPC.

Details of Incident No. 6 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Mahidharpura Hira Bazar, in the hole of wall on the upper portion of the shutter of Mayank Metalers, Surat	29/07/2008, during 16-30 to 17-15 Hours	Mahidharpura II-C.R. No.208/2008	A.R.Desai, Police Inspector, Mahidharpura Police Station, Surat City

2.67 On July 29, 2008, following serial bomb blasts in Ahmedabad on July 26, 2008, Police Inspector A.R. Desai of Mahidharpura Police Station, Surat City, was on patrol. At approximately 13:46, he received a call from ASI Ashok Devram of

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Hirabazar Police Chowky about a suspicious cloth bag near Bombay Pan Centre, close to the Chowky.

2.68 Upon arrival, P.I. Desai found a yellow and orange cloth bag with a suspicious article, attracting a crowd. A person named Ajay Sumatilal Shah informed the complainant that he initially found the bag on the shutter of "Mayank Metaler" shop. Noticing wires, he suspected a bomb, threw it to the ground, and immediately informed the police.

2.69 Suspecting a bomb, P.I. Desai, at about 13:55, contacted the control room via wireless to dispatch the bomb disposal squad to Hirabazar Police Chowky. The bomb disposal team promptly arrived, examined the suspicious article, and confirmed it was a hand-made explosive bomb. The team successfully diffused the live bomb.

2.70 In the presence of the bomb disposal squad and two witnesses, the following articles and parts were recovered from the diffused bomb:

1. One crescent moon-shaped wooden frame with a tin plate and red cello tape, weighing 310 grams.
2. A transparent plastic bag containing a white sticky material (identified as ammonium nitrate) with a transparent plastic cover, weighing 1.030 kg.
3. A transparent plastic bag containing pellets smeared with oil, arranged flatly.
4. A small red cello-taped "Duracell" battery ("Alkaline MN 1604 9V6LR61 MAR 2012 Made in EC").
5. Two white metal pencil-cell-shaped detonators with wires, bearing "RECL" on the tip and "G" on the lower portion, each with two thin white wires.
6. One electronic circuit wrapped with red cello tape, with electronic wires.

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7. Newspapers used for wrapping: Gujarat Samachar (Vadodara District Special Edition, Sunday, May 25, 2008) and Times of India (Surat, Wednesday, May 21, 2008).
8. The explosive bomb and its components were packed in two plastic bags (one green, one red, one brown) with wire tied around them.

2.71 For public safety, the bomb disposal squad transported the diffused bomb's components to the open compound of Mahidharpura Police Station. FSL Scientific Officers Shri Y.S. Patel and Shri P.M. Patel examined the white sticky material and confirmed it as ammonium nitrate. As per FSL instructions, 50 grams of ammonium nitrate and 10 pellets were collected as samples and placed in separate plastic containers.

2.72 The complaint alleges that unknown individuals conspired to place this hand-made live explosive bomb on the shutter of "Mayank Metaler" shop, near Hirabazar Police Chowky in Mahidharpura, with the intention of disturbing peace in Surat City, spreading fear and terror, and causing loss to public life and property.

Details of Incident No. 7 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Inside Katargam Gajera Circle, 1 KM towards North from Police Station, GIDC Police Chowky, Surat	29/07/2008, during 14-55 to 18-30 Hours	Katargam II- C.R. No.203/2008	K.S.Patel, Police Inspector, Katargam Police Station, Surat City

2.73 Brief fact of the complaint of the complainant K.S.Patel, Police Inspector, Katargam Police Station, Surat City is such that, on

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29/07/2008, complainant and Police Sub-Inspector V.J.Rathod, AND TEAM were in patrolling in the police station area for safety measures pursuant to the bomb blasts that occurred in Ahmedabad City and seizure of the material for preparation of bomb. In the meanwhile, the Police Station Officer received a vardhi from the control room that planted bombs have been REPORTED at Gajera Circle at Katargam. The PSO informed this to the complainant at 14-55 hrs. Therefore, the complainant explained the PSO to send the patrolling team to Gajera Circle and the complainant reached Gajera Circle and other patrolling personnel, reached there. They cordoned the Gajera Circle and removed the crowd of the people that had gathered there and called two persons of Panchas. One suspicious article packed in the shape of crescent moon container in the parrot green coloured plastic bag, which was lying between the plants and flowers and the circle's railing situated towards East from the electricity pole located in the middle of the garden made inside Gajera Circle, which appeared similar to the crescent shaped suspicious article that were recently found from Varachha, Kapodra area. Therefore, upon verification in the railing of the other part of the circle, towards the West side under the plants and flowers, such type of other parcel was seen and towards the North of the railing of the said Circle, the similar type of other suspicious parcel with black coloured packing was found out. Therefore, the complainant had informed the bomb disposal squad and FLS officers in this regard. They had reached at the site with their squad and the FSL Officer Shri N.D.Patel had also arrived and the in-charge of the bomb disposal squad had made verification regarding the said suspicious article, it was found to be a bomb. Therefore, he along with members of his squad had diffused all the three bombs. Upon opening the said hand-made diffused bombs by the bomb

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disposal squad team, in presence of the FSL Officer N.D.Patel and Panchas, below-mentioned material was found out.

1. Crescent moon shaped wooden frame structure with galvanized yellow coloured tin fitted above and under it and 2 detonators with wires and Duracell battery, ammonium nitrate total 990 grams, iron pellets with oil weighing 1.204 kilograms and electric circuit, as well as –
2. Crescent moon shaped wooden frame, with red-coloured tin under it and rexine over it, 2 detonators, Duracell battery, ammonium nitrate weighing 1.040 kilogram, iron pellets with oil weighing 1.170 kilograms, electric circuit, as well as in the third bomb-
3. Crescent moon shaped wooden frame, blue-coloured coating and tin under it with rexine on the upper portion, 1 detonator, Duracell battery, ammonium nitrate – 960, iron pellets total – 1.186 Kilogram, electric circuit.

2.74 Out of the above explosive articles and material, which was found out from the parrot green coloured plastic bag and one black coloured plastic bag, as per the instructions of the FLS Office N.D.Patel who was present at the site, one diffuse detonator from each of them and pellets, 10 in number, from each of the three bombs and wooden frame and electronic circuit, battery and 50 grams of ammonium nitrate from the three bombs were brought out for sample and the Muddamal for the sample and the Muddamal except for the sample were sealed as per the detailed of the Panchnama and given Mark numbers and seized for the investigation.

2.75 Thus, accused had planted 3 (three) hand-made live explosive bombs in the Katargam, Gajera Circle, among the plants and flowers of railing, with an intention to violate peace of Surat City and for spreading fear and terror and for causing loss to the lives and

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property of the public by hatching a conspiracy and, thereby, they have committed an offence under Section 5(A) of the Explosive Act and Sections-4,5, of the Explosive Substance Act-1908 and Section 120(B) of the IPC.

Details of Incident No. 8 and Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
On the iron angle of the hoarding installed On the Varachha overbridge pole No.98, In Varachha Minibazar Mohan's Chawl, on the bunion tree located near the scale of Anil Choksi and on the roof in front of this tree and in the hoarding of the overbridge located towards North from Mohan Chawl and on the hoarding of the Varachha overbridge located towards North from Bhavna Ford	29/07/2008, during 15-30 to 15-45 Hours	Varachha II-C.R. No.365/2008	R.R.Ahir, Police Sub-Inspector, Varachha Police Station, Surat City

2.76 Brief facts of the complaint of the complainant R.R.Ahir, Police Sub-Inspector, Varachha Police Station, Surat City is such that, on 26/07/2008, serial bomb blasts had occurred at various places in Ahmedabad City. In this connection, for the last three days, in the Varachha Police Station area, the residents and shopkeepers were orally instructed to be vigilant regarding any unclaimed articles and report if any such articles are found. For the safety measures in Varachha area, on 29/07/2008, the complainant and Police Constable Mukesh Ishwarbhai were in patrolling in Matavadi Police Chowky area. Meanwhile, at about

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1-45 Hours, news were received that one live bomb has been found on the Varachha Main Road, near J.D. Restaurant, on the iron hoarding affixed on pole No.98 of the overbridge and upon reaching there, it was revealed that one light green coloured bag was having some suspicious articles. Higher officer was informed, the higher officer had informed the bomb disposal squad and FSL Officer, they had also arrived at the site and upon examining it, the said article was found to be an explosive hand-made bomb. Therefore, the persons of bomb disposal squad had diffused the said hand-made live bomb and the said place was cordoned by the police personnel. The articles found out from the said diffused bomb are as under.

(1) Crescent moon shaped box with wooden frame wrapped with cello tape with tin plates on both the sides, weighing total 376 grams.

(2) In one plastic transparent bag brought out of the said box, there is presence of ammonium nitrate with fuel oil. Its total weight with plastic bag is 1.012 Kilograms.

(3) In the plastic bag brought out from the above box, there were pellets having total weight of 1 Kilogram 192 grams.

(4) Pencil cell shaped detonator with wire, 2 in number.

(5) One blue-coloured battery wrapped with cello tape. Upon opening the cello tape, it is a black and golden coloured battery of “Duracell” Company.

(6) One electronic circuit wrapped with blue-coloured cello tape.

(7) Above articles and parts of diffused bomb packed in light-green coloured plastic bag, which is a black coloured plastic bag and one Gujarat Samachar daily newspaper dated 11/06/2008 of Vadodara Edition.

2.77 Out of the above articles and parts from the ammonium

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nitrate and iron pellets, the scientific officer present on the site, C.C.Patel had instructed to collect ammonium nitrate and iron pellets for investigation.

2.78 Also, towards South from the above place, on the Bunyan tree located near the scale of Anilbhai Choksi, in Varachha Mini Bazar Mohan Ni Chawl and on the hoarding of explosive live bomb has been found and both the bombs have been diffused. Articles and parts of the bomb respectively are as under.

(1) Crescent moon shaped box with wooden frame wrapped with yellow-coloured cello tape with tin plates on both the sides, weighing total 356 grams.

(2) In one plastic transparent bag brought out of the said box, there is presence of ammonium nitrate with fuel oil. It's total weight with plastic bag is 1 kilograms 016 grams.

(3) In the plastic bag brought out from the above box, there were pellets having total weight of 1 Kilogram 210 grams.

(4) Pencil cell shaped detonator with wire, 2 in number.

(5) One blue-coloured battery wrapped with cello tape. Upon opening the cello tape, it is a black and golden coloured battery of "Duracell" Company.

(6) One electronic circuit wrapped with blue-coloured cello tape.

(7) Above articles and parts of explosive bomb packed in light-green and black coloured plastic bag and three pieces of wires and one Gujarat Samachar daily newspaper dated 15/06/2008 of Vadodara Edition.

2.79 Out of the above articles and parts from material of the explosive bomb, the scientific officers present on the site had instructed to collect ammonium nitrate and iron pellets. Hence, 50 grams of ammonium nitrate and 10 pellets were taken out for samples and

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Panchnama was drawn as per the details of the above Panchnama and Mark numbers were given to it and seized for investigation.

2.80 The bomb found out from the roof was diffused. Articles and parts of that bomb is as under.

(1) Crescent moon shaped box with wooden frame wrapped with cello tape with tin plates on both the sides, weighing total 350 grams.

(2) In one plastic transparent bag brought out of the said box, there is presence of ammonium nitrate with fuel oil. Its total weight with plastic bag is 1 kilogram 78 grams.

(3) In the plastic bag brought out from the above box, there were pellets having total weight of 1 Kilogram 196 grams.

(4) Pencil cell shaped detonator with wire, 2 in number.

(5) One blue-coloured battery wrapped with cello tape. Upon opening the cello tape, it is a black and golden coloured battery of "Duracell" Company.

(6) One electronic circuit wrapped with blue-coloured cello tape.

(7) Gujarat Samachar daily newspaper dated 18/06/2008 of Vadodara Edition.

2.81 Out of the above articles and parts from material of the explosive bomb, the scientific officers present on the site had instructed to collect ammonium nitrate and iron pellets. Hence, 50 grams of ammonium nitrate and 10 pellets were taken out for samples for investigation.

2.82 In the meanwhile, information was received that two live bombs were found in the hoarding installed on the overbridge towards North from the Mohan Ni Chawl. Team of bomb disposal squad was sent there and thereafter the complainant and the police personnel and FSL Officer and the Panchas had reached at the site and saw that two

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live bombs were kept near Pillar No.31 of the street light. The said bomb was diffused by the bomb disposal squad. Their parts are as under.

(1) Crescent moon shaped box with wooden frame wrapped with red-coloured cello tape with tin plates on both the sides, weighing total 384 grams.

(2) In one plastic transparent bag brought out of the said box, there is presence of ammonium nitrate with fuel oil 1 kilograms 012 grams.

(3) In the plastic bag brought out from the above box, there were pellets having total weight of 1 Kilogram 192 grams.

(4) Pencil cell shaped detonator with wire, 2 in number.

(5) One red-coloured battery wrapped with cello tape. Upon opening the cello tape, battery of "Duracell" Company.

(6) One electronic circuit wrapped with red-coloured cello tape,

(7) Light green coloured plastic bag and black coloured bag and iron wires were found in the box of the bomb. Gujarat Samachar daily newspaper dated 20/06/2008 of Vadodara Edition was also found.

2.83 Out of the above articles and parts from material of the explosive bomb, the scientific officer present on the site examined and instructed to collect ammonium nitrate and iron pellets seized for investigation.

2.84 The FSL Officer examined the above articles and he instructed to collect the samples of ammonium nitrate and iron pellets from it. Hence, 50 grams of ammonium nitrate and 10 pellets were taken out for samples and Panchnama was drawn.

2.85 In the meanwhile, news was received that there is an explosive bomb planted on the overbridge in front of Bhavna Ford near Pakwan Hotel. Therefore, at the said place, team of bomb squad and police personnel was sent. Thereafter, the complainant and staff

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members and Panchas and FSL Officer had reached at the said place and upon examination, one live explosive bomb was found out. The team of bomb squad had diffused the bomb. Its parts are as under.

(1) Crescent moon shaped box with wooden frame wrapped with yellow-coloured cello tape with tin plates on both the sides, weighing total 356 grams.

(2) In one plastic transparent bag brought out of the said box, there is presence of ammonium nitrate with fuel oil. Its total weight with plastic bag is 1 kilogram 16 grams.

(3) In the plastic bag brought out from the above box, there were pellets having total weight of 1 Kilogram 218 grams.

(4) Pencil cell shaped detonator with wire, 2 in number.

(5) One red-coloured battery wrapped with cello tape. Upon opening the cello tape, it is a black and golden coloured battery of "Duracell" Company.

(6) One electronic circuit wrapped with red-coloured cello tape.

(7) Light green coloured plastic bag and black coloured bag and iron wires were found in the box of the bomb. Gujarat Samachar daily newspaper dated 24/05/2008 of Vadodara Edition was also found.

2.86 The Scientific Officer examined the above articles and 50 grams of ammonium nitrate and 10 pellets were taken out for samples for investigation.

2.87 Thus, some unknown persons had planted hand-made live explosive bombs on the steel angle of the hoarding installed on Pole No.98 of the Varachha Overbridge and on the Banyan tree located near the scale of Anilbhai Choksi in Mohan Ni Chawl in Varachha Mini Bazar and on the hoarding located on the overbridge towards North from Bhavana Ford, with an intention to violate peace of Surat City and for

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spreading fear and terror and for causing loss to the lives and property of the public by hatching a conspiracy have committed an offence under Section 5(A) of the Explosive Act and Sections-4,5 of the Explosive Substance Act-1908 and Section 120(B) of the IPC.

Details of Incident No. 9 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
In the steel angle on the back side of the advertisement board of Pramod 2320028 installed adjoining the North wall of the over bridge above Hirabaug Circle	29/07/2008, during 13-35 to 21-30 Hours	Kapodra II- C.R. No.179/2008	B.R.Halpati, Police Sub-Inspector, Kapodra Police Station, Surat City

2.88 On July 29, 2008, following the serial bomb blasts in Ahmedabad on July 26, 2008, Police Sub-Inspector B.R. Halpati and Police Constable Umeshbhai Prabhunath of Kapodra Police Station, Surat City, were patrolling the Baroda Prestige Police Chowky area for safety measures. At approximately 13:40, while at Hirabaug Circle, they observed two suspicious parrot green, box-type packets behind an advertisement hoarding ("Pramod-232008") on the north wall of the overbridge.

2.89 Police Inspector Kapodra Police Station, along with other police personnel, arrived at the scene. The Police Inspector arranged for the bomb disposal squad and a scientific officer to be called. Shri Sumanbhai Chaudhari of the bomb disposal squad reached the site, and his team examined the suspicious packets, confirming them to be hand-made live bombs. Both bombs were diffused on the spot.

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2.90 To ensure public safety, the diffused bombs and their explosive materials were transported to the Kapodra Police Station. In the presence of Scientific Officers P.M. Patel and Y.S. Patel, the articles and parts from both diffused bombs were examined and seized for investigation.

From the first diffused bomb, the following were found:

1. A crescent moon-shaped wooden frame with tin plates, wrapped in yellow "Wonder Company" insulating tape.
2. A transparent plastic bag containing a sticky material, identified as ammonium nitrate, weighing 1.035 kg.
3. A plastic bag containing pellets, weighing 1.168 kg.
4. Two detonators with caps marked "RECL-6".
5. An electronic circuit (chip) with four wires (two red, one black, and one white).
6. A 9-volt "Duracell Company" battery junction with red tape.
7. A Times Ascent English Newspaper dated May 21, 2008, pages 1 to 10.
8. Torn parrot green and black plastic packing material, with blue and red insulating tape and white and steel wire pieces.

Samples were collected for analysis

From the second diffused bomb, the following were found:

1. A crescent moon-shaped wooden frame with galvanized tin plates, wrapped in yellow "Wonder Company" insulating tape.
2. A transparent plastic bag containing a sticky material, identified as ammonium nitrate, weighing 1.065 kg.
3. A plastic bag containing pellets, weighing 1.179 kg.
4. Two detonators with caps marked "RECL-6".
5. An electronic circuit (chip) with four wires (two red, one black, and one white).

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6. A 9-volt "Duracell Company" battery junction with red tape.
7. Gujarat Samachar daily newspapers: Vadodara Edition dated June 12, 2008 (pages 7-10) and June 13, 2008 (pages 3, 4 and 11, 12, plus Science Knowledge pages 1-8).
8. Torn parrot green plastic packing material, a black plastic bag with blue, red, and white transparent insulating tape, and white, thin steel, and red wire pieces.

2.91 The complaint alleges that unknown persons conspired to plant these two hand-made live explosive bombs behind the advertisement hoarding on the Hirabaug Circle overbridge with the intention of disturbing peace in Surat City, spreading fear and terror, and causing loss to public life and property.

Details of Incident No. 10 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime No.**	**Complainant**
1	2	3	4
Varachha A.K. Road, between the plants and grass in the dividers located towards North of Bhavani Gems Circle and in the East side divider of the Bhavani Gems Circle between the plants and grass, behind Sardar Police Chowky, in Kranti Medan, in the grass at East-South corner.	29/07/2008, during 21-00 to 21-40 Hours	Varachha Second C.R. No.366/2008	C.J.Damor, Police Sub-Inspector, Varachha Police Station, Surat City

2.92 On July 29, 2008, following the Ahmedabad bomb blasts, Police Sub-Inspector C.J. Damor and his team were patrolling the Varachha Police Station area in Surat City, where residents and shopkeepers had been advised to report suspicious unclaimed articles. At approximately 15:10, near Bhavani Gems Circle on Ashwinikumar Road,

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they discovered a suspicious light green bag containing articles within the road divider's plants and grass.

2.93 The Police Inspector and other police personnel, including Head Constables and Police Constables, arrived. The bomb disposal squad and FSL officers were informed and reached the site, confirming the article to be a hand-made explosive bomb. The bomb disposal team successfully diffused it, and the area was cordoned off.

From the first diffused bomb (North side of Bhavani Gems Circle), the following were found:

1. A crescent moon-shaped wooden frame with yellow cello tape and tin plates (386 grams).
2. A transparent plastic bag containing ammonium nitrate with fuel oil (1.042 kg with bag).
3. A plastic bag containing pellets (1.186 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A red cello-taped electronic circuit.
7. The bomb components packed in a light green and black plastic bag, along with Gujarat Samachar daily newspapers (Vadodara Edition dated May 12, 2008, and June 15, 2008). FSL Scientific Officer C.C. Patel instructed that samples of 50 grams of ammonium nitrate and 10 pellets be collected. These were marked and seized for investigation.

From a second diffused bomb (East side of Bhavani Gems Circle), the following were found:

1. A crescent moon-shaped wooden frame with red cello tape and tin plates (368 grams).
2. A transparent plastic bag containing ammonium nitrate with fuel oil (1.146 kg with bag).

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3. A plastic bag containing pellets (1.198 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A red cello-taped electronic circuit.
7. The bomb components packed in a light green plastic bag and a black plastic bag, along with a Gujarat Samachar daily newspaper (Vadodara Edition dated June 14, 2008). Samples of 50 grams of ammonium nitrate and 10 pellets were collected as per scientific officer instructions, marked, and seized.

2.94 Subsequently, information was received about a live bomb in Kranti Maidan, behind Varachha Sardar Police Chowky. The bomb disposal squad and FSL officers, accompanied by witnesses, went to the site. They found a live bomb in a light green plastic bag amidst the grass at the east-south corner of Kranti Maidan. The bomb disposal squad diffused it, revealing the following parts:

1. A crescent moon-shaped wooden frame with yellow cello tape and tin plates (362 grams).
2. A transparent plastic bag containing ammonium nitrate with fuel oil (1.002 kg with bag).
3. A plastic bag containing pellets (1.182 kg).
4. Two pencil-cell-shaped detonators with wires.
5. A red cello-taped "Duracell" battery.
6. A red cello-taped electronic circuit.
7. A light green bag, a black bag, and a Gujarat Samachar daily newspaper (Vadodara Edition dated June 15, 2008) found within the bomb's box. The FSL Officer instructed the collection of 50 grams of ammonium nitrate and 10 iron pellets as samples, which were marked and seized along with the other Muddamal for further investigation.

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2.95 The complaint alleges that unknown individuals conspired to plant these hand-made live explosive bombs in the road dividers on Varachha Ashwinikumar Road (both North and East sides of Bhavani Gems Circle) and in Kranti Maidan, behind Sardar Police Chowky. Their intention was to disturb the peace of Surat City, spread fear and terror, and cause loss to public life and property.

Details of Incident No. 11 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Varachha Baroda Prestage, Prem Gali, First Floor of Shrikishan Complex, Near Radhe Fashion	30/07/2008, during 13-15 to 14-15 Hours	Varachha Second C.R. No.367/2008	B.M.Patel, Police Sub-Inspector, Varachha Police Station, Surat City

2.96 On July 30, 2008, following the serial bomb blasts in Ahmedabad, Police Sub-Inspector B.M. Patel of Varachha Police Station, Surat City, was on patrol in the Labheshwar Chowki area, as residents and shopkeepers had been alerted to report suspicious unclaimed articles. At approximately 10:45, a large crowd gathered in Varachha Baroda Prestige Prem Gali.

2.97 Upon investigation, a suspicious light green bag was found on the first floor of Shri Kishan Complex in Prem Gali, specifically between a drainage plastic pipe and the wall near Radhe Fashion. The Police Inspector was informed, and he, along with ASI Ramanbhai Chimanbhai, Head Constable Manhar Karansinh, and Police Constable Sunil Uttambhai, arrived at the scene.

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2.98 The Police Inspector then contacted the bomb disposal squad and the FSL Officer. Upon their arrival and examination, the suspicious article was confirmed to be a hand-made explosive bomb. The bomb disposal team successfully diffused the live bomb, and the area was cordoned off by police personnel.

The following articles were recovered from the diffused bomb:

1. A crescent moon-shaped wooden frame wrapped with yellow cello tape and tin plates, weighing 340 grams.
2. A transparent plastic bag containing ammonium nitrate with fuel oil, weighing a total of 1.124 kilograms (including the plastic bag).
3. A plastic bag containing pellets, weighing a total of 1.172 kilograms.
4. Two pencil-cell-shaped detonators with wires.
5. A blue cello-taped "Duracell" battery.
6. A blue cello-taped electronic circuit.
7. A light green bag, a black bag, steel wire, three white wires, two white wires, one red wire, the battery, blue cello tape wrapped on the circuit, and a Gujarat Samachar daily newspaper (Shatdal Edition dated July 16, 2008).

2.99 FSL Scientific Officer N.D. Patel instructed the collection of samples. As a result, 50 grams of ammonium nitrate and 10 iron pellets were taken as samples. These samples, along with the other recovered articles (Muddamal), were given mark numbers as per the Panchnama details and seized for further investigation.

2.100 The complaint alleges that unknown individuals conspired to plant this hand-made live explosive bomb between the drainage plastic pipe and the wall near Radhe Fashion on the first floor of Shri Kishan Complex in Varachha Prestige Prem Gali. Their intention was to disturb the peace of Surat City, spread fear and terror, and cause loss to public

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life and property. Therefore, legal action has been initiated under Section 5(A) of the Explosive Act, Sections 4 and 5 of the Explosive Substance Act-1908, and Section 120(B) of the IPC.

Details of Incident No. 12 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Nana Varachha, on the mango tree on the footpath near the gate of the swimming pool situated in the Maharana Pratap Udhyan	30/07/2008, during 17-40 to 22-35 Hours	Kapodra II- C.R. No.180/2008	N.M.Damor, Police Sub-Inspector, Kapodra Police Station, Surat City

2.101 On July 30, 2008, Police Sub-Inspector N.M. Damor of Kapodra Police Station was on patrolling duty in the Nana Varachha Police Chowky area to maintain law and order. At approximately 17:45, he received a telephonic alert from Police Station Officer Shri Karsanbhai Nadiya, relayed from the Surat City Police Control room, stating that an informer, Tulsibhai Savani (Mobile No. 98244 41116), and had reported a bomb hanging on a tree near the Varachha Chopaty swimming pool.

2.102 Upon checking, the complainant found a suspicious parrot green colored box tied to a branch of a mango tree on the footpath near the gate of the swimming pool in Varachha Maharana Pratap Udhyan. Police Inspector, Police Sub-Inspector S.K. Roy, and other police and surveillance staff arrived at the scene.

2.103 The bomb disposal squad was informed, and officer Shri Sumanbhai V. Chaudhari and his team arrived. They safely brought

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down the live bomb from the tree and diffused it on the spot. To ensure public safety, the explosive material of the bomb was brought to the police station. In the presence of scientific officers Shri C.C. Patel and Shri Y.S. Patel, and two witnesses, the articles found from the diffused bomb were examined and recorded as follows:

Articles found from the diffused bomb:

1. A crescent moon-shaped wooden frame wrapped with blue insulating tape, fitted with a galvanized tin plate on one side and a plastic cover with nails on the other.
2. A transparent plastic bag containing oil-smeared pellets, weighing 1.178 kilograms.
3. A transparent plastic bag containing white sticky paste (ammonium nitrate), weighing 1.050 kilograms.
4. An electric circuit (device and chips) with two red, one black, and one white wire joined together, bearing the inscription "PIC-16F-628A 1/p 082125 W".
5. Two silver metal detonators, each with two white wire joints on its cap, inscribed "RECL-6".
6. A 9-volt Duracell company battery with "RMSTSON" written in English, a red colored cap, and "ALKALINE MN 1604 MADE IN ED 9V-6LR 61 MAR 2012" written on the battery cell.
7. A Gujarat Samachar daily newspaper (Shatdal edition dated June 11, 2008), pages 1 to 12.
8. Three thin iron wires (approx. 15 inches long), three white wire pieces, a torn parrot green plastic paper with white cello tape, and a torn black bag with red and light yellow insulating tape pieces.

2.104 FSL Scientific Officer N.D. Patel instructed the collection of samples. Accordingly, 50 grams of ammonium nitrate and 10 iron pellets

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were taken as samples. These samples and the other recovered articles (Muddamal) were marked as per the Panchnama details and seized for further investigation. The two detonators (Sr.No.5) were kept in a separate container for analysis as per scientific officer instructions.

2.105 The complaint alleges that some miscreants, by hatching a conspiracy, planted this hand-made live explosive bomb on the mango tree on the footpath near the swimming pool gate in Nana Varachha Maharana Pratap Udhyan. Their intention was to disturb the peace of Surat City, spread fear and terror, and cause loss to public life and property.

Details of Incident No. 13 and Gist of Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Hira Bazar, JadaKhadi, Kamnath Road, Under Shriram Nivas House, Behind the board of shop named Genius Instruments	30/07/2008, Before 23-40 to 23-45 Hours	Mahidharpura II-C.R. No.209/2008	A.R.Desai, Police Inspector, Mahidharpura Police Station, Surat City

2.106 On July 30, 2008, at approximately 20:35, Police Inspector A.R. Desai of Mahidharpura Police Station, Surat City, received a telephonic alert regarding a suspicious package. The alert, relayed by ASI Mangabhai from the Police Control Room, originated from an informer, Deepakbhai (mobile number 99241-44954), who reported a suspicious "bunch" near Ambica Farsan in Jadakhadi, Mahidharpura, drawing a crowd.

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2.107 P.I. Desai, accompanied by Head Constable Chhanabhai Narsinh and Police Constables Vajubhai Chhanabhai, Kutbuddin Gulam Rasul, and Satish Somabhai, promptly proceeded to Jadakhadi. A crowd had gathered near the "Genius Instrument" weighing scale shop. Investigations revealed the suspicious item was located behind the shop's board.

2.108 P.I. Desai and his team cordoned off the area. A green colored parcel was found, leading to a suspicion of it being a bomb. The bomb disposal squad was immediately summoned. Upon their arrival, ASI Shri Sumanbhai Vanmalibhai's team examined the suspicious parcel behind the "Genius Instrument" shop's board. They brought down the green parcel and confirmed it to be a hand-made live explosive bomb.

2.109 The bomb disposal team, utilizing necessary tools and in the presence of two witnesses, successfully diffused the bomb. FSL Surat Scientific Officer N.D. Patel and the bomb disposal team then verified and recovered the following articles and substances from the diffused bomb:

1. A crescent moon-shaped wooden frame with galvanized sheets on both sides, entirely wrapped in yellow cello tape, and additionally affixed with a black plastic bag and red and white cello tape.
2. A transparent plastic bag containing a light yellow sticky paste (identified as ammonium nitrate) with a hole, weighing a total of 1.012 kilograms.
3. A transparent plastic bag containing flatly arranged, grease-smeared pellets, weighing a total of 1.194 kilograms.
4. A small black and golden "Duracell" Company battery, inscribed with "Alkaline MN 1604 9V6LR1 MAR 2012" and "Made in EC".

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5. Two white metal pencil-shaped detonators, each with "RECL" on its tip, the digit "6" on the lower portion, and two thin white wires on the upper portion.
6. One electronic circuit with wires.
7. Gujarat Samachar newspapers: Vadodara District Special Edition from Thursday, May 8, 2008 (and the "Sahiyar" edition.
8. One torn parrot green plastic bag wrapped with white cello tape.

2.110 FSL Scientific Officer N.D. Patel instructed the collection of samples. Consequently, 50 grams of ammonium nitrate and 10 iron pellets were taken as samples. These samples, along with the other recovered articles (Muddamal), were marked as per the Panchnama details and seized for further investigation.

2.111 The complaint alleges that unknown individuals conspired to plant this hand-made live explosive bomb behind the board of the "Genius Instruments" shop, located under the Shriram Niwas House on Kamnath Road, Jadakhadi, HiraBazar. Their intention was to violate the peace of Surat City, spread fear and terror, and cause loss to public life and property.

Details of Incident No. 14 and Complaint

Area and place of incident	**Date and time of incident**	**Police Station registering the offence and Crime Registration No.**	**Complainant**
1	2	3	4
Near Chopati Garden, from the Advertising Hoardings in the City Bus Stop, Athwalines, Surat	03/08/2008, Before 12-50 to 18-00 Hours	Umara Second C.R. No.651/2008	R.S.Patel, Police Inspector, Umara Police Station, Surat City

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2.112 Brief facts of the complaint of the complainant R.S.Patel, Police Inspector, Umara Police Station, Surat City is such that, on 03/08/2008, the complainant was present in the Umara Police Station. At that time, the Assistant Police Commissioner, Traffic, Surat City had made telephone call stating that, upon removing one hoarding in the bus stand situated on the road in front of Chopati, one bomb has been found out. This information has been brought by the Armed Police Constable Bahadurbhai Ramabhai Vasava, . At this time, at about 12-50 Hours, the complainant had gone to Chopati with Police Inspector R.R.Bhagora and surveillance staff members who were present in the police station. In front of the main gate of the MTB College, while checking at the city bus stop, near the angle of the advertising board in the bus stop, one light green coloured bag with the bomb was found. Immediately, the complainant had informed the control room to send the bomb disposal squad and scientific officer Shri F.S.L., Surat on the spot immediately and safety measures were taken so that the general public is not subjected to any harm. ASI S.V.Chaudhari of bomb disposal squad and ASI M.B.Bhoya, Head constable Ajay Makwana, Police Constable Jesing Patel and Police Constable Yogesh Samudre and team and scientific officer Shri N.D.Patel had arrived. The said bomb was carefully removed from the advertising hoarding of the bus stop so that the general public may not have to suffer any loss of lives and property and for disposing of, it was taken in the open space of chopati bag situated behind the bus stop and it was diffused in presence of two panchas.

2.113 It contained crescent moon shaped box-like tool tied with thin galvanized wire. There is a light green coloured plastic bag on the bomb, which is torn out and upon seeing on one side thereof, there are

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two holes in the wooden structure, from which two different wires of detonators are coming out. In the crescent shaped structure of the bomb, with the use of cello tape, 9 volt battery with wire cap has been affixed and near that, by using the cello tape, microchip I.C. with wire is fitted. Its wire was attached to the battery and detonator. These wires were diffused by the team members of BDS and after separating the battery and microchip, after cutting the cello tape and pulling it out for opening, there appeared to be fitting with galvanized tin sheet fixed with nails. Upon opening that bent tin sheet, in the internal portion thereof, there were pellets mixed with oil in plastic bag and below it, inside of the newspaper, in the plastic bag, there was light yellow-coloured jelly like sticky material, wherein two different detonators with wires were kept and their edges were brought out through the holes made in the wooden frame for attaching them with the battery and wire of microchip. Upon looking into the newspaper, it is Gujarat Samachar dated 25/05/2008 of Vadodara Edition. The said bomb was ANFO hand-made live bomb as stated by the scientific officer. The articles seized were identical to the one seized and referred to in preceding paras.

2.114 All the Muddamal parcels were seized for the purpose of investigation and a detailed Panchnama has been drawn between Hours 13-15 to 16-30.

2.115 Thus, some unknown persons had planted hand-made ANFO live bomb, by hatching conspiracy, any time before 12-50 Hours on 03/08/2008, in the hoarding of advertising of City Bus Stop situated in front of Chopati garden, with an intention to violate peace of Surat City and for spreading fear and terror and for causing loss to the lives and property of the public by hatching a conspiracy and, thereby, they have committed an offence.

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Details of Incident No. 15 and Gist of Complaint

Area and place of incident	Date and time of incident	Police Station registering the offence and Crime Registration No.	Complainant
1	2	3	4
Katargam, on the West side of the road at the south end of Amroli bridge	09/08/2008, Before 16-45 to 20-05 Hours	Katargam II- C.R. No.208/2008	V.G.Patel, Police Inspector, Katargam Police Station, Surat City

2.116 On August 9, 2008, Police Inspector V.G. Patel of Katargam Police Station, Surat City, received a report at 16:46 from the Police Control Room about a suspicious, bomb-like article near LankaVijay Hanuman Temple, Amroli.

2.117 Acting on the report, P.I. Patel, along with Police Sub-Inspector M.B. Parmar, Head Constable Surendrasinh Umangsinh, and other police constables, proceeded to the south end of the Amroli bridge on the west side of the road. After dispersing the gathered crowd, they found a crescent moon-shaped, red cello-taped package on the roadside, resembling previously discovered bombs. Parrot green plastic bags were also found nearby.

2.118 P.I. Patel immediately contacted the bomb disposal squad. In-charge Sumanbhai Chaudhary and his team arrived, confirmed the suspicious crescent moon-shaped article was a bomb, and diffused it on the spot. FSL Officer N.D. Patel also arrived at the scene, and in the presence of two witnesses, the following materials were recovered from the diffused bomb and examined by the FSL officer:

Articles found from the diffused bomb:

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1. One crescent moon-shaped wooden frame structure with a galvanized sheet on the lower side and rexine fitted on the upper side, wrapped with red-colored cello tape.
2. One Duracell brand 9-volt battery with a cap.
3. One electronic circuit with wire edges.
4. Two detonators with wire (RECL brand).
5. One transparent plastic bag containing a light yellow, jelly-like sticky material (ammonium nitrate), weighing 0.980 grams.
6. One transparent plastic bag containing pellets mixed with oil, weighing a total of 1.190 kilograms.
7. A Gujarat Samachar daily newspaper (Vadodara Edition dated June 29, 2008).

2.119 As per the instructions of Scientific Officer N.D. Patel, samples were collected for investigation: the wooden frame, detonator, electronic circuit, battery, 10 pellets, and 50 grams of ammonium nitrate. The remaining Muddamal (seized articles), apart from the samples, was seized as per the details of the Panchnama.

2.120 Therefore, legal action has been initiated under Section 5(A) of the Explosive Act, Sections 4 and 5 of the Explosive Substance Act-1908, and Section 120(B) of the IPC.

2.121 The popular argument was to see this incident in isolation however, the Court is unable to consider each incident unconnected and solitary incident but has a strong reason to believe that all these incidents are in same sequence and an outcome of one large conspiracy. In fact, the Court has reasons to believe that this sequence of serial blasts is in fact, inter-connected which was suffered by the Nation in quick succession the serial blasts, with same modus. The Court cannot close its eyes to this obvious circumstance which is in the like of attack on the

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sovereignty of the nation. The identical manner of blasts and the similarity in the explosive device which now is in public domain is also an indication of relations between such incidents. The shapes of the explosive containers, were identical, i.e., a boat-shaped wooden frame with iron covering on the convex side. The timer devices at Delhi, Jaipur and Ahmedabad were identical and those at Bangalore and Surat were identical.

City	Timer device used	Battery used	Chemical used	Shape of bomb
Jaipur 13 May 2008	Quartz alarm clock with 1.5V pencil cell	9V Hi-watt make	Ammonium nitrate with embedded ball bearings	Boat-shaped wooden frame
Ahmedabad 26 July 2008	Quartz alarm clock with 1.5V pencil cell	9V Hi-watt make	Ammonium nitrate mixed with binder and embedded in ball bearings and nuts and bolts	Boat-shaped wooden frame
Surat 27–30 July 2008 (recovery of unexploded bombs)	Electronic timer circuit mounted on PCB of the size 4.5 cm × 3 cm	9V Hi-watt make	Ammonium nitrate with embedded ball bearings	Boat-shaped wooden frame
Delhi 13 September 2008	Quartz alarm clock with 1.5V pencil cell	9V Hi-watt make	Ammonium nitrate with embedded ball bearings	Boat-shaped wooden frame

3. Discussion on oral evidence of the relatives of the victims (deceased)

Upendra Maneklal Dave (PW- 318/ Exh.1659)

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3.1 The witness deposed that on July 26, 2008, his nephew Vishal and niece Hiralben Jignesh Kumar, were traveling from Raipur on a motorcycle. His nephew, Vishal stopped at Raipur Chakla to purchase battery cells near Gokhale Paan Centre. During this time, a bomb exploded, causing serious injuries to Vishal. The witness's niece transported the victim to the hospital; however, upon the witness's arrival at the facility, he was informed that Vishal had died. There appears to be no cross examination of this witness.

Hiralben Jigneshbhai Shukla (PW- 319/Exh.1600)

3.2 The witness stated that on the evening of the incident, her brother, Vishal was dropping her off on his motorbike. While the brother was purchasing batteries near Raipur Chakla, a loud explosion occurred near M. Narayandas Medical Stores. The witness moved her brother to the hospital, where he subsequently died. There appears to be no cross examination of this witness.

Dalaji Manaji Ghanchi (PW- 320/Exh.1661)

3.3 The witness deposed that after hearing of a bomb explosion at Raipur Chakla at approximately 7:00 pm, he searched for his wife at the scene and later at V.S. Hospital without success. He eventually located his wife's body on a stretcher at L.G. Hospital. It was established that she had been injured in the blast and died during treatment. There appears to be no cross examination of this witness.

Nilamben Chiragbhai Shah (PW- 321/Exh.1662)

3.4 The witness testified that her husband was at Maninagar char rasta for business when a bomb exploded near 'Chai ni Keetli'. He was transported to the trauma ward of L.G. Hospital for treatment. Shortly after the witness and her family arrived at the hospital, medical staff informed them that her husband had passed away. There appears to be

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no cross examination of this witness.

Jagdish Bhagwandas Fadiya (PW-323/Exh.1669)

3.5 The witness, a sandwich vendor at Raipur Chakla, deposed that at approximately 6:30 pm, a bomb blast occurred near M. Narayandas Medical Stores. Within a minute, a second blast took place near his stall at Gokhale Paan House. His wife, Hasumatiben, was struck by a pellet and seriously injured. Despite being taken to Vadilal Hospital, she was declared dead shortly thereafter. There appears to be no cross examination of this witness.

Pavankumar Morarilal Agrawal (PW- 401/Exh.2307)

3.6 The witness stated he received telephonic notification that a bomb had exploded near Hatkeshwar circle, where his father operated a foot lorry. Upon reaching the site, he observed blood and his father's abandoned lorry. He proceeded to L.G. Hospital, where doctors informed him that his father had died from injuries sustained in the blast. No cross-examination was recorded.

Chagan Mohanbhai Patel (PW- 740/Exh.3527)

3.7 The witness deposed that his brother, Parasottam, and two grandchildren, Rohan and Shraddha, had gone to Civil Hospital to deliver a tiffin. When they failed to return, he went to the hospital and discovered a blast had occurred near the Trauma Centre. He identified his brother's body and the dismembered remains of the two children in the post-mortem room. There appears to be no cross examination of this witness.

Shailesh Girishkumar Ravrani (PW- 741/Exh.3528)

3.8 The witness stated that his father had been at the Civil Hospital assisting those injured in earlier city blasts. Following a subsequent blast in front of the hospital's trauma centre, the witness

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searched the wards and eventually identified his father's body in the post-mortem room. There appears to be no cross examination of this witness.

Sonaji Nanjibhai Patni (PW- 742/Exh.3529)

3.9 The witness testified that his son, Vijay, was an ICU worker at the Civil Hospital Trauma Centre. After hearing of the blast at the hospital, the witness arrived to find his son severely injured and burnt. Vijay was moved to the ICU, where he was subsequently declared dead There appears to be no cross examination of this witness.

Kantibhai Bechardas Patel (PW- 743/Exh.3530)

3.10 The witness deposed that his brother, Vishnubhai, went to the Civil Hospital to assist blast victims. He suffered extensive burns during the explosion outside the trauma centre. He was admitted to the hospital but passed away the following morning. During cross-examination, the witness admitted he had no personal knowledge of the incident itself.

Balvantgiri Amargiri Goswami (PW- 744/Exh.3531)

3.11 The witness stated that his son, Viralgiri, went to the Civil Hospital with friends on the evening of the blasts. The witness was later summoned to the hospital and found his son in the Urology Department. Before passing away, Viralgiri informed his father that he had been injured in the blast. In cross-examination, the witness admitted to having no personal knowledge of the incident.

Nishitsinh Mahendrasinh Vaghela (PW- 745/Exh.3532)

3.12 The witness deposed that his brother, Rajkamalbhai, was working at the Civil Hospital when the blast occurred. After failing to reach him by phone, the witness went to the hospital and was informed of his brother's death. He identified the burnt body in the post-mortem room. In cross-examination, the witness admitted he lacked personal

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knowledge of the event.

Balchandragiri Shankargiri Goswami (PW- 995/Exh.6938)

3.13 The witness testified that his son, Chandangiri failed to return home, leading the witness to search the Civil Hospital following the blast. He eventually located and identified his son's severely burnt body in the post-mortem room. There appears to be no cross examination of this witness.

Viral Prakashbhai Shah (PW- 1009/Exh.6989)

3.14 The witness stated that after learning of the Civil Hospital explosion via television, he went to the site to search for his father, who had not returned from work. On the morning of July 27, 2008, he received confirmation that his father had died in the blast. There appears to be no cross examination of this witness.

Birendrarai Lalanrai Bhumihar (PW- 1011/Exh.6998)

3.15 The witness deposed that his brother-in-law, Dinesh, was found unconscious and undergoing treatment in the Civil Hospital ICU following the blasts. Dinesh was declared dead on August 1, 2008. In cross-examination, the witness stated he did not have personal knowledge and relied on information from his brother-in-law.

Hiteshkumar Hargovinddas (PW- 1012/Exh.6999)

3.16 The witness testified that his uncle was traveling on an AMTS bus in Sarkhej when a bomb exploded. The witness found his uncle at V.S. Hospital suffering from multiple stab wounds caused by the blast, where he subsequently died. There appears to be no cross examination of this witness.

Jagdish Manchashankar Antani (PW- 1014/Exh.7004)

3.17 The witness deposed that he was informed by his wife, who had spoken to the Khadiya Police, that his brother-in-law, Himanshubhai,

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had died in a bomb blast. There appears to be no cross examination of this witness.

Dimpiben Shaileshbhai Modi (PW- 1027/Exh.7034)

3.18 The witness stated she was informed by her aunt that a bomb had exploded near Gokhale Paan House in Raipur Chakla and that her brother, Ankit, was injured. It was later confirmed that Ankit had died from his injuries. There appears to be no cross examination of this witness.

Pravin Manjibhai Gajera (PW- 1028/Exh.7035)

3.19 The witness testified that after searching various hospitals for his missing brother, Bhagwanbhai, he located his dismembered and pierced body at the Civil Hospital. In cross-examination, he noted he was informed by the Crime Branch that the injury occurred near Kuldevi Tea Stall in Thakkarbapanagar.

Mathurbhai Manabhai Solanki (PW- 1013/Exh.7001)

3.20 The witness deposed that while entering the Civil Hospital with his family, an explosion occurred. His son, Rohit, was injured and subsequently died after being admitted. During cross-examination, the witness mentioned there were four blasts and that his son's body was handed over two or three days later.

4. Discussion on evidence of injuries sustained by victims (deceased) of the bomb blast as per post-mortem report

Shahibaug Police Station I-C.R. 236/08

Bomb blast in WagonR at Shahibaug Civil hospital, Trauma centre

4.1 In evaluating the cause and circumstances of death, the Court takes note of the Column 17 of the post-mortem note at Exh.596 and the corresponding inquest report at Exh.1173. P.W. No.31- Dr. Jagdeep

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Chanalal Jadav at Exh.595 performed the postmortem of the deceased namely; Ketankumar Surendrakumar Bhagora.

Blast injuries: Significant blast injuries were recorded on the left side of the head, front of the neck, left upper arm, left forearm, and the left upper chest. These injuries resulted in the extensive laceration of skin and soft tissues, exposing underlying bone.

Cranial damage: The left side of the head was destroyed, with documented fractures to the skull and mandible (lower jaw). The skull cavity was exposed, and portions of the skull bone were noted as lost or "blown up."

Abdominal trauma: The abdomen sustained a massive burst injury measuring 20*13 cm on the left side, leading to the protrusion of the intestines. The deceased suffered extensive charring and thermal trauma. The upper limbs, chest, face, and gluteal regions sustained 2 to 3 degree burns, while the soles of the feet showed 1' to 2' degree burns, multiple puncture-lacerated wounds, varying in size from 0.1to 0.8 cm , were observed on the lower limbs. These wounds were muscle-deep and contained dried blood clots, typically indicative of shrapnel or debris impact.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.2 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note at Exh.594 and the corresponding inquest report at Exh.1191. P.W. No.30-Dr.Jignesh Vasantkumar Shah at Exh.591 performed the postmortem of the deceased namely; Popatbhai Maganbhai Darbar.

Thermal and blast injuries: The deceased sustained 3 to 4 burns covering the chest, face, upper limbs, and thighs. The skin on the hands

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and chest was noted as "peeled off," which is consistent with the high-thermal energy of an explosion. Multiple wounds (ranging from 0.5 * 0.5 to 1 *1 cm) were found on the right side of the chest and the right thigh.

Deep tissue trauma: A 8 *5 cm lacerated wound on the right foot, described as "bone deep."

A 8 *4 cm lacerated wound on the medial aspect of the left leg, also "bone deep."

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.3 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note at Exh.593 and the corresponding inquest report Exh.1189 P.W. No.30-Dr.Jignesh Vasantkumar Shah at Exh.591 performed the postmortem of the deceased namely; Sanket Prakashbhai Andhariya.

Lacerated wound: A wound measuring 5 cm x 2 cm x bone-deep, located over the left temporal region of the scalp. The wound is oriented in the sagittal plane, situated 6 cm left of the midline and 10 cm above the left ear lobe, presence of fresh blood and red clots noted.

Abrasion (left temple): a red-colored abrasion measuring 4 cm x 1 cm located over the left temple region.

Abrasion (left ear): a red-colored abrasion measuring 2 cm x 1 cm present on the left ear lobe.

Burn injuries: Observed with the peeling of the epidermis (outer layer of skin).

These injuries are localized to: The dorsal aspect (back) of both hands.The dorsal aspect of both forearms.the ventral aspect (sole/bottom) of both feet.

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Contusions (bruises): pelvic region: A red contusion measuring 4 cm x 3 cm located over the right anterior superior iliac spine (the prominent bone at the front of the hip).

Right lower limb: A red contusion measuring 3 cm x 2 cm located on the front of the middle third of the right thigh.

Left lower limb: A red contusion measuring 5 cm x 3 cm located on the medial (middle) side of the middle third of the left thigh.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.4 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note at Exh.592 and the corresponding inquest report Exh.1206. P.W. No.30-Dr.Jignesh Vasantkumar Shah at Exh.591 performed the postmortem of the deceased namely; Virendrabhai Rameshchandra Pandya.

Burn profile: First to second-degree burns with evident blackening (soot/carbon deposits) localized to the anterolateral aspect of the right shoulder, upper arm, forearm, and wrist.

Vital reaction: The presence of a "vital reaction" confirms these burns were sustained while the individual was alive.

Blast-related penetrating trauma: left buttock & thigh: A significant contused lacerated wound 10*8 cm, penetrating 3–4 inches deep into the muscle. A yellow metal splinter 4*2 cm was recovered from this site.

Left thumb: A 4*2 cm laceration accompanied by a palpable fracture of the first metacarpal. A second yellow metallic splinter 2*1 cm was recovered from this wound.

Additional mechanical injuries: right mid-thigh: A 6*4 cm muscle-deep lacerated crushed wound.

Left ankle: A 10*4 cm muscle-deep lacerated crushed wound.

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Cause of death : Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.5 In evaluating the cause and circumstances of death, the Court takes note of the Column 17 of the post-mortem note Exh.598 and the corresponding inquest report at Exh.1194. P.W. No.31- Dr. Jagdeep Chanalal Jadav at Exh.595 performed the postmortem of the deceased namely;Vijaykumar Sonjibhai Patni.

Head and neck tracheostomy wound: A therapeutic surgical wound (1.5 *2 cm) located on the front of the neck, 8 cm below the mandibular tip.

Upper extremities (right) forearm & wrist: Multiple puncture lacerated wounds (1 *1 cm and 1 * 1.2 cm) and a red abrasion (1*1.5 cm) on the inner aspect.

Elbow: A puncture lacerated wound (2 *0.5 cm) located near the medial epicondyle.

Upper extremities (left)hand: A 3 *2 cm laceration on the little finger with bone exposure.

Forearm: Extensive 2nd and 3rd-degree burns covering an 8 \times 6 cm area.

Arm/Elbow: A skin-deep puncture lacerated wound at the elbow and three small, muscle-deep puncture lacerations on the back of the arm.

Trunk (torso & back) lumbar region: A large skin-deep laceration (6 * 4 cm) on the right lateral side above the iliac crest.

Posterior chest/back (left side): Five distinct puncture lacerated wounds ranging from 0.1*0.2 cm to 3*0.8 cm.

Lower extremities (right thigh): A muscle-deep puncture lacerated wound.

knee area: a severe 4*3 cm puncture lacerated wound involving comminuted fractures with bone protrusion.

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Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.6 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.619 and the corresponding inquest report at Exh.1194. P.W. No.35 Dr. Bhavin Shayamlal Shah at Exh.616 performed the postmortem of the deceased namely; Himatbhai Kantibhai Gohil.

Thoracic: A large, 21 cm "c-shaped" surgical incision extending from the right nipple area across the lateral chest wall to the back. a 0.5 cm intercostal drainage (icd) wound is noted in the 7th intercostal space.

Abdominal: a 12 cm midline vertical laparotomy incision from the midepigastrium to below the umbilicus. a 0.5 cm surgical drainage wound is located on the right flank.

Specific injuries by region: Chest: A 3 cm oblique contused lacerated wound (clw) on the upper right chest (below the clavicle), muscle deep.

Back/scapula: A 1 cm contused lacerated wound on the left lower scapular area (subcutaneous deep) and a 1x1 cm abrasion on the right lower scapular area.

Abdomen: A 3 cm clw on the right back of the upper abdomen; two small (0.5 cm) puncture-lacerated wounds at the midline of the middle back.

Upper limbs: A 1.5x0.5 cm transverse clw on the right forearm (muscle deep); abrasions on the right elbow and right wrist.

Lower limbs: A 1x0.5 cm vertical clw on the medial thigh (muscle deep); a 1.5x1 cm oblique clw on the knee; and a 3x2.5 cm horizontal clw on the middle of the leg (muscle deep). A 1x1 cm abrasion is present below the knee.

Left: A 0.5x0.5 cm puncture-lacerated wound on the medial thigh; small

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abrasions (0.5 cm) on the left knee.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.7 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.618 and the corresponding inquest report at Exh.1171 P.W. No.35 Dr. Bhavin Shayamlal Shah at Exh.616 performed the postmortem of the deceased namely; Ramanbhai Pujanbhai Prajapati.

Thermal injuries (burns): Extent: Second to third degree burns.

anatomical distribution: right temple, right lateral abdominal wall, entire right lower limb, right upper limb, and the dorsum of the left hand.

Appearance: Areas of redness and charring (blackening) of the skin.

Major traumatic & crushing injuries

Right hand: Total crush injury of four fingers (excluding thumb). all four fingers are missing from the base; the index finger remains attached only by a tissue tag.

Left leg: Severe crushing of the mid-portion; the limb is functionally severed, remaining attached to the distal part only by a tissue tag.

Right chest wall: a deep, irregular laceration (8 * 8 cm) penetrating the thoracic cavity just below the axilla.

Right forearm: a deep transverse cut (8 *4 cm) extending to the bone.

Lacerations and penetrating wounds

Facial: puncture-lacerated wound (0.5 *0.5 cm) on the right maxillary area, 3 cm below the eye.

Torso: left nipple area: 4 *2 cm muscle-deep horizontal cut.

Right scapula: 10 *2 cm subcutaneous transverse cut.

Distal extremity wounds

Ankles: left: 4 * 1 cm muscle-deep vertical cut below the medial

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malleolus. Right: 5 * 1 cm muscle-deep vertical cut below the lateral malleolus.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.8 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.617 and the corresponding inquest report at Exh.1224. P.W. No.35 Dr. Bhavin Shayamlal Shah at Exh.616 performed the postmortem of the deceased namely; Vishnubhai Bechardas Patel.

Nature of injury: second to third degree burns over face with eyes both & also all over body (except pubic area & both inguinal areas 7 pubic hair) second degree burns over penis & scrotum with blisters seen of places. Eyebrows, eyelashes, moustache & beard hair burnt, scalp hair of both frontal, both parietal & upper temprol areas burnt.White scalp hair at lower temporal & both oceipital oreas partially burnt & singed.

Cause of death: Cause of death is shock due to extensive burns over body.

4.9 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.620 and the corresponding inquest report at Exh.1312 P.W. No.35 Dr. Bhavin Shayamlal Shah at Exh.616 performed the postmortem of the deceased namely; Devkumar Gajodharbhai Lodha.

Major surgical & thoracic injuries

Posterolateral thoracotomy: a 23 cm surgical wound on the right chest, originating 5 cm below the scapula and extending to the lateral chest wall. the incision tracks deeply into the 6th intercostal space.

Active infection: a 6x3 cm gaping, infected surgical wound is present at the posterior origin of the thoracotomy.

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Chest lacerations: a 2.5x1.5 cm infected, muscle-deep transverse laceration below the right nipple.

A 3x2.5 cm infected, muscle-deep laceration on the lower right lateral chest wall.

Abdominal & trunk injuries

Deep abdominal laceration: a 9x3 cm oblique wound on the right lateral abdominal wall, penetrating to the abdominal cavity depth, located 6 cm above the iliac spine with partial infection.

Healing wounds: multiple healed vertical and transverse wounds (1.5 cm to 4 cm) with suture marks noted near the right nipple and left cubital fossa (arm).

Lower extremity injuries

Left leg/knee: a 4x2.5 cm infected muscle-deep laceration on the left shin.

A 3x3 cm infected laceration on the inner lower left knee.

Healed wounds with suture marks on the left thigh and back of the knee.

Right leg/knee: a 6x3 cm transverse muscle-deep laceration just below the right knee (medial aspect) with infection.

Cause of death: Cardiorespiratory failure due to sustained injuries over body.

4.10 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.622 and the corresponding inquest report at Exh.1236 P.W. No.36 Dr. Dharmesh S. Patel at Exh.621 performed the postmortem of the deceased namely; Parsottambhai Mohanbhai Patel.

Nature of injury: The body is converted into multiple pieces due to traumatised lacerated wounds (black injuries). Available parts of body shows blackening and reddish blood clots with lacerated and punctured

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injuries. Remnants of organs of intestine, liver and heart are identified and multiple lacerated wounds are present over them and multiple fleshes of tissue detected from the organs. Superficial burns with blackening with peeling of epidermis present over the available body part pieces at places.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.11 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.629 and the corresponding inquest report at Exh.1237 P.W. No.36 Dr. Dharmesh S. Patel at Exh.621 performed the postmortem of the deceased namely; Shraddha Ashwinbhai Patel.

Cranio-cerebral injuries

Multiple lacerated blast wounds were observed across the entirety of the skull. these wounds vary significantly in dimensions, ranging from 2 * 3 cm to 10*15 cm. All cranial wounds are recorded as cavity deep, indicating total penetration of the skull and direct trauma to the brain matter.

Thoracic and abdominal trauma

Thorax: a red-coloured, irregular lacerated blast wound (5 * 4 cm, cavity deep) is located on the right frontal chest, 5 cm lateral to the midline.

Upper abdomen: a contused lacerated blast wound (2 *2 cm, muscle deep) is situated in the midline, 5 cm superior to the umbilicus.

Lower abdomen: a similar contused laceration (5 * 3 cm, muscle deep) is located on the left lower aspect of the anterior abdomen, 5 cm left of the midline.

Evisceration: widespread lacerations across the body (ranging from 0.5 * 1 cm to 24 *20 cm) resulted in the exposure of internal organs,

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specifically showing loops of the intestine through the abdominal wall.

Extensive lateral and systemic trauma

A massive lacerated blast wound measuring 20 *15 cm (cavity deep) is present on the lateral aspect of the right side of the body. This injury involves significant loss of integument, exposing underlying skeletal structures and soft tissues.

Extremities and traumatic amputation

Both upper and lower limbs exhibit traumatic amputation. the remaining tissue at the amputation sites is described as "contorted and lacerated," showing classic "blast effect" markers, consistent with exposure to high-pressure shockwaves and thermal energy.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.12 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.628 and the corresponding inquest report at Exh.1238 P.W. No.36 Dr. Dharmesh S. Patel at Exh.621 performed the postmortem of the deceased namely; Rohan Ashwinbhai Patel.

Nature of injury

Whole body has been converted into multiple pieces of flashed all bones of body (available bones) are fractured red blood present at monfru & manfru wounds are traumatised and irregular. Redish & blackish.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.13 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.636 and the corresponding inquest report at Exh.1289 P.W. No.37 Dr. Mushtaqahmed Ghulamarsul Sheikh at Exh.635 performed the

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postmortem of the deceased namely; Nitinbhai Maganbhai Patel.

Thermal burn injuries

The victim sustained extensive second to third-degree burns. the distribution of these injuries is widespread, covering the following anatomical regions:

Head and neck: total involvement of the head, face, forehead, and both the anterior (front) and posterior (back) aspects of the neck.

Torso: comprehensive burns involving the anterior and posterior chest wall, the anterior and posterior abdominal wall, and both buttocks.

Upper limbs: involvement of both upper limbs, including the palms.

Lower limbs: involvement of both lower limbs, excluding the soles of the feet.

Cause of death: Cause of death is due to burns following blast injury over body.

4.14 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.637 and the corresponding inquest report at Exh.1335 P.W. No.37 Dr. Mushtaqahmed Ghulamarsul Sheikh at Exh.635 performed the postmortem of the deceased namely; Rohitbhai Mathurbhai Solanki.

Nature of injury: Surgical suture wound 5 ,cm in size present over rt.eyebraw situated obliquely lt.end up & rt.end down.Surgical suture wound 6 cm in size present over chin situated transversly. Multiple abrasion of size varying from 7*5 cm to 1*0.5 cm over forehead, lt tomporo occipital region of head, both cheeks, chin, lt shoulder dorsom of lt hand, back of chest, rt buttock & dorsum of lt footscalp formation. 1 cm circuler hole over front of cower part of neck made surgically as a part of treatment.

Cause of death: Death is due to shock and hemorrhage. Due to multiple

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sustained injuries over body.

4.15 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.638 and the corresponding inquest report at Exh.1316 P.W. No.37 Dr. Mushtaqahmed Ghulamarsul Sheikh at Exh.635 performed the postmortem of the deceased namely; Sunil Prakashbhai Kakde.

Nature of injury: ii' to iii' burns over face, - forehead, ant, latered & posterolateral part of chest ant, lateal & posteco lateral part of abdomen, both upper limbs ĉ palms rt lower limb, lt knee, lt leg & foot.multiple clws size varying from 0.5*0.5 cm to 1*1 cm over lower part of abdomen, rt thigh & lt. lower limb.Yellowish greenish puss discharge seen over burns places.

Cause of death: Cause of death is septicemic shock due to burns over body.

4.16 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.642 and the corresponding inquest report at Exh.1228 P.W. No.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Ajaykumar Rajnikant Chauhan.

Major lacerations (contused lacerated wounds)

The injuries exhibit irregular margins, consistent with blunt force impact or high-velocity trauma:

Right medial thigh: a deep clw measuring 15 cm x 10 cm, extending to the muscle layer, situated transversely over the medial aspect of the middle third of the right thigh.

Left lateral thigh: a severe, transverse clw measuring 20 cm x 12 cm, extending to the bone (bone-deep) over the lateral aspect of the upper third of the left thigh.

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Lower limbs: multiple clws ranging from 4 cm x 3 cm to 3 cm x 2 cm distributed across both lower limbs, extending to the muscle layer.

Posterior trunk: multiple smaller clws (ranging from 2 cm x 1.5 cm to 2 cm x 1 cm) distributed across the back of the chest, back of the abdomen, and the buttocks.

At elbow level: complete traumatic amputation of the right upper limb at the elbow. the right forearm remains attached only by a residual flap of skin and muscle tissue.

Thermal and surface injuries

Evidence of heat exposure and possible blast/flash effects:

First-degree burns: noted over the face, the anterior chest, and the upper two-thirds of the abdominal region.

Soot/blackening: widespread blackening observed on the face, the anterior and posterior chest, the abdomen, and both lower limbs.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.17 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.643 and the corresponding inquest report at Exh.1261 P.W. No.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Sureshbhai Nagarbhai Dataniya.

Nature of injury: 2' to 3' burns over face, forehead, ant & post part of neck, both upper limbs ĉ palms ant & post part of chest, ant & post abdominal wall, both thighs both legs & feet. Frontal scalp hair, eyebraws, eyelashes burnt & seiaged.Lacerated wound present on heel of lt foot size 12*10 cm & bone deep. Lacerated wound present on heel of rt foot size 5*4 cm & muscle deep.

Cause of death: Cause of death is due to burns following blast injury

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over body.

4.18 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.640 and the corresponding inquest report at Exh.1330 P.W. No.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Chandangiri Bhalchandragiri Goswami.

Nature of injury: Blood clot found. 3' to 4' burns over chest & abdomen region.rt. & lat aspect of body of thorax & abdomen exposed & burns are exposed at places.red coloured blood appreciated on this area & blood clots found base of bum area reddish in colour. Both upper limbs are burnt 4' to 6'.

Cause of death: Cause of death is due to burns following blast injury over body.

4.19 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.649 and the corresponding inquest report at Exh.1293 P.W. No.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Vinodbhai Bhikhabhai Patni.

Nature of injury: 2nd & 3rd degree burns all face, neck, chest, abdomen, both illegible & back, both upper limbs, both buttock, lt lateral thigh it knee jt and it ankle ĉ feet, rt.knee & rt.illegible. All burnt's surface over yellowish-pinkish illegible tissue like puss discharge over it. Multiple illegible skin punctured lacerated wound in rt abilla lateral upper chestskin.

Cause of death: Cause of death is septicemic shock due to burns over body.

4.20 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.655 and the

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corresponding inquest report at Exh.1208 P.W. No.39 Dr. Dharmesh Amritsinh Silajiya at Exh.654 performed the postmortem of the deceased namely; Rajkamal Mahendrasinh Bihola.

Nature of injury: The medical evidence indicates that the deceased sustained catastrophic blast injuries characterized by traumatic mutilation and extensive tissue destruction. Notable injuries include the complete destruction of the right eye and eyeball, deep lacerations to the chest and elbow, and severe "traumatic mutilation" of the forearm and both legs. the presence of irregular margins, reddish-black discoloration (blackening), and exposed bone in the calf and elbow regions are consistent with a high-impact blast. Collectively, these punctured and lacerated wounds, ranging from muscle-deep to bone-deep, reflect a violent and fatal mechanical trauma across the entire body.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.21 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.658 and the corresponding inquest report at Exh.1183 pw. no.40 Dr. Manish Chimanlal Sutaria at Exh.656 performed the postmortem of the deceased namely; Rajkumar Indrachand Shah.

Nature of injury: The deceased sustained multiple traumatic injuries across the upper and lower limbs. Notable findings include a 2x2 cm contused lacerated wound (clw) on the medial aspect of the right elbow, accompanied by two punctured lacerated wounds (plw) on the right forearm (1.5 cm and 1.0 cm) with an associated track on the medial side. A substantial 10x5 cm abrasion was noted on the posterior right thigh. Significant trauma was localized to the left lower thigh, consisting of two irregular lacerated wounds (8x4 cm and 4x4 cm) involving deep

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muscle and vascular damage. Most critically, an 8x6 cm irregular laceration was identified in the right popliteal region (back of the knee), which contained a metallic foreign body and resulted in severed blood vessels. Additionally, a 6x3 cm irregular lacerated wound was recorded on the posterior aspect of the left leg.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.22 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.659 and the corresponding inquest report at Exh.1226 pw. no.40 Dr. Manish Chimanlal Sutaria at Exh.656 performed the postmortem of the deceased namely; Sumit Rameshbhai Gajera.

Nature of injury: The deceased sustained extensive traumatic injuries primarily concentrated on the posterior torso and lower back. Significant findings include a 7x7 cm irregular laceration on the right posterior chest, medial to the scapula, which was associated with an underlying rib fracture. The back and trunk exhibited multiple lacerated wounds with inverted margins, ranging in size from 0.5 cm to 2 cm, characterized by surrounding abrasions and thermal burns. Further injuries include a 5x3 cm vertical laceration adjacent to the lumbar spine and a 3x3 cm muscle-deep laceration on the left buttock, from which two irregular metallic fragments were recovered. additionally, a 2x2 cm laceration was noted inferior to the coccyx, alongside multiple scattered lacerations across the body varying in size from 1x1 cm to 5x5 cm.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.23 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.657 and the

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corresponding inquest report at Exh.1193 pw. no.40 Dr. Manish Chimanlal Sutaria at Exh.656 performed the postmortem of the deceased namely; Jashvantbhai Ranchhodbhai Patel.

Nature of injury: The deceased sustained a constellation of severe injuries involving thermal, blunt force, and penetrating trauma. most notably, the individual suffered second-to-third-degree burns across the left upper limb and posterior thoracic region (back of the left chest). Evidence of high-energy impact is noted by a 10x8 cm open lacerated wound associated with a fracture of the ulna just below the elbow, alongside significant craniofacial trauma in the form of a 10x7 cm temporal abrasion of particular forensic significance are the multiple small lacerated wounds with inverted margins located on the lumbar region, and a 7x3 cm transverse lacerated wound on the left buttock. The latter involved deep tissue penetration, evidenced by the recovery of an irregular metallic foreign body from within the muscle, which has been preserved for forensic laboratory analysis. These injuries, characterized by fractured bone, deep burns, and embedded metallic fragments, collectively indicate a violent event involving both thermal energy and mechanical force.

Cause of death: Due to shock and hemorrhage due to sustain multiple injuries associated with burns and metalic foreion body found in wounded part of body.

4.24 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.662 and the corresponding inquest report at Exh.1181 pw. no.40 Dr. Manish Chimanlal Sutaria at Exh.656 performed the postmortem of the deceased namely; Dr. Kinjal Prerak Shah.

Nature of injury: The medical evidence details a series of catastrophic

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and life-threatening injuries, characterized by extensive sharp-lacerated wounds (slw) and traumatic mutilation. Notably, the victim sustained a traumatic amputation of the left wrist with associated skin flaying, alongside a massive 22 x 11 cm laceration to the neck and chest that was deep enough to expose the vertebral Column. Further severe trauma is evidenced by a 25 x 20 cm abdominal wall laceration and deep, bone-exposing wounds to the face and chin. The sheer scale, depth, and distribution of these injuries ranging from the head to the abdomen indicate the application of significant force and reflect an assault of a particularly brutal and lethal nature.

Cause of death: Due to shock and multiple injuries.

4.25 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.689 and the corresponding inquest report at Exh.1226 pw. no.41 Dr. Harishkumar Trikamdas Khubvchandani at Exh.656 performed the postmortem of the deceased namely; Dr. Prerak R. Shah.

Nature of injury: The medical evidence details a series of extensive and severe injuries, primarily characterized as lacerated blast wounds and contused lacerations distributed across the victim's body. Notably, the right side of the thorax sustained a massive cavity-deep wound measuring 30*30 cm, which resulted in the exposure and laceration of internal organs and soft tissues. Additional deep-tissue blast injuries were recorded on the upper chest, the right arm (bone-deep), and the left leg. The victim also presented with a distinct horizontal "c-shaped" contused lacerated wound on the right abdomen and multiple smaller, scattered contusions across the anterior chest and lower limbs. The nature, depth, and scale of these wound ranging from subcutaneous to cavity-deep are collectively indicative of high-impact trauma consistent

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with an explosive force or blast mechanism.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.26 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.688 and the corresponding inquest report at Exh.1180 pw. no.41 Dr. Harishkumar Trikamdas Khubvchandani at Exh.656 performed the postmortem of the deceased namely; Jaykrishan Chandubhai Patel.

Nature of injury

The medical evidence details three distinct antemortem injuries, characterized primarily as contused lacerated wounds. the most significant injury was a massive, bone-deep wound measuring 16*16 cm, spanning the right side of the face from the mandible to the forehead. The second injury, described as a blast wound measuring 7* 5cm, was located on the left side of the neck, extending to the muscle depth near the angle of the mandible. A third muscle-deep laceration, measuring 5*3 cm, was also noted. Collectively, these injuries particularly the extensive craniofacial trauma and the blast-pattern neck wound indicate the application of significant force and characterize the violent nature of the assault.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.27 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.690 and the corresponding inquest report at Exh.1186 pw. no.41 Dr. Harishkumar Trikamdas Khubvchandani at Exh.656 performed the postmortem of the deceased namely; Prakashbhai Narandas Jain.

Nature of injury: The deceased sustained extensive and life-threatening

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injuries consistent with high-energy trauma, specifically characterized by multiple contused lacerated blast wounds. these include a massive 15 *10 cm cavity-deep wound on the left lower back, which resulted in the rupture of the left kidney and intestine, and a 10 *5 cm cavity-deep wound on the right lower back. Further significant trauma was noted in the left gluteal region 15 *10 cm and the left heel. Complementing these mechanical injuries were widespread second and third-degree burns affecting the face, upper limbs, and lower legs, accompanied by the singeing of hair on the head and neck. The nature, depth, and anatomical distribution of these injuries specifically the internal organ ruptures and the blast-pattern lacerations indicate a high-intensity force consistent with an explosive event, cumulatively sufficient to cause death in the ordinary course of nature.

Cause of death : Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.28 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.700 and the corresponding inquest report at Exh.1234 pw. no.42 Dr. Bhargava Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely; Dushyant Motilal Vyas.

Nature of injury: The deceased presented with extensive second and third-degree burns covering approximately 35% of the total body surface area, specifically involving the forehead, frontal scalp, right upper and lower extremities, and the left thigh. The presence of both reddish and whitish patches, along with peeling skin, indicates deep-tissue thermal damage. In addition to the burns, the victim sustained multiple lacerated wounds (lws) and a significant incised wound. notably, the right lower thigh and leg exhibited multiple lacerations with bone exposure, while

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the left popliteal area (behind the knee) sustained a 4 *1.5 cm incised wound. This injury was particularly grave, resulting in the complete severing (cut) of the popliteal vessels. The combination of extensive high-degree burns and the traumatic disruption of major vascular structures suggests a violent mechanism of injury, resulting in significant blood loss and physiological shock.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.29 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.699 and the corresponding inquest report at Exh.1184 pw. no.42 Dr. Bhargava Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely; Viralgiri Balvantgiri Goswami.

Nature of injury: The deceased sustained second-to-third-degree burns covering 90% of the body, sparing only the external genitalia and isolated patches of skin. the presence of both "reddish and whitish" discoloration, combined with the "easy peeling" of skin (sloughing), indicates deep partial-thickness to full-thickness tissue destruction.

This thermal injury is compounded by multiple compound (open) fractures involving all four limbs:

Upper extremities: a fractured left humerus with penetrating lacerated wounds (plw) at the shoulder.

Lower extremities: a fractured left femur with a 7 cm deep muscle wound, and bilateral fractures of the tibia and fibula (t/f) accompanied by multiple lacerated wounds (lw) ranging from 2 cm to 4 cm in size.

The combination of 90% tbsa burns and bilateral major long-bone fractures represents an unsurvivable or "grave" injury profile, typically resulting in rapid hypovolemic and neurogenic shock, complicated by

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systemic inflammatory response syndrome (sirs).

Cause of death: Shock due to extensive burns and multiple injuries over body.

4.30 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.701 and the corresponding inquest report at Exh.1210 pw. no.42 Dr. Bhargava Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely; Pareshbhai Karshanbhai Panchal.

Nature of injury: The deceased sustained second-to-third-degree burns covering 40% of the body, critically involving the face, eyebrows, eyelashes, and scalp. the "full-thickness" (f.t.) nature of the scalp hair involvement and the facial distribution suggest intense, direct heat exposure.

Furthermore, the victim suffered a series of complex orthopedic and soft-tissue injuries:

Abdominal & pelvic trauma: a deep muscle-depth (md) lacerated wound (lw) to the lateral abdominal wall and a contused lacerated wound (clw) in the right inguinal (groin) region.

Severe lower limb devastation: the right leg shows catastrophic damage, including a bone-deep clw at the knee with a comminuted patellar fracture (multiple fragments) and exposed fractures of the tibia and fibula (t/f).

Crush injuries: significant crushing trauma to the fingers of the right hand and bilateral crushing of the medial malleoli (inner ankle bones), extending to the right foot where tendons were left exposed.

Cause of death: Death is due to shock and hemorrhage. Due to multiple sustained injuries over body.

4.31 In evaluating the cause and circumstances of death, the Court

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takes note of Column 17 of the post-mortem note Exh.758 and the corresponding inquest report at Exh.1259 pw. no.49 Dr. Maheshkumar Pursottambhai Kapadia at Exh.757 performed the postmortem of the deceased namely; Mansukhbhai Girdharbhai Ghumadiya.

Nature of injury: Wound of 1.5*1cm over left upper shoulder penetrating deep to subentrnoowd to muscle contused and illegible dry blood opened wound over left chest below nipple 4*1.5 cm contused and irregular shape blood clots opened pl wound 16*4 cm ellround type irregular shape over leg iliae fossa muscle illegibel seen dry blood. Contusions over abdomen 12*10 cm over left and middle of abdomen redness a wound 5*1 cm illegible blackning pads burns 2 to 3 degree over both upper limbs illegibel skin seperated many parts redness and blackning skin a opened wound 4*3cm over left anteriar parts of leg.

Cause of death: Death is due to shock and hemorrhage. Due to multiple projectile injuries over body with associated burns over body.

4.32 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.759 and the corresponding inquest report at Exh.1212 pw. no.49 Dr. Maheshkumar Pursottambhai Kapadia at Exh.757 performed the postmortem of the deceased namely; Girishbhai Vitthalbhai Ravrani.

Nature of injury: 2 to 3 degree burns over right and left arm, forearm, face area and both leg area illegible with blackning parts.clwound opened wound 3*0.5cm over right temporal region dry blood.14 stitches satuge over right front to temporoparietal region dry blood stained surroundings illegible.wound of 4*2.5cm over right anterior parts of leg & dry blood.

Cause of death: Death is due to shock and hemorrhage. Due to multiple projectile injuries to brain.

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4.33 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.775 and the corresponding inquest report at Exh.1219 pw. no.50 Dr. Jyantilal Veljibhai Satapara at Exh.774 performed the postmortem of the deceased namely; Ishwarbhai Madhabhai Chhavada.

Nature of injury: 2nd & 3rd degree burns present on face, ear, back of neck, 12*12 cm on mid sterinal area of chest, on back of chest & back of upper abdomen area. On both upper limbsexcept medial side of arm & fore arm both lower limb except few genitals area scalp hair singed, eye brow, eye lashes burnt infection, slough & few area of redness present on burn area. 5*3 cm lacerated infected wound 1.5cm muscle deep on lt snuft bone on wrist where 4*1 cm size irregular metalic piece found collected & send to fsl 2 cm surgicle lacerated wound for icd on lt side lateral chest in 6th ics mid arcillary line 1 cm round plw on rt chest 12 cm below nipple 1 cm round plw on lt epigartely region.

Cause of death: Cause of death is cardio respiratory arrest due to burns and associated injury as result of blast injury.

4.34 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.718 and the corresponding inquest report at Exh.1287 pw. no.45 Dr. Bhavna Chankaykumar Patel at Exh.717 performed the postmortem of the deceased namely; Bhavesh Rameshbhai Kabira.

Nature of injury: 1 cm*1cm sized surgically made wound on ant axillary line, 7cm below axillary line cavity deep s/o icd insertion. 2 cm long stitch wound one stich present on front of right side of chest, 12cm down undermedialy to rt nipple & 3cm lateral to midline margins are contused. 2nd to 3rd degree burn over face. neck right upper limb hand, left upper limb hand chest lateral half of ant aspect of both side & back

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of chest. Abdomen lateral half of ant of left side of aspect abdomen, left latwall & back of whole abdomen.

Cause of death: Cause of death is cardio respiratory arrest due to burns and associated injury as result of blast injury.

4.35 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.719 and the corresponding inquest report at Exh.1314 pw. no.45 Dr. Bhavna Chankaykumar Patel at Exh.717 performed the postmortem of the deceased namely; Rohan Dushyant Vyas.

Nature of injury: 2nd to 3rd degree burn over face ĉ ears, scalp hair churned, eyebrows - eye lashes burnt, neck chest, whole, upper abdomin- front and back over left. upper limb on quite medial aspect of arm & forearm scattered burnt & posterial aspect whole ĉ hand.Over right upper limb on ant medial aspect of arm to forearm scettered burns & postering aspect whole hand over both thighs ant lat & posterior aspect both feet burns area greenish over yellow foul smelling tissue seen s/o infection. Lacerated wound over rt clavicle size 2cm*1cm. Lacerated wound over left clavicle size 2 cm * 0.5 cm. Infected punch lacerated wound on medial aspect of left thigh, 7 cm above left knee. Contused abrasion on left thigh upper part redial aspect size 2cm*1cm.

Cause of death: Cause of death is cardio respiratory arrest due to burns and associated injury as result of blast injury.

Sarkhej Police Station I.- C.R. 181/08

Blast in AMTS

4.36 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.729 and the corresponding inquest report at Exh.1277 pw. no.46 Dr. Bhavna

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Chankaykumar Patel at Exh.728 performed the postmortem of the deceased namely; Hasmukhbhai Vrajlal Soni.

Nature of injury

The medical evidence reveals a constellation of injuries concentrated primarily on the right side of the victim's body, consisting of thermal burns, abrasions, and deep infected wounds. notably, the victim sustained first and second-degree burns involving the right side of the forehead, cheek, ear, ankle, and foot, characterized by dark red discoloration and slough formation. these are accompanied by multiple healing abrasions with scabs across the right arm, forearm, chest, and upper abdomen, indicating a period of recovery since the initial trauma,of particular clinical concern are two contused lacerated wounds (clws) on the right thigh one reaching bone-depth and the other muscle-deep both exhibiting pus discharge, which signifies a secondary bacterial infection. The distribution of these injuries spanning from the head to the lower extremities suggests a significant traumatic event involving both thermal and blunt force impact, with the presence of slough and pus indicating a lack of immediate or adequate antiseptic intervention during the healing process.

Cause of death: Shock as result of injuries sustained.

4.37 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.748 and the corresponding inquest report at Exh.1160 pw. no.48 Dr. Namish Rameshchandra Bhojak at Exh.747 performed the postmortem of the deceased namely;Himanshu Hasmukhbhai Chhaya.

Nature of injury: The medical evidence details a series of extensive and life-threatening injuries, primarily concentrated on the right side of the body. Most significant is a massive red contused lacerated wound (40 x

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25 cm) on the right lateral trunk, which is cavity deep, resulting in the evisceration and visibility of the liver and intestines. This is accompanied by a secondary cavity-deep laceration above the right nipple. Further examination revealed multiple red contused lacerated wounds of varying depths, ranging from subcutaneous tissue exposure on the thigh and fingers to bone-deep injuries at the right elbow and mid-leg. These are complemented by extensive red abrasions on the right forearm, thigh, and foot, indicating significant surface trauma. The combination of organ-exposing abdominal wounds, deep focal lacerations to the bone, and widespread abrasions suggests the application of extreme mechanical force and constitutes a medical emergency of the highest gravity, likely indicative of a fatal or near-fatal event.

Cause of death**: S**hock as result of injuries sustained.

Maninagar Police Station- I- C.R. 203/08,

(1) bomb blast on cycle at om pan parlour

(2) bomb blast on cycle at mahalaxmi market, nr. anna tea

4.38 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.777 and the corresponding inquest report at Exh.1266 pw. no.50 dr. at Exh.774 performed the postmortem of the deceased namely; Chirag Chandravan Shah.

Nature of injury: Punctured lacerated wound of size 0.5*0.5 cm present over left side of chest in 5th intercostal space at mid-axillary line 5 cm below axilla and 9.5 chm lateral (left) to left nipple. The margins are irregular and inverted blood is oozing from the wound.

Cause of death: Shock and hemorrhage as a result of projectile injury

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over chest.

Bapunagar Police Station – I- C.R. 220/08

(1) bomb exploded on cycle ata sardar patel diamond narket,infront diamond pan corner,

(2) bomb exploded on cycle at nr. shriji ice cream in front of tea stall

4.39 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.766 and the corresponding inquest report at Exh.1254 pw. no.30 Dr. Jigesh Vasantkumar Shah at Exh.591 performed the postmortem of the deceased namely; Anil Valjibhai Jasani.

Nature of injury: The deceased sustained multiple punctured lacerated wounds across the head, chest, and abdomen, characterized by inward margins and dimensions ranging from 0.5 *0.5 cm to 1 *1 cm. These injuries, consistent with the impact of projectile pellets from a bomb blast, are further supported by the presence of multiple circular, reddish contusions on the scalp. The force of the blast resulted in several circular fractures and corresponding holes in the occipital and parietal bones of the skull. internal examination revealed a pale brain, indicating significant hemorrhaging or systemic shock. collectively, these findings point to high-velocity pellet impacts as the primary mechanism of trauma.

Cause of death: Shock and hemorrhage as a result of projectile injury over head and body.

Amraiwadi Police Station – I-C.R. 237/08,

Bomb blast on cycle at new harinarayan park complex, opp. jyoti mobile shop, hatkeshwar, amraiwadi

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4.40 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.733 and the corresponding inquest report at Exh.1322 pw. no.47 Dr. Vikram Kalidas Parghi at Exh.732 performed the postmortem of the deceased namely; Dineshray Bhagvanray.

Nature of injury: The medical examination revealed a significant depressed wound over the occipital region of the skull, measuring 3 * 3 cm. This injury was characterized by the presence of purulent discharge (puss), indicating a localized infection at the site of trauma. Further evidence of head injury included a subgaleal hematoma (collection of blood) beneath the scalp skin measuring 5 *5 cm, and a 3 * 3 cm scalp wound, also discharging pus. additionally, a 4 cm surgical suture (stitch) was noted on the right ear, consistent with medical treatment for a laceration in that area. The combined presence of a depressed fracture site and significant internal bruising (hematoma) underscores the severity of the blunt force trauma sustained to the head.

Cause of death: Cause of death is due to cardic respirotary arrest after injury on head.

Ramol Police Station – I-C.R. No. 321/08,

Blast on cycle , nr. hatkeshwar circle, opp. tejendra complex, b/h. electric d.p

4.41 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.647 and the corresponding inquest report at Exh.1268 pw. no.38 Dr. Vinayakrav Vasudev Patel at Exh.639 performed the postmortem of the deceased namely; Dahiben Kalubhai Hirabhai Purabiya.

Nature of injury: The victim sustained a circular puncture lacerated

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wound measuring 1 cm × 1 cm, located on the left parietal region of the skull (approximately 11 cm above the left eyebrow and 3 cm from the midline). This external injury was associated with a significant underlying scalp hematoma (15 cm × 10 cm) and a specific "signature fracture" of the skull vault. Notably, a round metallic pellet ("chharra") was found embedded within the fracture site, indicating the use of a projectile weapon. Internal examination further revealed a secondary hematoma on the right frontal region, along with subarachnoid and subdural hemorrhages, confirming severe intracranial trauma. Additionally, a contused abrasion on the right upper thigh suggests blunt force impact or secondary trauma to the lower limb.

Cause of death: Shock and hemorrhage due to head injuries.

4.42 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.664 and the corresponding inquest report at Exh.1269 pw. no.40 Dr. Manish Chimanlal Suthariyani at Exh.656 performed the postmortem of the deceased namely; Sunandben Shravanbhai Borikar.

Nature of injury: 2*1 cm transverse muscle deep lacerated wound on back of right chest. 5 cm post to post axialary fold where round metalic foreign body found. 1 cm round plw (punctured lacerated wound) on chin just below rt angle of mandible. 1 cm round plw on rt face 1 cm ratenal to angle of rt eye with of underlying bone. 1 cm round plw on left temple, 3 cm above ear with of lt. temporal. 1 cm round plw on rt chest 10 cm above neeple & 5 cm medial to ant axilary.inj no(4) trancing to cranial cavity with puncture of lt temporal & linear component present & causing contusion, laceration of brain of lt temporal, partial rt. partial where round metalic forein body found collected and sent to fsl.

Cause of death: Shock and hemorrhage due to multiple projectile

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injuries.

4.43 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.702 and the corresponding inquest report at Exh.1271 pw. no.42 Dr. Bhargav Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely; Munarilal Prasadilal Agrawal.

Nature of injury: The victim sustained an extensive array of punctured lacerated wounds (plw) distributed across the lower limbs, torso, and axillary regions. notably, the injuries include multiple small-scale lacerations with inverted margins (ranging from 0.2 * 0.5 cm) concentrated on the thighs and legs, as well as three significant lacerated wounds in the left axilla measuring up to 3 * 0.5 cm. The examination further reveals a high frequency of "through-and-through" punctured wounds, specifically localized to the bilateral thighs, right axilla, right scapular region, and the left gluteal and lower back areas. The presence of inverted margins and the penetrating nature of the "through-and-through" injuries are clinically indicative of a targeted assault involving a sharp, pointed weapon used with sufficient force to transfix multiple anatomical regions, including the chest wall, inguinal region, and deep muscular tissues of the extremities.

Cause of death: Shock and hemorrhage due to causing injuries to vital organs.

4.44 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.783 and the corresponding inquest report at Exh.1275 pw. no.51 Dr. Jayant Nagardas Solanki at Exh.782 performed the postmortem of the deceased namely; Unknown Male.

Nature of injury: The medical evidence details a series of eight punched

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lacerated wounds distributed across the deceased's upper limbs, axilla (armpit), gluteal region, and chest wall. These wounds are characterized by inverted and contused margins, which are classic diagnostic indicators of firearm entry wounds. The "punched-out" appearance and the specific measurements (ranging from 0.2*0.2cm to 0.5*0.5 cm) suggest the impact of high-velocity projectiles. The presence of contusion collars (bruised margins) around these openings further confirms that the force was applied externally, consistent with multiple gunshots sustained from varying angles, including the lateral aspects of the limbs and the posterior chest wall.

Cause of death: Shock and hemorrhage due to injuries sustained to the body.

Dani Limda Police Station- I-C.R. 140/08,

bomb blast on cycle at narol circle, backside of hanumanji temple.

4.45 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.750 and the corresponding inquest report at Exh.1273 pw. no.48 Dr. Namish Rameshchandra Bhojak at Exh.747 performed the postmortem of the deceased namely; Mohmmad Israr Mohmad Jalil.

Nature of injury: The medical evidence details a fatal penetrating injury to the cranium, characterized by a perforated fracture of the left temporal bone measuring 1 cm × 1 cm. this internal injury corresponds to external surgical sutures on the left temporal region, indicating a localized point of entry. The trajectory of the wound was significant, traversing the scalp and temporal bone, tearing the dura mater, and resulting in a laceration of the left temporal lobe. The path of destruction extended through the brain tissue to the right lateral ventricle, where a 0.5 cm

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greenish-white metallic pellet was recovered. The injury caused extensive intracranial trauma, including sub-dural, sub-arachnoid, and intra-ventricular hemorrhages, alongside generalized cerebral edema and congestion. These findings, coupled with the recovery of the metallic projectile from the deep brain structures, are consistent with a close-range penetrating gunshot wound to the head, resulting in catastrophic neurological damage.

External trauma: two surgical stitches on the left temporal scalp and healing abrasions on the right palm and upper back.

Skull fracture: a specific 1*1 cm perforation of the left temporal bone.

Brain pathology: extensive hemorrhaging across multiple layers (sub-dural, sub-arachnoid) and within the ventricular system.

Foreign body: recovery of a 0.5 cm metallic pellet from the right lateral ventricle, establishing the wound track from left to right.

Cause of death: Shock as a result of head injuries sustained.

Isanpur Police Station I-C.R. 190/08,

bomb blast on cycle at govind wadi, vegetable market on road

4.46 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.646 and the corresponding inquest report at Exh.1264 pw. no.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Dipikaben Manojbhai Desai.

Nature of injury: The victim sustained multiple punctured lacerated wounds (plw) and traumatic injuries distributed across the torso and extremities. notably, the examination recorded four penetrating wounds to the left posterior chest and three to the right inferior back, the latter associated with singed clothing and everted margins, suggesting a

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specific mechanism of injury. The lower limbs showed extensive trauma, including a significant 12-wound cluster on the left thigh and additional penetrating injuries on the left leg, characterized by contused and everted edges with evidence of dried blood. Further findings included a 2x2 cm "dead wound" near the left nipple, surgical sutures on both legs indicative of medical intervention, and significant scalp haematomas measuring up to 9x6 cm. Internal examination revealed haemorrhaging on both surfaces of the brain, collectively indicating a violent assault involving multiple penetrating strikes and blunt force trauma to the head. Cause of death**:** Shock and hemorrhage due to projectile injuries sustained over heart, liver and spleen.

Naroda Police Station – I- C.R. 400/08,
Bomb blast on cycle at kuldevi tea stall

4.47 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.645 and the corresponding inquest report at Exh.1257 pw. no.38 Dr. Vinayakkarav Vasudevrao Patil at Exh.639 performed the postmortem of the deceased namely; Siyaram Deviram Oza.

Nature of injury: CLW 4*1 cm & muscle deep over lt leg, middle part, medially situated obliquely & red in colour.

Cause of death**:** Shock and hemorrhage due to blast injury sustained over body.

4.48 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.663 and the corresponding inquest report at Exh.1279 pw. no.40 Dr. Manish Chimanlal Sutaria at Exh.656 performed the postmortem of the deceased namely; Kanubhai Laxmanbhai Jodhani.

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Nature of injury: The victim sustained multiple traumatic injuries, most notably a 1.0 cm circular puncture lacerated wound (plw) located 3.0 cm above the right eyebrow. This injury was particularly severe, involving a bone-deep fracture of the skull and a tract extending into the cranial cavity. The internal examination revealed significant intracranial injury, including hemorrhaging and the contusion and laceration of brain tissue across the right frontal and left parietal lobes. A round metallic foreign body was recovered from the impact site within the brain and secured for forensic analysis . Additionally, the victim presented with several other 1.0 cm circular plws distributed across the chest, right mid-axillary line, epigastrium, and subcostal areas, alongside abrasions to the upper lip and nose. The nature and distribution of these wounds, specifically the deep penetrating cranial injury caused by a metallic object, indicate a high-velocity impact consistent with a serious life-threatening assault.

Cause of death: Shock and hemorrhage due to multiple projectile injuries

4.49 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.703 and the corresponding inquest report at Exh.1256 pw. no.42 Dr. Bhargava Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely;Bhagvanbhai Manjibhai Gajera.

Nature of injury: The deceased sustained multiple injuries, most notably a 1.1 cm round punctured lacerated wound (plw) in the left temporal region, posterior to the ear. Internal examination revealed that this wound corresponded to a 1 cm circular perforation of the left temporal bone near the temporo-occipital suture. The track of this injury extended deep into the cranial cavity, causing extensive laceration of the left temporal and parietal lobes, accompanied by subarachnoid hemorrhage

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(sah). A small, round metallic foreign body consistent with a projectile was recovered from the brain tissue, indicating a fatal penetrating gunshot wound to the head.

Cause of death: Shock and hemorrhage due to vital organs injuries due to projectile injuries.

Khadia Police Station I-C.R.71/08

Blast on cycle at 3 places

1. M. Narandas Medicial Stores

2. Gokhle Pan Parlour

3.Milan Kirana Stores.

4.50 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.704 and the corresponding inquest report at Exh.1162 pw. no.42 Dr. Bhargava Becharbhai Zaveri at Exh.698 performed the postmortem of the deceased namely; Subardevi Dalaji Ghanchi.

Nature of injury: The medical examination of the victim reveals multiple penetrating injuries, specifically characterized as punch lacerated wounds (plw), distributed across the right side of the body. Notably, the injuries to the right lower arm and right elbow exhibit a communicating track, with the elbow wound displaying everted margins, which is typically suggestive of an exit point in the context of penetrating trauma.Similar penetrating wounds were documented on the right buttock, the medial lower thigh (8 cm above the knee), and the lateral thigh; the latter also presented with everted margins and a subsurface track. Additional injuries include a linear contused lacerated wound (clw) measuring 11 *0.5 cm on the lateral aspect of the right eyebrow and a localized abrasion near the right nipple. The presence of multiple round,

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tracked wounds across the extremities and torso indicates a significant pattern of focal trauma consistent with the application of high-velocity or specialized penetrating force.

Cause of death: Shock and hemorrhage due to head injury and multiple other projectile injuries.

4.51 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.713 and the corresponding inquest report at Exh.1160 pw. no.43 Dr. Rohit Amrishkumar Raval at Exh.698 performed the postmortem of the deceased namely; Vishal Amrishkumar Raval.

Nature of injury: The victim sustained multiple injuries primarily concentrated on the right side of the body, characterized largely by puncture-lacerated wounds of varying depths. These injuries were located on the upper chest (15 cm above the right nipple), the superolateral aspect of the right arm, the lower third of the right leg, and the dorsum of the right hand, where the wound reached bone depth. additional puncture-lacerated wounds were noted in the pelvic and inguinal regions, specifically near the root of the penis and the right inguinal canal, penetrating to the subcutaneous and muscular layers. furthermore, a contused lacerated wound was recorded on the upper third of the right thigh. The depth of these wounds ranging from subcutaneous tissue to muscle and bone suggests the application of significant force with an object capable of both piercing and tearing the skin and underlying structures.

Cause of death: Shock as result of injuries sustained.

4.52 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.716 and the corresponding inquest report at Exh.1160 pw. no.44 Dr. Kartik

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Baladevbhai Prajapati at Exh.715 performed the postmortem of the deceased namely; Amrutbhai Asharam Nagar.

Nature of injury: The victim sustained multiple red, punctured, lacerated wounds across several anatomical regions, specifically the right upper abdomen (9 cm below the right nipple), the anterior medial aspect of the right leg, the postero-lateral aspect of the right thigh, and the antero-medial aspect of the left thigh. These wounds ranged in size from approximately 0.5*0.5 cm to 2 *1 cm and were uniformly muscle-deep in nature. Notably, upon internal examination of the wounds on the right leg and right thigh, greyish-white metallic pellets were recovered from the tissue. The nature, distribution, and presence of metallic foreign bodies within the lacerated punctures are consistent with injuries caused by a projectile-based weapon, such as a firearm.

Cause of death: Shock as result of injuries sustained.

4.53 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.731 and the corresponding inquest report at Exh.1160 pw. no.46 Dr. Kalpeshbhai Somchandadbhai Kothariya at Exh.728 performed the postmortem of the deceased namely; Ankit Shaileshbhai Modi.

Nature of injury: Two punctured lacerated wounds with contused margins, each measuring 0.5 cm x 0.5 cm. the first was located on the right parietal eminence of the head, extending to the depth of the bone. The second was situated on the upper aspect of the left thigh, from which a greyish-white metallic pellet was surgically recovered. These specific characteristics the small, uniform dimensions of the entry points and the presence of a metallic projectile are highly indicative of a firearm injury. Additionally, the victim sustained a significant red contusion (14 cm x 10 cm) on the left side of the abdomen. The clinical

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findings, particularly the recovery of the pellet and the "bone-deep" nature of the cranial wound, corroborate the use of a projectile weapon and underscore the life-threatening potential of the assault, especially given the strike to the vital parietal region of the head.

Cause of death: Shock as result of injuries sustained.

4.54 In evaluating the cause and circumstances of death, the Court takes note of Column 17 of the post-mortem note Exh.749 and the corresponding inquest report at Exh.1164 pw. no.48 Dr. Namish Rmaeshchandra Bhojak at Exh.747 performed the postmortem of the deceased namely; Hasumatiben Jagdishbhai Kadia.

Nature of injury

Surgical intervention

The presence of a 25 cm vertical midline incision on the abdomen, closed with black interrupted sutures and extending 12 cm above the umbilicus, indicates a significant therapeutic procedure. the depth and location suggest a midline laparotomy, likely performed as an emergency surgical response to treat internal injuries within the abdominal cavity.

Penetrating and superficial trauma

The victim sustained an open puncture wound (1.5 x 1 cm) on the left lower quadrant of the abdomen, located 16 cm from the midline and 4 cm below the umbilicus. the presence of "everted margins" and "cavity depth" strongly suggests this was a penetrating entry wound. additionally, a 2 x 1 cm contused lacerated wound was noted on the left cheek, involving the deep tissue layers, consistent with blunt force or impact trauma.

Ballistic injuries (pellet wounds) Multiple puncture-lacerated wounds with contused margins were identified across eight distinct locations,

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primarily concentrated on the right side of the body (ear, elbow, thigh, leg, and foot). upon medical incision, greenish-white metallic pellets (approximately 0.5 cm in diameter) were recovered from the muscle tissue. the distribution and nature of these wounds specifically the presence of metallic pellets are characteristic of injuries caused by a firearm discharge, specifically a shotgun or similar weapon firing birdshot or buckshot.

Cause of death: shock as result of injuries sustained.

5. Discussion on evidence on injuries sustained by victims due to the bomb blast

MANINAGAR POLICE STATION- I- C.R. 203/08,

(1) Bomb Blast On Cycle At Om Pan Parlour

(2) Bomb Blast On Cycle At Mahalaxmi Market, Nr. Anna Tea

5.1 Shaileshbhai Dashrathbhai Trivedi (P.W. No.143/ Exh.1011)

Name of Doctor: Dr. Aditya Upadhyay (P.W. No.281/ Exh.1503)

Medical Certificate: Exh.1507

Nature Of Injury:

i) (X- Ray Skull)

Pellet noted in left occipital bone impacted in outer table of the skull.

ii) (CT Scan Brain Plain)

Plain contiguous axial sections (5mm and 10mm) were obtained from skull base to cranial vault.

5.2 Harsdhabhai Chandubhai Halani (P.W. No. 04/ Exh.496)

Name of Doctor: Dr. Nirav Panchal (P.W. No.282 / Exh.1526)

Medical Certificate: Exh.1527

Nature of Injury: Vomiting, Convulsions ENT bleeding. (ENT- Ear,

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Nose, Throat.)

5.3 Rakesh Mukundbhai Odhaviya (P.W. No. 119/ Exh.961)

Name of Doctor: Dr. Nayan Vinodchandra Shah (P.W. No.289/ Exh.1555)

Medical Certificate: Exh.1556

Nature of Injury: Minor injuries at chest area.

5.4 Hardik Ghanshyambhai Thakkar (P.W. No.120/ Exh.962)

Name of Doctor: Dr. Pratik H Vyas (P.W. No.293/Exh.1576)

Medical Certificate: Exh.1577

Nature of Injury: Vomiting, convulsions ENT bleeding.

5.5 Gajanand Indravadan Gor (P.W. No.128/ Exh.979)

Name of Doctor: Dr. Deepak D Patel (P.W. No.314/ Exh.1642)

Medical Certificate: Exh.1643

Nature of Injury: Missile Injury- left sub occipital soft tissue. Injury on left eye, right forearm, left occipital region.

5.6 Chetankumar Pravinkumar Hingu (P.W. No.-118/ Exh.960)

Medical Certificate Admitted By Defence Exh..7130

Nature of Injury: A swelling approximately 10 cm above styloid process (radial) and swelling in right area of abdominal wall.

5.7 Bharatkumar Shivlal Rathod (P.W. No.-122/ Exh.970)

Medical Certificate Admitted By Defence Exh.7131

Nature of Injury: Pellet injury.

<u>MANINAGAR POLICE STATION- I- C.R. 205/08,</u>

<u>Bomb blast on cycle at near maninagar amts bus stand</u>

5.8 Jagdish Bheraji Mena (P.W. No.- 15/ Exh.533)

Medical Certificate Admitted By Defence Exh.7133

Nature of Injury: Puncture wound over right lower arm with bleeding.

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AMRAIWADI POLICE STATION – I-C.R. 273/08,

Bomb blast on cycle at New Harinarayan Park Complex, Opp.Jyoti Mobile Shop, Hatkeshwar, Amraiwadi

5.9 Hiraben Revabhai Parmar (P.W. No.- 141/ Exh.1009)

Name of Doctor : Dr. Hetalben Badhekani (P.W. No.276/Exh.1438)

Medical Certificate Exh.1461

Nature of Injury: 7*7 cm burn over left side, injury on back and left leg.

KALUPUR POLICE STATION I-C.R 123/08,

Bomb blast on cycle in front of Janta Pan House, Sarangpur

5.10 Hemant Madhukar Parab Gave Evidence Regarding Injury To Injured Kutbuddin Shaikh (PWNo.- 89/Exh.901)

Name of Doctor: Dr. Ronak Desai (P.W. No.271/ Exh.1362)

Medical Certificate Exh.. 1374

Nature of Injury: Left arm 1*1 cm puncture wound on the posterolateral aspect of arm. No sign of crepitus, a radio opaque opacity seen at post lateral aspect of arm.

5.11 Hemant Madhukar Parab (P.W. No.- 89/ Exh.901)

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1375

Nature of Injury: Four small 1*1 cm abrasion on back two in lumber region and two in hypochondrium region, red in colour.

5.12 Chanduji Maganji Thakaor(P.W. No. 90/ Exh.902)

Name of Dr. Vithalbhai Patel (P.W. No.317/Exh.1649)

Medical Certificate Exh.1650

Nature of Injury: Left knee injury.

5.13 Bhavin Piyushbhai Patel

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Medical Certificate Admitted By Defence Exh.7167

Nature Of Injury: pellets injury , right arm, right thigh, head injury.

NARODA POLICE STATION ŀC.R 401/08,

Bomb Blast On Cycle At Naroda Bhagol, Below Mayur Restaurant, Paramshakti Tea Stall

5.14 Rupji Dhulaji Damor (P.W. No. 211/Exh.1142)

Name of Dr. Bharatbhai Dave (P.W. No.292/Exh.1574)

Medical Certificate Exh.1575

Nature of Injury: A laceration on forehead, abrasion on abdomen right side.

5.15 Prabhat Bodabhai Baria (P.W. No. 212/Exh.1143)

Medical Certificate Admitted By Defence Exh.7129

Nature of Injury: Injury on right hand (elbow)

VATVA POLICE STATION – I-C.R. 218/08,

bomb blast on cycle at narol circle, opp. mittal chambers

5.16 Mithun Dhanabhai Rabari (P.W. No. 101/Exh.925)

Name of Dr. Jaydev Shivdan Modh (P.W. No.279/Exh.1477)

Medical Certificate Exh.1484

Nature of Injury: Small foreign body of forsal aspect of lt. arm with 2 cm wound.

5.17 Kadarbhai Karimbhai Ajmeri (P.W. No.10/Exh.518)

Name of Dr. Jaydev Shivdan Modh (P.W. No.279/Exh.1477)

Medical Certificate Exh.1487

Nature of Injury: Injury on back.

5.18 Jahedhusen Ramjanbhai Rangrej (P.W. No. 102/926)

Name of Dr. Jitendra Parmar (P.W. No.296/Exh.1588)

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Medical Certificate Exh.1589

Nature of Injury: Head injury, right side chest and back multiple wounds of 0.5* 0.5cm, left side chest and back five in number.

5.19 Narendrabhai Pundlikrav Shinde (P.W. No. 100/Exh.924)

Medical Certificate admitted By Defence Exh.7168

Nature of Injury: Injury on right thigh.

MANINAGAR POLICE STATION – I-C.R 204/08

Bomb blast on cycle at Shivani Avenue on public road

5.20 Mayurbhai Dhirajbhai Solanki (P.W. No. 13/Exh.529)

Medical Certificate Admitted By Defence Exh.7132

Nature of Injury: Left side chest injury.

BAPUNAGAR POLICE STATION- I-C.R. 220/08

(1) Bomb Exploded On Cycle At Sardar Patel Diamond Market, Infront Diamond Pan Corner

(2) Bomb Exploded On Cycle At Nr. Shriji Ice Cream In Front Of Tea Stall

5.21 Bachubhai Narshibhai Patel (P.W. No. 192/Exh.1903)

Name of Dr. Hetalben Badhekani (P.W. No.276/Exh.1438)

Medical Certificate Exh.1459

Nature of Injury: Abrasion of 2*2 cm lt. side chest.

5.22 Kantibhai Laljibhai Patel (P.W. No. 194/Exh.1905)

Name of Dr. Hetalben Badhekani (P.W. No.276/Exh.1438)

Medical Certificate Exh.1460

Nature of Injury: lacerated wound 2*3 cm, burend 2*2 cm at rt. chest, rt. side abdomen abrasion 2*3 cm.

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5.23 Dilipbhai Ramjibhai Gohel (P.W. No. 193/Exh.1904)

Name of Dr. Hetalben Badhekani (P.W. No.276/Exh.1438)

Medical Certificate Exh.1473

Nature of Injury: 1*0.5 cm on lateral end of left region abrasion 1*0.5 cm , 3*1 cm lateral of rt. shoulder.

5.24 Rameshbhai Chhaganbhai Chandpara (P.W. No. 6/Exh.504)

Name of Dr. Aditya Upadhyay (P.W. No.281/Exh.1504)

Medical Certificate Exh.1504

Nature of Injury: Injury over rt. leg.

5.25 Sureshbhai Ukabhai Bhayani (P.W. No. 197/Exh.1905)

Name of Dr. Chitan Arvindbhai Patel (P.W. No.295/Exh.1581)

Medical Certificate Exh.1582

Nature of Injury: 3*0.5*0.5 cm porterior aspect of elbow.

5.26 Kantibhai Laljibhai Patel Gave Evidence Regarding Injury To Sonu S. Agarawal (P.W. No. 194/Exh.1095)

Name of Dr. Chitan Arvindbhai Patel (P.W. No.295/Exh.1581)

Medical Certificate Exh.1583

Nature of Injury: Injury on head.

5.27 Bhagvanprasad Harjiprasad Soni (P.W. No. 199/Exh.1101)

Name of Dr. Kinjal Doshi (P.W. No.303/Exh.1608)

Medical Certificate Exh.1609

Nature of Injury: 5*2 cm cellulitis around wound bone deep on middle 1/3 of rt foot, 2*1 cm at lower lwg, clw (contused lacerated wound) over both leg anteriorly.

5.28 Motilal Bhajanlal Meheta (P.W. No. 196/Exh.1098)

Name of Dr. Bhavna Chankaykumar Patel(P.W. No.45/Exh.717)

Medical Certificate Exh.720

Nature of Injury: Abrasion over rt. lower abdomen, abrasion over rt.

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thigh, burning sensation in both hands.

ODHAV POLICE STATION I-C.R. 339/08,

Bomb Blast Under Pakodi Lari At Odhav Khodiar Nagar Cross Road, N.H.8, Opp. Mayur Dairy Road, On Public Road

5.29 Chetnaben Punaram Ghanchi (P.W. No. 217/Exh.1054)

Name of Dr. Apurvak Challawalla (P.W. No.294/Exh.1578)

Medical Certificate Exh.1580

Nature of Injury: Injury over Lt. ear.

SARKHEJ POLICE STATION I-C.R. 181/08

Blast in AMTS

5.30 Babubhai Pochabhai Singrotiya (P.W. No. 271/Exh.1362)

Name of Dr. Apurvak Challawalla (P.W. No.271/Exh.1362)

Medical Certificate Exh.7143

Nature of Injury: Injury over Rt. wrist.

5.31 Ashwinkumar Ramujibhai Parmar (P.W. No. 140/Exh.1008)

Name of Dr. Apurvak Challawalla (P.W. No.279/Exh.1477)

Medical Certificate Exh.1485

Nature of Injury: Pellet injury over rt. forehead.

5.32 Momin Nazma Sulemanbhai (P.W. No. 137/Exh.1005)

Name of Dr. Soheb Shaikh (P.W. No.284/Exh.1542)

Medical Certificate Exh.1547

Nature of Injury: traumatic performation at lt. tympanic membrance..

5.33 Vaishali Pravinbhai Solanki (P.W. No. 286/Exh.1546)

Name of Dr. Manubhai M. Gadhvi (P.W. No.286/Exh.1546)

Medical Certificate Exh.1547

Nature of Injury: Injury in right ear.

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5.34 Mansukhlal Bhuralal Doshi (P.W. No. 127/Exh.978)

Medical Certificate Admitted By Defence Exh.7141

Nature of Injury:multiple injury over all body.

5.35 Vasimbhai Sikandarbhai Ghanchi (P.W. No. 131/Exh.982)

Medical Certificate Admitted By Defence Exh.7140

Nature of Injury: Injury over rt. eye.

5.36 Babubhai Lalubhai Rawat (P.W. No. 134/Exh.987)

Medical Certificate Admitted By Defence Exh.7142

Nature of Injury: low hearing in both ear, injury on rt. wrist.

5.37 Solanki Dilipkumar Babulal (P.W. No. 139/Exh.1007)

Medical Certificate Admitted By Defence Exh.7145

Nature of Injury: Soft Tissue Injury Over Head.

5.38 Chanduji Gemarji, Witness Not Found

Medical Certificate Admitted By Defence Exh.7144

Nature of Injury: Pain in chest and rt.hand, 0.5*0.5cm wound at middle chest wound, one pellet noted outside lt. chest wall another in rt. chest.

DANI LIMDA POLICE STATION- I-C.R. 140/08,

Bomb Blast On Cycle At Narol Circle, Backside Of Hanumanji Temple.

5.39 Dipakbhai Dahabhai (P.W. No. 96/Exh.910)

Name of Dr. Kundanbhai Motibhai Amin (P.W. No.307/Exh.1617)

Medical Certificate Exh.1618

Nature of Injury: Injury on head.

5.40 Dinesh Jasaram Meghval (P.W. No. 93/Exh.907)

Name of Dr. Nirav Panchal (P.W. No.282/Exh.1526)

Medical Certificate Exh.1530

Nature of Injury: A/H/O trauma.

5.41 Tulsiram Nagjiram Gujar (P.W. No. 98/Exh.921)

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Name of Dr. Nirav Panchal (P.W. No.282Exh./1526)

Medical Certificate Exh.1531

Nature of Injury: A/H/O trauma.

5.42 Navinbhai Kantibhai Bharwad (P.W. No. 92/Exh.906)

Name of Dr. Ashok B Modi (P.W. No.300/Exh.1597)

Medical Certificate Exh.1598

Nature of Injury: Suffering from accidental injury.

5.43 Bharatbhai Kanaialal Panchal (P.W. No. 95/Exh.909)

Name of Dr. Jagat B Bhatt (P.W. No.302/Exh.1603)

Medical Certificate Exh.1604

Nature of Injury: Sharp injury at lt. forearm amd lt. chest.

5.44 Vaghela Pushpaben Jaantilal (P.W. No. 94/Exh.908)

Medical Certificate Admitted By Defence Exh.7163

Nature of Injury: 0.3 cm wound at back of neck.

5.45 Sureshkumar Madhavlal Engineer (P.W. No. 117/Exh.953)

Medical Certificate Admitted By Defence Exh.7166

Nature Of Injury: Injury At Lt. Elbow And Lt. Hand..

5.46 Bhimcharan Ramdas Manohar (P.W. No. 19/Exh.542)

Medical Certificate Admitted By Defence Exh.7162

Nature of Injury: Injury at lt. side of body.

5.47 Dinesh Jasaram Meghwal Gave Evidence Regarding Injury To Hirabhai Gigaji (P.W. No. 93/Exh.907)

Medical Certificate Admitted By Defence Exh.7164

Nature of Injury: Soft tissue injury , 1cm wound at rt. hand..

<u>MANINAGAR I-C.R 206/08,</u>

<u>L.G Hospital, Bomb Blast In Maruti-800</u>

5.48 Tejas Ashwinbhai Gadani (P.W. No. 129/Exh.980)

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Medical Certificate Admitted By Defence Exh.7136

Nature of Injury: Multiple injuries over lt. forearm.

5.49 Nimeshbhai Labhbhai Chauhan (P.W. No. 130/Exh.981)

Medical Certificate Admitted By Defence Exh.7135

Nature of Injury: Swelling over rt. feet.

5.50 Amitbhai Pravinbhai Jethva (P.W. No.- 132/Exh.985)

Medical Certificate Admitted By Defence Exh.7137

Nature of Injury: Multiple injury over left side of body.

5.51 Girishkumar Chimanlal Chauhan (P.W. No. 133/Exh.986)

Medical Certificate Admitted By Defence Exh.7139

Nature of Injury: Injury on left arm and rt. leg.

5.52 Shahikant Ganpatrao Patil (P.W. No. 136/Exh.989)

Medical Certificate Admitted By Defence Exh.7134

Nature of Injury: 0.5 cm puncture on rt. side, 1 cm abrasion with 0.25cm cut on left forearm.

5.53 Krushnakant Mangaldas Chaudhari (P.W. No. 5/Exh.499)

Medical Certificate Admitted By Defence Exh.7138

Nature of Injury: C/O lt. ear, injury over rt ear, 1*1 cm abrasion over rt. ear.

RAMOL POLICE STATION – I. C.R NO. 321/08,

Blast On Cycle, Nr. Hatkeshwar Circle, Opp. Tejendra Complex, B/H Electric D.P

5.54 Sanjay Ramjibhi Paswan (P.W. No. 146/Exh.1018)

Name of Dr. Yashmin Md. Hussain (P.W. No.288/1551)

Medical Certificate Exh.1552

Nature of Injury: C/W at rt. side scalp.

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5.55 Hemalattaben Manilal Purbiya (P.W. No. 144/Exh.1016)

Name of Dr. Bhairvi Balvant Pande (P.W. No.322/1666)

Medical Certificate Exh.1668

Nature of Injury: Injury over lt. leg, 1*0.5cm clw over f/a.

5.56 Shekh Mohmadyunush Abdulmunaf (P.W. No. 142/ Exh.1010)

Medical Certificate Admitted By Defence Exh.7182

Nature of Injury:

0.5 cm puncture wound over neck.

5.57 Mekwan Fansis Kantibhai (P.W. No. 145/Exh.1017)

Medical Certificate Admitted By Defence Exh.7180

Nature of Injury: Puncture wound over neck.

5.58 Lilaben Sonaji Parmar

Pw No(- 148/Exh.1020)

Medical Certificate Admitted By Defence Exh.7181

Nature of Injury: 0.5 cm wound on rt. ankle.

5.59 Panchal Renukaben Vinodbhai Gave Evidence Regarding Injury To Rishi Vinodbhai Panchal (P.W. No. 149/Exh.1027)

Medical Certificate Admitted By Defence Exh.7179

Nature of Injury: Injury on rt. hand.

<u>ISANPUR POLICE STATION I- C.R. 190/08,</u>

<u>Bomb Blast On Cycle At Govind Wadi, Vegetable Market On Road</u>

5.60 Nayanaben Pareshbhai Patel (P.W. No. 115/Exh.951)

Name of Dr. Nayan Vinodchandra Shah (P.W. No.289/Exh.1555)

Medical Certificate Exh.1557

Nature of Injury:

Injury on nose and forearm.

5.61 Bhavnaben Pravinbhai Gajjar (P.W. No. 121/Exh.996)

Name of Dr. Nayan Vinodchandra Shah (P.W. No.289/Exh.1555)

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Medical Certificate Exh.1558

Nature Of Injury: Small abrasion wound over the rt. forehead area.

5.62 Injured Jamnaben Prajapati

Name of Dr. Nayan Vinodchandra Shah (P.W. No.289/Exh.1555)

Medical Certificate Exh.1559

Nature of Injury: Injury at rt. hand and both leg.

5.63 Vinaykant Natvarlal Shah (P.W. No. 123/Exh.971)

Name of Dr. Nayan Vinodchandra Shah (P.W. No.289/1555)

Medical Certificate Exh.1560

Nature of Injury: 10 days rest.

5.64 Imrankhan Guladkhan Saiyad (P.W. No. 111/Exh.946)

Name of Dr.Nayan Vinodchandra Shah (P.W. No.289/1555)

Medical Certificate Exh.1596

Nature of Injury: Injury 2cm wound at lt. hand.

5.65 Imranbanu Ramaji Prajapati (P.W. No. 124/ Exh.972)

Name of Dr. Mukesh D Patel (P.W. No.301/Exh.1600)

Medical Certificate Exh.1601

Nature of Injury: Injury at rt. arm.

5.66 Jyotiben Dipakbhai Shah (P.W. No. 105/Exh.930)

Name of Dr.Yogesh R Parikh (P.W. No.315/Exh.1644)

Medical Certificate Exh.1645

Nature of Injury: Injury on both leg.

5.67 Jyotiben Dipakbhai Shah Gave Evidence Regarding Injury To Injured Puja Dipakkumar (P.W. No. 105/Exh.930)

Name of Dr. Yogesh R Parikh (P.W. No.315/Exh.1644)

Medical Certificate Exh.1646

Nature of Injury: Both lrg, lt. forearm.

5.68 Champaben Amthabhai Rabari (P.W. No. 104/Exh.929)

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Medical Certificate Admitted By Defence Exh.7174

Nature of Injury: Swelling on neck and rt. chest.

5.69 Monaben Bhadreshkumar Acharya (P.W. No. 106/Exh.931)

Medical Certificate Admitted By Defence Exh.7178

Nature of Injury: Injury on lt leg and joint knee.

5.70 Mrudulaen Thakor Gajjar (P.W. No. 108/Exh.933)

Medical Certificate Admitted By Defence Exh.7169

Nature of Injury: Injury on upper limb, neck and rt. thigh.

5.71 Kanjibhai Lavjibhai Devipujak (P.W. No. 110/Exh.945)

Medical Certificate Admitted By Defence Exh.7175

Nature of Injury: Injury on lt. side.

5.72 Shruti Arunkumar Shah (P.W. No. 114/Exh.950)

Medical Certificate Admitted By Defence Exh.7177

Nature of Injury: Injury over back side, 3*1 cm abrasion at back side.

5.73 Lavjibhai Bhikhabhai Devipujak (P.W. No. 126/Exh.974)

Medical Certificate Admitted By Defence Exh.7173

Nature of Injury: Multiple injury in lt. leg.

5.74 Bhavnaben Maneklal Desai (P.W. No. 103/Exh.928)

Medical Certificate Admitted By Defence Exh.7171

Nature of Injury: 1*0.5 cm puncture wound over rt. knee.

5.75 Jalaben R. Desai (P.W. No.116/Exh.952)

Medical Certificate Admitted By Defence Exh.7176

Nature of Injury: 0.5 cm puncture at left knee.

5.76 Garibbhai Virchandbhai (P.W. No. 1030/Exh.7037)

Medical Certificate Admitted By Defence Exh.7172

Nature of Injury: Injury on lt. knee.

KHADIA POLICE STATION- I-C.R. 71/08

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Blast-On Cycle At 3 Places

(1) M. Narandas Medical Stores (2) Gokhle Pan Palour (3) Milan Kirana Stores

5.77 1. Maheshbhai @ Raju Chandulalb Gajjar (P.W. No. 84/8 Exh.82)

Name of Dr. Ronak Desai (P.W. No.271/1 Exh.362)

Medical Certificate Exh.1364

Nature of Injury: Injury on rt. hip, rt. knee multiple pellet seen in lt. thigh.

5.78 Sureshbhai Jaysinh Rajpurohit (P.W. No. 74/Exh.865)

Name of Dr.Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1365

Nature of Injury: Injury on lt. hand and forearm.

5.79 Ankit Atulkumar Patel (P.W. No. 61/Exh.810)

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1633

Nature of Injury: C/O pain at rt. thigh, rt. knee, left side back.

5.80 Indiraben Ishwarbhai Modi (P.W. No. 57Exh./806)

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1367

Nature of Injury: Injury on both leg.

5.81 Thanaram Nathaji Ghanchi (P.W. No. 56/Exh.797)

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1368

Nature of Injury: Injury on rt. hip.

5.82 Jitendra Somabhai Modi (P.W. No. 52/Exh.791)

Name of Dr.Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1369

Nature of Injury: Injury on rt. leg, lt. thigh.

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5.83 Krupalbhai Jitrendrakumar Gandhi (P.W. No. 55/Exh.796)

Name of Dr.Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1370

Nature of Injury: Injury on rt. arm, rt. knee and leg, rt hip.

5.84 Aditya Rakeshkumar Jani (P.W. No. 54/Exh.795)

Name of Dr.Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1371

Nature of Injury: Injury on lt. elbow, lt. foot, rt. leg.

5.85 Dahrmendra @bhupesh Ramanbhai Gajjar (P.W. No. 53/792)

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1372

Nature of Injury: Injury on rt. shoulder, knee, hip and thigh.

5.86 Hitesh Rameshchandra Rana (P.W. No. 2/Exh.486)

Name of Dr.Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1373

Nature of Injury: Injury on rt. knee, lt. ankle.

5.87 Bhupendra Bansilal Thakor (P.W. No. 58/ Exh.807)

Name of Dr.Mehulmanubhai Jagirdarni (P.W. No.273/Exh.1390)

Medical Certificate Exh.1392

Nature of Injury: Injury at rt. lower back.

5.88 Paresh Chandulal Mistri (P.W. No. 62/Exh.811)

Name of Dr. Mehulmanubhai Jagirdarni (P.W. No.273/Exh.1390)

Medical Certificate Exh.1394

Nature of Injury: Injury on rt. gluteral region.

5.89 Pradip Kanaiyala Parekh (P.W. No. 73/Exh.864)

Name of Dr.Jaydev Shivdan Modh (P.W. No.279/Exh.1477)

Medical Certificate Exh.1479

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Nature of Injury: 0.3*0.5 cm of pellet wound over outer aspect of shin of tibia.

5.90 Sunil Hasmukhlal Bhatt (P.W. No. 76/Exh.867)

Name of Dr. Jaydev Shivdan Modh (P.W. No.279/Exh.1477)

Medical Certificate Exh.1480

Nature of Injury:

Injury on rt. leg.

5.91 Umeshbhai Bhailalbhai Rana (P.W. No.77/Exh.868)

Name of Dr.Jaydev Shivdan Modh (P.W. No.279Exh./1477)

Medical Certificate Exh.1481

Nature of Injury: Injury on rt. lower thigh.

5.92 Devendra Bhagvandas Soni (P.W. No. 86/Exh.885)

Name of Dr.Jaydev Shivdan Modh (P.W. No.279/Exh.1477)

Medical Certificate Exh.1483

Nature of Injury: Injury on head, chest, rt. upper limb.

5.93 Prahladji Somaji Thakor (P.W. No. 71/Exh.862)

Name of Dr.Nirav Panchal (P.W. No.282/ Exh.1526)

Medical Certificate Exh.1528

Nature of Injury: 5*4 cm wound on scalp, lt.arm and forearm.

5.94 Bhaveshbhai Saileshbhai Chaturvedi (P.W. No. 68/Exh.854)

Name of Dr.Shailesh R Shah (P.W. No.287/Exh.1548)

Medical Certificate Exh.1549

Nature of Injury: Injury on rt. upper limb, abrasion on rt. thigh.

5.95 Devang Mahendrabhai Dudhiya (P.W. No. 59/Exh.808)

Name of Dr.Urvish Makwana (P.W. No.297/Exh.1590)

Medical Certificate Exh.1591

Nature of Injury: Injury on rt. limb , rt. leg and back.

5.96 Pannaben Jayendrakumar Modi (Pw No- 78/Exh.587)

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Name of Dr.Dineshbhai Jayantilal Shah (P.W. No.304/Exh.1610)

Medical Certificate Exh.1611

Nature of Injury: Injury on rt. gluteal region.

5.97 Prakashbhai Bhanuprasad Gandhi (P.W. No. 66/Exh.852)

Name of Dr.Shaurin Shahin (P.W. No.306/Exh.1614)

Medical Certificate Exh.1615

Nature of Injury: Injury on rt. leg , swelling, C/O pain.

5.98 Bhavnaben Prakashchandra Gandhi (P.W. No. 67/Exh.854)

Name of Dr.Shaurin Shahin (P.W. No.306/Exh.1614)

Medical Certificate Exh.1616

Nature of Injury: A/H/O injury , lt. axilla, rt. forearm.

5.99 Pankajkumar Kanaiylal Thakar (P.W. No. 265/Exh.1328)

Name of Dr.Bhushan Ramesh Patil (P.W. No.310/Exh.1623)

Medical Certificate Exh.1624

Nature of Injury: Injury on rt. leg.

5.100 Nainesh Dhimantray Dalal (P.W. No. 60/Exh.809)

Medical Certificate Admitted By Defence Exh.7157

Nature of Injury: Injury on lt. elbow, rt. hip and both knee.

5.101 Prajapati Mukesh Nathubhai (P.W. No. 63/Exh.825)

Medical Certificate Admitted By Defence Exh.7155

Nature of Injury: 0.5*0.5 cm size wound at lt. side of back, pellet injury noted in lt. side of chest.

5.102 Raju Babubhai Thakor (P.W. No. 64/Exh.826)

Medical Certificate Admitted By Defence Exh.7158

Nature of Injury: Injury on lt. knee, lt. shoulder, both ankle and both hip.

5.103 Shailesh Dhanjibhai Chunara (P.W. No. 65/Exh.827)

Medical Certificate Admitted By Defence Exh.7147

Nature of Injury: Swelling on neck and pain in rt. chest.

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5.104 Jinesh Girishbhai Shah (P.W. No.69/Exh.855)

Medical Certificate Admitted By Defence Exh.7150

Nature of Injury: Pellet found in lt. hand, injury on head, hand and lt. leg.

5.105 Gaurangbhai Bipinchandra Patel (P.W. No. 72/Exh.863)

Medical Certificate Admitted By Defence Exh.7153

Nature of Injury: 0.5 cm wound over puspero lateral of rt. side, 3 cm below knee, 0.5cm over ankle.

5.106 Jigar Yogeshbhai Parmar (P.W. No. 75/Exh.866)

Medical Certificate Admitted By Defence Exh.7148

Nature of Injury: Injury on both ear.

5.107 Ishwarlal Bechardas Bhavsar (P.W. No. 79/Exh.876)

Medical Certificate Admitted By Defence Exh.7161

Nature of Injury: Only treatment at l.g hospital.

5.108 Ajay Jagannath Sabkale (P.W. No.80/Exh.877)

Medical Certificate Admitted By Defence Exh.7152

Nature of Injury: Injury on lt. leg.

5.109 Rekhaben Jivanlal Joshi (P.W. No. 82/8 Exh.79)

Medical Certificate Admitted By Defence Exh.7149

Nature of Injury: Injury on rt. leg, 1*1 cm wound over rt. leg below knee.

5.110 Aarif Iqbalbhai Mansuri (P.W. No. 91/Exh.903)

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Injury on chest.

5.111 Madanlal Bhanubhai Vanzara (P.W. No. 97/Exh.911)

Medical Certificate Admitted By Defence Exh.7156

Nature of Injury: Injury on lt. side of chest wall.

NARODA POLICE STATION – IC.R. 400/08,

Bomb Blast On Cycle At Kuldevi Tea Stall.

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5.112 Ganpatbhai Samurbhai Thakor

Name of Dr.Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1425

Nature of Injury: Rt. thigh.

5.113 Rameshbhai Khemabhai Solanki Gave Evidence Regarding Sunderdas Kishanchand Purswami (P.W. No. 214/Exh.1145)

Name of Dr.Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1426

Nature of Injury: Throat.

5.114 Vrajlal Jethabhai Patel (P.W. No. 210/1 Exh.139)

Name of Dr.Hetalben Badhekani (P.W. No.276/Exh.1438)

Medical Certificate Exh.1462

Nature of Injury: 1*0.5 cm abrasion on rt. elbow, rt. thigh.

5.115 Rameshbhai Khemabhai Solanki (P.W. No.214/Exh.1145)

Name of Dr. Aditya Upadhyay (P.W. No.281Exh./1503)

Medical Certificate Exh.1505

Nature of Injury: Lt. thigh.

5.116 Hasmukhbhai Maganbhai Padhiyar (P.W. No. 269/Exh.1349)

Name of Dr.Aditya Upadhyay (P.W. No.281/Exh.1503)

Medical Certificate Exh.1506

Nature of Injury: Skull region.

5.117 Kalubhai Deviala Bhandari Gave Evidence Regarding Injury To Kamalbhai Magilal Jaiswal (P.W. No. 200/Exh.1117)

Name of Dr. Chitan Arvindbhai Patel(P.W. No.288/Exh.1581)

Medical Certificate Exh.1586

Nature of Injury: Multiple small abrasion on rt. head, back and neck.

5.118 Kalubhai Deviala Bhandari (P.W. No. 200/Exh.1117)

Name of Dr. Chitan Arvindbhai Patel(P.W. No.288/Exh.1578)

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Medical Certificate Exh.1579

Nature of Injury: Pain at rt. arm, rt. elbow, lt. knee.

5.119 Mehul Bhanubhai Dhummar (P.W. No.200/Exh.1117)

Name of Dr.Apurva K Challawalla (P.W. No.294/Exh.1614)

Medical Certificate Exh.1616

Nature of Injury: Injury over chin.

5.120 Dayaldas Mirchumal Virani (P.W. No.203/Exh.1120)

Name of Dr. Chitan Arvindbhai Patel(P.W. No.295/Exh.1581)

Medical Certificate Exh.1585

Nature of Injury: Injury on thigh.

5.121 Rameshbhai Khemabhai Solanki Gave Evidence Regarding Injury To Dineshbhai Sampatbhai (P.W. No.214/Exh.1145)

Name of Dr.Jigyaben Nagri (P.W. No.298/Exh.1592)

Medical Certificate Exh.1593

Nature of Injury: Swelling over eye.

5.122 Maharajsinh Ramji Kushwah (P.W. No. 213/Exh.1144)

Name of Dr.Nishant H Sanghvi (P.W. No.305/Exh.1612)

Medical Certificate Exh.1613

Nature of Injury: Injury on chest.

5.123 Mohan Charansinh Mali (Pw No-208/Exh.1127)

Name of Dr.Hiren Doshi (P.W. No.309/Exh.1621)

Medical Certificate Exh.1622

Nature of Injury: 1.5*0.5*0.5 cm wound at rt. side of knee.

5.124 Ramhet Manlabhai Kushwah (P.W. No. 206/Exh.1124)

Name of Dr. Krunal N Dholakia (P.W. No.312/Exh.1630)

Medical Certificate Exh.1632

Nature of Injury: Lt. side of upper part of abdomen.

5.125 Gitaben Pitambarsinh Rajput Gave Evidence Regarding Injury To

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Twinkle Pitambarsinh (P.W. No. 270/Exh.1350)

Name of Dr. Krunal N Dholakia (P.W. No.312/Exh.1630)

Medical Certificate Exh.1633

Nature of Injury: Rt. lower thigh, lt. side of back.

5.126 Gitaben Pitambarsinh Rajput (P.W. No.270/Exh.1350)

Name of Dr. Krunal N Dholakia (P.W. No.312/Exh.1630)

Medical Certificate Exh.1634

Nature of Injury: Rt. knee.

5.127 Govindbhai Sampatbhai Chunara (P.W. No.201/Exh.1118)

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Injury on chest and abdomen.

5.128 Maheshkumar Sitaram Tiwari (P.W. No.202/Exh.1119)

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Injury 1*0.5 cm punctured wound on rt. hand middle finger.

5.129 Sejalben Dineshbhai Rami (P.W. No. 205/Exh.1123)

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Injury on lt. thigh and forearm pain.

5.130 Haldarbhai

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Injury on chest and upper arm.

5.131 Rameshbhai Khemabhai Solanki Gave Evidence Regarding Injury To

Shankarbhai Kaniyalal Kushwah (P.W. No. 214/Exh.1145)

Medical Certificate Admitted By Defence Exh.7146

Nature of Injury: Chest pain.

SHAHIBAUG POLICE STATION I- C.R. 236/08,

Bomb Blast In Wagonr At Shahibaugh Civil Hospital, Troma Centre.

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5.132 PW-176/Exh.1066 Mukesh Gordhandas Lalani

Name of Dr. Ronak Desai (P.W. No.271/Exh.1362)

Medical Certificate Exh.1363

Nature of Injury: Rt. shoulder, lt. knee, foot.

5.133 Manubhai Bhayjibhai Thakor (P.W. No.158/1 Exh.034)

Name of Dr. Prakash Doshi (P.W. No.272/Exh.1385)

Medical Certificate Exh.1387

Nature of Injury: Both leg, lt. thumb.

5.134 Pw-1013/Exh.7001 Mathurbhai Manabhai Solanki Gave Evidence Regarding Injury To Nishaben Vinubhai Solanki

Name of Dr. Prakash Doshi (P.W. No.272/Exh.1385)

Medical Certificate Exh.1388

Nature of Injury: Deep wound over lt. abdomenal wall.

5.135 Pw-156/Exh.1032 Bhupatji Chanduji Chavada

Name of Dr. Prakash Doshi (P.W. No.272/Exh.1385)

Medical Certificate Exh.1389

Nature of Injury: Leg, thigh, back.

5.136 Pw-171/Exh.1058 Tulsi Chandubhai Bhil

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1396

Nature of Injury: Rt. lower leg, lt. lower leg, thigh.

5.137 Aayushi Harshadbhai Vaghela Pw-1007/Exh.6987

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1398

Nature of Injury: Neck injury.

5.138 Aayushi Harshadbhai Vaghela Gave Evidence Regarding Injury To Harshadbhai Vaghela Pw-1007/Exh.6987

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/1 Exh.395)

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Medical Certificate Exh.1400

Nature of Injury: Lt. arm, rt. chest wall.

5.139 Ranjitsinh Girdharisinh Rajput Gave Evidence Regarding Injury To Kamleshbhai Tank And Vishnubhai 164/Exh.1044

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1401, 1407

Nature of Injury: Rt. lower leg, thigh, lt. hand, forearm.

5.140 Pw-169/Exh.1053 Kanaiyalal Matambhai Bharvad

Name of Dr.Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1402

Nature of Injury: Rt. leg, foot, lt. foot, rt. hand, forearm.

5.141 Pw-167/Exh.1051 Dineshbhai Trikambhai Barot

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1403

Nature of Injury: Lt. side face, forehead.

5.142 Pw-167/Exh.1051 Dineshbhai Trikambhai Barot Gave Evidence Regarding Injury To Ajay Bhavudas Bulande

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1406

Nature of Injury: Rt. knee.

5.143 Pw-182/Exh.1074 Sanjay Dharmaji Thakor

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1404

Nature of Injury: Rt. thigh.

5.144 Pw-164/Exh.1044 Ranjitsinh Girdharilal Rajput Gave Evidence Regarding Injury Vishnubhai

Name of Dr. Rupkumar Manilal Agarwal (P.W. No.274/Exh.1395)

Medical Certificate Exh.1407

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Nature of Injury: Lt. foot, ankle swelling.

5.145 Pw-183Exh./1075 Ambalal Muljibhai Chavada

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1412

Nature of Injury: Lt. thigh, 4*3 cm abrasion wound lt.hip.

5.146 Pw-184/Exh.1076 Ganesh Amraji Prajapati

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1413

Nature of Injury: Rt. upper chest, 1*1 wounad at rt. chest.

5.147 Pw-154/Exh.1028 Laxmansinh Ajitsinh Chudasma

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1414

Nature of Injury: Rt arm, knee, neck.

5.148 Pw-166/Exh.1050 Dineshbhai Lavjibhai Dudhat

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1415

Nature of Injury: Pain and swelling at rt. leg, soft tissue injury on rt. foot.

5.149 Pw-165/Exh.1049 Navinbhai Paragbhai Gohel

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1416

Nature of Injury: Rt. side of abdomen

5.150 Pw-175/Exh.1065 Ashwinbhai Narottambhai Patel

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1419

Nature of Injury: Rt. hand, rt. nose.

5.151 Pw-175/Exh.1065 Ashwinbhai Narottambhai Patel Gave Evidence Regarding Injury To Jyotishbhai Chandubhai Dave

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

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Medical Certificate Exh.1417

Nature of Injury: Injury over temporal region rt. eyebrow, lower hip.

5.152 Pw-175/Exh.1065 Ashwinbhai Narottambhai Patel Gave Evidence Regarding Injury To Ganpatbhai Vitthalbhai Patel

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275Exh./1411)

Medical Certificate Exh.1418

Nature of Injury: Lt. thigh and leg

5.153 Pw-179Exh./1071 Kanubhai Yogeshbhai Solanki

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1420

Nature of Injury: Rt. hand, forearm, lt. thigh.

5.154 Pw-216/Exh.1153 Vinubhai Ranchhodbhai Raval Gave Evidence Regarding Injury To Divaben Kantibhai Parmar

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1421

Nature of Injury: Pellet injury over lt. upper arm.

5.155 Pw-160/Exh.1040 Ishwarbhai Khimjibhai Rajgor

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1422

Nature of Injury: Rt. knee, leg.

5.156 Pw-180/Exh.1072 Dhirajlal Amrutlal Solanki Gave Evidence Regarding Injury To Hansaben Mohanlal Makwana

Name of Dr. Suresh Kantilal Zaveri (P.W. No.275/Exh.1411)

Medical Certificate Exh.1424

Nature of Injury: Neck, face, back, lt. hand.

5.157 Pw-188Exh./1083 Irfan Kalumiya Shekh

Name of Dr. Hetalben Badhekani(P.W. No.276/Exh.1438)

Medical Certificate Exh.1441

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Nature of Injury: 2 cm lt. side forehead, rt. side thigh.

5.158 Pw-189/Exh.1090 Ram Arjanbhai Parmar

Name of Dr. Hetalben Badhekani(P.W. No.276/1 Exh.438)

Medical Certificate Exh.1443

Nature of Injury: 2*0.5*6 cm rt. thigh, 0.2*0.2 cm rt. forearm.

5.159 Pw-159/Exh.1035 Manoj Babubhai Thakor

Name of Dr. Hetalben Badhekani(P.W. No.276/Exh.1438)

Medical Certificate Exh.1444

Nature of Injury: 1*3*2 cm lower thigh, rt.foot, rt. leg.

5.160 Pw-153/Exh.1027 Jayaben Nareshbhai Gohel

Name of Dr. Hetalben Badhekani(P.W. No.276/Exh.1438)

Medical Certificate Exh.1446, 1468

Nature of Injury: 3*5 cm rt. elbow, 2*3 lt. hand, 2*2 rt. forearm.

5.161 Pw-268/Exh.1339 Govindbhai Maganbhai Makwana

Name of Dr.Hetalben Badhekani(P.W. No.276/Exh.1438)

Medical Certificate Exh.1448

Nature of Injury: ENT reference shows hearing loss.

5.162 Pw-157/Exh.1033pravinbhai Somabhai Patel

Name Of Dr. Chandrikaben Chaganbhai Patel (P.W. No.277/Exh.1467)

Medical Certificate Exh.1469

Nature Of Injury: 10*3 cm lt. foot, 1*1 cm lt. lower limb, two Clw 2*1 Cm.

5.163 Pw-152/Exh.1026 Yogendra Amrutbhai Patel

Name Of Dr. Chandrikaben Chaganbhai Patel (P.W. No.277/Exh.1467)

Medical Certificate Exh.1470

Nature Of Injury: 5*5 rt. lower limb leg, rt.leg 3*2 cm.

5.164 Pw-181/Exh.1073 Kesharisinh Raghusinh Rajput

Name of Dr. Manish Bachubhai Ghelani (P.W. No.278/Exh.1471)

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Medical Certificate Exh.1472

Nature of Injury: 2*1 cm lt. upper leg, 1*0.5 cm lt. shoulder.

5.165 Pw-160/Exh.1040 Ishwarhbia Khimjibhai Rajgor Solanki Gave Evidence Regarding Injury To Dharmeshbhai Dharamsibhai Pandya

Name of Dr. Manish Bachubhai Ghelani (P.W. No.278/Exh.1471)

Medical Certificate Exh.1475

Nature of Injury: Face, both forearm, both leg, foot.

5.166 Pw-215/1152 Ramgiri Purangiri Goswami

Name of Dr. Manish Bachubhai Ghelani (P.W. No.278/1471)

Medical Certificate Exh.1476

Nature of Injury: Small wound rt. foot, ankle (2*1cm).

5.167 Pw-162/1 Exh.042 Jagdish Vanaji Mali

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1493

Nature of Injury: Both thigh.

5.168 Pw-16 Exh.3/1043 Gulabsinh Mangalsinh Jadeja

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1494

Nature of Injury: Lt. foot, rt. foot, lt. ankle.

5.169 Pw-170/ Exh.1057 Narendrabhai Kalyanbhai Parmar

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1495

Nature of Injury: Lt. upper limb, both lower limb, lt. thigh.

5.170 Pw-161/Exh.1041 Ramanlal Umedji Mali

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1496

Nature of Injury: Foreign body rt. leg.

5.171 Pw-173/Exh.1060 Anil Kanaiyalal Solanki

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Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1497

Nature of Injury: Lt. leg, rt. eye, both thigh.

5.172 Pw-174/Exh.1061 Rameshbhai Khodaji Thakor

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/1 Exh.491)

Medical Certificate Exh.1498

Nature of Injury: ear ,neck.

5.173 Pw-164/Exh.1044 Ranjitsinh Girdharisinh Rajput

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1499

Nature of Injury: Rt. wrist, hand, upper arm. lt. hand, forearm.

5.174 Pw-164/Exh.1044 Ranjitsingh Girdharisinh Rajput Gave Evidence Regarding Injury To Mahendrabhai Ratanbhai Kala

Name of Dr. Jyantibhai Kalidas Parmar (P.W. No.280/Exh.1491)

Medical Certificate Exh.1500

Nature of Injury: 3*1 cm dorsum at rt. forearm, chest.

5.175 Pw-168/Exh.1052 Mukesh Savjibhai Patni

Name of Dr. Reena K Choksi (P.W. No.285/Exh.1544)

Medical Certificate Exh.1545

Nature of Injury: Lt. leg, both feet.

5.176 Pw-155/Exh.1029 Prashant Mahendraray Bhosle

Name of Dr. Kaushikbhai C Shah (P.W. No.290/Exh.1564)

Medical Certificate Exh.1565

Nature of Injury: Chest, lt. knee, lt. leg, lt. ankle.

5.177 Pw-150/Exh.1024 Dinesh Arjunbhai Upadhyay

Name of Dr. Shrikant Lagvanker (P.W. No.291/Exh.1573)

Medical Certificate Exh.1652

Nature of Injury:

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clw of 3 x 1 x 2 cm in right lumber region, muscle deep.

clw of 6 x 5 x 2 cm in right gluteal region, muscle deep.

clw of 3 x 2 xx 0.5 cm on posterior aspect of right thigh.

clw of 1x 1x 0.5 cm on right knee.

clw of 3 x 1 x 0.5 cm on right leg just below knee.

clw of 8 x 1 x 0.5 cm on right leg just above ankle.

clw of 1 x 1 x 0.5 cm on right heel on lateral surface

clw of 1 x 0.5 x 0.5 cm size on left knee.

clw of 2 x 0.5 x 0.5 cm size on left knee just below previous

clw of 2 x 2 x 0.5 cm on anterior aspects of left leg.

clw of 3 x 1 x 0.5 cm on face just anterior to right ear

5.178 Pw-150/Exh.1024 Dinesh Arjunbhai Upadhyay Gave Evidence Regarding Injury To Munindra Savant

Name of Dr. Shrikant Lagvanker (P.W. No.291/Exh.1573)

Medical Certificate Exh.1653

Nature of Injury:

left index finger was hanging loose with attachment to rest of the body by small (4 mm) part of volar skin and flexor tendon with clw extending all around the finger. left index finger was cold and blue.

clw of 6 x 1 x 0.5 cms on dorsum of left middle finger with cut extensor expansion.

multiple small clws on both lower limbs.

x-ray shows a metallic foreign body in left foot along lateral border.

5.179 Pw-150/Exh.1024 Dinesh Arjunbhai Upadhyay Gave Evidence Regarding Injury To Jaimin Nayak

Name of Dr. Shrikant Lagvanker (P.W. No.291/Exh.1573)

Medical Certificate Exh.1654

Nature of Injury:

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clw on right thigh of 20 x 10 x 10 cm in size. muscles of anterior compartment were cut with multiple small foreign bodies and devitalized fatty tissue

clw of 1 x 1 x 0.2 cm in size, just medial to 1st clw in right thigh.

clw of 2 x 1 x 0.5 cm on right forearm near anticubital fossa.

clw of 1 x 1 x 0.5 cm on right arm on medial aspect.

clw of 1 x 1 x 0.5 cm on right arm on lateral aspect.

clw of 3 x 1 x 1 cm on right shoulder on anterior aspect.

clw of 1 x 1 x 0.5 cm on right shoulder on lateral aspect.

clw of 2 x 0.5 x 0.5 cm on left lumbar region.

clw of 2 x 1 x 0.5 cm in left lumbar region joint below previously described wound.

clw of 7 x 0.5 cm in left infraorbital region extending in depth upto opposite maxillary antrum.

6. Charges framed and Sections invoked

6.1 Framing of a charge is an exercise which is a painstaking beginning for the ultimate revelation of truth. It has two fold purposes. The twin purpose of framing of charge is to assimilate the scattered facts of the trial and frame the points on which the trial will progress, essentially to give the direction to a trial and the other purpose being, to provide clarity to the accused regarding what he has to face and provide a fair opportunity to prepare his own defence ensuring fair trial.

6.2 This is a document which is a concise statement of the time, date and place of the incident which is termed as an offence. It also contains the action attributed to the accused which amounts to an offence as defined and specific sections of the penal code with which the accused is charged and the consequential punishing section. Section 211

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to 213 of the Code of Criminal Procedure deals with the framing of the charge; the combined reading would list down following requirements for proper framing of charge.

i. A statement of the offence with which the accused is charged.

ii. A statement of the law and the section of the law against which the offence is said to have been committed.

iii. Particulars as to time and place of the alleged offence and the person against whom or the thing in respect of which it was committed.

iv. Particulars of the manner in which the alleged offence was committed.

6.3 From the record, it appears that the Court has framed charge vide Exh.32 against 62 accused of Ahmedabad cases and thereafter consolidation of Surat bomb plantation case vide exhibit-122 against 64 accused. Considering the provision of Section 220 of Cr.P.C. treating various incidents as a part of the same transaction, the charge was framed for several offences and the accused involved jointly.

6.4 However, the Court may refer to the procedure followed which led to framing of the joint charge, both incident-wise as well as accused-wise. In para-14 of the judgment, the procedure thus followed is reflected.

6.5 Upon registration of complaints in respect of total-22 twenty two incidents of bomb blasts that had occurred in Ahmedabad City and 2 (two) incident of bomb planting that occurred at Ramol Police Station and Kalol, District Gandhinagar and total 29 (twenty-nine) incidents of bomb plantation that had taken place at various place in Surat City, the investigating officers had conducted the investigations of these offences. The details thereof have been mentioned in the above paragraphs. Thereafter, upon completion of investigation, in the matter of each of the offences, various investigating officers had submitted main charge-sheet

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against the arrested accused persons and had also submitted supplementary charge-sheet against the accused persons, who had been absconding and arrested subsequently, after completing the investigations against them, before the Metropolitan Magistrate Court No.11, Ahmedabad.

6.6 The Metropolitan Magistrate Court of Ahmedabad City is vested with the local jurisdiction for submission of charge-sheet in respect of total-19 incidents of bomb blasts that had taken place in Ahmedabad City and that the City Civil and Sessions Court of Ahmedabad City is having the local jurisdiction for conducting the judicial proceedings for the same. Whereas, the local jurisdiction for submission of the charge-sheet in respect of the incident of bomb-blast occurred at Kalol, District Gandhinagar is vested in the Court of Judicial Magistrate First Class and the Sessions Court at Gandhinagar is having the jurisdiction for conducting judicial proceedings for the same. In the same manner, the local jurisdiction for submission of the charge-sheet in connection with the incidents of bomb plantation occurred in Surat City is vested in the Court of Chief Judicial Magistrate, Surat and the Sessions Court of the Surat District is having the jurisdiction to conduct the judicial proceedings. However, as the Government of Gujarat had made a request before the High Court of Gujarat to the effect that the charge-sheets in respect of nineteen complaints regarding the bomb blasts that took place in Ahmedabad City and one complaint of bomb plantation that took place at Kalol, District Gandhinagar, being total-20 complaints, as well as the charge-sheets in respect of total-15 complaints of bomb plantations that took place in Surat City, may be submitted before only one Court and that the judicial proceedings of all of the above incidents of offences may be conducted before only one Sessions

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Court; High Court of Gujarat had issued Notification No.A/1244/2008, dated 01/09/2008. In accordance with the same, the Metropolitan Magistrate Court, Ahmedabad has been vested with the local jurisdiction for submission of all the charge-sheets in respect of offences of bomb plantation at Ahmedabad, Kalol and Surat and that the City Civil and Sessions Court, Ahmedabad has been designated as the Special Court for conducting judicial proceedings in this matter.

6.7 On the basis of this Notification, the concerned investigating officers had submitted all the charge-sheets in respect of the incidents of bomb blasts in Ahmedabad City and one incident of bomb plantation that occurred at Kalol, District Gandhinagar and all of the above incidents of bomb plantation that took place in Surat City before the Metropolitan Magistrate Court No.11, Ahmedabad. As the Metropolitan Magistrate Court No.11, Ahmedabad is not having jurisdiction for conducting judicial proceedings regarding all of the above charge-sheets submitted, after conducting necessary legal proceedings as per Section-207, 208 of the Criminal Procedure Code, all of the above charge-sheets have been committed for judicial proceedings to the Special Court functioning in the City Civil and Sessions Court at Ahmedabad. All of the charge-sheets which had been given separate Criminal Case numbers.

6.8 Moreover, Additional Sessions Judges have been appointed time and again as the 'Special Judge' by High Court of Gujarat for the judicial proceedings of all of the above offences and Notifications have been published in this regard at the relevant times by the High Court of Gujarat and at lastly, vide Notification No.A-1244/2008(51), dated 09/06/2017, the Additional Sessions Judge has been designated as the Special Judge for conducting all of the above cases.

6.9 As all of the above charge-sheets had been committed to the

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Special Court for judicial proceedings, it was ascertained as to whether all of the accused persons were provided with the copies of police papers by the predecessor Judges or not and that after making verification as to whether all of the accused persons have engaged Advocates in their defence or not.

6.10 Thus, Criminal Case numbers were given to all the charge-sheets that had been submitted by the concerned Police Station before the Metropolitan Magistrate Court No.11, Ahmedabad in connection with total-22(twenty two) incidents of bomb blasts and 2 incidents of bomb plantation at Ramol Police Station Bage Firdos Police line and Kalol, District Gandhinagar. Subsequently, after initiating necessary proceedings as per Section-207, 208 of the Criminal Procedure Code, the Metropolitan Magistrate Court No.11 had committed all the Criminal Cases before the Special Court for conducting proceedings in respect of the main charge-sheets of the concerned offence and the supplementary charge-sheets submitted in those offences and that all the offences wherein main charge-sheets and supplementary charge-sheets had been filed, all of them were given Sessions Case numbers instead of Criminal Case numbers after registering them in the Sessions case register. The details thereof are as under.

Sr. No.	Police Station	Crime Register Number First	Main Charge-Sheet	Supplementary Charge-sheet
(1)	(2)	(3)	(4)	(5)
1	Shahibaug	236/2008	38/2009	47/2009, 338/2009, 337/2009, 389/2009
2	Ramol	321/2008	95/2009	393/2009, 352/2009, 379/2002
3	Ramol	322/2008	365/2009	372/2009, 380/209
4	Bapunagar	220/2008	341/2009	353/2009, 388/2009
5	Amraiwadi	273/2008	347/2009	350/2009, 386/2009
6	Naroda	401/2008	300/2009	336/2009, 303/2009,

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Sr. No.	Police Station	Crime Register Number First	Main Charge-Sheet	Supplementary Charge-sheet
(1)	(2)	(3)	(4)	(5)
				400/2009
7	Naroda	400/2008	352/2009	357/2009, 399/209
8	Khadia	71/2008	82/2009	356/2009, 332/2009, 376/2009
9	Kalupur	123/2008	362/2009	363/2009, 381/2009
10	Vatva	218/2008	364/2009	366/2009, 369/2009
11	Danilimda	140/2008	339/2009	340/2009, 373/2009
12	Kalol	200/2008	348/2009	378/2009
13	Isanpur	190/2008	344/2009	351/2009, 355/2009, 370/2009
14	Maninagar	203/2008	61/2009	101/2009, 302/2009, 397/2009
15	Maninagar	204/2008	321/2009	333/2009, 396/2009
16	Maninagar	205/2008	319/2009	320/2009, 395/2009
17	Maninagar	206/2008	323/2009	324/2009, 398/2009
18	Sarkhej	181/2008	334/2009	335/2009, 394/2009
19	Odhav	338/2008	361/2009	354/2009, 368/2009
20	Odhav	339/2008	346/2009	371/2009, 377/2009

6.11 Thus, pursuant to registration of the Sessions Cases in respect of the main charge-sheets in all of the above cases, subsequent to passing of an order for assimilation of all the supplementary charge-sheets (sessions cases) with the main Sessions Case of the same offence, Learned Special Public Prosecutor had submitted an application vide Exhibit-11 on 04/12/2009 requesting to record the evidences in consolidated manner in the matter of only one Sessions Case No.38/2009, after assimilating the main charge-sheets (sessions cases) of all 20 complaints. Application Ex.11 came to be allowed and passed an order to record the common evidence of all of the above sessions cases together in the matter of Sessions Case No.38/2009.

6.12 Further, after completing the investigation in respect of all the 15 (fifteen) incidents of bomb plantation that had occurred in the Surat

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City, the charge-sheets and supplementary charge sheet had been submitted by the concerned Police Station before the Metropolitan Magistrate Court No.11, Ahmedabad. All of these charge-sheets were given case numbers and; thereafter, the Metropolitan Magistrate Court No.11, Ahmedabad had committed all of those Criminal Cases to this Special Designated Court after initiating the proceedings under provisions of Section-207, 208 of the Criminal Procedure Code, for conducting judicial proceedings for the offence and that Sessions Case Numbers were given instead of Criminal Case Numbers after registering them in the Sessions Case Register for the respective offences wherein the main charge-sheet and supplementary charge-sheets were submitted. The details thereof are as under.

Sr. No.	Police Station	Crime Register Number Second	Main Charge-Sheet	Supplementary Charge-sheet
(1)	(2)	(3)	(4)	(5)
1	D.C.B.	3019/2008	509/2009	510/2009, 511/2009, 512/2009, 513/2009
2	Kapodra	175/2008	412/2009	414/2009, 415/2009, 416/209, 417/2009
3	Kapodra	176/2008	418/2009	419/2009, 420/2009, 421/2009, 422/2009, 424/2009
4	Varachha	363/2008	448/2009	449/2009, 450/2009, 451/2009, 452/2009
5	Varachha	364/2008	453/2009	454/2009, 455/2009, 456/2009, 457/2009
6	Mahidharpura	208/2008	482/2009	482/2009, 483/2009, 484/2009, 485/2009
7	Katargam	203/2008	468/2009	469/2009, 470/2009, 471/2009, 472/2009
8	Varachha	365/2008	458/2009	459/2009, 460/2009, 261/2009, 462/2009
9	Kapodra	179/2008	438/2009	439/2009, 440/2009, 441/2009, 442/2009
10	Varachha	366/2008	463/2009	464/2009. 265/2009,

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Sr. No.	Police Station	Crime Register Number Second	Main Charge-Sheet	Supplementary Charge-sheet
(1)	(2)	(3)	(4)	(5)
				466/2009, 467/2009
11	Varachha	367/2008	488/2009	489/2009, 490/2009, 491/2009, 492/2009, 493/2009
12	Kapodra	180/2008	443/2009	444/2009, 445/2009, 446/2009, 447/2009
13	Mahidharpura	209/2008	37/2009	501/2009, 506/2009, 507/2009, 508/2009
14	Umara	651/2008	504/2009	505/2009, 506/2009, 507/209, 508/2009
15	Katargam	208/2008	476/2009	477/2009, 478/2009, 479/2009, 480/2009

6.13 In the above Column No.4, main Sessions Case Number of the offences registered in the respective Police Station has been shown and the Sessions Case Numbers for the supplementary charge-sheets that had been submitted in respect of the same offences have been shown at Column No.5. In this connection, in the matter of Sessions Case No.418/2010, after submission of the main charge-sheet (sessions case) by each Police Station, an order dated 08/01/2010 passed below Exhibit-1 for consolidation of all the sessions cases of supplementary charge-sheets with the Sessions case of main charge-sheet for the respective offence.

6.14 Thus, pursuant to passing of an order for consolidation of all the Sessions Cases above and all the supplementary charge-sheets and its sessions cases with the main charge-sheet (sessions case) of the same offence, Learned Special Public Prosecutor had submitted an application vide Exhibit-2 on 11/01/2010 requesting for consolidation of all of the sessions cases of main charge-sheet in respect of all of the total-15

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incidents in the matter of Sessions Case No.418/2009.

6.15 In this connection, the Court may refer to the application made on the record both by the prosecution as well as by the defence. Exh.11 is an application made by learned Public Prosecutor under Section 220 of Cr.P.C. in connection with 19 sessions cases along with the main lead Sessions Case No.38 of 2009. The Special Judge passed an order below Exh.11 on 04.12.2009. The Court may reproduce the operative part of the same order as under:-

"In that view of the matter following order is passed:-

(1) The application is allowed.

(2) All the twenty cases registered as Sessions Case numbers 38/09, 95/09, 365/09, 341/09, 347/09, 300/09, 342/09, 82/09, 362/09, 364/09, 339/09, 348/09, 344/09, 61/09, 321/09, 319/09, 323/09, 334/09, 361/09, 346/09 are consolidated in one case i.e. Sessions Case No. 38/2009. It is directed that all the accused shall be charged with and tried at one trial for the alleged offences, in Sessions Case No. 38/2009.

(3) Though the papers of charge sheets submitted in all cases shall be treated as part of the Sessions Case No. 38/2009, the prosecution is directed to furnish fresh list of witnesses to be examined, and also fresh list of documents to be relied upon at the time of trial, giving references of charge sheets already submitted in the Court, along with the page numbers of the charge sheets referred.

(4) The prosecution is directed to furnish copies of the above mentioned two fresh lists to the accused, before the next date of hearing that may be fixed by the Court. It is clarified that if the fresh lists contain any additional documents, which are not part of the papers of the charge sheets furnished earlier, the prosecution shall also furnish the copies of such additional documents to the accused.

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(5) The next date of hearing shall be 18.12.09 by which time, the accused are directed to engage their lawyers failing which the Court shall proceed further for opening of the case by the prosecution as contemplated under Section 226 of Criminal Procedure Code.

Copy of this order be kept in the 20 main cases."

6.16 The Court may observe that in the aforesaid order in para-2 the Special Judge has observed that despite being asked to make any submission, the accused side had not made any submission. Accordingly, the decision was taken to frame charge.

6.17 Yet another occasion arose when an application was made by the defence in the lead Sessions Case No.418 of 2009 of Surat incident again under Section 220 of the Cr.P.C. This application is given at Exh.113. **(**Exh.12 as per noting made in connection with Sessions Case No.38 of 2009**)**. In this application, it was pleaded that all the sessions cases of 15 FIRs of Surat incidents be consolidated. Para-2 of the said application referred to an order passed by the Sessions Court, Surat below application of the prosecution to consolidate the trial of all the cases of the Surat incidents. The application Exh.113 prayed for consolidating Sessions Case No.419 of 2009 (Surat incidents) with Sessions Case No.38 of 2009 (Ahmedabad incidents).

6.18 The Court finds it useful to quote the paragraphs from application Exh.12 (sic. Exh.113) to record the stand of the defence as well. This application was signed by 52 accused persons.

D. That the accused of both the cases are same and common who had been charged for raising funds and staying at the different places of the state of Gujarat and made/obtained powerful explosives, bombs etc. as emerged from both the charge sheet papers, i.e. Annexure A & B. therefore obviously for these accused persons, to prove the said charges

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in both the cases, there is a common set of evidence, oral as well as documentary.

E. That like wise the accused persons shown in the charge sheet papers of Sessions Case No. 38/09 and present Sessions Case No. 418/09 for hacking the computers and making E-Mails etc. the same and common charges are there. And obviously to prove the charges against them the evidence in the nature of oral as well as documentary is same and common.

F. Therefore considering the main allegation against the accused with regards to conspiracy, the proximity of date & time places of bomb plantation and explosion are the acts so connected with each other as the series of acts to form the part of same transaction as a result of a part of one alleged conspiracy hatched by the accused persons in both the sessions cases.

That therefore bare reading of the Section 220 which enable the court to charge the accused of different offences registered at different places at one trial as appears from the records, the series of acts are so connected with each other as to form the same transaction.

This Hon'ble court observed the same while consolidating the different sessions case of Ahmedabad City and different cases of Surat City as one trial while passing the order up on the applications submitted by the Ld. Special Public Prosecutor."

6.19 The Special Judge passed an order below Exh.12 (also Exh.113) allowing such application of the defence by order dated 10.02.2010 and the operative part of the order reads as under:

"11. In that view of the matter, following order is passed:

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ORDER

(1) The application Exh.12 is allowed.

(2) The Sessions Case No.38 of 2009 & Sessions Case No.418 of 2009 are consolidated, and it is directed that the accused of both the cases i.e. in all sixty four accused shall be charged with and tried together in one trial i.e. in Sessions Case No.38 of 2009. The record and proceedings of Sessions Case No.418 of 2009 shall be treated as part of Sessions Case No.38 of 2009 and the evidence shall be recorded in Sessions Case No.38 of 2009 only. The documents already exhibited in Sessions Case No.418 of 2009 shall be re-exhibited in Sessions Case No.38 of 2009 for the sake of convenience and easy reference.

(3) Since the Court has already framed the charge in Sessions Case No.38 of 2009, the same shall have to be altered in view of this order, for which the matter is kept on 15.2.2010.

Copy of this order be kept in Sessions Case No.38 of 2009."

6.20 The Special Judge, while passing the order of consolidation of the Sessions Cases arising out of the Ahmedabad and Surat bomb blast incidents, recorded that in the Ahmedabad cases, the charge against accused Nos.1 to 62 had already been framed vide Exhibit-32 and their pleas were recorded. Since the Surat cases were thereafter ordered to be consolidated with Sessions Case No.38 of 2009, it became necessary to amend and reframe the charge so as to incorporate the offences and accused pertaining to both the Ahmedabad and Surat cases. Accordingly, the charge was amended and reframed from time to time by the trial

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Court as additional accused came to be arraigned, resulting in successive charge exhibits, beginning with Exhibit-122 dated 15.02.2010 and continuing thereafter by way of further charges against subsequently added accused.

6.21 The Special Judge has undertaken the task of meticulously framing, amending and supplementing the charge reflecting the addition of accused, and the consolidation of multiple cases. Initially, charges were framed against accused Nos.1 to 62 (common to the Ahmedabad and Surat cases) and thereafter against accused Nos.63 and 64 of the Surat cases vide Exhibit-122. Subsequently, upon filing of further charge-sheets, the cases of accused Nos.65 to 68 were consolidated and charges were framed vide Exhibit-799, followed by charges against accused Nos.69 and 70 vide Exhibit-956, against accused No.71 vide Exhibit-1300, against accused No.72 vide Exhibit-1847, against accused Nos.73 and 74 vide Exhibit-1935, and against accused No.75 vide Exhibit-6944. Thereafter, upon further consolidation, charges against accused Nos.76, 77 and 78 were framed vide Exhibit-7245. Moreover, accused who were charge after Exhibit-122 and thereafter have adopted the earlier evidence which were recorded before amalgamation of their cases. Accused no.65, 66, 67 and 68 have adopted the evidence before their charge by giving pursis Exhibit-823, Accused no. 69 and 70 were adopted the evidence before their charge by giving pursis Exhibit-990, Accused no. 71 has adopted the evidence before his charge by giving pursis Exhibit-1302, Accused no. 72 has adopted the evidence before his charge by giving pursis Exhibit-1859, Accused no. 73 and 74 were adopted the evidence before their charge by giving pursis Exhibit-1944, Accused no. 75 has adopted the evidence before his charge by giving pursis Exhibit-7241 and Accused no. 76, 77 and 78 were adopted the

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evidence before their charge by giving pursis Exhibit-7249. For better understanding, this Court has broken down the elaborate charge framed as under:

I. In furtherance of the common intention of the accused persons and with consent of one another, the accused persons entered into the criminal conspiracy and attempted to execute the same, or propogated the conspiracy, or rendered assistance thereto, or advised or instigated its commission, or knowingly committed terrorist acts or facilitated the commission of the terrorist acts, and directly or indirectly aided in carrying the aforesaid conspiracy into effect

A) Sections: S.120B of IPC

Accused charged: All the accused persons and the absconding accused persons who have since been apprehended, absconding accused persons who continue to remain at large, and absconding accused who have since expired.

II. Conducted meetings, organised camps for imparting terrorist training, attended such meetings and made speeches in furtherance of the conspiracy.

A) Sections: S. 121A and 124A of IPC

Accused charged: (A-1 to A-15, A-17, A-18, A-23, A-24, A-27, A-31, A-37, A-59, A-75 and A-78)

A-1: Jahid S/o Kutubuddin Shaikh

A-2: Imran S/o Ibrahim Shaikh

A-3: Iqbal S/o Kasam Shaikh

A-4: Samsuddin S/o Shahabuddin Shaikh

A-5: Gyasuddin @ Gyasu S/o Abdulsalim Ansari

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A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi

A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala

A-8: Yunus S/o Mohammad Mansuri

A-9: Kamruddin S/o Chandmohammad Nagori

A-10: Aamil Parvaz S/o Kaji Saifuddin Shaikh

A-11: Sibli @ Sabit S/o Abdul Karim Muslim

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

A-13: Hafiz Hussain @ Adnan S/o Tajuddin Mulla

A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri

A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh

A-17: Naved Naimuddin Kadri

A-18: Javed Ahmed S/o Sagir Ahmed Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-24: Umar @ Ashok Kalabhai Kabira

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-59: Mohammad Ansar @ Siddik @ Nadvi S/o Abdul Razak Muslim

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-78: Tausifkhan @ Atik Sagir Ahmedkhan Pathan

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 121A and S.124A r/w S. 120B of IPC; in the alternative under S. 121A and S.124A

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r/w S. 34 of IPC; and in the alternative under S. 121A and S. 124A r/w S.109 of IPC.

III. Delivered speeches in various meetings and camps inciting revenge on grounds of religion, addressed meetings and called for recee (reconnaissance) of locations to identify where bombs should be planted.

A) Sections: S. 153A (1) of IPC

Accused charged: (A-1 to A-18, A-23, A-24, A-27, A-31, A-37, A-59, A-75 and A-78)

A-1: Jahid S/o Kutubuddin Shaikh

A-2: Imran S/o Ibrahim Shaikh

A-3: Iqbal S/o Kasam Shaikh

A-4: Samsuddin S/o Shahabuddin Shaikh

A-5: Gyasuddin @ Gyasu S/o Abdulsalim Ansari

A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi

A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala

A-8: Yunus S/o Mohammad Mansuri

A-9: Kamruddin S/o Chandmohammad Nagori

A-10: Aamil Parvaz S/o Kaji Saifuddin Shaikh

A-11: Sibli @ Sabit S/o Abdul Karim Muslim

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

A-13: Hafiz Hussain @ Adnan S/o Tajuddin Mulla

A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri

A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh

A-16: Abbas S/o Umar Sameja

A-17: Naved Naimuddin Kadri

A-18: Javed Ahmed S/o Sagir Ahmed Shaikh

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A-23: Ayaz Razakmiyan Saiyed

A-24: Umar @ Ashok Kalabhai Kabira

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-59: Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-78: Tausifkhan @ Atik Sagir Ahmedkhan Pathan

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S.153A (1) r/w S. 120B of IPC; in the alternative under S.153A(1) r/w S.34 of IPC; and in the alternative under S.153A(1) r/w S. 109 of IPC.

IV. Planting of bombs resulting in explosions in Ahmedabad City:

A) Sections: S. 302 and S. 307 of IPC.

Accused charged: Accused (A-3, A-23, A-27, A-28, A-30, A-31**,** A-36, A-37, A-38, A-39, A-40, A-42, A-49, A-50, A-75 to A-78) and absconding accused including Iqbal Bhatkal and Mujib S/o Jamil bhai Shaikh (A-80 as per the Judgment-abated) Mirza Sadabbeg @ Malik Etheshambeg.

i) A-3: Iqbal S/o Kasam Shaikh

Place of bomb blast:

Placed a bicycle planted with a bomb in the area of Thakkarnagar, Naroda, near Kuldevi Tea Stall, and also placed a bomb in AMTS Bus

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No. 150, thereby causing a bomb blast.

ii) A-23: Ayaz Razakmiyan Saiyed (approver)

Place of bomb blast:

Conducted recee (reconnaissance) and placed a bomb in AMTS Bus No. 66/3, and also placed a bicycle planted with a timer bomb near Mayur Restaurant and Param Shakti Tea Stall, located near Naroda Patiya, resulting in bomb blasts.

iii) A-27 : Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and, A-37 : Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

Place of bomb blast:

The accused rented House No.10 at Al-Mahammadi Society, Danilimda for preparing bombs and to provide accommodation to other accused persons, purchased gas bottles/cylinders, bicycles and materials for making bomb. Further, acquired bombs manufactured at House No. 10 in Al-Mahammadi Society and other locations and, planted and arranged to plant the acquired timer bombs on bicycles, in a Wagon-R car and in a Maruti-800 car. The accused planted a bicycle with a bomb which was placed at Diamond market in Bapunagar.

iv) A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and, A-28: Afzal@ Afsar S/o Mutallib Usmani (Musalmaan)

Place of bomb blast:

The accused placed bombs and gas cylinders inside a Maruti 800 car which was stationed in the premises of LG Hospital. Also, bombs and gas bottles/cylinders were placed in a Maruti WagonR which was stationed near the Trauma Centre at Civil Hospital, resulting in explosion.

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v) A-28: Afzal@ Afsar S/o Mutallib Usmani (Musalmaan)

Place of bomb blast:

Having knowledge that A-69 (Aamin @ Raja S/o Aiyub Nazir Shaikh) and A-70(Mohammad Mobin @ Mubin @ Irfan S/o Abdul Sakurkhan) had stolen Maruti 800 and WagonR vehicles from Mumbai for using in bomb blasts, he altered the registration number plates and brought such vehicles to Ahmedabad wherein he planted bombs, gas bottles and explosives in it. He placed the Maruti 800 at L.G. hospital along with A-27(Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri) and A-37(Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya). Also, he placed the WagonR at Civil Hospital with A-27 which were used to carry out the bomb blasts.

vi) A-30: Mohammad Sadik @ Yasir @ Imran @ Sadakat S/o Israr Ahmed Shaikh and A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

Role in bomb blast: He bought timer clocks which were used to prepare timer bombs.

vii) A-36: Mohammad Arif Nasim Ahmed Mirza

Place of bomb blast:

Travelled with a false name and came to Ahmedabad from outside Gujarat, conducted recee (reconnaissance) and placed a bicycle fitted with a timer bomb at Raipur Chakla, Gokhale Paan Parlor and M. Narandas Medical which are located close to each other and caused bomb blasts.

viii) A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

Place of bomb blast:

He rented House No. 10 at Al-Mahammadi Society, Danilimda and at

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Umrao Nagar, Vatva. He purchased materials to make, conceal and wrap bombs. Also, he bought bicycles for planting the bombs and conducted recee (reconnaissance). He placed a bicycle planted with a bomb opposite Sindhi Market near Sarangpur Darwaja and at other places where recee was conducted by him and caused bomb blasts.

ix) A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

Place of bomb blast:

Resided at House No. 10 at Al-Mahammadi Society, acquired bombs and placed a bicycle planted with a bomb near Bage Firdosh police lines area and caused the bomb blast.

x) A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh and absconding accused

Place of bomb blast:

Acquired bomb laden bicycles and placed a bicycle planted with a bomb near Om Paan Parlor in Maninagar area and caused the bomb blast.

xi) A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli and absconding accused

Place of bomb blast:

Acquired bomb laden bicycles and placed a bicycle planted with a bomb near Jawahar Chowk Char Rasta in Maninagar area and caused the bomb blast.

xii) A-42: Mohammad Shakil Yamin Khan Luhar and absconding accused

Place of bomb blast :

Acquired bomb laden bicycles and placed a bicycle planted with a bomb near Mahalakshmi market in Maninagar area and caused the bomb blast.

xiii) A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

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Role in bomb blast:

Prepared and distributed timer chips which were used to make timer bombs.

xiv) A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

Place of bomb blast:

Conducted recee and placed a bicycle planted with a bomb near the Narol Circle area, and caused the bomb blast.

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 302 and S. 307 r/w S. 120B of IPC; in the alternative under S. 302 and S. 307 r/w S. 34 of IPC; and in the alternative under S. 302 and S. 307 r/w S.109 of IPC.

C) Locations of bomb blast and police stations in Ahmedabad:

i) Within the limits of Shahibaug Police Station near Civil Hospital Trauma Centre.

ii) Within the limits of Naroda Police Station

(a) Near Kuldevi Tea Stall, Thakkar-nagar road.

(b) Near Mayur restaurant, Naroda, Bhagal.

iii) Within the limits of Bapunagar Police Station near Diamond Market and Shreeji Ice Cream Shop.

iv) Within the limits of Amraiwadi Police Station near Hatkeshwar Circle, Harinarayan Complex, near vegetable market.

v) Within the limits of Odhav Police Station:

(a) after Rajendra Park Vahera, opposite post office.

(b) Rajendra Park, opposite Mayur Dairy (near Pakodi stall).

vi) Within the limits of Sarkhej Police Station in an A.M.T.S. bus having route no. 150 on the Sarkhej - Vasana Road, near Ambar Tower.

vii) Within the limits of Khadia Police Station at :

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(a) N. Narandas and Co. Raipur Chakla.

(b) Gokhale Pan House, Raipur Chakla.

(c) Milan Kirana Store, Sarangpur Chakla.

viii) Within the limits of Kalupur Police Station besides Janta Paan House, opposite Sindhi Market.

ix) Within the limits of Vatva Police Station near Mittal Chambers, Narol Circle.

x) Within the limits of Danilimda Police Station near Sankatmochan Hanuman Temple, Narol Chaar Rasta.

xi) Within the limits of Maninagar Police Station:

(a) near Om Paan Parlour, Mahalaxmi Market, Maninagar Chaar Rasta.

(b) near Anna's tea stall, near Mahalaxmi Market.

(c)opposite Shivani avenue, Jawahar Chaar Rasta.

(d) near A.M.T.S. bus stand.

(e) in the parking lot of L.G. Hospital.

xii) Within the limits of Isanpur Police Station at vegetable market, Govindwadi Chaar Rasta.

xiii) Within the limits of Ramol Police Station, opposite Tejendra Complex, Hatkeshwar Circle.

Also, an unexploded bomb was found within the limits of Ramol Police Station inside a dustbin in an open ground near Baghe Firdos Police and another unexploded bomb was found within the limits of Kalol Taluka Police Station near the gates of Arvind Mill on the outskirts of Khatraj (Bomb planted at Naroda in the A.M.T.S. bus route no. 66/3)

V. Planting of bombs in Surat City:

A) Sections: S. 307 of IPC.

Accused charged: (A-37, A-43, A-44, A-45, A-63 and A-64)

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

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A-43: Anik @ Khalid S/o Shafik Saiyed

A-44: Mohammad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari

A-45: Fazle Rehmaan @ Rafik @ Salauddin S/o Musaddik Durrani

A-63: Mohammad Tanvir @ Tulha S/o Mohammad Akhtar Pathan

A-64: Mohammad Zahir S/o Ayubbhai Patel)

A-43, A-45, A-63 and A-64 purchased raw materials for making bombs. A-37, A-44 and A-63 rented houses at Surat City, prepared the bombs in those houses and as a part of the conspiracy with the knowledge that death may be caused due to the explosion of the same, planted bombs at various places in Surat City.

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 307 r/w S. 120B of IPC; in the alternative under S. 307 r/w S. 34 of IPC; and in the alternative under S. 307 r/w S. 109 of IPC.

C) <u>Places of bomb plantation in Surat</u>:

Planted four live bombs in form of car-bomb in Surat City at :

(1) A black Wagon-R car with explosive material at Sitanagar Cross Road, opposite Puna General Hospital and Ambika Park, near Saurashtra Hardware Shop.

(2) A red Wagon-R car with explosive material in a parking space opposite Sonal Bhel House, under Doctor House, Baroda Prestige, Varachha Road.

Planted live bombs at various public places such as:

(3) A live bomb in the divider situated on the left side of the eastward road, opposite Nupur Hospital, in the City-light Road area..

(4) A live bomb at Varacha Lambe Hanuman Road, at the end of Old

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Shakti Vijay Society, under the transformer of a small sub-station of Torrent Power Company.

(5) A live bomb near Baroda Prestige, near Samarpan Cloth Centre, a live bomb near Baroda Prestige Market Plot No.132 Ramzan ali building and a live bomb on the Pipal tree at the edge of the road situated opposite of Bansari Pan Centre in Matwadi, J.B. Shopping Centre No.1.

(6) Three live bombs inside Katargam Gajera Circle.

(7) A live bomb in the aperture on the upper part of the shutter of the shop namely "Mayank Metal" in Mahidharpura, Hirabajar.

(8) A live bomb on the iron angle of the hoarding placed on pole no. 98 of Varachha overbridge; a live bomb on a banyan tree near Anil Choksina Kanta in Varachha Mini Bazar, Mohan ni Chal; a live bomb on roof sheets in front of a tree situated near Anil Choksina Kanta, in Mohan ni Chal, Mini Bazar, Varachha; a live bomb in a hoarding on the overbridge north of Mohan Chal; and two live bombs on the hoarding at Varachha overbridge north of Bhavna Ford.

(9) Two live bombs in an iron angle on the back of the advertisement hoarding of Pramod 2320028, placed adjacent to the north wall of the over-bridge situated at Hirabaug Circle.

(10) A live bomb in the grass and bushes in the divider north of Bhavani Gems Circle on Varachha A.K. Road; a live bomb in the grass and bushes in the divider east of Bhavani Gems Circle; and a live bomb in the grass in the east-south corner of Kranti Medan behind Sardar Police Chowki.

(11) A live bomb near Radhe Fashion, on the first floor of Shri Kishan Complex, Baroda Prestige Premgali, Varachha.

(12) A live bomb on a mango tree on the footpath near the gate of the swimming pool situated in Maharana Pratap Udyan, Nana Varachha.

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(13) A live bomb on the back of the nameplate of a shop namely Genius Instrument, under Shri Ramnivas Building, Kamnath Road, Jadakhadi, Hirabajar.

(14) A live bomb in the advertisement hoarding situated on the city bus-stop, in front of Chaupati Garden, Athwa lines and,

(15) A live bomb on the west side of the road at the northern end of Amroli Bridge, Katargam.

VI. Caused grievous hurt to 240 individuals.

A) Section: S. 326 of IPC.

Accused charged: Accused (A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-40, A-42, A-49, A-50, A-75 to A-78) and absconding accused.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli

A-42: Mohammad Shakil Yaminkhan Luhar

A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

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A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-76: Manjarimam @ Alam @ Jamil S/O Aliimam

A-77: Suheb Potnikal S/O Abdul Kadar Potnikal

A-78: Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 326 r/w S. 120B of IPC; in the alternative under S. 326 r/w S. 34 of IPC; and in the alternative under S. 326 r/w S. 109 of IPC.

VII. Damage amounting to more than Rs. 100

A) Sections: S. 435 of IPC

Accused charged: Accused (A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-40, A-42, A-49, A-50, A-75 to A-78) and absconding accused.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli

A-42: Mohammad Shakil Yaminkhan Luhar

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A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-76: Manjarimam @ Alam @ Jamil S/O Aliimam

A-77: Suheb Potnikal S/O Abdul Kadar Potnikal

A-78: Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan

B)Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 435 r/w S. 120B of IPC; in the alternative under S. 435 r/w S. 34 of IPC; and in the alternative under S. 435 r/w S. 109 of IPC.

VIII. Damage to human inhabited buildings of L.G. Hospital and Civil Hospital.

A) Sections: S. 436 of IPC

Accused charged: Accused (A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-42, A-49, A-50, A-75 to A-78) and absconding accused.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

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A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-42: Mohammad Shakil Yaminkhan Luhar

A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-76: Manjarimam @ Alam @ Jamil S/O Aliimam

A-77: Suheb Potnikal S/O Abdul Kadar Potnikal

A-78: Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 436 r/w S. 120B of IPC; in the alternative under S. 436 r/w S. 34 of IPC; and in the alternative under S. 436 r/w S. 109 of IPC.

IX. Damage to private and public properties (including AMTS buses, buildings of L.G. Hospital and Civil Hospital) and, death of domestic animals such as a bull and thereby causing loss to the owner.

A) Sections: S. 427 of IPC

Accused charged: Accused (A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-40, A-42, A-49, A-50, A-75 to A-78) and absconding accused.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

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A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli

A-42: Mohammad Shakil Yaminkhan Luhar

A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-76: Manjarimam @ Alam @ Jamil S/O Aliimam

A-77: Suheb Potnikal S/O Abdul Kadar Potnikal

A-78: Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan

B)Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 427 r/w S. 120B of IPC; in the alternative under S. 427 r/w S. 34 of IPC; and in the alternative under S. 427 r/w S. 109 of IPC.

X. False representation to stay at hotels and for obtaining mobile SIM cards.

A) Sections: S. 465, 468 and 471 of IPC

Accused charged: Accused no's. A-14, A-37, A-43, A-45, A-46 and A-70.

i) A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri

Concealed his true identity and made forged production to stay at Hotel

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Shrihari Tourist Home located near forests of Vagamon and to accommodate other co-accused.

ii) A-37: Kayamuddin @ Rizwan @ Ashfak Sarfuddin Kapadiya

Concealed his true identity and made forged production to stay at Hotel Kamleshwar, Pune and to accommodate other co-accused. Further, in Ahmedabad, he made an application under the name of another person to get entry in the swimming pool. Also, he made fraudulent applications, used forged licenses and false identity proofs to obtain mobile SIM cards which were distributed to the accused persons and the absconding accused persons and the deceased accused person among them. Also, as a part of the conspiracy and in order to help the absconding accused No.11 in hiding, concealed the true identity, made forged production, booked the room under the fake name in Hotel Vapi Intercontinental and recorded entry in the hotel register under the fake name.

iii) A-43: Anik @ Khalid S/o Shafik Saiyed

As a part of the conspiracy and in order to conceal the true identity, he made forged production, purchased Honda Kinetic under the fake name and affixed signature in the sale-agreement book under the fake name at Surat.

iv) A-45: Fazle Rehmaan @ Rafik @ Salauddin S/o Musaddik Durrani

The accused concealed his true identity, made forged production, booked the room under the fake name and recorded entry in the hotel register under the fake name in order to arrange stay for himself and other accused persons at Bharuch.

v) A-46: Mohammad Naushad @ Mohammad Irshad Saiyed

As a part of the conspiracy and in order to conceal his true identity, he made forged production, booked the room under the fake name, and

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recorded an entry in the hotel register under the fake name at Hotel Abhilash Tourist Home in Kannur city of Kerala state.

vi) A-70: Mohammad Mobin @Mubin @ Irfan S/o Abdul Sakurkhan

As a part of the conspiracy, this accused concealed his true identity and made a representation in a false name and booked a room under a false name and caused an entry to be made in the hotel register of "Hotel Shrinath and Guest House" at Valsad, Killa Pardi.

B) Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 465, 468 and 471 of IPC r/w S. 120B of IPC; in the alternative under S. 465, 468 and 471 of IPC r/w S. 34 of IPC; and in the alternative under S. 465, 468 and 471 of IPC r/w S. 109 of IPC.

XI. Destruction of evidence.

A) Section**:** S. 201 of IPC

Accused charged: A-63: Mohammad Tanvir @ Tulha S/o Mohammad Akhtar Pathan

Having knowledge and belief that the pipe bomb made by A-37 as a part of the conspiracy at Surat and the mobile phone used in furtherance of the conspiracy are evidence of the offence, the accused with intent to destroy the evidence, threw the pipe bomb and the mobile phone used in furtherance of the conspiracy in the river.

B)Moreover, all the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have also been charged under S. 201 of IPC r/w S. 120B of IPC; in the alternative under S. 201 of IPC r/w S. 34 of IPC; and in the alternative under S. 201 of IPC r/w S. 109 of IPC.

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XII. Harbouring certain accused persons knowing or having reason to believe that they were involved in the offences related to Ahmedabad bomb blast and Surat bomb plantation with the intent to protect them from legal consequences.

Section: S.212 of IPC

Accused charged:

A-67: Hasibraja @ Samimbhai S/o Firdoshraja Saiyed

A-73: Afaq Iqbal @ Iqval @ Danish Riyaz @ Saki S/o Nurulhoda Saiyed

XIII. Offences under UAPA

A) Continued to be members of an unlawful association (SIMI) even after it was declared an unlawful association by the Central Government, participated in meetings, collected and contributed funds, possessed large quantities of unlicensed firearms and explosives with intent to cause harm and death to human lives on a large scale.

Section: S. 10 of UAPA

Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 10 of UAPA.

B)Participated to assist in the unlawful activities of the organization SIMI, banned u/s 3 of UAPA and carried out unlawful activities and advised and abetted in the unlawful activities of SIMI, instigated and decided as to how to do unlawful activities and terrorist activities in order to destabilize the democratically elected Government and made bombs and carried out bomb blast and abetted one another directly and indirectly for terrorism.

Section: S. 13 of UAPA

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Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 13 of UAPA.

C)Joined the terrorist organization SIMI, planted bombs in various areas of **Ahmedabad city** and committed the terrorist act of causing bomb blast with an intention to cause loss of life and property and to spread fear and terror, and thereby caused death of 56 persons in various areas of Ahmedabad city.

i) Section: S. 16(1)(a)(b) of UAPA

Accused charged: Accused (A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-40, A-42,A-49, A-50, A-75 to A-78) and absconding accused.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli

A-42: Mohammad Shakil Yaminkhan Luhar

A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

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A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

A-76: Manjarimam @ Alam @ Jamil S/O Aliimam

A-77: Suheb Potnikal S/O Abdul Kadar Potnikal

A-78: Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 16(1)(a)(b) UAPA r/w S. 18 UAPA and S. 120B IPC.

D) Joined the terrorist organization SIMI and committed the terrorist act of planting bombs in various areas of **Surat city** with intention to cause loss of life and property and to spread fear and terror.

i) Section: S. 16(1)(b) of UAPA

Accused charged: A-43, A-45, A-63 and absconding accused and the deceased accused persons among the absconded accused.

A-43: Anik @ Khalid S/o Shafik Saiyed

A-45: Fazle Rehmaan @ Rafik @ Salauddin S/o Musaddik Durrani

A-63: Mohammad Tanvir @ Tulha S/o Mohammad Akhtar Pathan

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 16(1)(b) UAPA r/w S. 18 UAPA and S. 120B IPC.

E) Conspiracy to execute the goal of causing bomb blasts, abetted one another to carry out the aforesaid conspiracy, prepared to deliberately commit the act of terrorism and facilitated the execution of the conspiracy.

Section: S. 18 of UAPA

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Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 18 of UAPA.

F) Voluntarily giving shelter to or causing shelter to be given to, and concealing certain accused persons, despite knowing that they were associated with terrorist activities or were terrorists.

Section: S. 19 of UAPA

Accused Charged:

A-67: Hasibraja @ Samimbhai S/o Firdoshraja Saiyed

A-73: Afaq Iqbal @ Iqval @ Danish Riyaz @ Saki S/o Nurulhoda Saiyed

G) Joined in the terrorist activities as members of the terrorist group and the banned organization SIMI and decided to cause bomb blasts as a part of aforesaid conspiracy and executed the terrorist activity.

Section: S. 20 of UAPA

Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 20 of UAPA.

H) Execution of conspiracy through use of bombs and hazardous explosives which were capable of causing large scale destruction and caused death of 56 persons in Ahmedabad and caused grave injuries to more than 240 persons with intention to cause death and used bombs which could explode in Surat city with the intention to cause death.

Section: S. 23 of UAPA

Accused charged:

All the aforesaid accused persons, including those accused who are

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absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 23 of UAPA.

I) Acquisition of membership of a terrorist organisation with intent to promote SIMI's unlawful activities.

Section: S. 38 of UAPA

Accused charged: Accused no's A-1, A-2, A-4, A-5, A-6, A-7, A-8, A-12, A-14, A-15, A-18, A-22, A-24 and A-27.

A-1: Jahid S/o Kutubuddin Shaikh

A-2: Imran S/o Ibrahim Shaikh

A-4: Samsuddin S/o Shahabuddin Shaikh

A-5: Gyasuddin @ Gyasu S/o Abdulsalim Ansari

A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi

A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala

A-8: Yunus S/o Mohammad Mansuri

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri

A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh

A-18: Javed Ahmed S/o Sagir Ahmed Shaikh

A-22: Imran Ahmed @ Raja S/o Siraj Ahmed Haji Pathan

A-24: Umar @ Ashok Kalabhai Kabira

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

J) Supported unlawful activities of the terrorist organisation SIMI and with intention to propagate the activities of SIMI, organised, addressed and conducted meetings, propagated jihad and decided upon engaging in terrorist activities such as bomb blasts.

Section: S. 39 of UAPA

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Accused charged: Accused no's A-1, A-2, A-3, A-4, A-6, A-7, A-8, A-10, A-11, A-12, A-13, A-14, A-15, A-18, A-27, A-37, A-51, A-59 and A-75.

A-1: Jahid S/o Kutubuddin Shaikh

A-2: Imran S/o Ibrahim Shaikh

A-3: Iqbal S/o Kasam Shaikh

A-4: Samsuddin S/o Shahabuddin Shaikh

A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi

A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala

A-8: Yunus S/o Mohammad Mansuri

A-10: Aamil Parvaz S/o Kaji Saifuddin Shaikh

A-11: Sibli @ Sabit S/o Abdul Karim Muslim

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

A-13: Hafiz Hussain @ Adnan S/o Tajuddin Mulla

A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri

A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh

A-18: Javed Ahmed S/o Sagir Ahmed Shaikh

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-51: Doctor Anwar S/o Abdulgani Bagvan

A-59: Mohammad Ansar @ Siddik @ Nadvi S/o Abdul Razak Muslim

A-75: Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed

K) Collected funds for the unlawful activities of the terrorist organization SIMI, in spite of believing and knowing that the aforesaid collected funds were being used for terrorism and to expand the activities of the terrorist organization SIMI.

Section: S. 40 of UAPA

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Accused charged: Accused no's A-1, A-8 and A-12.

A-1: Jahid S/o Kutubuddin Shaikh

A-8: Yunus S/o Mohammad Mansuri

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

XIV. OFFENCES UNDER EXPLOSIVE SUBSTANCES ACT:

A) Planted bombs containing explosive substances at various locations with intention to risk the lives of people and to cause serious damage to property, in collusion with one another, abetted one another with a malafide intention, with the knowledge that such unlawful activities will cause loss of life and damage to property, caused death of 56 persons in various areas, caused life threatening grave injuries to 240 persons and caused damage to property.

i) Section: S. 3 of Explosive Substances Act

Accused charged: Accused no's A-3, A-23, A-27, A-28, A-31, A-36, A-37, A-38, A-39, A-40, A-42, A-49 and A-50.

A-3: Iqbal S/o Kasam Shaikh

A-23: Ayaz Razakmiyan Saiyed

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-28: Afzal @ Afsar S/o Mutallib Usmani (Musalmaan)

A-31: Mohammad Arif @ Arif Badar @ Ladan S/o Badruddin @ Jumman Shaikh

A-36: Mohammad Arif Nasim Ahmed Mirza

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-39: Zishan Ahmed @ Zishan Isan Ahmed Shaikh

A-40: Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli

A-42: Mohammad Shakil Yaminkhan Luhar

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A-49: Sarfuddin @ Sarfu S/o It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim

A-50: Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under S. 3 of Explosive Substances Act r/w S. 120B of IPC ; in the alternative under S. 3 of Explosive Substances Act r/w S. 34 of IPC; or in the alternative under S. 3 of Explosive Substances Act r/w S. 109 of IPC.

B)Planting of bombs unlawfully and with malafide intention at various locations in Ahmedabad which posed danger to human life, which could result in serious injuries and could cause damage to property.

Section: S. 4 of Explosive Substances Act

Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 4 of Explosive Substances Act.

C)Preparation, possession, and planting of bombs with intent to cause damage and loss of life which were kept under the control of the accused and later planted at different locations.

Section: S. 5 of Explosive Substances Act

Accused charged: Accused no's A-1, A-2, A-5, A-6, A-7, A-8, A-12, A-14, A-15, A-27, A-37, A-38, A-43, A-44, A-45, A-47, A-63 and absconding accused.

A-1: Jahid S/o Kutubuddin Shaikh

A-2: Imran S/o Ibrahim Shaikh

A-5: Gyasuddin @ Gyasu S/o Abdulsalim Ansari

A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi

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A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala

A-8: Yunus S/o Mohammad Mansuri

A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori

A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri

A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh

A-27: Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri

A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya

A-38: Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh

A-43: Anik @ Khalid S/o Shafik Saiyed

A-44: Mohammad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari

A-45: Fazle Rehmaan @ Rafik @ Salauddin S/o Musaddik Durrani

A-47: Ahmed Bava @ Abu S/o Abubakr Barelvi

A-63: Mohammad Tanvir @ Tulha S/o Mohammad Akhtar Pathan

D) Gathered, concealed, supplied vehicles and assisted each other in committing offences under the Explosive Substances Act.

Section: S. 6 of Explosive Substances Act

Accused charged: All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under Section 6 of Explosive Substances Act.

XV. Offences under Prevention of Damage to Public Property Act

A) Placed vehicles planted with bomb at L.G. Hospital and Civil Hospital

i) Section: S. 3(1) of Prevention of Damage to Public Property

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Act

Accused charged:

a) A-27: Mohammad Ismail @ Rajik @ Musaf @ Furkan Mohammad Isaak Mansuri:

Planted bomb inside a Maruti 800 car at L.G. Hospital, Maninagar on 26.07.2008 and caused a bomb explosion which resulted in a damage of Rs.3,25,000/- (Three lakh twenty five thousand rupees)

b) A-28: Afzal Mutallib Usmani @ Afsar Usmani (Musalmaan)

Planted a WagonR car filled with explosives near the Trauma Ward at Civil Hospital and caused a bomb explosion which resulted in a damage of Rs. 1,82,00,000/- (One crore eighty two lakh rupees)

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under S. 3(1) of Prevention of Damage to Public Property Act r/w S. 120B of IPC; in the alternative under S. 3(1) of Prevention of Damage to Public Property Act r/w S. 34 of IPC; or in the alternative under S. 3(1) of Prevention of Damage to Public Property Act r/w S. 109 of IPC.

B)Placed a bomb on AMTS Bus No. GJ-1/W-8390, Route No. 150

i) Section: S. 3(2) of Prevention of Damage to Public Property Act

Accused charged: A-3: Iqbal @ Ikrar Kasam Shaikh

He placed a bomb on AMTS Bus No. GJ-1/W-8390, Route No. 150 on 26.07.2008 and caused a bomb explosion which resulted in a damage of Rs. 5,90,000/- (Five lakh ninety thousand rupees).

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under S. 3(2) of Prevention of Damage to Public Property Act r/w S. 120B of IPC; in the alternative under S.

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3(2) of Prevention of Damage to Public Property Act r/w S. 34 of IPC; or in the alternative under S. 3(2) of Prevention of Damage to Public Property Act r/w S. 109 of IPC.

C) Explosions as a result of bomb placed at L.G. Hospital and Civil Hospital and on AMTS Bus No. GJ-1/W-8390, Route No. 150

i) Section: S. 4 of Prevention of Damage to Public Property Act

Accused charged:

a) A-27: Mohammad Ismail @ Rajik @ Musaf @ Furkan Mohammad Isaak Mansuri placed a Maruti 800 car filled with explosives and gas cylinders in the compound of LG Hospital, Maninagar and,

b) A-28: Afzal Mutallib Usmani @ Afsar Usmani (Musalmaan) planted a WagonR car filled with explosives near the Trauma Ward at Civil Hospital and,

c) A-3: Iqbal @ Ikrar Kasam Shaikh placed a bomb on AMTS Bus No. GJ-1/W-8390, Route No. 150 on 26.07.2008,

which cumulatively led to damage to public property worth approximately Rs. 1,91,15,000/-.

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under S. 4 of Prevention of Damage to Public Property Act r/w S. 120B of IPC; in the alternative under S. 4 of Prevention of Damage to Public Property Act r/w S. 34 of IPC; or in the alternative under S. 4 of Prevention of Damage to Public Property Act r/w S. 109 of IPC.

XVI. Offences under I.T. Act:

Details about incident:

The accused stayed in Pune and Mumbai, unauthorisedly used Wi-Fi networks (including those of Kenneth Heywood and Khalsa College,

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Mumbai) and other Wi-Fi connections at Mumbai without consent to send emails with headings "The Rise of Jihad Revenge of Gujarat" and "The Curses That Devastate You" to various news channels on 26.07.2008. Thereafter, they deleted email files using anti-forensic software to destroy evidence.

i) Section: S. 65 and S. 66 of I.T. Act

Accused charged: A-32, A-33, A-34 and A-44.

A-32: Asif @ Hasan S/o Bashiruddin Shaikh

A-33: Mubin @ Salman S/o Kadar Shaikh

A-34: Mohammad Mansur S/o Asgar Pirbhoi

A-44: Mohammad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari

ii) All the aforesaid accused persons, including those accused who are absconding and those reported as deceased during the pendency of the proceedings have been charged under S. 65, S. 66 of I.T. Act r/w S. 120B of IPC; in the alternative under S. 65, S. 66 of I.T. Act r/w S. 34 of IPC; or in the alternative under S. 65, S. 66 of I.T. Act r/w S. 109 of IPC.

XVII. Kept in his possession a country-made pistol unlawfully without any license.

Section: S. 25(1)(B)(a) of the Arms Act

Accused charged: A-7: Mohammad Usman @ Usman Mohammad Anis Agarbattiwala

7. Sentence awarded to the accused in tabular format

7.1 Accused No.1: Jahid @ Javed Kutubuddin Sheikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000

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Section	Punishment
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.2 Accused No.2: Imran Ibrahim Shaikh

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Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.3 Accused No.3: Iqbal @ Ikrar Kasam Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public	7 years R.I. + 10,000

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Section	Punishment
Property Act 1984	

7.4 Accused no.4: Samsuddin @ Samsu Shahabuddin Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public	5 years R.I. + 5,000

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Section	Punishment
Property Act 1984	
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.5 Accused no.5: Gyasuddin @ Gyasu Abdulsalim Ansari

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000

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Section	Punishment
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.6 Accused no.6: Mohammad Aarif Mohammad Iqbal Kagzi

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000

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Section	Punishment
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.7 Accused no.7: Mohammad Usman @ Usman Mohammad Anis Agarbattiwala

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	1 year R.I.+3,000
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000

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Section	Punishment
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.8 Accused no.8: Yunus Mohammadbhai Mansuri

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000

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Section	Punishment
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.9 Accused no.9: Kamruddin @ Raja @ Abdulla Chandmohammad Nagori

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000

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Section	Punishment
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.10 Accused no.10: Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000

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Section	Punishment
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.11 Accused no.11: Sibli @ Sabit Abdul Karim

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Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.12 Accused no.12: Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000

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Section	Punishment
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.13 Accused no.13 : Hafizhussain @ Adnan @ Tamim Tajuddin

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000

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Section	Punishment
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.14 Accused no.14: Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000

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Section	Punishment
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.15 Accused no.15: Abubasar @ Mufti @ Abdul Rashid @ Abdulla Abubakar Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000

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Section	Punishment
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.16 Accused no.16: Abbas Umar Sameja

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000

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Section	Punishment
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.17 Accused no.18: Javed Ahmed Sadir Ahmed Shaikh (Saiyed)

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000

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Section	Punishment
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.18 Accused no.20: Atikurrehman @ Atik Abdulhakim Khilji

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000

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Section	Punishment
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.19 Accused no.21: Mehndihasan @ Viki Abdul Habib Akbarkha Ansari

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-

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Section	Punishment
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.20 Accused no.22:Imran Ahmed @ Raja Sirajahmed Haji Pathan

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000

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Section	Punishment
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.21 Accused no.26: Mohammad Ali @ Jamal @ Zia @ Yasar @ Abubakar Moharramali Ansari

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000

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Section	Punishment
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.22 Accused no.27:Mohd. Ismail @ Abdul Rajik @ Musaf @ Furkan Mohammad Ishak Mansuri

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000

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Section	Punishment
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.23 Accused no.28:Afzal @ Afsar @ Raja @ Ajit Singh @ Sanjay Pandey @ Usmani Mutalib Usmani

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000

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Section	Punishment
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.24 Accused no.30: Mohammad Sadik @ Yasir @ Imran @ Sadakat @ Sahadat Ishrar Ahmed Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000

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Section	Punishment
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.25 Accused no.31-Mohd. Arif @ Arif Badar @ Ladan Badruddin Shaikh @ Jumman Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000

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Section	Punishment
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.26 Accused no.32-Asif @ Hasan Bashiruddin Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000

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Section	Punishment
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.27 Accused no.35: Rafiuddin Sarfuddin Kapadia (Muslim)

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000

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S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.28 Accused no.36-Mohammad Arif Nasim Ahmed Mirza

Section	**Punishment**
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000

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Section	Punishment
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.29 Accused no.37-Kayamuddin @ Musa @ Ashpak @ Abdul Kadir @ Rizvan @ Samir Sarfuddin Kapadia

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000

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Section	Punishment
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.30 Accused no.38-Mohammad Saif @ Rahul Sharma @ Keriseva Sadab Ahmed Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000

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Section	Punishment
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.31 Accused no.39: Zisanahmad Ahsanahmed Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000

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Section	Punishment
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.32 Accused no.40-Ziya-Ur-Rehman @ Montu Abdulrehman Muslim

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000

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Section	Punishment
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.33 Accused no.42-Mohammad Shakil @ Shakil Yaminkhan Luhar

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000

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Section	Punishment
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.34 Accused no.43-Anik Shafik Saiyed @ Khalid

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000

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Section	Punishment
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.35 Accused no.44-Mohd. Akbar Ismail Chaudhary @ Saeed

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000

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Section	Punishment
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.36 Accused no. 45: Fazal-E-Rehman @ Salauddin @ Rafik Musaddikkhan Durani

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000

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Section	Punishment
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.37 Accused no. 46: Mohammad Naushad @ Saiyed Mohammad Irshad Saiyed

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000

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Section	Punishment
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.38 Accused no.47-Ahmedbawa @ Abbu Abubakar Barelvi

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000

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Section	Punishment
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.39 Accused no.49-Sarfuddin @ Sharif Et Sainuddin @ Abdulsattar @ Salim

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Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.40 Accused no.50-Saif-Ur-Rehman @ Saifu @ Saif Abdulrehman Ansari

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000

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Section	Punishment
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.41 Accused no.59-Mohammad Ansar @ Nadvi @ Siddik Abdul Razak Muslim

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000

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Section	Punishment
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.42 Accused no.60-Saduli @ Haris Abdul Karim Muslim

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000

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Section	Punishment
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.43 Accused no.63-Mohd. Tanvir @ Talha Mohd. Akhtar Pathan

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000

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Section	Punishment
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.44 Accused no.66-Mohammad Shafik @ Dadabhai @ Thakur @ Rafik @ Ali Abdulbari Ansari

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000

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Section	Punishment
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.45 Accused no.69-Amin @ Raja Ayub Nazir Shaikh

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000

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Section	Punishment
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.46 Accused no.70-Mohammed Mobin @ Mubin @ Irfan Abdul Sakurkhan

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000

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Section	Punishment
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.47 Accused no.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim Babukhan Maniyar

Section	Punishment
S. 302 r/w 34,109 IPC	L.I. + 25,000
S. 10 UAPA 1867	L.I. + 25,000
S. 16(1)(a)(b) UAPA 1867	L.I. + 25,000
S. 25 (1B) (a) Arms Act, 1959	-

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Section	Punishment
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

7.48 Accused no.75-Mohammad Rafik @ Javed @ Alamzeb Afridi Maskur Ahmed

Section	Punishment

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Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

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7.49 Accused no.78-Tausifkhan @ Atik Sagir Ahmedkhan Pathan

Section	Punishment
S. 302 r/w 34,109 IPC	Capital + 25,000
S. 10 UAPA 1867	Capital + 25,000
S. 16(1)(a)(b) UAPA 1867	Capital + 25,000
S. 25 (1B) (a) Arms Act, 1959	-
S. 120B IPC	L.I. + 10,000
S. 121A r/w 34, 109 IPC	10 years R.I. + 10,000
S. 124A r/w 34,109 IPC	L.I. + 10,000
S. 153A r/w 34,109 IPC	3 years R.I. + 10000
S. 307 r/w 34,109 IPC	10 years R.I. + 10000
S. 326 r/w 34,109 IPC	10 years R.I. + 10000
S. 435 r/w 34,109 IPC	7 years R.I. + 10,000
S. 436 r/w 34,109 IPC	10 years R.I. + 10,000
S. 427 r/w 34,109 IPC	2 years R.I. + 5,000
S. 465 r/w 34,109 IPC	2 years R.I. + 5,000
S. 468 r/w 34,109 IPC	7 years R.I. + 10,000
S. 471 r/w 34,109 IPC	7 years R.I. + 10,000
S. 13 UAPA	5 years R.I. + 10,000
S. 18 UAPA	5 years R.I. + 5,000
S. 20 UAPA	L.I. + 10,000
S. 23 UAPA	5 years R.I. + 5,000
S. 38 UAPA	7 years R.I. + 5,000
S. 39 UAPA	7 years R.I. + 5,000
S. 3 Explosive Substances Act	L.I. + 10,000
S. 4 Explosive Substances Act	10 years R.I. + 10000
S. 5 Explosive Substances Act	10 years R.I. + 10000
S. 6 Explosive Substances Act	10 years R.I. + 10000
S. 3(1) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000
S. 3(2) The Prevention of Damage to Public Property Act 1984	5 years R.I. + 5,000

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Section	Punishment
S. 4 The Prevention of Damage to Public Property Act 1984	7 years R.I. + 10,000

8. Ingredients of Sections vis-à-vis acts attributed to the accused

Sr. No.	Section	Ingredients of section	Act attributed to the accused
1	**S.121A and S.124A IPC**	**<u>S. 121A of IPC</u> :** **i)** Conspiracy to commit offences punishable by S. 121 of IPC. (Offence punishable under S. 121 IPC : • Waging war against Government of India, • or attempts to wage such war • or abets the waging of such war.) **ii)** Conspiring to overawe, that is, intimidate by means of criminal force or a mere show of criminal force against the Government. **<u>S. 124A of IPC : Sedition</u>** **i)** Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection. **ii)** By means of : • Spoken or written words, • Signs, or • Visible representations, or otherwise. **iii)** Against the Government established by law in India.	Conducted meetings and organised training camps at Vagamon in Kerala and Pavagadh in Halol in Gujarat for imparting terrorist training, attended such meetings at various locations in Ahmedabad etc, where delivered instigating, hate speeches, amounting to or trying to wage a war against the Government of India and the State Government, in each of such meeting hatched the conspiracy, for using criminal force against the Union or State Government and created apprehension and attempted to create unrest by striking terror in public thereby causing unrest within the state..
2	**S. 153A(1) IPC**	**<u>S. 153A(1) of IPC</u> : Promoting enmity between different groups on ground of religion, race, place of birth, residence,**	In various meetings and camps, the accused delivered and participated in hate

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		language, etc., and doing acts prejudicial to maintenance of harmony. **i)** The act must be done by words spoken or written, signs, visible representations, or otherwise. **ii)** The act must promote or attempt to promote enmity, hatred or ill will on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, or the act should be prejudicial to the maintenance of harmony or likely to disturb public tranquillity or, **iii)** The accused must organize or participate in any exercise, movement, drill or other similar activity intending or knowing it to be likely that the participants in such activity shall use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community.	speeches stating that revenge should be taken for the loss of life suffered by Muslims in communal riots, that a Muslim nation should be established, and that jihad should be waged against Hindus to take revenge, and addressed such meetings. Also, the accused conducted recce of the places where the Hindu population is high and where more Hindus gather, and planted bombs and caused blasts.
3	**S. 302 and S. 307 IPC.**	**S.302 of IPC: Punishment for murder (S. 300)** Ingredients of murder (S. 300) : **a)** Culpable homicide is murder, if the act by which the death is caused falls under any of the following descriptions: **i)** The act is done with the intention of causing death. **ii)** The act is done with the	The accused planted and thereby carried out bomb blasts with the intention and knowledge that the act of carrying out bomb blasts would cause deaths of people and would cause grave injuries and with such intention and knowledge,

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		intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. **iii)** The act is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. **iv)** The person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such body injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury. **b)** Such an act is not covered by the exceptions under section 300 IPC, that is : **i)** Grave and sudden provocation. **ii)** Private defence. **iii)** Act of public servant. **iv)** Without premeditation in a sudden fight. **v)** Consent of a person above 18 years.	the accused carried out bomb blasts in various cities of Ahmedabad, causing death of 56 persons and grave and serious injuries to 240 persons, thereby committing an offence under Sections 302 and 307 of the IPC. Further, as a part of the conspiracy, the accused nos. 43, 45, 63 and 64 purchased raw materials for making bomb and as a part of the conspiracy, the accused nos. 37, 44 and 63 rented houses at Surat city, prepared the bombs in those houses, and as a part of the conspiracy and with knowledge that death may be caused due to the explosion of the same planted bombs at various places in Surat city and thereby accused nos 37, 43, 44, 45, 63 and 64 have committed an offence punishable under section 307 of IPC.
		S. 307 of IPC : Attempt to murder **i)** The accused must do an overt act towards the commission of murder. **ii)** The act must be done with the intention of causing death or with the intention of causing such bodily injury as: (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death or with the knowledge that	

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		the act is so imminently dangerous that it must in all probability cause death. **iii)** The act must be such that, if it had caused death, the accused would have been guilty of murder under section 300 IPC. **iv)** The act falls short of causing death, that is, death is not actually caused, but the act must be a direct act towards the commission of murder.	
4.	**S. 326 IPC**	**S. 326 IPC : Voluntarily causing grievous hurt by dangerous weapons or means.** **i)** The accused must have voluntarily caused grievous hurt. The hurt caused must fall under the definition of "grievous hurt" as defined in S. 320 IPC . **ii)** The act must have been committed by means of instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal.	The accused planted bombs with intention and knowledge that it will result in death and with such an intention, the accused voluntarily caused grievous hurt to several persons.
5.	**S. 435 IPC**	**S. 435 IPC : Mischief by fire or explosive substance with intent to cause damage to amount of 100 or (in case of agricultural produce) 10 rupees** **i)** The accused must have committed mischief as defined	The accused caused bomb blasts with use of explosive material like ammonium nitrate and LPG cylinders causing fire with the intention of causing damage by

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		under S. 425 IPC i.e. the accused intending to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously. **ii)** The mischief must be committed by means of fire or any explosive substance. **iii)** The accused must intend to cause or know it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards (or where the property is agricultural produce ten rupees or upwards).	loading aforementioned explosive material packed with nut bolts, ball bearings etc in cycles and cars at public place including at govt. hospitals the explosion leading to loss of life and damage to govt and public property.
6.	**S. 436 IPC**	**S.436 IPC : Mischief by fire or explosive substance with intent to destroy house, etc.** **i)** The accused must have committed mischief as defined under S. 425 IPC i.e. the accused intending to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously. **ii)** The mischief must be committed by means of fire or any explosive substance. **iii)** The accused must intend to cause, or know it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of	The accused with intent to destroy by means of explosives and cause damage to the inhabited buildings of LG Hospital and Civil Hospital and with the knowledge that their actions would result in the destruction of the inhabited buildings of LG Hospital and Civil Hospital, planted bombs containing explosives and other damaging articles packed with expolsive and caused the blasts and thereby committed the mischief.

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		worship or as a human dwelling or as a place for the custody of property.	
7.	**S. 427 IPC**	**S.427 IPC : Mischief causing damage to the amount of fifty rupees.** **i)** The accused must have committed mischief as defined under S. 425 IPC i.e. the accused intending to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously. **ii)** The loss or damage caused must be an amount of fifty rupees or upwards.	The accused caused bomb blast, and in the course of the same act used explosive in the buildings of LG Hospital and Civil Hospital, private properties and the AMTS buses with the intention and knowledge that it would cause damage to the above mentioned properties and thereby caused damage to private and public properties, AMTS buses and also caused death of domestic animal, such as, a bull and caused damage to its owner and thereby committed the offence.
8.	**S. 465, 468 and 471 IPC**	**S. 465 IPC : Punishment for forgery.** Ingredients of forgery under S. 463 IPC are as under: **i)** The accused must make a false document or false electronic record or part of a document or electronic record. **ii)** The act must be done with intention • to cause damage or injury to the public or to any person, or • to support any claim or title, or • to cause any person to part with property, or • to enter into any express or implied contract, or	The accused persons concealed true identity, made a forged production, booked a room and recorded the entry in the hotel register under the fake name and affixed forged signatures. Also, accused no. 37, in order to conceal the identity forged applications under the names of other persons, fabricated license and identity documents in support of the

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		• to commit fraud or that fraud may be committed.	application to get mobile connections of mobile companies in furtherance of the conspiracy. Also, accused no. 43, as a part of the conspiracy and in order to conceal true identity, made forged production, purchased a Honda Kinetic under the fake name and affixed signature in the sale-agreement book under the fake name at Surat.
		S. 468 IPC : Forgery for the purpose of cheating. **i)** The accused must have committed forgery as defined under S. 463 IPC (i.e., made a false document or false electronic record or part of a document or electronic record.) **ii)** The forgery must have been committed with the intention that the document or electronic record forged shall be used for the purpose of cheating (as defined under S. 415 IPC)	
		S. 471 IPC : Using as genuine a forged document or electronic record. **i)** The document must be a forged document as under S. 463 IPC. **ii)** The accused must have fraudulently or dishonestly used as genuine any document or electronic record. **iii)** The accused must know or have reason to believe the document to be a forged document or electronic record.	
9.	**S. 201 IPC**	**S. 201 IPC : Causing disappearance of evidence of offence, or giving false information to screen offender.** **i)** An offence must have been committed. **ii)** The accused must have knowledge or reason to believe that an offence has been committed. **iii)** The accused must have caused any evidence of the commission of that offence to disappear, with the intention of screening the offender	The accused no. 63, having knowledge and belief that the pipe bomb made by accused no. 37 as a part of the conspiracy at Surat and the mobile phone used in furtherance of conspiracy are evidence of the offence and with an intent to destroy the evidence threw the pipe bomb and the mobile phone used in

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		from legal punishment, or with that intention must have given any information respecting the offence which he knows or believes to be false.	furtherance of the conspiracy in the river and destroyed the evidence of the case.
10.	**S. 10 UAPA**	**S. 10 UAPA: Penalty for being member of an unlawful association** **a)** Association must have been declared unlawful under S.3 UAPA by the Central government and must have become effective under sub-section (3) of S. 3 UAPA **b)** The accused-person, who - **(i)** is and continues to be a member of such association; or **(ii)** takes part in meetings of such association; or **(iii)** contributes to, or receives or solicits any contribution for the purpose of, such association; or **(iv)** in any way assists the operations of such association, shall be punishable under this section. **c)** The accused-person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, shall be punishable under this section.	The accused persons continued to be members of Student Islamic Movement of India (SIMI) despite it being declared an illegal association and, participated in the meetings of SIMI, assisted directly or indirectly in such association and in order to propagate the purpose of such association, the accused possessed without license, firearms and explosives with an intent to cause harm and death to human life in large scale and used such explosives despite having such knowledge that it may cause harm and death to human lives in large scale.

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11.	**S. 13 UAPA**	**S.13 UAPA: Punishment for unlawful activities** **i)** Whoever (a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable under this section. (**ii**) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable under this section. **(iii)** Nothing in this section shall apply to any treaty, agreement or convention entered into betw7een the Government of India and the Government of any other country or to any negotiations there for carried on by any person authorised in this behalf by the Government of India.	The accused persons with intention to execute the conspiracy, participated to assist in the unlawful activities of the organisation SIMI, banned under section 3 of UAPA and carried out out unlawful activities and advised and abetted in the unlawful activities of SIMI, instigated, and decided as to how to do unlawful activities and terrorist activities in order to destabilise the democratically elected government and made bombs, carried out bomb blasts and abetted one another directly and indirectly for terrorism.
12.	**S. 16(1)(a)(b) UAPA**	**S. 16 UAPA: Punishment for terrorist act.** S. 16 provides for punishment for terrorist act. 'Terrorist act' has been defined under S. 15 UAPA and **ingredients of S. 15 UAPA** are as under: **i)** The act must be done with intent to : • Threaten or likely threaten the unity, integrity, security, or sovereignty of India, or • Strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.	The accused joined the terrorist organisation SIMI, placed bombs in various areas of Ahmedabad and Surat city and committed the terrorist act of causing bomb blast with an intention to cause loss of life and property and to spread fear and terror. The said act caused the death of 56 persons in various areas of Ahmedabad city.

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		ii) The act must be done by: a) using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause - death of, or injuries to, any person or persons; or - loss of, or damage to, or destruction of, property; or - disruption of any supplies or services essential to the life of the community in India or in any foreign country; or - damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or b) overawe by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State	

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		Government or the Government of a foreign country or any other person to do or abstain from doing any act.	
13.	**S. 18 UAPA**	**S.18 UAPA : Punishment for conspiracy, etc**. The accused-person must have : - conspired or attempted to commit, or - advocated, abetted, advised or incited, directly or knowingly facilitated the commission of, a terrorist act or any act preparatory to the commission of a terrorist act (defined under S. 15 UAPA).	The accused hatched the conspiracy to execute the goal of causing bomb blasts, abetted one another to carry out the aforesaid conspiracy, prepared to deliberately commit the act of terrorism and facilitated the execution of the conspiracy.
14.	**S. 20 UAPA**	**S.20 UAPA : Punishment for being member of terrorist gang or organisation.** The accused person is a member of a terrorist gang or a terrorist organisation, which is involved in a terrorist act.	The accused persons joined in the terrorist activities as members of the terrorist group and the banned organization SIMI and decided to cause bomb blast as a part of aforesaid conspiracy and by executing the terrorist activity.
15.	**S. 23 UAPA**	**S. 23 UAPA : Enhanced penalties** 1) If any person with intent to aid any terrorist or terrorist organisation or a terrorist gang contravenes any provision of, or any rule made under the : - Explosives Act, 1884(4 of 1884) or the Explosive Substances Act, 1908(6 of	The accused persons in order to execute the conspiracy of the aforesaid terrorist activities, used bombs and hazardous explosives which were capable to cause large scale destruction and caused death of 56 persons in Ahmedabad and caused

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		1908), or - Inflammable Substances Act, 1952(20 of 1952), or - Arms Act, 1959(54 of 1959), or - is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare or high quality counterfeit Indian currency, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life, and shall also be liable to fine. 2) Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".	grave injuries to more than 240 persons with intention to cause death and used bombs which could explode in Surat city with the intention to cause death.
16.	**S. 38 UAPA**	**S. 38 UAPA : Offence relating to membership of a terrorist organisation**	The accused Nos.1, 2, 4, 5, 6, 7, 8, 12, 14, 15, 18, 22, 24 and 27 included

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		i) A person, who associates himself, or professes to be associated, with a terrorist organisation. **ii)** It is with an intention to further the activities of a terrorist organisation. **iii)** Provided that, this section shall not apply where the person charged is able to prove - a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and b) that he has not taken part in the activities of the organisation at any time during its inclusion in the First Schedule of UAPA as a terrorist organisation.	the accused persons in the terrorist organization and the intention of the accused persons behind joining the terrorist organization was to propagate the unlawful activities of the terrorist organization SIMI and by becoming a member of the terrorist organization, committed offence punishable under this section.
17.	**S. 39 UAPA**	**S. 39 UAPA : Offence relating to support given to a terrorist organisation.** A person commits the offence relating to support given to a terrorist organisation, — a) who, with intention to further the activity of a terrorist organisation, i) invites support for the terrorist organization; and ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is, — i) to support the terrorist organization; or	The accused supported the unlawful activities of the terrorist organization SIMI and with intention to propagate the activities of SIMI, arranged, held and addressed meetings, to establish Islam religion by way of Jihad, decided to carry out terrorist activities such as bomb blast, thus by supporting the terrorist organization, committed offence punishable under this section.

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		ii) to further the activity of the terrorist organization; or iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.	
18.	**S. 40 UAPA**	**S. 40 UAPA : Offence of raising fund for a terrorist organisation** A person, commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation - a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.	The accused Nos.1, 8 and 12 collected funds by various means for the unlawful activities of the terrorist organization SIMI, in spite of believing and knowing that the aforesaid collected funds were being used for terrorism and to expand the activities of terrorist organization, assisted by providing the collected funds and thus committed offence punishable under this section.
19.	**S. 3 of Explosive Substances Act**	**S. 3 of Explosive Substances Act : Punishment for causing explosion likely to endanger life or property**	The accused persons planted the bombs containing explosive substance at various

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		i) The person has maliciously and unlawfully caused an explosion. **ii)** Such an explosion has been caused by - a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not, b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not.	places with intention to risk the lives of people and to cause serious damage to property, in collusion with one another, abetted one another with a malafide intention, with the knowledge that such unlawful activities will cause loss of life and damage to property, caused death of 56 persons in various areas, caused life threatening grave injuries to 240 persons and caused damage to property and thus committed offence punishable under this section.
20.	**S. 4 of Explosive Substances Act**	**S.4 of Explosive Substances Act: Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property** **i)** A person, unlawfully and maliciously— a) does any act with • intent to cause by an explosive substance or special category explosive substance, or • conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or b) makes or has in his possession	The accused persons deliberately planted bombs at various places in Ahmedabad so that the aforesaid explosive substance can cause risk to human life and damage to property and can cause grave injuries to people and thus committed offence punishable under this section.

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		or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India. **ii)** Such a person, shall be punishable under section whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not.	
21.	**S. 5 of Explosive Substances Act**	**S. 5 of Explosive Substances Act : Punishment for making or possessing explosives under suspicious circumstances** **i)** The person must have made or knowingly had in his possession or under his control any explosive substance or special category explosive substance. **ii)** It must be under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object. **iii)** Such a person shall be punishable under this section, unless he can show that he made it or had it in his possession or under his control for a lawful object.	The accused made the bombs containing explosive substance which were not for lawful purpose or did not keep in their possession or control and with intention to cause damage and loss of life, made such bombs at the places under their control or kept in their possession, went to plant at various places or planted and thus committed offence punishable under this section.
22.	**S. 6 of Explosive**	**S. 6 of Explosive Substances Act : Punishment of abettors**	The accused-persons gathered vehicles,

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	Substances Act	Any person who by the supply or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under The Explosive Substances Act, 1908 shall be punished with the punishment provided for the offence.	concealed and supplied them in order to commit offences under the Explosive Substances Act and abetted and aided each other in other ways and thereby, have committed offences punishable under this section.
23.	**S. 3(1) of Prevention of Damage to Public Property Act**	**S. 3(1) of Prevention of Damage to Public Property Act : Mischief causing damage to public property.** **i)** The person commits mischief by doing an act in respect of public property. ii) Such a public property is of the nature, <u>other than what is referred to under sub-section (2) of S. 3 of Prevention of Damage to Public Property Act</u>. (i.e., **other than** - a) any building, installation, or other property used in connection with the production, distribution, or supply of water, light, power, or energy; b) any oil installations; c) any sewage works; d) any mine or factory; e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith.)	Accused no. 27 Mohmmed Ismail @ Rajik @ Musaf @ Furkan Mohmmed Isak Mansuri parked the Maruti 800 car loaded with bombs at L.G. Hospital, Maninagar, whereas, accused no. 28 Afzal Mutallib Usmani @ Afsal Usmani (Muslim) parked Wagon-R car loaded with bomb explosives near the Trauma Ward at Civil Hospital on the aforesaid date with an intention to cause bomb blast and create terror amongst the people and to cause loss of life and property of innocent people and to ensure damage to the private properties and thereby, the accused no. 27 and 28, caused explosions as stated above and caused loss of Rs. 3,25,000/- to L.G. Hospital, whereas loss of one crore eighty two lakh

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			rupees to public properties of Civil Hospital and thereby, the accused persons, have committed offences punishable under this section.
24.	**S. 3(2) of Prevention of Damage to Public Property Act**	**S. 3(2) of Prevention of Damage to Public Property Act : Mischief causing damage to public property.** **i)** The person commits mischief by doing an act in respect of public property. **ii)** Such a public property being - a) any building, installation, or other property used in connection with the production, distribution, or supply of water, light, power, or energy; b) any oil installations; c) any sewage works; d) any mine or factory; e) <u>any means of public transportation</u> or of tele-communications, or any building, installation or other property used in connection therewith.	The accused no. 3, on the said date, time and place and in the course of the same transaction, planted the bomb in the A.M.T.S. bus bearing registration no. GJ-1-W-8390, Route No. 150, on 26/07/2008 and caused bomb blast, with an intention to spread terror amongst the people and to cause loss of life and property of the innocent people and to cause damage to the private and public properties, and caused loss of five lakh and ninety thousand rupees to A.M.T.S. and thereby, the accused no. 3, has committed offence punishable under this section.
25.	**S. 4 of Prevention of Damage to Public Property Act**	**S. 4 of Prevention of Damage to Public Property Act: Mischief causing damage to public property by fire or explosive substance** **i)** The person committed an offence under sub-section (1) or sub-section (2) of Section 3 of Prevention of Damage to Public Property Act.	The accused no. 3, on the said date, time and place and in the course of the same transaction, planted bomb in the A.M.T.S. bus bearing registration no. GJ-1-W-8390, Route No. 150, on 26/07/2008, which exploded. Whereas, on 26/07/2008, accused no. 27,

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		ii) Such an offence is committed by means of fire or explosive substance.	Mohmmed Ismail @ Rajik parked the Maruti 800 car loaded with explosives and gas bottles in the compound of L.G. Hospital, Maninagar, where terrible bomb blast took place and due to which, public properties of L.G. Hospital were damaged. Accused no. 28 Afzal Mutallib Usmani parked a Wagon-R car loaded with explosives and gas bottles near Trauma Centre of Civil Hospital on 26/07/2008, where bomb blast took place. Therefore, the public properties of Civil Hospital were damaged. Thus, loss of 1 crore 91 lakh 15 thousand rupees was caused to public properties and thereby, accused no. 3, 27 and 28, have committed offences punishable under this section.
26.	**S. 65 and 66 of Information Technology Act**	**S. 65 of IT Act: Tampering with computer source documents** **i)** There must be a computer source code used for a computer, computer programme, computer system or computer network. **ii)** Such a computer source code is required to be kept or maintained by law for the time being in force. **iii)** A person conceals, destroys or alters the computer source code or causes another to conceal, destroy	The accused persons as part of a conspiracy and with an intention to spread terror, stayed at Pune and Mumbai and unauthorizedly used wifi connection of a person, namely Kenith Kevud, Khalsa College, Mumbai and other wifi connections at Mumbai, to send an email from their laptop and, using

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		or alter the computer source code. **iv)** Such an act is done knowingly or intentionally. **S. 66 of IT Act: Computer related offences.** A person is punishable if he does dishonestly or fraudulently, any act, referred to in Section 43 of The Information Technology Act i.e., If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,– (a) accesses or secures access to such computer, computer system or computer network or computer resource; (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network; (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network; (e) disrupts or causes disruption of any computer, computer system or computer network; (f) denies or causes the denial of access to any person authorised to	aforesaid WiFi connection, the accused persons sent email to different news channels on 26/07/2008 and thereafter, sent an email captioned "The rise of jihad revenge of Gujarat" and "The scars that devastate you" through the laptop possessed by the accused. With an intention to destroy the evidence of emails having been sent through the laptop, the accused installed anti-forensic software in your laptop to delete files and deleted email attachments from the laptop possessed by the accused with malafide intention and thereby, have committed offences punishable under these sections.

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		access any computer, computer system or computer network by any means; (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder; (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network; (i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means; (j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage)	
27.	**S. 25(1)(B)(a) of Arms Act**	**S. 25(1)(B)(a) of Arms Act: Punishment for certain offences** A person acquires, has in his possession or carries any firearm or ammunition in contravention of S. 3 of Arms Act i.e., without a license for acquisition and possession of firearms and ammunition.	The accused no. 7, without having licence, unlawfully possessed country made pistol and thereby, the accused committed an offence punishable under S. 25(1)(B)(A) of the Arms Act.

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9. Gist of evidence of prosecution vis-à-vis Sections charged

9.1 S. 121A and 124A of IPC: Conducted meetings, organized camps for imparting terrorist training, attended such meetings and made speeches in furtherance of the conspiracy.

PW-957/Exh.6687 – Zakir Husen Quareshi

This witness attended different meeting including Accused No. 4 – Samsuddin's Nana's House meeting where some accused discussed regarding Jihad etc.

- PW-1141/ Exh.8191– Approver (for meeting and provocative speeches (Takrir))
- PW-1151/ Exh.8265 – Riyaz Husen (for meeting and provocative speeches (Takrir)
- PW-1115/ Exh.8002–Mohmmad Usman (for meeting and provocative speeches (Takrir))
- PW-1117/ Exh.8019- Asif Usmanbhai Shaikh (for meeting and provocative speeches (Takrir))
- PW-1131/ Exh.8118 – Mohdd. Rafiq @ Baba (for meeting and provocative speeches (Takrir))
- A-2 confessional statement Exh.8619
- A-21 confessional statement Exh.8623
- A-24 confessional statement Exh.8627
- A-35 confessional statement Exh.8631
- A-76 confessional statement Exh.9021

9.2 S. 153A(1) of IPC: Delivered speeches in various meetings and camps inciting revenge on grounds of religion, addressed meetings and called for recee (reconnaissance) of locations to identify where bombs should be planted.

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- PW-957/ Exh.6687 - Zakir Husen Quareshi

  This witness attended different meeting Accused No. 4 – Samsuddin's Nana's House meeting where some accused discussed regarding Jihad, etc.
- PW-957/6687 - Zakir Husen Quareshi
- Witness attended different meeting including A-4 Nanas House meeting where some accused discussed regarding Jihad etc.
- PW-1141/8191 – Approver (for meeting and Hate speeches)
- PW-1151/8265 – Riyaz Husen (for meeting and Hate speeches)
- PW-1115/8002- Mohmmad Usman (for meeting and Hate speeches)
- PW-1117/8019- Asif Usmanbhai Shaikh (meeting and provocative speeches (Takrir))
- PW-1131/8118 – Mohmmad Rafiq @ Baba (meeting and provocative speeches)
- A-2 confessional statement exh-8619
- A-21 confessional statement exh-8623
- A-24 confessional statement exh-8627
- A-35 confessional statement exh-8631 (on oath)
- A-76 confessional statement exh-9021

9.3 S. 302 and S. 307 of IPC: Planting of bombs resulting in explosions in Ahmedabad city

- PW-957/6687 - Zakir Husen Quareshi (Witness attended different meeting including A-4 Nanas House meeting and planned regarding Jihad etc.
- PW-1141/8191–Approver (for meeting and provocative speeches (Takrir))

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- PW-1151/8265 – Riyaz Husen(conspiracy and Hate speeches (Takrir))
- PW-1115/8002 – Mohmad Usman (conspiracy and Hate speeches,)
- PW-1117/8019- Asif Usmanbhai Shaikh(conspiracy and hate speeches (Takrir))
- PW-1131/8118 – Mohd. Rafiq @ Baba (meeting and provocation speeches (Takrir))
- A-2 confessional statement exhit-8619
- A-21 confessional statement Exh.8623
- A-24 confessional statement Exh.8627
- A-35 confessional statement Exh.8631
- A-76 confessional statement Exh.9021
- Other evidence regarding Vagamon camp.
- Other evidence regarding Halol camp.
- Pointing out panchnama of places were bomb blast took place at Ahmedabad as well as pointing out panchnama of bus.
- Scene of offence panchnamas.
- Postmortem notes and doctor whom perform PM evidence.
- Depositions of relatives of deceased.

9.4 **S. 307 of IPC: Planting of bombs in Surat City.**

- PW-957/6687 - Zakir Husen Quareshi (Witness attended different meeting including A-4 Nana's House meeting where some accused plans regarding Jihad etc.)
- PW-1141/8191 – Approver (for Conspiracy)
- PW-1151/8265 – Riyaz Husen (for Conspiracy)
- PW-1115/8002 – Mohmad Usman (for meeting and Takrir)
- PW-1117/8019- Asif Usmanbhai Shaikh(for meeting and speeches

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(Takrir))

- PW-1131/8118 – Mohd. Rafiq @ Baba (for meeting and (Takrir))
- A-2 confessional statement exh-8619
- A-21 confessional statement exh-8623
- A-24 confessional statement exh-2627
- A-35 confessional statement exh-8631 (on oath)
- A-76 confessional statement exh-9021
- Other evidence regarding Vaghamon camp.
- Other evidence regarding Halol camp.
- Pointing out panchnama of planting of bomb at Surat.
- Scene of offence panchnama . (recovery of unexploded Bombs)
- witnesses from Bomb Disposal Squad who diffused the bombs.
- FSL report of the Unexploded Bombs.

9.5 **S. 326 of IPC: Caused grievous hurt to 240 individuals.**

- Injured witnesses, injuries certificate and treating doctor's evidence.
- Deposition of the injured witnesses and their relatives

9.6 **(S. 435 of IPC) Damage amounting to more than Rs. 100**

- Witnesses who gave evidence of damages.

  PW-397/Exh.2303 Dipali Vasantkumar Bhatia

  PW-398/Exh.2304 Sonalben Vaksibhai Pandor

  PW-399/Exh.2305 Vijay Parsottam Chavda

  PW-400/Exh.2306 Harish Natvarlal Shah

  PW-682/Exh.3343 Chandu Ramubhai Dantani

  PW-717/Exh.3492 Ghanshyam Chandrakant Pandya

  PW-749/Exh.3537 Sanjay Bharatbhai Patel

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PW-1029/Exh.7036 Ritesh Vinodbhai Patel

PW-601/Exh.3228 Rushabh Bharatbhai Mehta (damage to his WagonR car)

PW-393/Exh.2286 Pritesh Natvarbhai Patel (panch of panchnama of other car damaged in blast at Shahibaug)

PW-394/Exh.2289 Jagdishbhai Narottamdas Panchal (panch of panchnama of other car damaged in blast at Shahibaug)

9.7 **S. 436 of IPC: Damage to human inhabited buildings of L.G. Hospital and Civil Hospital.**

- PW-1055/ Exh.7186 Doctor Manju Anchaliya regarding damage to Civil Hospital building amounting to 1 Crore 82 Lakhs Rupees.
- PW-806/ Exh.5430 Dr. Savita Sharma, damage to LG Hospital amounting to more than 3 Lakh Rupees.
- PW-800/ Exh.5316 Jitendra Mehta damage to AMTS Bus No. 61 Route No.150, amounting to 5 Lakh 90 Thousand Rupees.
- PW-785/ Exh.4088 Jaliben Naranbhai Rabari (Damage to animal) Khadia
- Khadia scene of offence panchnama, death of cow panchnama proved through PW-333/ Exh.1717.

9.8 **S. 427 of IPC: Damage to private and public properties (including AMTS buses, buildings of L.G. Hospital and Civil Hospital) and, death of domestic animals such as a bull and thereby causing loss to the owner.**

- Witnesses who gave evidence of damages.

PW-397/Exh.2303 Dipali Vasantkumar Bhatia

PW-398/Exh.2304 Sonalben Vaksibhai Pandor

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PW-399/Exh.2305 Vijay Parsottam Chavda

PW-400/Exh.2306 Harish Natvarlal Shah

PW-682/Exh.3343 Chandu Ramubhai Dantani

PW-717/Exh.3492 Ghanshyam Chandrakant Pandya

PW-749/Exh.3537 Sanjay Bharatbhai Patel

PW-1029/Exh.7036 Ritesh Vinodbhai Patel

PW-601/Exh.3228 Rushabh Bharatbhai Mehta (damage to his WagonR car)

PW-393/Exh.2286 Pritesh Natvarbhai Patel (panch of panchnama of other car damaged in blast at Shahibaug)

PW-394/Exh.2289 Jagdishbhai Narottamdas Panchal (panch of panchnama of other car damaged in blast at Shahibaug)

9.9 **S. 465, 468 and 471 of IPC: False representation to stay at hotels for co-ordination and for obtaining mobile SIM cards.**

(i) A-14 stayed at Shri Hari Tourist Home during Vagamon Camp.

- Hotel Register Exh.6486 proved through PW-989/Exh.6879 Raju Nair, Manager of Shri Hari Tourist Home.
- During panchnama Exh.6485 dated 06-12-08 specimen and natural of A-14 taken. P.N. proved through PW-905/Exh.6484 Kalpesh Gajjar
- I.O.PW-1163/Exh.8638 at Page-66
- Handwriting Expert - PW-990/6886 K.P. Vyas gave opinion that Exh.6888 which is disputed is written by A-14.
- Expert opinion Exh.6889.

(ii) Hotel Abhilasha Tourist Home, Kerala (Date 14-12-2007).

- Page of Register of Hotel Abhilasha Tourist Home seized during Panchnama Exh.8531, proved through Investigating Officer

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being PW-1155/Exh.8517. Panch not examined as not found.

- Accused No.46- Mohd. Naushad, stayed in hotel in the name of S. Ismail.
- Panchas before whom during Panchnama Exh.8532 specimen handwriting / signature of accused no.46 were taken. Panchas of this panchnama were not found and therefore, not examined.
- Panchnama Exh.8532 and documents proved through Investigating Officer being PW-1155/Exh.8517.
- Specimen handwriting are Exh.7981. Natural handwriting Exh.7983.
- Document sent to Hand writing Expert by forwarding letter Exh.7979.
- Handwriting expert opinion Exh.7984 by PW-1113/7970
- Person who wrote standard writing and signature and natural writing have written disputed Mark-D, D-1 & D-2.
- Expert opinion Exh.7985.

(iii) Pointing out of Hotel Inter Continental, Vapi by accused No.37-Kayamuddin Kapadiya during the panchnama at Exh.6497.

- Panch witness PW-908/Exh.6496; Kasif-Hostile. This panchnama proved through Investigating Officer being PW-1155/Exh.8517,
- PW-1122/Exh.8068 Ismail Bagga, Serving at Hotel Inter Continental, Vapi on reception. Relevant page of Register Exh.6498, Entry No. 1739 in the name of Taukir A. Shaikh. S
- Specimen of A-37 taken during panchnama Exh.6738 dtd.06-03-2009. Panchnama proved through PW-959/Exh.6737- Balvantbhai. Specimen Exh.6739, Natural Exh.6740.

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- Forwarding Letter to Handwriting Expert Exh.7986.
- PW-1113/Exh.7970 Handwriting Expert Mr. Vadgama gave opinion Exh.7987, which is disputed to be written by A-37.
- Expert opinion Exh.7988

(iv) Hotel Narmada

- PW-945/6637, Irfan Dauva
- Panchnama -Exh.3097; TIP of A-45 -Fazal Rehman @ Saluudin Musdik Durani
- Executive Magistrate-PW-575/Exh.3076; Kirtan Patel
- Hotel Register Exh.6517

Arrival 2-07-08 and Departure 4-07-08

(v) Hotel Hari Mangala

- PW No.944-Bhavin Bariya (Exh.6636)
- Hotel Register Exh.-6516 (Arrival 4-07-08 and Departure 5-07-08 dates proximate to incidents)

(vi) Hotel Revan

- Handwriting Expert -PW-990/Exh.6886
- PW No.946-Gulam Patel (Exh.6638)
- Panchnama -Exh.3097; TIP of A-45 -Fazal Rehman @ Saluudin Musdik Durani
- Executive Magistrate -PW-575/Exh.3076; Kirtan Patel
- Hotel Register Exh.6518 (Arrival 8-07-08 and Departure 9-07-08 dates proximate to incidents and travel of accused towards Gujarat)

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(vii) Common evidence for Hotel Narmada, Hotel Hari Mangala, and Hotel Revan

- Hotel Register of Hari Mangala, Revan & Narmada seized during Panchnama at Exh.6519, dated 12-12-2008. This panchnama is proved through PW-912/Exh.6515, Yogesh Pandya, as well as evidence of I.O. PW-1163/Exh.8638.
- Specimen and natural of A-45 taken during panchnama at Exh.6526, dtd.14-12-08, proved through PW-913/Exh.6524 and I.O. PW-1163/Exh.8638.
- Forwarding Letter Exh.6892
- Handwriting Expert Opinion at Exh.6893, and the Handwriting Expert being; PW No.990-K.P. Vyas (Exh.6886)
- Opinion : Disputed is written by A-45 (Hotel Register entry of Hari Mangala, Revan & Narmada) (Para-4.1 to 4.6)
- Expert opinion Exh.6894.

(viii) Hotel Shrinath & Guest House, Valsad

- PW-985/Exh.6852 Hasanali, Manager, Hotel Shrinath & Guest House wherein this witness during the Test Identification Parade identified Accused No.28-Afzal @ Afsar Mutallib Usmani; TIP Panchnama at Exh.3100; Executive Magistrate-PW No.575/Exh.3076.
- TIP Panchnama; Exh.6844 wherein accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh and accused No.70- Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan were identified; Executive Magistrate-PW-982/Exh.6842.
- Hotel Register Exh.2858, produced during panchnama Exh.2857, In this entry Car No. GJ-06-CD-3569 is written. (Black WagonR) register produced by Hasanali PW-985/Exh.6852.

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- Hotel Register Panchnama Exh.2857 proved through PW-466/Exh.2856 Hemang and I.O.PW-1155/Exh.8517. Entry dtd.09-07-08 (11:00 pm) to 10-07-08 (9:15 am). Entry No.424 in the name of Kishan Vanzari, Amin Shaikh, Usmani.
- Original Register exhibited in cross examination is Exh.2336
- PW-1078/Exh.7364; Specimen of accused No.70- Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan as per entry of Shrinath & Guest House taken during panchnama at Exh.7367.
  Specimen Exh.7365 Dtd.01-10-11 and Natural Exh.7366. In presence of PW-1078/Exh.7364 Yusuf and I.O. PW-1146/Exh.8231
  Forwarding Letter to Handwriting Expert by I.O. Exh.7989
- Opinion by Handwriting Expert – PW No.1113-Mr. Vadgama (Exh.7970) Para-5, Opinion Exh.7990; Disputed writing written by accused No.70-Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan (entry). Expert opinion Exh.7991.

(ix) Hotel Prince, Kalupur, Ahmedabad Date 17-07-08,

- Entry No. 1326, which in the name of Amin Shaikh & Afzal Shaikh, entry dated: 17-07-08 (11:30 am) to 17-07-08 (6:30 pm), Register Page Exh.6315
- PW-920/Exh.6550 Vijay Vadikar Receptionist of Hotel Prince.
- Hotel Register Exh.6315 seized during panchnama Exh.6316 proved through PW No.884-Umang Rameshbhai Thakkar (Exh.6314), who is a Panch witness.
- During panchnama at Exh.6512, specimen of accused No.69- Amin @ Raza were taken and panchnama proved through PW No.911-Mukesh Ashabhai Thakor vide Exh.6510, who is a panch witness.
- Panchnama before I.O. V.R. Toliya; who had died during trial evidence

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regarding panchnama given by PW-1163/Exh.8638.

- Specimen hand writing Exh.6511.
- Disputed, specimen and natural sent to Hand writing expert, through forwarding letter Exh.6863.
- PW No.987-Manohar Mohandas Taheliyani/Exh.6862; who is a hand writing expert examined the documents and gave his opinion /report exhibit-6864 (Handwriting Expert).
- Disputed is written by A-69.
- Reasons for opinion exhibit-6865.

(x) Hotel Kamleshwar, Doodh Bhatti, Pune where A-37 stayed while he was absconding.

- Hotel Register Page Exh.3223, seized during Panchnama Exh.3222, PW-599/Exh.3221 Jaimin Ranpura.
- PW-970/Exh.6790 Satish Pardesi produced hotel register during panchnama Exh.3222, Entry No. 961 dated 19-10-08 (5:45 am) to 20-10-08 (9:00 pm).
- PW No.969-Sunil Agrawal (Exh.6789), owner of Hotel Kamleshwar gave evidence regarding entry in the name of Samir I. Kirani.
- Evidence of Investigating Officer PW-1163/Exh.8638
- Accused No.37-Kayamuddin Kapaadiya's specimen and Natural taken during panchnama at Exh.6430 proved through PW No.897-Ravi Shah (Exh.6428)
- Specimen & natural Exh.6429.
- Forwarding letter to Hand Writing Expert Exh.6896
- Opinion Exh.6897- Disputed is written by Accused No.37-Kayamuddin Kapaadiya

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- Handwriting Expert PW-990/Exh.6886 (Page-17, Para-4-5)
- Reasons for opinion at Exh.6898.

9.10 **S. 201 of IPC: Destruction of evidence.**

- **Destruction of Pipe Bomb**

i) PW-452/Exh.2795 Sunil Gupta; panch before whom accused No.63-Mohammad Tanvir @ Talha S/O Mohammad Akhtar Pathan pointed out causeway bridge water, where he throws five bomb.

ii) PW-813/Exh.5878 Rasikbhai Narshibhai Patel; Employee of fire attendant.

iii) PW-815/Exh.5480 Rakeshbhai Gavit; Fireman

iv) PW-1044/Exh.7061 Nishar Mohmd. Malik; PI (Para-2)

- **Destruction of Nokia Mobile**

PW-814/Exh.5479 Gaurang Parekh; Panch witness before whom accused No.63-Mohammad Tanvir @ Talha S/O Mohammad Akhtar Pathan pointed out Barimata Bridge where he throws Nokia mobile.

9.11 **S. 10 of UAPA: Continued to be members of an unlawful association (SIMI) even after it was declared an unlawful association by the Central Government, participated in meetings, collected and contributed funds, possessed large quantities of unlicensed firearms and explosives with intent to cause harm and death to human lives on a large scale.**

- SIMI Members And Associate Evidence.

(1) PW-957/6687 = Zakir, Para-4, 5 and other Para-19.

(2) PW-1117/8019 = Asif, Para-2.

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(3) PW-1131/8118 = Rafik @ Baba.

(4) PW-1141/8191 = Ayaz, Para-4,5,7,8 and 9 and Ayaz application to became approver Exh.8056.

(5) PW-1097/7767 = Mehtab

(6) PW-1142/8214 = Mo. Ishlamuddin Shaikh, Maulavi Siddi Saiyad Masjid, during panchnama Exh.-8215, different books etc. recovered. Muddamal Article List Exh.461, Article No.170 to 192.

(7) PW-1149/8256 Tarunkumar Barot I.O. of Panchnama Exh.8215, Para-6, 7

- A-2 Confession Exh.8619
- A-21 Confession Exh.8623
- A-35 Confession Exh.8613
- A-76 Confession Exh.9021
- All evidence of Halol Camp
- All evidence of Vagamon Camp
- PW-1097/7767, Exh.9176 SIMI Material
- Exh.6605 chit recovered from the house A-16 proved through PW-934/6604
- PW-1081/7384 Anand Daulal Shrivastav
- PW-1150/8263 Prashant Tandan
- PW-1153/8287 Rajandra Asari I.O.Exh.8328 notification and other documents.

9.12 **Holding of Vagamon Training Camp**

- Evidence of Anilkumar P.D

PW-998, Exh.6950 care taker of neighboring farmhouse.

- Confessional statement of A-12, Exh.8619
- Confessional Statement of A-76 Manzar Imam Exh.9021

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- Pointing out panchnama by A-13, Exh.8254

  Panch witness PW-1148, Exh.8253

- Panchnama Exh.8251 towards identification by photos of participants in the camp.

9.13 **Holding of Pavagadh, Halol Terror Camp**

- Eye Witnesses:

  PW-972, Exh.6802- Ramnikbhai

  PW-981, Exh.6835- Pravinbhai

  PW-1067, Exh.7231- Ambalal

  PW-1105, Exh.7923- Idris, Monjawar Khundpir dargah

- Pointing out panchnama by A-1 under Section 27 of Indian Evidence Act.

  Ex. 6480 proved by PW-904, Panch Deepakkumar Dalwadi

  Pointing out panchnama by A-16,

  Exh.7053 proved by P.W. 1039 Exh.7052- Laxmanbhai Popatbhai

- **Confessional Statements:**

  Exh.8619, A-2, Imran Ibrahim Shaikh

  Exh.8623, A-21 Mahendihasan Abdulhabib

9.14 **S. 13 of UAPA: Participated to assist in the unlawful activities of the organization SIMI, banned u/s 3 of UAPA and carried out unlawful activities and advised and abetted in the unlawful activities of SIMI, instigated and decided as to how to do unlawful activities and terrorist activities in order to destabilize the democratically elected Government and made bombs and carried out bomb blast and abetted one another directly and indirectly for terrorism.**

Evidence connecting the accused with SIMI as per Para No. 6.11

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hereinabove.

9.15 **S. 16(1)(a)(b) of UAPA: Joined the terrorist organization SIMI, planted bombs in various areas of Ahmedabad city and committed the terrorist act of causing bomb blast with an intention to cause loss of life and property and to spread fear and terror, and thereby caused death of 56 persons in various areas of Ahmedabad city.**

i) Evidence connecting the accused with SIMI as per Para No.11 hereinabove.

ii) Houses from where presence of explosive as well as material for preparing bomb found.

- Al-Mohamadi Society House no.10, Exh.6656 and FSL opinion 5766, 7958.
- D-34 Riverview Society from which presence of accused is found Exh.2757 and other material for preparing bomb was found FSL Opinion Exh.5776.
- Sherpura Bharcuh house form which presence of accused is found PN Exh,6540 articles found from this house and presence of explosive also found. See FSL opinion Exh.5963.
- Other houses

(a) Vatva Umravnagar PN Exh.6434,

(b) Seema Communication of A-1 PN, 5492.

(c) A-8, Ajit Mill Row-House Pn-5488

(d) House of Accused Mujib Shaikh died during trial. PN Exh.6329.

(e) Lukman Park house, Bharuch. PN Exh.6359 (material for bomb was found) FSL P.N.Exh.5957 (petroleum hydrocarbon found).

(f) Bavanpura Vadodara house during PN Exh.6370 loaded pistol, air-

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gun, pipe bomb and other articles found, FLS Opinion-5874, Pipe bomb and gun powder, FSL opinion Exh.5689 and Exh.5790.

iii) Evidence regarding Purchase of material

iv) Pointing out Panchnama regarding evidence of bomb plantation.

v) PW-936/Exh.6613 Sunil Shantilal Patel who identified A-36 in TIP Panchnama Exh.3151; Executive Magistrate PW-588/Exh.3130.

vi) Injured witness

vii) Evidence of Hide out Houses

viii) Evidence of doctors for injuries

ix) Evidence of relatives of deceased

x) Evidence of Doctors who performed Post-mortem.

9.16 **S. 16(1)(b) of UAPA: Joined the terrorist organization SIMI and committed the terrorist act of planting bombs in various areas of Surat city with intention to cause loss of life and property and to spread fear and terror.**

(i) Evidence connecting the accused with SIMI as per Para No. 6.11 hereinabove.

(ii) Pointing out panchnama regarding bomb plantation

(ii) Total evidence of prosecution connects all accused with conspiracy.

9.17 **S. 18 of UAPA: Conspiracy to execute the goal of causing bomb blasts, abetted one another to carry out the aforesaid conspiracy, prepared to deliberately commit the act of terrorism and facilitated the execution of the conspiracy.**

Conspiracy evidence as discussed under the issue of 'Conspiracy'.

9.18 **S. 20 of UAPA: Joined in the terrorist activities as members of the**

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terrorist group and the banned organization SIMI and decided to cause bomb blasts as a part of aforesaid conspiracy and executed the terrorist activity.

Evidence connecting the accused with SIMI as per Para No. 6.11 hereinabove and Conspiracy evidence as discussed under the issue of 'Conspiracy'.

9.19 **S. 23 of UAPA: Execution of conspiracy through use of bombs and hazardous explosives which were capable of causing large scale destruction and caused death of 56 persons in Ahmedabad and caused grave injuries to more than 240 persons with intention to cause death and used bombs which could explode in Surat city with the intention to cause death.**

As discussed in Para No. 6.15 hereinabove for section 16(1)(a) (b) of UAPA.

9.20 **S. 38 of UAPA: Acquisition of membership of a terrorist organization with intent to promote SIMI's unlawful activities.**

As discussed in Para No. 6.15 hereinabove for section 16(1)(a) (b) of UAPA.

9.21 **S. 39 of UAPA: Supported unlawful activities of the terrorist organization SIMI and with intention to propagate the activities of SIMI, organized, addressed and conducted meetings, propagated jihad and decided upon engaging in terrorist activities such as bomb blasts.** Evidence connecting the accused with SIMI as per Para No. 6.11 hereinabove and other evidence

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9.22 **S. 3 of Explosive Substances Act: Planted bombs containing explosive substances at various locations with intention to risk the lives of people and to cause serious damage to property, in collusion with one another, abetted one another with a malafide intention, with the knowledge that such unlawful activities will cause loss of life and damage to property, caused death of 56 persons in various areas, caused life threatening grave injuries to 240 persons and caused damage to property.**

(i) Evidence of House from where explosive and material for preparing bombs found.

(ii) Scene of offence panchnama and opinion of FSL.

(iii) Evidence of conspiracy connect all the accused-evidence against all accused.

9.23 **S. 4 of Explosive Substances Act: Planting of bombs unlawfully and with malafide intention at various locations in Ahmedabad which posed danger to human life, which could result in serious injuries and could cause damage to property.**

(i) Evidence of House from where explosive and material for preparing bombs found.

(ii) Scene of offence panchnama and opinion of FSL.

(iii) Evidence of conspiracy connect all the accused-evidence against all accused.

(iv) Evidence of injured witness as discussed under the chapter "Discussion on evidence on injuries sustained by victims due to the bomb blast".

(v) Evidence of damage to properties as discussed under the chapter of "Gist of Submissions on incidents by the State and findings of Court".

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9.24 **S. 5 of Explosive Substances Act: Preparation, possession, and planting of bombs with intent to cause damage and loss of life which were kept under the control of the accused and later planted at different locations.**

(i) Evidence of hide out houses

(ii) Evidence of bomb plantation.

(iii) Conspiracy evidence as discussed under the issue of 'Conspiracy'.

9.25 **S. 6 of Explosive Substances Act: Gathered, concealed, supplied vehicles and assisted each other in committing offences under the Explosive Substances Act.**

Conspiracy evidence as discussed under the issue of 'Conspiracy'.

9.26 **S. 3 (1) of Prevention of Damage to Public Property Act: Placed vehicles planted with bomb at L.G. Hospital and Civil Hospital**

- Scene of offence PN Exh.1992, PW-350/Exh.1991 Panch of scene of offence to prove the blast at Civil hospital, injured witnesses and other witnesses to prove the blast at above place.
- Scene of offence PN Exh.2036, PW-355/Exh.2035, Panch of scene of offence to prove the blast at L.G. hospital, injured witnesses and other witnesses to prove the blast at above place.

9.27 **S. 3(2) of Prevention of Damage to Public Property Act: Placed a bomb on AMTS Bus No. GJ-1/W-8390, Route No. 150**

- Scene of offence PN Exh.1901, PW-348/Exh.1900, Panch of scene of offence to prove the blast at AMTS Bus, injured witnesses and other witnesses to prove the blast at above place.

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9.28 **S. 4 of Prevention of Damage to Public Property Act: Explosions as a result of bomb placed at L.G. Hospital and Civil Hospital and on AMTS Bus No. GJ-1/W-8390, Route No. 150**

- Scene of offence PN Exh.1992, PW-350/Exh.1991 Panch of scene of offence to prove the blast at Civil hospital, injured witnesses and other witnesses to prove the blast at above place.
- Scene of offence PN Exh.2036, PW-355/Exh.2035, Panch of scene of offence to prove the blast at L.G. hospital, injured witnesses and other witnesses to prove the blast at above place.
- Scene of offence PN Exh.1901, PW-348/Exh.1900, Panch of scene of offence to prove the blast at AMTS Bus, injured witnesses and other witnesses to prove the blast at above place.

9.29 **S. 25(1)(B)(a) of the Arms Act: Kept in his possession a country-made pistol unlawfully without any license.**

- Bavanpura Vadodara house during panchnama Exh.6370; loaded pistol, air-gun, pipe bomb and other articles found, FLS Opinion-5874, Five bombs and gun powder, FSL opinion Exh.5689 and Exh.5790.
- Pointing out Panchnama for evidence of planting of Bombs.

9A. Chain of circumstances leading to the crime

9.30 It appears from the evidence on record that the case of prosecution has been based on various circumstances which have been relied upon by the prosecution. The same are briefly noted as under:

Circumstance No. 1 - Circumstance regarding alleged conspiracy and training camp at Vagamon

9.31 An important circumstance of holding a terror camp at Vagamon,

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Kerala, where persons from various parts of India had assembled to undertake large scale physical, religious and anti-national training, and also training in methods of striking terror such as, making of bombs. This was the initial stage of the conspiracy.

9.32 To establish this circumstance, the prosecution has examined P.W. No.998-Anilkumar Damodaran Pottananiyil vide Exh.6950**,** confessional statement of Manzer Imam recorded in a separate trial and exhibited herein as Exh.9021, the judgment of the Ernakulam court at Exh.9421 convicting the accused for holding terror camp.

Circumstance No. 2 - Circumstance regarding alleged conspiracy and training camp at Halol

9.33 It appears from the prosecution case and the evidence recorded during the trial that approximately some 15 to 20 accused persons had allegedly hatched a criminal conspiracy at Halol-Pavagadh, near Helical Vav, where they allegedly underwent training in swimming, scrolling, bike riding and shooting with an air gun. The conspiracy allegedly took place from 13th to 15th January 2008 at the said place.

9.34 In support of this circumstance, the prosecution has relied upon the evidence of:

i) PW No. 972-Ramka Devkaranbhai Kesariya,

ii) PW No. 1067-Ambalal Vechatbhai Bariya, and

iii) PW No. 981-Pravinbhai Hamirbhai Kathiriya

iv) PW No. 1105-Idris Gulabshah Fakir

9.35 It is further the case of the prosecution that accused No.1-Jahid Shaikh, Accused No.16-Abbas Sameja, Accused No.35-Rafiuddin Kapadiya, Accused No.66-Mohd. Safi, Accused No.74-Abrar Maniyar, Accused No.75-Alamzeb Afridi and Accused No.78-Tausifkhan

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allegedly pointed out the place of the alleged conspiracy during their respective period of police remand on different dates, pursuant to which panchnamas were drawn.

9.36 The prosecution has also relied upon the Test Identification Parades which were conducted before the following Executive Magistrates, namely:

i) PW No. 571-Shree R S Solanki

ii) PW No. 588-Shree L K Parghi

iii) PW No. 589-Shree I V Zala

9.37 The prosecution further relied upon the following confessional statements to prove the presence of accused at the training camp:

i) Confessional statement of accused No. 2-Imran Ibrahim Shaikh (Exh.8619),

ii)Confessional statement of accused No. 21-Mehndihasan Ansari (Exh.8623), and

iii)Confessional Statement of Accused No. 35-Rafiuddin Kapadiya (Exh.8631)

9.38 According to the case of the prosecution, these materials establish the presence of the accused persons at the alleged training camp at Halol and form part of chain of circumstances relied upon in support of the case of the prosecution regarding the alleged conspiracy.

Circumstance No. 3 - Circumstance regarding house No.3 at Umravnagar, Vatva, Ahmedabad allegedly hired for the use/preparation of bombs (hide out)

9.39 It appears from the charge framed and the evidence recorded during trial, the accused Kayamuddin and Abdul Subhan had allegedly hired House No.3, situated at Umravnagar, Vatva area of Ahmedabad, in the

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month of May 2008 from one Shri Firoz Dilawar shaikh (PW No.1106) through a recommendation of his neighbour, Saidurrehman.

9.40 It is on record during the trial that, on 18.8.2008, the investigating officer had allegedly searched the said house in the presence of Panchas and FSL personnel; and had found some pieces of wire, Nut, pellets and a cardboard, and a panchnama was drawn vide Exhibit No.6434.

9.41 The prosecution has relied upon the following witnesses in support of this circumstance:

(1) PW No. 1106-Firoz Dilawar Shaikh (alleged owner of the house)

(2) PW No. 898-Bipin Chotalal Patel (Panch witness)

(3) PW No. 1141-Ayaz Razakmiyan Saiyed (Approver)

(4) PW No. 1163-Shri Mayur Chavda (IO)

(5) Statement of Firoz Dilawar Shaikh u/s 164 of the Cr.P.C. at Exh.7930.

(6) FSL report at Exhibit No. 5935 and 7954.

9.42 According to the prosecution, the said premises were used by the accused persons and the articles found therein form part of the circumstances chain.

Circumstance No. 4 - Circumstance regarding usage of House No. 10 of Al-Mohammadi Society, Danilimbda, Ahmedabad for making bombs. (Hide out)

9.43 It appears from the case of the prosecution and charge framed vide Exh.122 that House No. 10 of Al-Mohammadi Society, Danilimda, Ahmedabad, was allegedly hired by accused No.37 Kayamuddin Kapadiya on 07.07.2008 from the owner of the house i.e. PW No. 943-Fukhrajbanu Mohd. Yakub Shaikh.

9.44 I**t** also appears that on 19.09.2008, accused No.1-Jahid Shaikh allegedly pointed out the said premises in the presence of panchas and

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FSL experts and the panchnama Exh.6656 was drawn by investigating officer; PW No.1154-Smt. Usha Rada herein some articles were allegedly recovered during the search

9.45 In support of the said circumstance, the prosecution has relied upon the following witnesses:

i) PW No. 943-Fukhrajbanu Mohd. Yakub Shaikh (owner of the premises)

ii) PW No. 928-Ibrahimbhai (property broker)

iii) PW No. 952-Mohd Arif (Property broker)

iv) PW No.1154-Smt. Usha Rada (investigating officer)

9.46 The prosecution has also relied upon the documents including the allotment letter at Exh.6628, the agreement at Exh.6631, the electricity bill at Exh.6630 and the panchnama at Exh.6656. According to the prosecution, the said premises were used for the purpose of making bombs, and the articles found therein form part of the circumstances relied upon.

Circumstance No. 5 - Circumstance regarding alleged hiring of "Master House" at Surat by accused No.37-Kayamuddin

9.47 It appears from evidence adduced by the prosecuting agency that on 09.07.2008 one Accused Kayamuddin had hired a house belonging to Abdul Farid Shaikh, situated at Sopariwala compound, known as 'Master House'.

9.48 In support of the circumstance, the prosecution has examined:

i) PW No. 864-Abdul Farid Shaikh, and

ii) PW No. 1016-Mohd Sakir, son of PW No. 864.

9.49 The case of the prosecution is that the said premises were taken on rent by accused Kayamuddin under the name "Rafik". The prosecution has also relied upon a panchnama at Exh.2806, pursuant to which,

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accused No. 63-Tanvir Pathan while in custody had pointed the premises of Master house on 04.09.2008. In connection with the said panchnama, the prosecution has relied upon the evidence of PW No.456-Mehulkumar Jadiya.

9.50 According to the prosecution, the said premises form important link of chain of circumstances relied upon in the case.

Circumstance No. 6 - Circumstance regarding a premises situated at Riverview Society, Surat allegedly hired by any accused for making bombs.

9.51 The prosecution has examined PW No. 1123-Liyakatali Shaikh, alleged landlord of the premises situated at Riverview Society, Surat. The prosecution has also examined PW No. 1110-Jignesh Shah, panch witness in whose presence accused No. 43 and 44 have allegedly pointed the said premises. According to the prosecution, the said premises form part of chain of circumstances relied upon in the case.

9.52 The prosecution further relies upon the panchnama drawn on 28.08.2008 in relation to the said premises. The prosecution case also refers to the evidence of Mohd Sarif; alleged neighbour of the said premises, through whose recommendation the premises were let out by PW No. 1123-Liyakatali Shaikh.

Circumstance No. 7: Circumstance regarding pointing out panchnama and alleged recovery of muddamal at the instance of Accused No. 8-Yunus Mansuri.

9.53 It appears from the evidence adduced by the prosecution that while accused No.8-Yunus Mansuri was in police remand, a pointing-out

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panchnama was drawn vide Exh.5488 in the presence of FSL officer, and during the course of the panchnama, a book written in Urdu, pieces of cello tape, old towel, three pieces of bolt, 36 iron pellets and a wall scraping sample were recovered from the premises. In support of this circumstance, the prosecution had examined PW No.817-Govindbhai Varsada, a panch witness, in whose presence a panchnama was drawn vide Exh.5488 on 19.08.2008. The prosecution has also relied upon the FSL Report at Exh.5957 in relation to the articles recovered during the said panchnama.

9.54 According to the prosecution, the recovery effected pursuant to the panchnama at Exh.5488 forms part of chain of circumstances relied upon against accused No.8-Yunus Mansuri.

Circumstance No.8: Circumstance relating to the continuing of conspiracy in between the camps and meetings at places in Ahmedabad and Surat:

9.55 (i) Confessional statement of A-2, (ii)F.S.L. Reports of explosive articles recovered from scene of offence being similar such as Exhs.5923, 5908, (iii) F.S.L. Reports on the shape and assembling of bombs and (iv) Common accused

Circumstance No.9 - Circumstance relating to the materials allegedly used in preparing the bombs.

9.56 According to the FSL report, each bomb allegedly consisted of approximately 1 kg of ammonium nitrate, two detonators, a wooden box of about one foot in length, electric Circuits, pellets and other

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components. As per prosecution case, 24 bombs were used in city of Ahmadabad and 26 bombs were planted in the city of Surat. In support of this circumstance, the prosecution has relied upon the evidence of the following investigating officers:

i) PW No.1153-Shri R.V. Asari, ACP

ii) PW No.1154-Smt Usha Rada, ACP

iii) PW No.1163-Shri. Mayur Chavda, ACP

iv) PW No.1155-Shri N.B. Parmar, ACP

9.57 According to the prosecution, the aforesaid materials were used in preparation and execution of bomb blasts at Ahmedabad and for planting of bombs at Surat, and the evidence relating to such circumstances form part of chain of circumstances.

Circumstance No.10 - Circumstance relating to bicycles allegedly used for blasts in the city of Ahmedabad.

9.58 It appears that in the city of Ahmedabad at about 18 places the bombs were exploded on bicycles, and about 18 bicycles were recovered from the scene of offences.

9.59 It has come on record that the accused No.27, Mohammad Ismail, while in remand had allegedly pointed two shops from where he had purchased about 8 bicycles. These panchnamas are exhibited as Exhibit No.6268, 6064 and 5545.

9.60 As per the said panchnamas, accused No.27 pointed out ten bicycle shops during the period of remand. The prosecution has examined following five persons as the bicycle sellers which are as under:

i) PW No. 826-Rafiq bhai Ataurrahman Ansari

ii) PW No. 829-Aiyub bhai Husen bhai Sheikh

iii) PW No. 955-Allarakha Sattarbhai Sanghi

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iv) PW No. 1035-A.Rahim Gulambhai Mansuri

v) PW No. 1036-Khurshidbhai Ahmadbhai Qureshi.

9.61 The prosecution has also relied upon evidence of PW No.1163-Mayur Chavda, PW No.1000-Shri Mulyana and PW NO.1135-N.B. Parmar in relation to this circumstance.

Circumstance No. 11 – Preparing of Electric circuits allegedly used in bomb explosion

9.62 It appears from prosecution case that electric circuits were used in making the bombs as per FSL report. The prosecution relies upon the use of electric circuits as a component of the explosive devices which were used in the said bomb blasts. As a part of conspiracy, accused persons were assigned with the task regardless of the knowledge assigned about tasks to other accused. Therefore, the task of preparing the bomb which requires special skills and this skill is known to only few accused and it appears that as a model of terror attack such trained and skilled persons who specialized in using materials which otherwise are innocuous and convert the same into a bomb. These specialized persons are few in number but are part of the preparation whenever the model terror plot would require them to perform their skills.

Circumstances No.12 - Purchase Gas cylinders allegedly used in bomb explosion.

9.63 It is the prosecution's case that gas cylinder were used in bomb explosion. It appears that Shri V.R. Toliya, ACP had drawn one Panchnama on 08.12.2008 between Night 00:00 hrs to 5:30 am, where by one accused No.37 Kayamuddin Kapadiya, while in police remand had pointed out some shops, and from one shop namely Royal Gas

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Stove, some gas cylinders were purchased by him.

9.64 In support of this evidence, the prosecution has examined PW NO.872-Karnav Hemantbhai Patel, panch witness and PW No. 927 Mohammad Ayaz Rizwan Dudhwala , owner of M/S Royal Gas Stove. The prosecution has also relied upon evidence of IO Shri Mulyana; PW No.1000 and PW No.1163; Mayur Chavda who visited the aforesaid shops and recorded the statement of the said shop owner.

Circumstance No. 13 – Purchase of Watches of Prince company allegedly used as timers in the bombs.

9.65 It appears from the prosecution case that about 20 to 22 watches were used of Prince Company as timer in the different bomb blast incidents in the city of Ahmedabad.

9.66 The prosecution has examined Mohd. Hanif Roshan; PW No.978 and Shri Dashrath Patil; PW No.979 of one “Ms Vali Mohammad Roshan & Co” which is situated at Bombay. It was the prosecution’s case that the accused No.31; Mohd. Arif Badruddin had purchased 50 pieces of watches from the said shop. The prosecution has also relied upon the evidence of PW No.589 Executive Magistrate in connection with the identification procedure. The prosecution has also relied upon the alleged bills vide Exhibits-6824, 6826 and 6827 regarding the sale of watches. As per the case of the prosecution, the watches which were so purchased had been used as timers in preparation of the bombs used in the offence.

9.67 According to the prosecution, the watches of Prince company so purchased were allegedly used as timers in the preparation of bombs used in the said offences.

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Circumstance No. 14 - SIM cards and mobile phones allegedly used by the accused persons.

9.68 As per Exh.122 the charges framed against the accused persons, and it is the case of prosecution that, several SIM cards of several service providers, were allegedly used by the accused persons and that mobile phone connections were obtained by submitting false documents.

9.69 In support of this circumstance, the prosecution has relied upon the evidence of:

(1) PW No. 1153 R.V. Asari,

(2) PW No. 1154 Usha Rada,

(3) PW No. 1155 N.B. Parmar and

(4) PW No. 1163 M.J Chavda.

9.70 The prosecution has also examined the following persons who had allegedly sold the SIM cards to one accused No.37 Kayamuddin Kapadiya as under;

1) PW No. 799 Desharam Vardhaji Prajapati.

2) PW No. 807 Bhawarlal Nenaji Prajapati

3) PW No. 803 Dineshbhai Chandubhai Chaudhri

4) PW No. 801 Azad Ahmed Sardar Ahmed Shaikh

9.71 As per the case of the prosecution, one diary, driving license and a bill of mobile phone of Reliance company having SIM card No. 9377201545 were discovered during investigation. The case of the prosecution is that accused No.37-Kayamuddin had purchased the SIM card by submitting a false driving license, which was in the name of Gujarati Ashok Navinbhai. In this regard, panchnama was drawn vide Exh.6355, a bill was produced at Exh.6356, and the driving license forming part of documentary evidence was relied upon by the prosecution.

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9.72 The prosecution has also relied upon the F.S.L. report at Exh.6913 and the application form at Exh.8999 in connection with this circumstance.

Circumstance No.15: Circumstance relating to conducting of recce for planting of bombs:

9.73 Deposition of witnesses:

i) PW No.1115-Mohammadumar Usmanbhai Mansuri (Exh.8002)

ii) PW No.1117-Aasif Usmanbhai Shaikh (Exh.8019)

iii) PW No.936-Sunil Shantilal Patel (Exh.6613)

9.74 Statements under Section 164 :

i) Exh.8020 (PW No.1117-Aasif Usmanbhai Shaikh/Exh.8019)

ii) Exh.6688 (PW No.957-Zakirhussain Abduljabbar Qureshi/Exh.6687)

9.75 Pointing out panchnamas: Exh.6051

Circumstance No. 16 - Circumstance regarding shirts allegedly purchased by accused No.37-Kayamuddin Kapadiya

9.76 It is the case of the prosecution that accused No.37-Kayamuddin, had purchased 50 shirts from one Hafizurrahman Vohra from the Lal Darwaja area. The prosecution has relied upon the evidence of Executive Magistrate; PW No. 589-I.V.Zala, in connection with a Test Identification Parade wherein Hafizurrahman Vohra had identified accused No.37; Kayamuddin. According to the prosecution the alleged purchase of shirts forms part of chain of circumstances relied upon against accused No.37 as purchase in bulk would suggest assembling of large number of people.

9.77 According to the prosecution, the alleged purchase of shirts form part of chain of circumstances relied upon against accused No.37-

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Kayamuddin.

Circumstance No. 17 - Circumstance regarding use of cars in bomb explosion.

9.78 It appears from the case of the prosecution and the evidence recorded during the trial, that 4 cars were used in the bomb explosion incidents. According to the prosecution, 4 cars were stolen by Accused No. 28-Afzal Usmani, Accused No. 69-Amin Shaikh and Accused No.70-Mubeen from Mumbai.

9.79 The prosecution has relied upon the information regarding the movement of said four vehicles from Bombay to Ahmedabad vide a letter Exh.5323 which was addressed to Manager Technical National Highway Authority of India, Vadodara. In support of this circumstance, the prosecution has examined PW No. 802- Shree Kamlesh Ramniklal Vasant, Manager (technical) NHAI and PW No.1163-Shri Mayur Chavda, Investigating Officer.

9.80 According to the prosecution, the movement of the four vehicles form part of the evidence relied upon in relation to the use of the said vehicles in the bomb explosion incidents at Ahmedabad and Surat.

Circumstance No. 18 - Circumstance regarding stay of accused No. 45-Fazalerehman at Hotel Harimangala, Hotel Revan and Hotel Narmada of Bharuch.

9.81 It appears from the prosecution case that accused No. 45-Fazalerehman, stayed at the aforementioned three hotels prior to the serial bomb blasts at Ahmedabad under the guise name of 'S.K. Rafik' and 'Rafik Shaikh'.

9.82 In support of the said circumstance, the prosecution has examined the

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following hotel managers, namely:

i) PW No. 944 Bhavinkumar Vijaykumar Bariya,

ii) PW No. 945 Irfanbhai Dauwa, and

iii) PW No. 946 Gulambhai Adambhai Patel

9.83 The prosecution has also relied upon entries and pages from the guest register of the respective hotels.

9.84 The prosecution has also relied upon the evidence of :

i) PW No. 1077-A.F.Sindhi (Investigating Officer)

ii) PW No.1120-P.I. Shree S.J.Tirmiji (Police Inspector)

iii) PW No. 1163-Mayur Chavda (Investigating Officer)

9.85 As per the case of the prosecution, accused No.45- Fazale Rehman stayed at the hotels during his travel to Ahmedabad under the aforesaid guise names and the guest register entries and related records form part of the circumstances relied upon by the prosecution.

Circumstance No.19: Planting of bombs in a systematic manner to cause maximum damage to life and property:

9.86 The most important circumstance in the chain of events is the serial and systematically planned cycle bomb explosion in crowded areas predominantly populated by Hindus or non-Muslims and timing it in a manner to cause maximum damage to life and property. The circumstance of timing the Car bomb by placing it near Trauma Centres of Government Hospitals in such a manner, that even when the injured from other cycle bomb-blasts would arrive, the car bomb would explode. The prosecution has examined the injured and the complainant to establish the timings of the explosion and damage caused. To avoid repetition, the same is not referred extensively. The evidence of the serial blasts causing damage to life and property is extensively narrated

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under the chapter "Gist of Submissions on incidents by the State and findings of Court".

10. Gist of Submissions on incidents by the State and findings of Court

10.1 The Court may now proceed to refer to the submissions made on behalf of the State to support the case of confirmation. In the process, Learned Additional Advocate General; Shri Miteshbhai Amin with the assistance of Learned Special Public Prosecutor Mr. Amit Patel has taken this Court through the evidence in support of the incidents and the roles of the accused. The submissions have been made on various dates which are recorded in the order sheets. However, for maintaining the continuity, the submissions are hereby referred to, to maintain the chronology of the incidents rather than chronology of submissions.

10.2 After Ld. AAG opened the arguments by giving the bird eye-view of the entire case which the Court has recorded in the Chapter "Introduction", Learned Special Public Prosecutor Shri Amit Patel continued with the reading of the charge at Exh.122. He has submitted that the accused persons for Ahmedabad incident and Surat incident are common, as the conspiracy was hatched for the very purpose of planting of bombs at various selected places in Ahmedabad and Surat.

10.3 Learned Special Public Prosecutor; Shri Amit Patel continued with the reading of the charge specially focusing on requirements of Section 109, Section 34 and Section 120(b) of IPC submitting that there was knowledge of usage and the consequences of the act of planting of bombs and that this knowledge of usage and consequences indicates intention behind the act. Attention was drawn to the Note below the charge made by learned Special Judge with regard to

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reading out of the charge and explaining the same to the accused persons represented by their respective Lawyers even in Hindi language. He has submitted that after framing of charge and pending the trial, subsequently also the accused have been arrested and the charge qua such accused were also framed. As and when the charges have been framed under different Exhibit numbers, learned Designated Judge has read out and explained the charge in Hindi and Note having been made below such Exhibit number. He has therefore referred to Exh.799, the charge framed against 4 subsequently arrested accused persons against whom the charge was framed on 06-03-2013 and the Note made on the very same day in this connection by learned Judge. It is observed that in the Court being conducted in the Central Jail, Sabarmati, the charge has been translated in Hindi and read out and explained to the accused persons.

Discussion of evidence as per the FIR registered

Ahmedabad Incidents:

Shahibaug Police Station-C.R. No. I-236/08

10.4 Learned Additional Advocate General has referred to Exh.1992, which is the panchnama of scene of offence. While reading panchnama of scene of offence, learned Additional Advocate General extensively referred to the damage to the properties like vehicles, mobile phones and building and structures. This panchnama was conducted in the Civil Hospital, where the major blasts had taken place. While reading the panchnama, he has also referred to the map of scene of offence, which is at Exh.3432, which was exhibited through PW No.698-Hirabhai Dungarbhai Makwana, Exh.3429.

10.5 Learned Additional Advocate General continued with the reading of scene of offense panchnama and the incident of bomb blast at

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Civil Hospital, Ahmedabad and while reading of the panchnama for the scene of offense, reference was also made to visit of FSL Officer to carry out the spot verification and inspection the scene of offense. He also referred to the report prepared by the FSL officer about his visit which report was given Exh.5909 which also contained directions of the FSL officer for seizing of various articles from the scene of offense. The articles were seized under the report of the FSL officer visiting the scene of offense, and the final report/opinion of the FSL was referred to vide Exh.5932.

10.6 Upon the incidents having been reported, the Special Public Prosecutor has referred to the FIR reported and the evidence of the witnesses through which details regarding FIRs were brought on record. He referred to Exh.439, the deposition of PW No.1-Jogaji Nanjibhai Parmar. He was performing duty as Police Inspector at Shahibaug Police Station which came to be registered as C.R. No.I-236 of 2008 at Shahibaug Police Station. Learned Special Public Prosecutor therefore, submitted that in the due course of his duty, he has attended the activities which took place at the site of bomb-blast and also taken part in Bandobast to maintain law and order. He has deposed that through his writer, the FIR came to be registered. Over and above his complaint, his statement was recorded on 31.07.2008 and till such time, 33 persons had reportedly died and 76 had sustained injuries. He has also referred to the initial inquiry before handing it over to a superior officer. The complaint given by this witness was exhibited vide Exh.463. Various other investigation like inquest panchnama etc were also exhibited through this witness. This witness has been extensively cross-examined with regard to the message received by him about the bomb-blasts taking place at various places in Ahmedabad and Bandobast for the purpose of

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maintaining law and order especially pertaining to the receiving of message for being vigilant at various points within the police stations.

10.7 In the opinion of the Court, these questions were put so as to confront the witness whether he had travelled beyond the jurisdiction. He was also cross-examined with regard to the circumstances under which he got his complaint registered and what all action he had taken at the site while making inquiry with the doctors and nurses before giving such complaint. These questions were put, to put up a case of defence that instead of police person why an independent person present was not made informant. To which, this witness has already answered that as the medical staff were present at the incident but were engaged in administering the treatment and that was delaying the recording of the FIR and in fact, he had requested to other doctors to give the complaint. Questions were also put with regard to the detail of crime and the purpose behind the bomb-blast was also not clear. However, this witness has indicated that on account of the inputs received from the informant, he was able to assess the reason behind the bomb-blast. In the evidence in chief, he has deposed that on 26.07.2008, in the evening at 18:30 hours, message received from police control room that at various places in Ahmedabad City, bomb-blasts have taken place and therefore, all the Police Inspectors and police staff are to be stand-by. As it was a Saturday, there was a huge crowd at Hanuman Temple at Camp and therefore, he immediately rushed with his staff and organized a Bandobast and it is from where he came to know that at 19:30 hours, the bomb-blast has taken place near Trauma Centre in Civil Hospital and there were several causalities. Alongwith the staff, this witness therefore, immediately reached the Trauma Centre and had witnessed fire and smoke in all directions and people rushing helter and skelter with cries for help. The

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injured were being taken for treatment and the witnesses also started to assist shifting of injured for treatment. The site for bomb-blast was cordoned off. The witness has also observed that human body parts were lying in mutilated condition around the place and at least, six dead bodies in complete brunt condition were lying. The vehicles around were also ablaze. Some initial inquiry was made from the Doctors and other witnesses from whom some details of the incident were gathered by this witness. In connection with this incident, therefore, this witness submitted a complaint on behalf of the State on the ground that some unknown terrorists, as a part of their conspiracy to terrorize people and to disturb communal harmony, have resorted to this anti-national activity. The offence was declared at 22;00 hours through PSO Jesingbhai Gemar. The FIR came to be registered vide CR No.236 of 2008 and the location of blast in civil hospital was near main entrance of Trauma Centre.

10.8 The initial investigation was also handed over to this witness and therefore, under supervision of superior officers, he had undertaken investigation by preparing inquest panchnama of the dead bodies and for that purpose, prepared team of police officers.

10.9 He has thereafter referred to the investigation undertaken by him along with Executive Magistrate and after preparing inquest panchnama, forwarded dead bodies for postmortem. At 03:00, under the order of the Police Commissioner, the investigation was thereafter handed over to the then ACP of Crime Branch. After the ACP, Crime Branch took the investigation, he had assisted ACP by visiting site along with him and the Assistant Director of FSL and other experts were also summoned for inspection. In this connection, panchnama report was prepared. During this period, Bomb Disposal Squad was also present and under a panchnama, various articles form the place of offence were

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also seized. He had deposed that during his investigation, before being handed over to the higher officer, it was revealed that the blast had taken place in the Civil Hospital in a silver gray coloured Wagon R car and it was containing explosive material. It was further revealed that all across India, such bomb blasts were planned by the persons associated with Pakistani controlled "Indian Mujahideen".

10.10 The witness was thereafter shown the complaint mark-97/2. He ascertained the contents of such complaint and his signature in the margin and accordingly, FIR in connection with serial bomb blast near Trauma Centre in Civil Hospital, Ahmedabad was exhibited vide Exh.462.

10.11 The report submitted vide Mark-97/1 was read out to the witness and after ascertaining his signature, was exhibited vide Exh.463.

10.12 The inquest panchnama Mark-97/8 of deceased Prakash Narayanbhai Jain was read out to the witness and after ascertaining signatures, was shown to the witness. Thereafter, Exh.97/102, "Ravanagi nondh" of the articles collected during panchnama of site was forwarded to the FSL, which was exhibited vide Exh.464. This witness has deposed details contained in Exh.464 and the acknowledgment of Exh.464 was given Exh.465. The signature on Exh.465 of the subordinate was also ascertained from this witness.

10.13 The witness has been elaborately cross-examined with regard to the point at which he received message from control room and the time taken for him to immediately react to such message, to which he has deposed that upon receiving message, he had passed on the instructions to his subordinate PSI to be vigilant at certain points and he himself having proceeded to Camp Hanuman Temple, where there was reportedly large crown. He was also questioned regarding necessary

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formality which is required to be undertaken upon receiving such message from the control and necessary entries which are required to be made in station diary and "Varthy Book". He was also questioned with regard to instructions received from his superior officers in this particular fact situation. He was questioned with regard to team which had accompanied him to various places as a part of his duty. He was also questioned with regard to presence of "D" staff members and whether they had reached prior to him or after him. In the cross-examination, he has confirmed that upon reaching, he could see people shouting for help and fire had spread in all directions and there was darkness around. He has confirmed distance of the blast approximately 20 fts. away from the wall of Trauma Centre's entrance. With regard to his initial inquiry being made from the persons present, including doctors and nurses, he has stated that he has not made inquiry with regard to specific names of the doctors from whom he gathered information.

10.14 In the cross-examination, on behalf of certain other accused persons, he has deposed that when he received message for "bandobast" with regard to blast in various areas of Ahmedabad city, he did not know exactly at which place, blasts have taken place. In the message, specifically in which areas, "bandobast" was to be organized, was also not informed, but it was left upon the discretion of the Police Inspector in such cases. He has admitted that before reaching to Civil Hospital, regarding which Exh.462 complaint is given, he had not sent his subordinate in advance to Civil Hospital. He admitted that Exh.462 complaint was given after inquiry made from certain persons, doctors and nurses. He admitted that he had reached place of incident later on whereas victims were already present there. Apart from victims, there

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were other doctors, nurses and persons from the very beginning with whom he had inquired and on the basis of which, FIR came to be registered. In his initial inquiry, he could not gather any information about criminals and assailants from the victims, doctors, nurses and others. He confirmed that apart from the fact that he had made inquiry from many other individuals, but he did not gather any document in this regard to support the complaint that he made. He has confirmed that he had input about the objective behind bomb blast, which he had received from his informers. He confirmed that with regard to the action he had taken at the site of blast by assigning duties to his subordinates, he has not given any written orders.

10.15 He was thereafter questioned with regard to his presence when investigation was handed over to ACP Muliyana of Crime Branch and the action taken by him under the newly appointed Investigation Officer.

10.16 The question was put to this witness that information / vardhi was never received from on-duty Police Table of Civil Hospital at Shahibag Police Station. To which, this witness has answered that as he himself was present at the scene of offence, there was no question of such vardhi and therefore, it is true that no such vardhi is found in the Police Station register. He has answered in affirmative that no entry is made in the vardhi register both at Civil Hospital Police Table and at Police Station. He has also answered in affirmative that at 3.00 am, he had handed over investigation to Senior Police Officer. At the time of handing over the investigation, he received information from his Informer as well as from Newspaper that Indian Mujahideen has accepted the responsibility of the bomb blast.

10.17 He was thereafter questioned with regard to communal

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violence in the City of Ahmedabad and whether in this Communal violence, use of Country made bombs were made. To which, he has answered that earlier there were no bomb blasts like in the present case. He was thereafter questioned about existence of an organization name as 'Abhinav Bharat' and certain functionaries associated with it.

10.18 He has deposed that at site of bomb blast at Civil Hospital, Senior Police Officer had arrived on that day. However, he has answered in negative about the question put with regard to an issue of two children having disappeared from one Asaram Bapu Ashram. He has denied information about the fact whether in the bomb blast cases, on that day, all the informants were Police Inspectors only. He has denied suggestion that minority Community is falsely sought to be implicated in this incident.

10.19 This witness was further crossed by learned Advocate representing another set of accused persons, where he has deposed that, the complaint was given by him in his presence only and on the very night, investigation was handed over to Crime Branch. He had no instructions in writing or an order to assist the Investigating Officer in the investigation. However, oral instructions were given in this regard. He has stated that ACP Gahlot had given such instructions to him. He has answered in affirmative that he had assisted in transferring of many injured persons into hospital ward. However, in his complaint, there is no mention about the fact that his staff also engaged in transferring injured for treatment, not mentioned in his complaint. He was thereafter questioned with regard to duties of various Police Officers. According to him, Doctor had identified the place, where the bomb blast took place, but he is not aware of the name of such Doctor and according to him, this Doctor could be treated as an important witness. He has denied

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suggestion that the bomb blast had taken place in the vehicle, which was in the parking area and affirmed that incident had taken place near Trauma Centre.

10.20 Once again, he was cross examined with regard to an Organization namely 'Abhinav Bharat' and functionaries and their role behind 'Samjhauta Express' and 'Malegaon' incident. To which, he has claimed ignorance. He has denied suggestion that anywhere in India, where there is bomb blast, only Muslim Community Members are being arrested and theory is adopted of naming Muslim Organization.

10.21 In the cross-examination, again at the behest of the set of accused, repetitive questions were posed with regard to the presence of witness and arrival of the superior officer and that the action being taken as per the instructions given by such superior officer. In the opinion of the Court, the witness being one of the first police officers to reach the scene of offense has deposed with regard to the prevailing situation and the action taken by him initially as the Investigating Officer and thereafter, in assistance of a superior officer, who was handed over with the investigation. The witness has therefore, established the incident of serial blast including the blast at the Civil Hospital having taken place, the blast having taken place on account of explosive storage in the Maruti Wagon R Car and that too at the entrance of Trauma Centre of Civil Hospital as also the timing of the place to coincide with the arrival of victims of other serial blast sites in City of Ahmedabad. This witness has also given account of the fatalities, injured and the damage on account of the serial blast. The extensive cross-examination of this witness could only lead to a conclusion that the witness truthful deposed and there is no reason to doubt the genuineness of his version or that the witness was interested in deposing in a particular manner to help the

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prosecution only because he is a police officer.

10.22 Learned Special Public Prosecutor has thereafter, referred to the list of witnesses, who were examined for the purpose of establishing the extent of damage suffered in the serial blast, registered as offenses at various police stations. Learned Special Public Prosecutor began with reading of evidence of PW No.1055-Dr. Manjulata Motilal Anchliya vide Exh.7186, who is a doctor and was performing her duty as Medical Superintendent at the relevant time. She has referred to the incident reported on 26.07.2008 in the Civil Hospital, where the blast took place near Trauma Centre at 7:30 PM to 7:45 PM, as a result of which, extensive damage was caused to the building, furniture, Medical Store and medical instruments. Learned Special Public Prosecutor has emphasized that the evidence of this witness is sufficient to establish that the damage suffered is attributable to the bomb-blast which took place alone and to know other factor and therefore, the objective of the accused person was to cause damage to the maximum extent from the blast, not only to the life, but also to the property of the State. It is submitted that as this witness has been cross-examined only as a formal witness. The deposition of this witness has to be accepted in its entirety.

10.23 The Court finds that PW No.1055- Dr. Manjulata Motilal Anchliya who was examined vide Exh.7186 is a doctor, who at the relevant time was posted as Medical Superintendent, Ahmedabad, Civil Hospital and on the fatal date of 26.07.2008, she has deposed that the bomb-blast took place near the Trauma Centre of Civil Hospital at 7:30 PM to 7:45 PM and damage was caused to the building, furniture, Medical Store and medical instruments. In this connection, the Assistant Commissioner of Police, Crime Branch, addressed a letter to her giving an information and assessment of damage caused to the Civil Hospital.

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The witness has identified the signature of having received such communication on 05.08.2008 and was forwarded to the Additional Medical Superintendent for further action and on the basis of such communication, the Executive Officer, Civil Hospital, Ahmedabad has given a written detail of such damage suffered. This witness has also forwarded communication to the Director of Medical Services for the purpose of sanctioning of the grant for damage suffered due to the bomb-blast. In such communication, the witness has indicated the loss suffered department wise, medical store has indicated Rs. 13 Lakhs, Medical Store Surgical, Ventilator and other instruments Rs.50 Lakhs, Sanitary Department Rs.10 Lakhs, Medical Work Shop Rs.18 Lakhs, Linen Department Rs.1 Lakh and Steward Department, ICU, OT Surgical and Ortho Department Rs.40 Lakhs and the Road and Building and Electric Department of Rs.50 Lakh, totaling upto damage to the extent of Rs.182 Lakhs which has been incurred for repairing the same. Therefore, accordingly the damage sustained due to the blast is also to that extent. Through, this witness mark 7185/1 was exhibited as Exh.7187, which is the carbon copy of the document received from the Assistant Commissioner of Police, Crime Branch and on which this witness has put her signature of having received the document, mark 7185/2 has been exhibited as Exh.7188, which is a document of Executive Officer, Civil Hospital, addressed to the Assistant Commissioner of Police and the copy of which has been sent to this witness. Mark 7185/3 has been exhibited as jointly Exh.7189, which is the assessment of damage suffered by the Civil Hospital to the Director of Medical Services, giving assessment of damage for the purpose of sanction to incur expenditure. Mark 7185/3 has been given Exh.7190. The Court has recorded by referring to Exh.7189 that the original of the

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communication by the Executive Officer of Civil Hospital regarding the damage suffered made to the Director of Medical Services was not available in the record and therefore, in exercise of Sections 62 and 63 of the Evidence Act, xerox copy of which was available from the file has been given Exh.No.7190, which is giving out the detail of expenditure incurred.

10.24 This witness has been cross-examined to the extent of her educational qualification and as to whether she has a qualification to act as valuer, to which she has denied. However, she has deposed that whatever damage assessed by the Department was sent to her was cross verified by her. However, she is aware of the qualification of the Head of the Department, who had sent such valuation. She has denied that the assessed damage was only sent to her and she has only signed it without any verification.

10.25 Perusal of evidence of this witness and the documents which are exhibited demonstrate the damage which has taken place. Over and above, other witnesses have also been examined to assess the damage at Civil Hospital.

10.26 The Court has perused the evidence of PW No.601-Rushabh Bharatbhai Mehta at Exh.3228 who has deposed that he was interning at B.J. Medical College, Civil Hospital Compound at the relevant time after completing his M.B.B.S. and that, as he resided in Ahmedabad and required a means of commute, his mother lent her Maruti WagonR car which was a 2002 model and bearing registration number GJ 7 AQ 495. Further, he has deposed that on 24.07.2008, as he had to travel to Surat, he parked the aforesaid car near the wall of a P.G. Hostel which is adjacent to the Trauma Centre and left for Surat on 25.07.2008. Thereafter, on 29.07.2008, upon his return to Ahmedabad, his friend

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Nikunj informed him that the said car had sustained damage due to the bomb blast that took place on 26.07.2008 and that the police had moved the car to an open ground nearby. Upon reaching the said location and inspecting his vehicle, he observed that the windshield on the front and both the windows situated on the left side of the car had shattered and that one tyre was deflated. Thereafter, he produced the copies of RC Book and his driving license before the police, who upon verification returned the vehicle to this witness. Also, a statement regarding the damage caused to the vehicle was recorded by the police.

10.27 Thereafter, this witness has been cross examined wherein this witness has deposed that he was residing within the Civil Hospital Campus and denied that he was enrolled in any P.G. course at the said time. Further, he has stated that he travelled to Surat as his mother was unwell and therefore, applied for a leave for two days. He has deposed that upon returning, he observed that the said vehicle was not in the same position or condition as it was when it had been parked. Also, he has deposed that his friend Nikunj had only informed him about the broken windows and that, he upon inspection observed that the windshield and both windows on the left side were broken, a tyre was deflated and that the lock of the boot (decky) of the car had been damaged and appeared to have been pressed inward due to the blast. Further, he has deposed that he could not recall the specific contents of the note written by the police at the time of returning the car. Further, he has also deposed that he did not recall whether he had provided the police with a copy of the receipt which recorded the condition of his vehicle and confirmed that he still possessed the said receipt.

10.28 This witness has admitted that the information regarding the damage being caused by a blast was conveyed to him by his friend and

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that he had no personal knowledge of the cause of the damage. Further, he has deposed that he had stated in the statement recorded by the police that the damage was caused by a blast. Thereafter, upon being cross examined he has admitted that it is not possible to determine cause of breakage of any object by merely looking at it. He has also denied the suggestion that the police recorded the statement in their words and that they had only recorded his name, address and phone number.

10.29 Upon perusing the testimony of this witness, it supports the case of the prosecution to the extent that the said vehicle was parked near the place of the explosion and that it sustained damage due to the said explosion which occurred on 26.07.2008. Therefore, the Court finds the deposition of this witness to be credible and consistent with the overall narrative of the prosecution regarding the occurrence of the explosion and the widespread damage caused by it.

10.30 Thereafter, the Court has perused the evidence of PW No.308-Dr. Bharatbhai Parsottambhai Baravaliya at Exh.1619 who is a veterinary doctor by profession and runs a clinic in the name of "Krushti Maternity Clinic" at Rakhiyal Village, Ahmedabad. He has deposed that on 27.07.2008 he had gone to the residence of one Kamalaben Punambhai Patni to provide treatment to their bullock which had sustained injuries due to the bomb blast. This witness has deposed that upon examination, the bullock was found to have sustained injuries in the abdominal region due to penetration by a sharp iron fragment caused by the explosion and other multiple wounds across its body from where he removed the fragments. He gave treatment to the animal including, medicine to prevent infection and an injection to prevent tetanus. This witness had issued a certificate in that regard which has been produced as Mark 97/996 and exhibited as Exh.1620. This witness has identified

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his handwriting and signature upon being shown the aforesaid document. Further, this witness has given an opinion that the said injuries sustained by the bullock are possible by an object striking it with force due to a blast or an explosion.

10.31 Upon perusing the testimony of this witness, it appears that the nature of injuries sustained by the bullock, removal of fragments from such wounds and the opinion given by the veterinary doctor corroborates the case of the prosecution regarding the explosion that took place and that the said injury was caused by such an explosion.

10.32 Thereafter, PW No.393-Pritesh Natwarbhai Patel at Exh.2286 is the panch witness who has deposed that he was residing in the Old P.G. Hostel which is situated within the Civil Hospital Campus, Shahibaug, Ahmedabad and was pursuing his studies at the relevant time. On 29.07.2008, this witness was called at around 3 p.m. by the officers of Crime Branch to the ground which is opposite to Block 'B' of the boys hostel in the Civil Hospital Compound. He has deposed that one Ravibhai Vinodbhai Patel was also present at the said location. They were informed that a car which was bearing registration number GJ-18 AA 5174 had sustained damage due to the bomb blast that took place on 26.07.2008 near the Trauma Centre and a panchnama was to be prepared in that regard and further, the said car was to be returned to its owner. Therefore, both of them agreed to be panchas. This witness has deposed regarding the presence of one Lav Ashwinkumar Patel at the location.

10.33 Thereafter, this witness has deposed that both the panchas saw a silver colored car bearing registration number GJ-18 AA 5174 and that, the engine and chassis numbers were verified and noted in the panchnama. The documents of the car were shown by Lav Ashwinkumar Patel and the car was registered in the name of Ramilaben Ashwinkumar

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Patel. Further, the said car was parked near the P.G. Hostel which is behind the Trauma Centre and upon observing it was found that its front and rear windshields were broken and that the front and rear glasses of the window on the driver's side had shattered. Also, both the front and rear doors on the driver's side were bent and the fiber beneath the bonnet was broken. Apart from this, there was no other damage appeared on the car and an estimated damage of Rs. 40,000/- had been caused. The documents were returned to Lav Ashwinkumar Patel who is the son of the owner after it was verified. The panchnama concluded at around 3:30 p.m. and the contents were read over to the panchas upon which, they signed upon the said panchnama.

10.34 The panchnama at Mark no.97/87 was confirmed by this witness which bore signatures of this witness as Panch no.1 and that of Ravibhai as Panch no.2. This witness has also confirmed regarding the contents of the said panchnama upon being read over to him and it came to be exhibited at Exh.2287.

10.35 Thereafter, this witness has deposed that on the same day at around 4 p.m. the police called them again for conducting the panchnama of a Maruti WagonR car which was metallic green in color and was bearing Registration no.GJ-7/495 which had sustained damages due to the explosion and had to be returned to its owner. Therefore, both these witnesses agreed to be panchas.

10.36 Upon inspection, it was observed that both the front and rear windshields of the WagonR car were broken. Further, even the front and rear lights on the driver's side were damaged and one window glass had shattered. The estimated damage was around Rs. 30,000/- and at that time, one Rushabh Bharatbhai was present who was handed over the car after verification of the documents.

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10.37 The panchnama at Mark no.97/88 was confirmed by this witness which bore signatures of Ravibhai as Panch no.1 and that of this witness as Panch no.2. This witness has confirmed regarding the contents of the said panchnama upon being read over to him and it came to be exhibited at Exh.2288.

10.38 Upon perusing the deposition of this panch witness, it appears that he has confirmed regarding the damage caused by the explosion on 26.07.2008 that is, damage of Rs. 40,000/- to silver colored car bearing registration number GJ-18 AA 5174 and damage of Rs. 30,000/- to the Maruti WagonR car which was metallic green in color and bearing Registration no.GJ-7/495. This supports the version of the prosecution regarding the bomb blasts that took place on 26.07.2008 and the damage caused as a result of such blasts.

10.39 The Court in regard to the damage that took place as a result of the bomb blasts has thereafter perused the evidence of the panch witness PW No.394-Jagdishbhai Narottamdas Panchal at Exh.2289 who has deposed that on 28.07.2008 at around 7 p.m. he was called by the A.C.P. of the Crime Branch, Ahmedabad to the area near the P.G. Hostel wall which is adjacent to the Trauma Centre of Civil Hospital. He has deposed that one another panch namely, Manharbhai Gadhvi was also present. Further, both these panchas were informed that a car was lying under a tree near the wall which had sustained damage due to the explosion and therefore, a panchnama was to be made in that regard and the vehicle was to be returned to its owner. Upon inspection, it was found that the car bearing Registration No. GJ-1/HP 771 had sustained damage to its bumper, all four doors, boot (decki), headlights, bonnet and the rear side of the car. Further, the glasses of the window were also shattered. The chassis and engine number of the vehicle were

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verified and recorded in the panchnama. The damage was estimated at approximately Rs. 55,000/- and all the damages which were observed by the panchas were recorded in the panchnama along with the procedure undertaken during the panchnama.

10.40 The signatures of both the panchas were affixed on the panchnama after it was recorded and upon being shown the original panchnama at Mark No.97/80, this witness has identified the signatures and has confirmed the accuracy of the contents recorded in the panchnama upon which it came to be exhibited as Exh.2290.

10.41 Upon perusing the deposition of this panch witness, it appears that he has confirmed regarding the damage caused by the explosion on 26.07.2008 that is, damage of Rs. 55,000/- to the car bearing Registration No.GJ-1/HP 771. This supports the version of the prosecution regarding the bomb blasts that took place on 26.07.2008 and the damage caused as a result of such blasts.

10.42 The Court has thereafter perused the evidence of PW No.412-Ankit Rashmikant Patel at Exh.2359 who has deposed that he was working as an employer at Nutan Nagarik Cooperative Bank and that he used a Hero Honda bearing Registration No.GJ-1/EC/5238 for the purpose of commutation. He has deposed that apart from this he used to render voluntary service in an institution which was engaged in assisting patients in the Civil Hospital area by arranging for blood and other necessary aid. On 26.07.2008, upon coming to know regarding the blasts that have took place in various places at Ahmedabad, the injured persons were brought to the hospital and therefore, he along with other members of the institution went to Civil Hospital on their vehicles. He has deposed that while they were assisting at the Trauma Centre of the Civil Hospital, at around 7:30 p.m., a blast occurred near the wall

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adjacent to the Trauma Centre due to which, persons standing there as well as passers-by sustained injuries and many of them also sustained burn injuries. Thereafter, upon coming out of the Trauma Centre he saw the fire brigade and police that had arrived at the location and were carrying out their duties. Among the persons who had sustained injuries, he personally knew one person named Bhikhubhai Ranchhodbhai Patel who sustained grievous injuries in the blast and the flesh from the body had also come out. He has deposed that many persons were injured and several died in the blast however, he cannot state the exact number of the deceased persons. Also, due to the blast, vehicles parked nearby had caught fire and sustained damage and the glass windows and doors of the Trauma Centre of Civil Hospital were also shattered. He has deposed that his Hero Honda vehicle which was parked near a tree besides the Trauma Centre had got completely destroyed and that the police thereafter interrogated him and recorded his statement. There appears to be no cross examination of this witness. Upon perusing the evidence of this witness, nothing is coming on record so as to caste a doubt on it.

10.43 The Court has thereafter perused the evidence of PW No.746-Natvarbhai Dungarbhai Parmar at Exh.3533 who was serving as a home guard and was assigned on duty at the Trauma Centre of Civil Hospital, Ahmedabad at the relevant time. He has deposed that on 26.07.2008, while he was on duty at around 7:15 p.m. ambulances were arriving at the Trauma Centre bringing in the patients who had sustained injuries from the blasts at various places in the city of Ahmedabad. At this time, while he was assisting them, an explosion took place near the wall behind the ambulance which was stationed on a sloping passage outside the Trauma Centre due to which fire broke out and there was helter-skelter amongst the people. Also, several persons had caught fire

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and sustained grievous injuries and that some persons had succumbed to death. His statement in this regard was thereafter recorded by the police. In the cross examination of this witness, he has affirmed that he did not sustain any injuries and that on the day of the incident, he did not provide any information to the police regarding the incident. Apart from this, there appears to be no cross examination of this witness. Upon perusing the evidence of this witness, nothing is coming on record so as to caste a doubt on it.

10.44 The Court has thereafter perused the evidence of PW No.996-Jagdish Maheshbhai Patel at Exh.6940 who was serving as a Supervisor with Rajdeep Enterprise, which had a contract for supplying servants to the Civil Hospital, Ahmedabad. On 26.07.2008, he was assigned on supervision duty at the Trauma Centre of Civil Hospital along with 18 to 20 workmen and at about 7:00 p.m., as bomb blasts occurred at various places in Ahmedabad city, ambulance vans and 108 emergency vehicles started arriving at the Trauma Centre carrying injured persons. Therefore, he assigned additional servants to duty at the lower portion of the Trauma Centre, and he went outside as per the instructions of the in-charge doctors wherein he noticed two cars parked slightly ahead near the slope leading to the Trauma Centre one being a silver-coloured Wagon R and the other one being an Innova. He called out for the drivers of those vehicles upon which, the driver of the Innova moved the vehicle however, as the driver of the silver-coloured Wagon R could not be found, that car remained there.

10.45 Thereafter, while he was returning towards the entrance after carrying patients on stretchers into the Trauma Centre, a blast occurred in the silver-coloured Wagon R due to which, four persons standing nearby sustained injuries and were immediately carried inside. He has

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deposed that approximately 25 to 30 persons present there had suffered injuries, and 5 to 6 of the servants on contract under him were also injured. Additionally, one supervisor named Rajubhai Bihola succumbed to injuries and he saw about 10 to 12 dead bodies lying at the site. The police recorded his statement regarding this incident.

10.46 Further, in the cross examination of this witness, he has deposed that the police recorded his statement at the hospital on 31.07.2008 which was read over to him and he has affirmed regarding the particulars of the statement given to the police regarding the location of the car and the people who had sustained injuries as a result of the blast. He has denied the suggestion that he was not present in the hospital that day or that he gave a false statement. He has also denied the suggestion that no explosion took place in his presence or that no one was injured or no dead bodies were lying there.

10.47 In the further cross examination of this witness, he has deposed that he did not note the registration number of the silver-coloured WagonR nor did he see any distinctive marks on that vehicle and that many vehicles were damaged in the explosion, though he cannot say whether all were equally damaged. He has denied the suggestion that another vehicle was parked beside the silver-grey car and that the car he referred to was not the one that exploded. He has deposed that he is unaware whether any corpse was lying near the blasted car and that he did not see any body being taken out from inside the vehicle. He has affirmed that on 26.07.2008 he did not go to the police station voluntarily to give his statement, nor did he inform any other person of these facts.

10.48 The Court has thereafter perused the evidence of PW No.1006-Dr. Tejas Narsinhbhai Hathila at Exh.6984 who was

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discharging his duty as a third year Resident Doctor at B.J. Medical College, situated within the Civil Hospital compound and was assigned on duty at the Trauma Centre of the Civil Hospital. On 26.07.2008, at around 6:30 p.m., as bomb blasts had taken place in the city of Ahmedabad, patients injured in the said bomb blasts were being brought to the Trauma Centre of the Civil Hospital and accordingly treatment was given to them. Thereafter, at about 7:30 p.m., an explosion occurred near the slope situated outside the Trauma Centre due to which, the glass panes of the windows of the Civil Trauma Centre were shattered, and there was helter and skelter amongst the people. Further, several persons sustained injuries and some lost their lives including Dr. Prerak Shah, a Resident Doctor of Civil Hospital, and his wife, Dr. Kinjal Shah. Thereafter, treatment was provided to the injured patients and his statement was recorded by the police on 30.07.2008.

10.49 In the cross examination of this witness, he has deposed that he does not remember having seen any injured person near the gate of the Trauma Centre and that he did not go outside the Trauma Centre after the said incident to see the place of explosion. He has deposed that he had seen the spot from the window as well as from the gate and that he cannot say whether he informed the police about the actual condition of the place which was seen by him. He has deposed that he remained on duty during the entire night and did not see as to what proceedings were taking place at the place of incident. He has also deposed that does not know as to where the persons who died or sustained injuries during the blasts were at the time of the explosion and that he does not know about the number of people who were injured in the incident. Further, he has deposed that he did not notice any other damage to the building except for the breaking of the window glasses of the Trauma Centre building

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and that he is unaware as to how many window glasses were broken. He has deposed that he did not inform the police about the exact place where the fire caused by the explosion had started.

Maninagar Police Station- C.R. 203/08

10.50 Learned Additional Advocate General thereafter referred to serial bomb blast which took place in the area of Maninagar, Ahmedabad wherein one death had taken place and seven others were injured. Here, the injured person himself is the informant.

10.51 Learned Additional Advocate General took this Court through Exh.1752, which is panchnama of scene of offence. According to learned Additional Advocate General, the panchnama, which is proved, carries vivid description of the bomb blast on the remains of the bicycle which was used for platting bomb in the crowded area. The remains of the clothes tied around the handle of the bicycle are indicative of the use of bicycle for planting and the panchnama identifies exactly the place where bomb was placed.

10.52 The Court has perused Exh.1752; which is the panchnama of scene of offence of serial blast at Maninagar, wherein one death had taken place and seven were injured. It is the incident where serial bomb blast had taken place bear Om Pan Parlour, which is the first incident reported at Maninagar, Ahmedabad. This panchnama is proved by PW No.336-Kavaljitsinh Jogindarsinh Arora, examined vide Exh.1751.

10.53 Exh.2025 is also the panchnama drawn at the same place where panchnama Exh.1752 was executed. However, Exh.2025 was the panchnama which was executed under the instruction of the visiting FSL officer under whose instructions articles lying on the scene of offence after the bomb blast were collected.

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10.54 Learned Additional Advocate General referred to Exh.5730, which is final opinion of FSL with regard to articles collected while executing panchnama Exh.2025 and Exh.1752. This opinion is of the Chemical Department of FSL.

10.55 The Court has perused Exh.5730; which is the final opinion of the Chemical Department of FSL, which is proved by PW No.840-Janmahmmad Fakirbhai Mansuri at Exh.5700.

10.56 Similarly, Exh.7953 is the final opinion of the Physics Department of FSL. Learned Additional Advocate General submitted that the observations and opinion thus given under Exh.7953 are on the basis of the marks and signs found on various articles to conclude that causes of such findings are indicative of bomb explosion.

10.57 The Court has perused Exh.7953; which is the final opinion of the Physics Department of the FSL with regard to articles collected during execution of the panchnama of scene of offence. This document is proved by examining PW No.1112-Samir Subhashchandra Joshi, Exh.7952. This report was of six parcels which were sent for examination and Mr. M.N. Joshi, Scientific Officer-cum-Assistant Chemical Examiner had signed the report and identified by the deponent. The observations and opinion contained in this document are pertaining to clock Mark-E, which, in the opinion is recorded, can be used as timer in the bomb. The opinion also refers to ball bearings of the diameter 0.62 to 0.64 cm, weighing 0.88 to 1.06 gms. These ball bearings were made out of iron metal. Mark-A are pencil cells, battery and adopter, which according to opinion, can be utilized for bomb explosive and physical examination of the cycle, which is item sample No.C and D was opined to be affected by bomb explosion.

10.58 Learned Special Public Prosecutor has thereafter took the

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Court through the evidence of witnesses with respect to the blast reported at Maninagar Police Station reported as C.R.No.I-203 of 2008, wherein two blasts took place in quick succession planted through cycle at Om Pan Parlour and Anna Tea Stall. Learned Special Public Prosecutor first referred to PW No.4-Harshadbhai Chandubhai Halani at Exh.496, who in his deposition has indicated that he had to visit medical shop along with his friend and relative for medicine of his child who was suffering with Typhoid and had waited at the Tea Kitley when the blast took place and he could identify the blast having taken place in a Tiffin like bag which was hanging on the handle of a nearby cycle. He had also sustained injury and his friend along with him had immediately taken him to L.G. Hospital, where he was treated and his complaint was recorded at L.G.Hospital. He has also deposed that his relative Hardik had also sustained injury and was admitted for treatment along with him. He has also referred to a dying declaration which was exhibited vide Exh.498.

10.59 To substantiate the deposition of this witness with regard to the injuries, the prosecution has examined treating doctor PW No.282-Dr. Nirav Hasmukhbhai Panchal, examined vide Exh.1526 and producing medical certificate for treatment vide Exh.1527.

10.60 The Court has perused the evidence of PW No.4-Harshadbhai Chandubhai Halani vide Exh.496 who has deposed that on 26.07.2008, he was in Ahmedabad for the purpose of treatment of his son who was suffering with Typhoid and had gone to the medical store for collecting the prescribed medicine and he was accompanied by his relative and friends and when he took a break at Anna Tea Stall for tea and was waiting, at that time, he had observed one cycle and on the handle of the cycle, a bag was hanging which appeared to be a Tiffin like

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thing and when his relative while talking on mobile was standing near the cycle in its support the blast took place and from the blast, iron nails, broke glasses and pellets (small ball-bearings) exploded causing injuries to his relative Hardik, his friends, he himself and many others. He also experienced second blast at the opposite side of where they were standing and the injured persons were rushed to L.G. Hospital and he himself was also taken to L.G. Hospital by his friend Milan. In this connection, his complaint was recorded at hospital which was exhibited vide Exh.497. He has deposed that his relative Hardik had also sustained injury and was admitted in hospital along with him.

10.61 In his deposition, he has referred to a dying declaration which was recorded on 27.07.2008 (Mark 97/497) and his statement was recorded by the Crime Branch. In the cross-examination, he was questioned with regard to the death which took place of one Chirag in the blast to which he answered that while in L.G.Hospital, through people he came to know from public about the death of said Chirag. He also contradicted with the previous statement recorded by police to the extent that he had not stated about the Tiffin like article hanging in a bag on the cycle. During the cross-examination, it is recorded that the dying declaration was given Exh.498 and thereafter, questions were posed with regard to the dying declaration to the extent of presence of any relative at the time of recording of dying declaration. The question was also posed that in the dying declaration he has not given the name of his relative who was injured to which he has deposed that he was answering only questions which were posed to him. He was also contradicted with some sentences which were recorded in the dying declaration as to who had brought him to the hospital and that he was in full conscious state of mind when his statement was being recorded.

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10.62 In the opinion of the Court, this witness has deposed with regard to the question that he had perceived and his presence at the scene of place and offence cannot be doubted in view of the fact that he has suffered injury for which the prosecution has examined PW No.282-Dr. Nirav Hasmukhbhai Panchal, who is the treating doctor and who is examined as a witness vide Exh.1526.

10.63 PW No.282-Dr. Nirav Hasmukhbhai Panchal was the Medical Officer in L.G.Hospital at the relevant time when he has examined and treated PW No.4-Harshadbhai Chandubhai Halani and he was under treatment till 01.08.2008 as indoor patient and in the hospital PW No.4- Harshadbhai Chandubhai Halani had indicated to him that the injury was caused to him on account of the bomb-blast and had sustained injury on his left hand and back and he was bleeding. The medical certificate his exhibited at Exh.1257 and the opinion expressed by this witness is the injuries could be sustained on account of the blast resulting in any article colliding with the body with great force. This witness has also examined several other witnesses which were injured however, there does not appear to be any cross-examination of this witness, thereby defence accepting the cause and the history given for the nature of injury.

10.64 Learned Special Public Prosecutor has thereafter, relied upon the deposition of PW No.119-Shri Rakesh Mukundbhai Odhviya at Exh.961, who has deposed that while returning from work he had halted for tea when the blast took place nearby, as a result of which, he sustained injury on his left leg and therefore, he escaped from that place and went on the opposite side, where the second blast took place. This witness has deposed that blast has taken place from the cycle and on account of L.G.Hospital being overcrowded, he was taken to a private

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doctor for treatment. In support of the deposition of this witness, the prosecution has examined PW No.289-Dr. Nayanbhai Vinodchandra Shah, the treating doctor, who has deposed at Exh.1555 and produced certificate of injury at Exh.1556.

10.65 With regard to the very offense of Maninagar Police Station being C.R.No.I-203 of 2008, the Court has perused the evidence of PW No.119-Rakeshbhai Mukundbhai Odhviya at Exh.961, who is working in a private company as a technician and on 26.07.2008, after completing his duty hours was returning along with his friend and at Maninagar cross road, both of them went to have tea at the Kitley and at approximately 6:30 PM just besides the Kitley, where a cycle was parked, there was big blast and pellets (ball bearings) and metal particles flew, which caused injury to this witness on his chest and left leg. Out of fear, he ran in the opposite direction, where again he heard another bomb-blast near Om Pan Parlor. He deposed that several persons were injured and his friend took him to private hospital at Isanpur. He deposed that many other persons were also injured and for the purpose of treatment he had to visit Doctor several times. In the cross-examination, this witness was put questions as he was scared, he did not realize about the number of blasts and how the blast had taken place, to which he has replied that as the blast had taken place near to him, he was conscious of the same. He has denied the suggestion that the witness has mentioned about the blast in the cycle only upon the say of the police. The defence has not cross-examined any further.

10.66 In support of evidence of this witness, regarding his injury and treatment, the prosecution has examined PW No.289-Dr. Nayanbhai Vinodchandra Shah at Exh.1555, who is a treating doctor of PW No.119-Rakeshbhai Mukundbhai Odhviya and in his deposition Dr. Nayan

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Vinodchandra Shah (PW No.289) has deposed about the treatment given by him to the witness and the history conveyed to him about the reason behind the injury on account of the bomb-blast. He has also deposed about the injury sustained of his chest and legs for which he has treated him and placed on record the medical certificate at Exh.1556. He has opined that the injury caused to the witness was on account of the bomb-blast. This witness has not been cross-examined.

10.67 Learned Special Public Prosecutor in connection with the very blast has lastly referred to PW No.128-Gajanand Indravadan Gor at Exh.979 and submitted that he had visited the pan parlour for having paan, where could hear the first blast which took place near the tea stall and the second blast near the pan parlour, where he was standing and out of the blast, ball-bearing had exploded and injured his eye and head, as a result of the injury on eye, he had taken a treatment at Nagari Hospital and also at a private hospital however he has suffered a complete loss of vision of his left eye. The treating doctor was examined vide Exh.1642 and has placed on record Exh.1643, which is the certificate/discharge summary of PW No.128-Gajanand Indravadan Gor. The defence has not examined this witness.

10.68 The Court has perused the evidence of PW No.128-Gajanand Indravadan Gor at Exh.979, who has deposed that he was standing near Om Pan Parlour for having paan and at around 6:30 PM, he heard the sound of a blast from near the tea stall and immediately thereafter, another bomb-blast took place near the Pan Stall and one Asopalav tree. Out of the blast, pellets exploded and injured his left eye and also on the back side to his head he sustained injury. He was bleeding on account of such injury and he was taken to L.G.Hospital for treatment. Before that he was also taken to Dr. Subhas Dave, a private doctor for immediate

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treatment. On account of injury on eye, he was removed in Ambulance to an eye hospital at Nagri Hospital and thereafter, he has received higher treatment from a private doctor Nagpla. He has deposed that on account of the injuries received by him in the bomb-blast, he has lost complete vision of his left eye. His statement was recorded by the police on 31.07.2008 and 07.08.2008.

10.69 In support of the evidence of this witness regarding injury, the prosecution has examined PW No.314-Dr. Dipakkumar Devkarandas Patel at Exh.1642. In his deposition, he has given the history reported by the witness PW No.128-Gajanand Indravadan Gor and inspected his injury on left eye and back side of his head as well as injury on his right hand from elbow to wrist. He could also find a foreign body object on the back side of his head, for which he was required to be operated. He has described the nature of injury sustained and the discharge summary was exhibited vide Exh.1643. This witness has opined that the injury sustained by this witness was on account of the bomb-blast and the articles which exploded from such blast and colliding with the body of the injured. This witness has not been cross-examined.

10.70 The Court has perused the deposition of PW No.4-Harshadbhai Chandubhai Halani at Exh.496 who is the complainant of the offence pertaining to two bomb blasts that took place in quick succession at Om Pan Parlour and Mahalaxmi Market and reported with Maninagar Police Station vide C.R.No.I-203 of 2008. This witness has deposed that on 26.07.2008, he had come to Ahmedabad for the purpose of treatment of his son who was suffering from typhoid and had gone to the medical store for collecting the prescribed medicine. He was accompanied by his relative and friends and when he took a break at Anna Tea Stall for tea and was waiting, at that time, he had observed one

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cycle and on the handle of the cycle, a bag was hanging which appeared to be a tiffin like thing and while his relative Hardik was talking on mobile and leaning on the cycle, the blast took place and from the blast, iron nails, broke glasses and pellets (small ball-bearings) propelled causing injuries to his relative Hardik, his friends, he himself and many others. He also experienced second blast at the opposite side of where they were standing and the injured persons were rushed to L.G. Hospital and he himself was also taken to L.G. Hospital by his friend Milan. In this connection, his complaint was recorded at hospital which was confirmed by him and exhibited vide Exh.497. He has deposed that his relative Hardik had also sustained injury and was admitted in hospital along with him.

10.71 In his deposition, he has referred to a dying declaration which was recorded on 27.07.2008 (Mark 97/497) and also, his statement which was recorded by the Crime Branch.

10.72 In the cross-examination, he was questioned with regard to the death which took place of one Chirag in the blast to which he answered that while in L.G.Hospital, through public he came to know about the death of said Chirag. He also contradicted with the previous statement recorded by police to the extent that he had not stated about the Tiffin like article hanging in a bag on the cycle. During the cross-examination, it is recorded that the dying declaration was given Exh.498 and thereafter, questions were posed with regard to the dying declaration to the extent of presence of any relative at the time of recording of dying declaration. The question was also posed that in the dying declaration he has not given the name of his relative who was injured to which he has deposed that he was answering only questions which were posed to him. He was also contradicted with some sentences which were recorded in

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the dying declaration as to who had brought him to the hospital and that he was in full conscious state of mind when his statement was being recorded.

10.73 In the opinion of the Court, although there are some contradictions that are coming out in the cross examination of this witness, they are not of a nature so as to affect the core evidence led by this witness. Further, his testimony remains consistent and reliable regarding the occurrence of two bomb blasts that took place and the aftermath of damage caused by such blasts upon looking at the narration of events, nature of injuries sustained, and the medical treatment received by this witness.

10.74 The Court has also perused the evidence of the witnesses who have deposed about the blast that took place at Mahalakshmi Market and the damage caused as a result of it. In this regard firstly, the Court has perused the evidence of PW No.421-Harshad Natvarlal Shah at Exh.2382 who has deposed that he was running a shop which is located at Mahalakshmi Market No.2, near the Maninagar Chaar Rasta in the name of 'Jaymataji Parlour' at the relevant time and that in front of his shop, there was a tea stall which was run by Purushottambhai Gayakwad which is usually crowded. On 26.07.2008, at around 6:30 p.m. while he was at his shop, an explosion took place on the road adjoining his shop leading to 'Mukti Medan' due to which, shrapnel scattered and struck at various places of his shop including the counter causing holes therein. He has deposed that one of the tubelights was also broken and upon looking outside he saw that the explosion had took place on an old cycle. He has deposed that at the time of the blast, there were several people at the tea stall as well as inside his shop who got injured by the shrapnel including his friend, Chiragbhai Shah who

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sustained injuries on his chest as well as different parts of the body. A statement in this regard was recorded by the police. There appears to be no cross examination of this witness.

10.75 The Court has thereafter perused the evidence of PW No.713-Parsottambhai Hajarilal Gayakwad at Exh.3479 who used to run the tea stall which was situated in front of the aforementioned shop namely, 'Jaymataji Parlour'. He has deposed that on 26.07.2008, while he was at the tea stall, an explosion occurred on a cycle which was on the road leading towards 'Mukti Medan' where generally vehicles are parked. He got frightened upon hearing the sound of the explosion and saw that the people who were at his tea stall sustained injuries due to the shrapnel flying from the blast however, he is unaware of their names and addresses. The injured persons were thereafter taken for medical treatment. He has deposed that the explosion took place from the cloth bag which was placed on the cycle and that the vehicles which were parked nearby got damaged due to the explosion. At the same time, another blast took place in front of a shop named 'Om Paan House' which is situated near his tea stall and that it occurred from the cloth bag placed on a cycle. He has deposed that he is unaware of names of people who got injured and that a statement in this regard was recorded by the police.

10.76 In the cross examination of this witness, he has deposed that he can read and write in Gujarati and that he closed his shop and went home after the incident. He has admitted that he did not give any complaint or inform that he knew about the incident to the police on the date of the incident. His statement was recorded two days after the incident at the stall and he has deposed that he is unaware of what the police have written therein. He has deposed that he had not seen any

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injured or suspicious person and has denied the suggestion that he does not know about the incident and he was deposing falsely at the instance of the police. In further cross examination of this witness, he has deposed that the road leading towards 'Mukti Medan' is located behind his tea stall and that both the blasts took place within one or two seconds. He has deposed that six to seven vehicles sustained damage in the incident mainly, two wheelers including, scooters and motorcycles. He has deposed that all the people around were saying that the blast had taken place on a cycle and therefore, he said that the explosion occurred on the cycle. He has thereafter deposed that, 'Om Paan House' is located on the right side of his stall and that he was unaware of who was at sitting at the stall of 'Om Paan House'. He has admitted that he does not remember whether the police had come to the spot in his presence.

10.77 The Court has perused the evidence of PW No.732-Dilipbhai Gokalbhai Patel at Exh.3517 who has deposed that he was running a shop in Gokul Palace Complex near Maninagar Chaar Rasta in the name of 'Tulip Readymade Store'. He has deposed that on 26.07.2008, at around 6:30 p.m. while he was at the shop, a blast occurred on the road leading towards 'Mukti Medan' under a banyan tree which is situated in front of his shop. Upon looking at the spot, he noticed that the blast occurred on a cycle and that a boy had sustained injuries in the blast. Thereafter, another blast occurred in front of 'Om Paan House' which is situated besides his shop which also took place on a bicycle and that due to it, a boy who was working at the tailor's shop near 'Om Paan House' sustained injuries and that, on the next day the police recorded his statement in regard to the incident at the shop. In the cross examination of this witness, he has admitted that he is unaware as to who carried out the blasts and has deposed that after the incident, people closed their

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shops and left and that he too did the same. He has admitted that he had not of his own accord given any statement to the police. There appears to be no other cross examination of this witness.

10.78 The Court has perused the evidence of PW No.737-Alpeshbhai Jangbahadur Maakan at Exh.3523 who has deposed that he was running a mobile shop in Mahalakshmi Market No.2 situated in Maninagar Chaar Rasta and that on 26.07.2008, while he was at the shop, an explosion occurred on a cycle which was kept near the tea stall situated in the market area. Thereafter, another blast took place near 'Om Paan House' which is situated in the vicinity and a statement in this regard was recorded by the police on 28.07.2008. In the cross examination of this witness, he has admitted that he closed the shop after the incident and that he had not voluntarily disclosed any statement anything to the police about the incident. He has denied the suggestion that his knowledge regarding the blast was hearsay and has deposed that if he has mentioned in the police statement that he knew the blast took place on the cycle, then such a fact was true. He has deposed that it is recorded in his police statement that he saw on television that the blast had taken place on a bicycle and at a particular place. He has denied the suggestion that he does not know anything about the incident and that he is giving a false deposition at the instance of the police.

10.79 The Court has perused the evidence of PW No.997-Arun Sukhdevbhai Khambalkar at Exh.6941 who has deposed that he was working as an Executive in a department of ICICI Bank and that for the purpose of commuting to work, he had purchased a Hero Honda Splendor for which he had made part payment and for the balance, he had taken a loan from ICICI Bank. On 26.07.2008, while he was near a tea stall at Maninagar Chaar Rasta at about 6:45 p.m., a blast took place

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on a cycle near the tea stall due to which five persons had sustained injuries and his motorcycle was also damaged as the shrapnel struck the engine and the body of the vehicle. Thereafter, another blast took place from a cycle which was lying near the paan stall under an Asopalav tree. The police thereafter arrived at the spot and a panchnama of the place was drawn and he informed the insurance company with respect to the damage caused to his motorcycle. The police interrogated him and recorded his statement. In the cross examination of this witness he has deposed that after 26.07.2008, he was in Ahmedabad and that he had gone to the police station on 26.07.2008 however, his statement was not recorded until 17.11.2008. He denied the suggestion that he cannot state what the blast was and that he cannot say from where the shrapnel struck the motorcycle. He has also denied the suggestion that no such blasts had took place in his presence and that he is giving a false testimony at the instance of the police.

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10.80 Learned Additional Advocate General thereafter referred to another incident of Maninagar, which was the bomb explosion which took place near Shivani Complex, where one person was injured. He referred to Exh.1731, panchnama of scene of offence which was conducted in early hours, where also it appears from reading that the bomb explosion had taken place wherein the bomb was planted on cycle and caused damage to nearby vehicles like Wagon R, Fronty cars as well as several two wheelers. This document also records creation of crater as an impact of blast at the scene of offence and arrival of the FSL officer at the scene of offence, who had advised investigation team for collection of various articles.

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10.81 The Court has perused Exh.1731, which is the panchnama of scene of offence, which was executed in the early hours of the date of incident reported at Maninagar Police Station. This panchnama was proved by examining PW No.334-Hiteshbhai Piraji Prajapati, Exh.1730. By this document, prosecution has sought to prove extensive damage to private and public properties as a result of the blast. The fact of blast is recorded on the basis of damaged cycle which was used for planting bomb and the damage caused to private vehicles, which were lying in the vicinity and also crater which was caused on the road on account of blast. This document is also recorded arrival of the FSL officer for spot inspection and advising for collecting material relevant for the investigation. The Court can co-relate this with the document Exh.2022, which is proved by examining PW No.352-Rajubhai Pundlikbhai Vani, one of the panch witnesses, Exh.2021.

10.82 In co-relation to the above, Exh.8128 is the preliminary report of the Investigation Van Unit of the Directorate of Forensic Science, Gujarat State, Gandhinagar, which was exhibited by examining PW No.1132-Jasubhai Karshanbhai Patel, Exh.8127. This report pertains to collecting various articles from the scene of offence, particularly connected with bomb explosion. These articles consisted of wire pieces of various colours found lying scattered nearby damaged vehicles due to explosion. Exh.8127 is the deposition of PW No.1132-Jasubhai Karshanbhai Patel. This witness being Scientific Officer of FSL has proved his visit to the scene of offence and thereby establishing the scene of offence and producing on record the preliminary report. In the cross-examination, he was posed question with regard to other activity, which he had undertaken in this regards at other scene of offence, but nothing is coming out with regard to falsifying his evidence

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with regard to articles collected from the scene of offence and the actual scene of offence. Conjoint reading of Exh.1731, Exh.2022 and Exh.8128 firmly establishes the scene of offence and cause of damage and the fact of bomb explosion at the scene of offence.

10.83 Learned Additional Advocate General referred to Exh.5850 being final report of the Chemical Department of the FSL as well as Exh.5807, which is report of the Physics Department of the FSL emphasizing on the commonalities of the substance used and the construction of bomb with other serial blasts and also opinion on the spices of wires collected from the debris of bomb blast site by the In-way Van being capable to pass on electronic current.

10.84 In this regard, attention is drawn to Exh.5850 being final opinion of the FSL with regard articles collected in the bomb blast near Shivani Complex. The Court would like to observe that in document Exh.5848, being outward entry for sending various articles to FSL for examination, questions were posed, of which relevant would Question No.4, which points to the articles identified as Marks-E and H (wires) as to whether the same could be utilized in the timer, to which the answer is given in Exh.5807, the opinion given by the Physics Department of the Directorate of Forensic Science. The opinion with regard to Mark-E confirmed the capacity of those articles for being used to pass electric currents. However, the same document is unable to answer second part of Question No.4-Exh.5850 regarding the same being capable of being used as timer.

10.85 The Court has perused Exh.5920, which is the final report and opinion of FSL with regard to contents of the bomb which had remained unexploded. The contents of the unexploded bomb, which consisted of the articles like ammonium, potassium, sodium and nitrite

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and also petroleum hydrocarbon oil (paraffin oil). All these chemicals were opined to be highly explosive nature. The specific opinion describing contents of unexploded bomb to be ammonium nitrite and petroleum hydrocarbon oil, i.e. to say ammonium nitrite based on ammonium nitrite fuel as oil (NFO). This has also the characteristic of being highly explosive in nature. This document also explains the structure of the unexploded bomb.

10.86 Learned Special Public Prosecutor has thereafter referred to the deposition of the complainant PW No.13-Mayurbhai Dhirajbhai Solanki at Exh.529 who got injured due to the bomb blast that took place on the road in front of 'Laxmi Jewellers' which is situated within the Shivani Avenue Complex and has lodged a complaint regarding the explosion that occurred when he went to seek medical treatment at the hospital. Thereafter, reference was also made to the deposition of PW No.535-Babubhai Leelabhai Desai at Exh.2985 who is the P.S.I. that recorded the complaint of the aforesaid witness and the complaint at Exh.530 was confirmed by this witness. This witness has also deposed regarding the duties undertaken by him pursuant to the information received by him regarding the explosion.

10.87 The Court has perused the deposition of PW No.13-Mayurbhai Dhirajbhai Solanki at Exh.529 who has deposed that he is engaged in the business of brokerage of land and that on 26.07.2008, he had gone for a walk at around 6 to 6:30 p.m. in the evening. Further, while he was standing near the shop named 'My Idea' which is located besides Shivani Avenue Complex near Jawahar Chowk crossroads and was preparing to proceed further, an explosion had occurred on the road in front of 'Laxmi Jewelers' which is situated within the Shivani Avenue Complex. The said explosion had taken place on a bicycle and as this

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witness was standing 30-35 feet away from the place of the incident, he moved closer to have a look at what had occurred. Upon going closer, he observed that the bicycle was completely damaged and the bag placed on it had also torn apart. A WagonR car which was parked in front of the bicycle had also sustained damage due to the said explosion as all the glasses of the car had broken and the rear tyres had got deflated.

10.88 Further, this witness has deposed that he sustained a minor injury on his chest as a result of the explosion and upon being advised to seek medical treatment; he went to L.G. Hospital for a checkup and also recorded a complaint in the hospital itself. He came to know that similar blasts had taken place at various places such as Govindwadi, Maninagar Chaar Rasta (crossroads) and L.G. Hospital. This witness upon being shown the handwritten complaint marked as Mark No.97/544 has identified his signature on the handwritten complaint and has also confirmed the correctness of the contents of the complaint which came to be exhibited vide Exh.530. He has deposed that he had shown the place where the said explosion took place on the same night at around 1 to 1:30 a.m. to the police.

10.89 This witness has been further cross examined wherein he has denied the suggestion that he did not go to the hospital for treatment and that the said complaint was not recorded. He has also denied the suggestion that he had not witnessed the incident and that the complaint was not recorded based on his observation and was lodged at the instance of police.

10.90 Upon perusing the deposition of this witness, the Court finds it to be consistent and reliable insofar as his presence at the place of incident, observations made by him, visit to the hospital for medical treatment and lodging of the complaint at the hospital is concerned.

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Further, even in the cross examination there is nothing so as to caste a doubt on the evidence of this witness.

10.91 The Court has thereafter perused the deposition of PW No.535-Babubhai Leelabhai Desai at Exh.2985 who is in the police department and was working as a Police Sub-Inspector, Maninagar Police Station at the relevant time when the incident took place. He has deposed that on 26.07.2008, upon instruction from the Police Inspector of Maninagar Police Station, he went to L.G. Hospital and that; one Mayurbhai Dhirajbhai Solanki (PW No.13) who is a resident of the area near Durga school gave a complaint before him stating that at around 6 p.m. he reached the area near 'Idea Showroom' in Shivani Complex while he was on his way towards Jawahar Chaar Rasta (crossroad) and that around 6:30 p.m. an explosion occurred which created panic amongst the public. This complainant has further deposed before this witness that upon reaching the site, he saw a bicycle which was in damaged condition and he also saw a bomb which was wrapped in a cloth had exploded. Also, the rear windshield of a car which was parked nearby had broken and both the rear tyres of the car had got deflated. The complainant had also stated that he sustained injury on his chest due to the explosion that took place and based on these facts stated by the complaint, this witness recorded a complaint and forwarded the same to the officer in charge of Maninagar Police Station for registration of an offence under Section 307 of the Indian Penal Code and other relevant provisions. A note was also sent requesting that the further investigation be deputed.

10.92 This witness has confirmed the complaint at Exh.530 which was given by Mayurbhai Dhirajbhai Solanki stating that it was recorded by him as narrated by the complainant. This witness has also confirmed

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that the signature of the complainant was obtained and this witness also signed on the said complaint. Thereafter, this witness has deposed that a copy of the complaint was given to the complainant and his acknowledgement signature was also obtained. This witness has identified both his own, and the signature of the complainant. Further, he has also confirmed the report at Exh.585 and stated that it was prepared by him and bore his signature.

10.93 This witness has been cross examined wherein he has deposed that the recording of the complaint had taken place upon the oral instructions of the Police Inspector and that he had not received any written instructions in that regard. He has also denied the suggestion that a written vardhi was issued by the P.S.O thereby directing him to go to L.G. Hospital and that the registration of complaint at Exh.530 was in violation of law.

10.94 The Court upon perusing the testimony of this witness finds it to be consistent and credible as the recording of the complaint appears to have been made in the regular course of his duty and also, this witness has confirmed the documents and identified the signature on such documents. The contents of the complaint recorded by this witness are supported by the deposition of the complainant himself. Further, in the cross examination, nothing substantial has emerged so as to discredit the evidence of this witness.

10.95 The Court has thereafter perused the evidence of the witnesses who have deposed about the blast that took place near in front of Laxmi Jewellers which is situated inside Shivani Complex and the damage caused as a result of it. PW No.717-Ghanshyambhai Chandrakant Pandya at Exh.3492 has deposed that he was carrying on the business of selling fruits and that on 26.07.2008 at about 6:30 p.m.

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an explosion occurred in front of Laxmi Jewellers which is situated inside Shivani Avenue upon which, he along with others went to the location and saw that the explosion had occurred from the cloth bag which was placed on a bicycle due to which, a Maruti WagonR car parked nearby sustained damage and a passer-by had sustained injuries. A statement in this regard was recorded by the police on 27.07.2008. In the cross examination of this witness, he has admitted that the people went home after closing their shops and that he too took his cart and left home. He has admitted that he did not go to the police to give any complaint or statement in this regard or provide his phone number and address. He has deposed that he is unaware as to who sustained what injuries in the incident and has denied the suggestion that he is unaware of the incident and is giving false evidence in order to assist the police.

10.96 Thereafter, the Court has perused the evidence of PW No.718-Bharatbhai Kuraji Patidar at Exh.3493 who has deposed that he was running a tea stall near Jawahar Chowk in Maninagar area besides “Bapa Sitaram Jawahar Paan Parlour” which is situated opposite “Shivani Complex” and that around 6:30 p.m., an explosion took place near the bus stand and upon reaching there he saw that the bomb had exploded on a bicycle due to which the vehicles parked nearby had sustained damage and a passer-by sustained injuries. Thereafter, the police arrived at the spot and a statement of this witness in this regard was recorded by the police on 27.07.2008. In the cross examination of this witness, he has admitted that his shop is situated in the inner side of “Shivani Complex” and that due to the blast, the police arrived and thereafter the shopkeepers closed their shop and left. He has also admitted that he has not made any statement to the police that he was aware about the incident and has denied the suggestion that he did not

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witness the incident and is unaware about it and he is giving false evidence to assist the police.

10.97 The Court has also perused the evidence of PW No.720-Satishkumar Rameshchandra Soni at Exh.3497 who was running a shop in the name of "Shubham Jewellers" which is situated at Shivani Complex, Maninagar and has deposed that on 26.07.2008, at about 6:30 p.m., a blast took place near the roadside opposite "Shubham Complex" and upon going there he saw that the bomb had exploded on a bicycle which was placed near the board of Jawaharnagar Crossroads Bus Stand. Due to the blast, a Maruti WagonR car which was parked nearby had sustained damage as its rear glasses were shattered, tyres were deflated and the body of the car was pierced due to the splinters. Further, even a passer-by sustained injuries due to the splinters and statement of this witness with respect to the incident was recorded by the police on 28.07.2008. In the cross examination of this witness, he was put forth questions regarding the location of his shop and he has admitted that there were two workers at his shop and he has denied the suggestion that on the date of the incident, both the workers were present at the shop. He has also admitted the fact that after the blast, he was standing at the shutter of the shop and did not proceed further and that he got to know through other people regarding the injured persons. He has further admitted that he is unaware as to where the WagonR car was parked or who had parked it. Further, he has deposed that on 26.07.2008, he was not examined by the police and that he had opened his shop on 27.07.2008 and that on 28.07.2008 he had not gone to the shop and was at his residence.

10.98 The Court has perused the evidence of PW No.726-Rupchand Kishanchand Pirani at Exh.3506 who was running a shop in

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the name of “R.K. Step” at “Shivani Complex” and has given a similar deposition regarding the blast that took place and the damage caused as a result of it to the Maruti WagonR car and injury sustained by a passer-by. His statement in this regard was recorded by the police on 27.07.2008. In the cross examination of this witness, he has admitted the fact that he had not given any statement to the police and that he was not interrogated by the police on the date of the incident. He has also admitted the fact that he went to the place of occurrence and that he did not examine any explosive material at the spot. In the further cross examination of this witness, he has admitted that he is unaware as to who had placed the car or as to where it was placed and in which state. He has also admitted that the police have not questioned him regarding the WagonR car.

10.99 The Court has perused the evidence of PW No.728-Satish Maheshbhai Raval at Exh.3508 who was working at a shop in the name of “Shreeji Electronics” at “Shivani Complex” and has given a similar deposition regarding the blast that took place and the damage caused as a result of it to the Maruti WagonR car. Thereafter, the police arrived and the area was cordoned off and a statement of this witness in this regard has been recorded by the police. In the cross examination of this witness he has admitted that he is unaware as to who had placed the car or as to where it was placed and in which state. Further, he has admitted that in his police statement he has not stated the fact that the police cordoned off the area. He has deposed that that he has not made any statement to the police that he was aware about the incident. He has deposed that he is unaware whether he was at the shop on 27.07.2008 and that his statement was recorded by the police on 28.07.2008.

10.100 The Court has perused the evidence of PW No.733-Rohitbhai

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Bhanubhai Waghwani at Exh.3518 who was running a shop in the name of "Deeplakshmi Selection" at "Shivani Complex" and has given a similar deposition regarding the blast that took place and the damage caused as a result of it to the Maruti WagonR car and injury sustained by a passer-by. In the cross examination of this witness, he has admitted the fact that he had not voluntarily given any statement to the police on the date of the incident. He has also admitted the fact that the shopkeepers and he closed their shop and left after the incident. He has also admitted that he has no personal knowledge about the people who sustained injuries or the damage caused to the property as a result of the incident.

10.101 The Court has perused the evidence of PW No.739-Hardik Mahendrabhai Sanghvi at Exh.3525 who was running a handloom cloth shop at "Shivani Complex" and has given a similar deposition regarding the blast that took place and the damage caused as a result of it to the Maruti WagonR car and injury sustained by a passer-by. His statement in this regard was recorded by the police on 28.07.2008. In the cross examination of this witness, he has admitted the fact that he had not voluntarily given any statement to the police on the date of the incident. He has also admitted the fact that the shopkeepers and he closed their shop and left after the incident. Further, he has admitted the fact that he has not went and examined the place of incident. The deposition of the aforesaid witnesses establishes the occurrence of the blasts, nature and extent of the damage caused to public and private property and the injuries sustained by the victims as a result of it.

Maninagar Police Station: C.R. No. 205 of 2008

10.102 Learned Additional Advocate General thereafter referred to the Maninagar incident registered vide C.R. No. 205 of 2008 wherein

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the explosion took place behind the Maninagar AMTS Bus stand, in front of Roop Complex resulting in an injury to one person. In this regard, he has referred to Exh.1741; panchnama of scene of offence conducted in the early hours on 27.02.2008 wherein it appears that the explosion had occurred from a cloth bag which was placed on a cycle resulting in damage to the cycle and the AMTS bus. He has also referred to Exh.2018 which is the panchnama for seizure of the articles collected by the FSL Officer from the scene of offence.

10.103 The Court has perused Exh.1741; the panchnama of the scene of offence which commenced at 3:30 a.m. on 27.02.2008. This panchnama was proved by examining PW No.335-Montu Damodarbhai Sharma examined vide Exh.1740. By this document, the prosecution has sought to prove the scene of the offence, the planting of the bomb on a bicycle and the damage caused to the A.M.T.S. bus and the surrounding area as a result of the explosion.

10.104 The panchnama records that the bicycle was found lying in a damaged condition at the spot and that its front side and front tyre were completely damaged. Further, cloth pieces were found on the carrier portion of the cycle. Also, the AMTS bus sustained multiple perforations on its right side and pieces of shrapnel were found scattered. This document also records that the torn cloth bag, the damaged bicycle, samples of black residue from the cycle and the bus, samples of soil were separately seized and sealed in the presence of the panch witnesses.

10.105 The Court has perused Exh.2018; panchnama for seizure of articles collected by the FSL Officer relating to the bomb-blast at Maninagar AMTS Bus Stop. These articles consisted of pieces of wires and cloth which were seized for the purpose of investigation. The Court can co-relate this document with Exh.1741 being the panchnama of

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scene of offence and the conjoint reading of Exh.1741 and Exh.2018 establishes the seizure and sealing of articles from the scene of offence.

10.106 The Court has also perused Exh.8128 which is the preliminary FSL report of the Investigation Van unit of DFSL and it records the visit of the scientific officer to the three bomb blast sites under the Maninagar Police Station namely, Maninagar Cross Roads, Jawahar Cross Roads and AMTS Bus Stand and insofar as the AMTS Bus Stand is concerned, samples of pieces of wire and cloth fragments were collected and directed to be forwarded to DFSL, Gandhinagar for examination.

10.107 Thereafter, Court has considered Exh.5923 which is the final FSL report, prepared by PW No.849-Gauridat Dayanidhi Sharma, who was examined vide Exh.5908 and it appears that chemical traces were found in the collected samples which are similar to other sites. This shows similarity in composition of explosive material which shows uniformity in preparation of bombs.

10.108 The Court has perused the deposition of the complainant PW No.15-Jagdish Bheraji Mena at Exh.533 who has deposed that on 26.07.2008, he was working at Jai Ambe Tea Stall which is situated within Rup Complex near the Maninagar AMTS Bus Stand and that at around 6:45 p.m., an explosion had occurred near the AMTS bus stand. This witness sustained injuries to his right hand and face as a result of the said explosion. He has further deposed that, the wheel of the cycle had got bent and that damage was also caused to an AMTS bus as a result of the explosion. Also, a crowd had gathered near the location and he was unaware if other people had sustained injuries. He got to know about the explosions that took place at various other places.

10.109 Thereafter, upon being shown the complaint , this witness

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has confirmed the contents of the complaint and has identified his signature on it which came to be exhibited vide Exh.534. He has deposed that the said complaint was recorded at L.G. Hospital when he was taken for treatment as a result of the injuries sustained by him. Further, this witness has deposed that, on the next day i.e., on 27.07.2008 at around 3:30 a.m. he accompanied the police to the place of incident to show the place of incident in the presence of two panch witnesses. There appears to be no cross examination of this witness and therefore in the opinion of the Court, there is no doubt about the truthfulness of this witness insofar as the occurrence of the explosion and the injuries sustained are concerned.

10.110 Thereafter, the Court has also perused the deposition of PW No.504-Dilipsinh Gambhirsinh Vaghela at Exh.2938 who is the Police Inspector and has deposed that on 26.07.2008, he was present at L.G. Hospital as he had conducted the inquest panchnama of the deceased namely, Chiragbhai Chandravadanbhai Shah which was identified by Alpeshbhai Pravinbhai Shah. This witness has confirmed the contents and has identified the signatures on the inquest panchnama at Exh.1266. Thereafter, this witness has deposed that he recorded the complaint of PW No.15-Jagdish Bheraji Mena at L.G. Hospital which was written down as per the narration of the complainant and has affirmed the truthfulness of the contents of the complaint. This witness has confirmed the contents and has identified the signatures on the complaint at Exh.534. Thereafter, the said complaint was forwarded to the P.S.O. for undertaking further proceedings. This witness has confirmed the contents and has identified his signature on the report at Exh.586.

10.111 This witness has been cross examined wherein he has deposed that as per his report, the information regarding the incident was

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received at Maninagar Police Station at 10 p.m. and that no prior complaint had been registered at Maninagar Police Station regarding the said incident. He has also admitted in his cross examination that he was not the Investigation Officer in the said case.

10.112 Therefore, in the opinion of the Court, the deposition of this witness appears to be credible and is also supported by the testimony of the complainant. Further, even in the cross examination there appears to be nothing so as to discredit the truthfulness of this witness.

10.113 The Court has perused the evidence of the witnesses who have deposed about the blast that took place near Maninagar Bus Stand and the damage caused as a result of it. The Court has perused the evidence of PW No.708-Riteshbhai Chandraprakash Jain at Exh.3472 who has deposed that he was running a shop in the Maninagar Old Vegetable Market Area in the name of 'Pinky Juice Centre' and that Maninagar Bus Stand is situated near his shop. He has deposed that on 26.07.2008 at around 6:45 to 7 p.m., an explosion took place near the bus stand upon which, he came out of the shop and saw one Pravinbhai, who runs a tea stall and one Jagdishbhai Mena's son who was working there present at the location. He saw that Jagdishbhai had sustained injuries due to the shrapnel from the explosion. He is not aware whether anyone else sustained injuries and has deposed that an A.M.T.S. bus parked at the location sustained damage due to the explosion. The people gathered at the location and shortly thereafter, the police also arrived and on 27.07.2008, this witness was interrogated by P.I. Jadeja regarding the blast. In the cross examination of this witness, he has deposed that his shop is situated opposite to the bus stand and that the railway station is on the other side of the bus stand. He has admitted that he had not specified to the police whether the blast occurred towards the

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side of the shop or the railway station. He has thereafter admitted that he remained at the shop for half an hour and thereafter the shopkeepers closed the shop and has denied the suggestion that no police action was taken until then but has clarified that he had not participated in any proceedings conducted by the police. Apart from this, there is no cross examination of this witness.

10.114 The Court has thereafter perused the evidence of PW No.709-Khushalbhai Bhimjibhai Rana at Exh.3473 who has deposed that he was running a perfume shop near Maninagar Bus Stand and has deposed that on 26.07.2008, an explosion took place in a bus which was nearby his shop due to which a person sustained injuries whose name he is unaware of. Also, the bus sustained damage thereby causing holes (perforations) and a statement in this regard was recorded by the police on 27.07.2008. Thereafter, this witness has been cross examined wherein he has affirmed that he is unaware of the number of people who were present at the tea shop and has deposed that the blast took place near the rear tyre of the bus and that he is unaware of the size of holes on the bus as a result of the damage. Apart from this, there appears to be no cross examination of this witness.

10.115 The Court has thereafter perused the evidence of PW No.710-Biharibhai Omkarbhai Sharma at Exh.3474 who has deposed that he was running a paan stall named “Bholenath Paan Centre” which was located near Maninagar Bus Stand and that on 26.07.2008, at around 7 p.m., while he was at the shop an explosion took place near a bus which was stationed by the bus stand. At the location, a bicycle was also lying there and due to the explosion, a person namely Jagdishbhai Mena who was working at the tea stall had sustained injuries. Further, the A.M.T.S. bus which was stationed also sustained damage and near

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the bicycle, a cloth bag and a thin plastic like material in broken condition was found lying at the location. At the time, several people had gathered at the location and on the next day, a statement was recorded by the police in this regard. In the cross examination of this witness, he has deposed that he did not see how the explosion occurred and that the people began closing the shops and left within fifteen to twenty minutes and that he too left. He has further deposed that he came to know about the fact of the explosion thereafter through the people. Apart from this, there appears to be no cross examination of this witness.

10.116 The Court has thereafter perused the evidence of PW No.716-Prahladbhai Amarnath Panjabi at Exh.3489 who has deposed that he owned a shop named "Anil Juice Centre" near Maninagar Old Vegetable Market and that on 26.07.2008, at around 6:45 to 7 p.m., an explosion took place at the Maninagar Bus Stand which occurred on a bicycle lying near a wall at the location. He has deposed that there is a tea stall which was near the place of explosion and that one Jagdishbhai Mena who was working there sustained injuries due to the shrapnel as a result of the explosion. Further, the A.M.T.S. bus sustained damage as there were holes on the bus due to the shrapnel and at the location, a cloth bag and a blue colored plastic material were lying near the bicycle. Thereafter, the police arrived and a statement in this regard was recorded by the police on 27.07.2008. In the cross examination of this witness, he has deposed that he has not approached the police with regard to the incident and has confirmed that he has not sustained any injury. He has further deposed that people closed their shops and that he too closed his shop and went home. He has admitted the fact that he had not personally visited the place of occurrence or made any inquiry and that except for one person, no other people had sustained injuries. He has denied the

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suggestion that he had no knowledge about the incident and that he was giving a false deposition at the instance of the police. He has also been cross examined further with respect to the distance and location of his shop from the bus stand and the time taken by the polic to reach the location. He had denied the suggestion that he was absent when the incident took place and that he was giving a false deposition.

10.117 The Court has thereafter perused the evidence of PW No.719-Pramodbhai Durgaram Sharma at Exh.3496 who was carrying out business under the name “Ripu Fashion” near Maninagar A.M.T.S. Bus Stand and has given a similar deposition that on 26.07.2008 at around 6:45 to 7 p.m., while he was at his shop, an A.M.T.S. bus was stationed near the Maninagar Bus Stand and that a loud explosion occurred on a bicycle. He has deposed that upon looking at the location, he saw that a person named Jagdish, who was working at the nearby tea stall, had sustained injuries due to the shrapnel from the explosion. He has deposed that a cloth bag and blue colored plastic-like material were lying near the bicycle and that thereafter the police came to the location. A statement in this regard has been recorded by the police on 27.07.2008. In the cross examination he has deposed that he was at the shop at the time of the incident and that it was dark outside and people had gathered at the location. He has affirmed that he is unaware as to what caused the explosion and that he came to k now about the injuries sustained by Jagdishbhai through the people. He has also confirmed that on 26.07.2008, his address or phone number was not recorded by the police and that on 27.07.2008 he had not gone to the police station instead, the police came to him and recorded his statement.

10.118 The Court has thereafter perused the evidence of PW No.727-Pramod Chabildas Parmar at Exh.3507 who was carrying on a

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cutlery business in the area behind the A.M.T.S. Bus Stand and has given a deposition of a similar nature regarding the blast that took place on 26.07.2008 and has deposed that his statement was recorded by the police on 01.08.2008. There appears to be no cross examination of this witness.

10.119 The Court has also perused the evidence of PW No.729-Ashok Premjibhai Thakkar at Exh.3509 who was running a fruit cart near the A.M.T.S. Bus Stand and has given a similar deposition regarding the explosion that took place near the bus stand on 26.07.2008 and that his statement was recorded by the police on 01.08.2008. In the cross examination of this witness, he has admitted that he himself has not voluntarily gone and given any statement to the police and that he took his cart and went home due to the helter-skelter of the people at the location.

10.120 The Court has also perused the evidence of PW No.735-Rohit Manubhai Thakkar at Exh.3520 who was carrying on a business in the name of "Thakkar Paper Stores" which is situated opposite Maninagar A.M.T.S. Bus Stand and has given a similar deposition regarding the explosion that took place near the bus stand on 26.07.2008 at about 6:45 p.m. He has deposed that due to the shrapnel from the blast, one person named Jagdish who was working at a nearby tea stall had sustained injuries and the iron sheet of the bus was pierced by it. He has deposed that the blast occurred on a cycle and that the police recorded his statement. In the cross examination of this witness, he has admitted that for four to five days after the incident he did not voluntarily go to the police to give any statement and that he has not made any independent inquiry regarding the damage caused as a result of the blast. Further, he has denied the suggestion that he was unaware regarding

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who had sustained injuries.

10.121 The Court has perused the evidence of PW No.738-Manoj Ghanshyam Satbhai at Exh.3524 who has deposed that he was carrying on a business in the name of "Ritu Fashion" near Maninagar Bus Stand and has given a similar deposition regarding the explosion that occurred near the bus stand due to which a boy working at the tea stall had sustained injuries and he also observed upon going to the location that the blast took place from the cloth bag which was kept on the bicycle. Thereafter, he has deposed that his statement was recorded by the police on 31.07.2008. In the cross examination of this witness, he has admitted that he did not voluntarily go to the police to give any statement and that he did not sustain any bodily injuries or damage to the property as a result of the blasts. He has also denied the suggestion that he is unaware of the incident and is giving a false deposition to assist the police.

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10.122 Learned Additional Advocate General has thereafter took this Court to the incident that took place at L.G. Hospital wherein 7 people were injured and in this regard has referred to the panchnama of scene of offense of bomb blast vide Exh.2036. The panchnama initially reports voluntariness of the panch witness to stand as a panch witness. According to learned AAG, this panchnama demonstrates the impact caused by the blast and the process carried out was an independent investigation in conformity with the requirements of law. He also submitted that the panch witnesses were engaged in due course to ensure the independence of the investigation. While reading Exh.2036, reference was also made to Exh.5572 and Exh.3455, which is the primary report of the FSL Officer, who visited the site in close proximity

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to the incident. The report is inve. Van report. On the basis of the preliminary report, preliminary opinion was also given by the FSL Officer.

10.123 Learned Additional Advocate General took this Court to Exh.5803 which was exhibited through PW No.843-Naimeshbhai Manubhai Soni (Exh.5799). Exh.5803 is the FSL report of the car debri collected from the scene of offense at L.G. Hospital with a specific emphasis on the fact that the car debri contained gas cylinder also.

10.124 The Court has perused Exh.5814 which is the opinion of the FSL brought on record by PW No.843-Naimeshbhai Manubhai Soni which pertains to articles seized from the scene of offense at L.G.Hospital by executing the panchnama Exh.2036 and 2030. This opinion of the FSL is emphasized on fake vehicle registration number which was used for storing the bomb which exploded. From this remote, it is clearly coming out that the original registration number plate bore a registration number from Maharashtra which was superimposed with a number of Gujarat. Thereby, establishing the fact that to hide the correct identity of the vehicle, the number plate was tampered with.

10.125 The Court has considered Exh.5724 which is the FSL opinion for the purpose of chemical contained in the explosive device. This document was proved by the witness PW No.840-Janmohammad Fakirbhai Mansuri (Exh.5700) and it contained the analysis on various articles found from the scene of offence for analysis and it contained various articles like exploded gas cylinder, ball-bearing etc and the analysis report concludes that such articles demonstrated the traces of explosion and this articles also bore traces of explosive substance. It is also coming out that with regard to the articles identified as D, E and F, no traces of any explosive substance (Ammonia Nitrite and

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Hydrocarbon) were found. These articles identified as D, E and F are the body parts of the vehicle which are on the outside of the vehicle and therefore, obviously when the explosion took place from within, the traces of the chemical used in explosion were traces of which were not found on these parts. Exh.5721 is also an opinion of FSL expert on the articles which were found while drawing panchnama Exh.2036 which was also proved by PW No.840- Janmohammad Fakirbhai Mansuri and the opinion of this witness with regard to the status of ball-bearings which were found at the scene of offense to contain the traces of explosive material on it.

10.126 Learned Additional Advocate General drew attention to Exh.6040 which is also an opinion of FSL expert on the articles seized vide Exh.2036. It appears that Exh.6040 was exhibited through PW No.838-Surendrabhai Purshottambhai Patriwala (Exh.5685) which opined on the physical content of the bolt and ball-bearing, which was made of Iron (Fe), Calcium (Ca) and Manganese (Mn). Exh.5830 is also an opinion of FSL of the articles collected by drawing Exh.2036. Exh.5830 was exhibited through PW No.845-Ashokbhai Natwarlal Patel (Exh.5828) which is the analysis of the car debri specifically containing the engine part of the car which was flung due to explosion and on this part also, the FSL has opined to have found presence of explosive chemical. The exercise undertaken by the Investigating Officer in collecting the articles from the scene of offense were sent for analysis to the FSL and the FSL within its department have submitted independent reports with regard to its physical analysis and therefore, with regard to the articles collected from the scene of offense, there are more than one opinion connecting the articles to the incident of bomb-blast.

10.127 Reference was also made to Exh.5803 which is the

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independent FSL report pertaining to the car debris purportedly used for planting of bomb at L.G.Hospital as specific reference was made by learned AAG to the contents inside the car debris which also had remains of Gas cylinder after the blast. The FSL reports have been exhibited through PW No.843-Naimeshbhai Manubhai Soni, who was examined at Exh.5799.

10.128 The Court has perused Exh.5814; which is the final report of the FSL which is also proved by PW No.843-Naimeshbhai Manubhai Soni and this opinion is of the articles seized during the site visit of the FSL officer and the articles were collected under the panchnama vide Exh.2036 and Exh.2030. Exh.2030 is an independence panchnama pertaining to the damaged to the vehicles lying in the parking area of L.G.Hospital on account of the blast. Exh.5813 (sic.) 5814 is the observation and final opinion of the FSL with regard to the registration number plate of the vehicle found from the debris and related to four wheel vehicle used for planting of bomb.

10.129 Exh.5724 is referred to by learned Additional Advocate General which is the observation and final opinion of Chemical Department of the FSL pertaining to the articles collected during the visit by FSL Officer at the scene of offense. According to learned AAG, the opinion is demonstrating the usage of highly explosive chemicals and the traces of the same have been found on various parts of the vehicle used for planting of bomb. He has also referred to the observation made in the analysis report that traces of explosive material is not found on articles ‘D’, ‘E’ and ‘F’ and has explained that articles ‘D’, ‘E’ and ‘F’ are different parts of the vehicle in which blast took place being metal sheets and metallic parts of the body which were deformed, but did not contain the traces of the chemical explosive.

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10.130 Exh.5701 is the observation and opinion of the Chemical Department of FSL with regard to the articles seized under panchnama Exh.2036. The final opinion shows the presence and traces of explosive material on the articles like bolts, ball bearing (Chhara) which are the part of the explosive devise.

10.131 Exh.6040 is also referred to by learned AAG being a final opinion of the FSL Department, particularly the Physics Department on the articles which were collected vide Exh.2036 and consisted of articles like bolts and ball bearing (Chhara). According to this opinion, the final make of the ball bearing contained Iron (FE), Calcium (CA) and Manganese (MN). Exh.6040 was proved by PW No.838-Surendrabhai Purshottambhai Patriwala who was examined vide Exh.5685.

10.132 Reference was thereafter, made to Exh.5830 which is the final observation and opinion of the Chemical Department of FSL which received separate parcel from its Physics Department for the purpose of analysis to find out traces of any explosive on various parts of the car engine found in the debris and was used for planting of bomb. The final opinion is to the effect that the traces of Ammonium Nitrite and Petroleum Hydrocarbon Ammonium Nitrite based and Nitrite Fuel Oil (NFO) which are highly explosive were found. Exh.5830 was proved by PW No.845-Ashokbhai Natwarlal Patel examined at Exh.5828.

10.133 Learned Special Public Prosecutor has thereafter, referred to the serial blast which took place in L.G.Hospital Compound in a Maruti Vehicle which was registered with Maninagar Police Station being C.R.No.I-206 of 2008. In this connection, he has referred to evidence of PW No.129-Tejas Ashwinbhai Gadani, who is examined at Exh.980, who is injured witness who was returning from his work place along with his father and while he was passing nearby L.G.Hospital, there was

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a bomb-blast because of which he received injury and the injury certificate at Exh.7136 has been admitted by the defence counsel.

10.134 Thereafter, learned Special Public Prosecutor has read the evidence of PW No.133-Girishkumar Chimanlal Chauhan, who was examined at Exh.986. This witness is an employee of Fire Brigade who was periodically allotted duty in a L.G.Hospital with other staff and on that very day this witness was allotted duty at L.G.Hospital for night duty and hence, when he reached L.G.Hospital for his duty, there was a blast because of which he was also injured and his injury certificate at Exh.7139 is admitted by the defence counsel. This witness has in his deposition stated that he was in the process of receiving injured witnesses from other blast side and while he was assisting one of the injured witnesses to locate his missing daughter, he came out near gate No.2, where there was a blast and he received the injury. Exh.136-Shashikant Ganpatrav Patil is examined vide Exh.989. This witness was also injured on account of the injury sustained by ball-bearings and iron strips which came out of the explosion. This witness is a driver of the vehicle of the control room and was on duty at the time when the explosion took place and qua this witness injury certificate at Exh.7134 is exhibited with the consent of the defence.

10.135 Learned Special Public Prosecutor has thereafter, referred upon PW No.5-Chaudhary Krushnakant Mangaldas vide Exh.499, who has identified the place where the bomb-blast took place as near gate No.2. He has also referred to in his deposition to damage caused to the public and private property. This witness has sustained injury on the internal part of his ear and ear drums. This witness has filed the complaint and was also present at the time of drawing of scene of offense panchnama. The medical certificate of this witness is exhibited

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vide Exh.7138.

10.136 The Court has perused deposition of PW No.5-Chaudhary Krushnakant Mangaldas at Exh.499. At the relevant time, he was posted as Conveyor of Building Department in L.G.Hospital. He was on duty on 26.07.2008 and on account of the blast at various places in Ahmedabad reported specially at Maninagar, he was assigned duty to remain present at gate No.2 near Emergency Ward and according to instruction received from his higher officer, he was present at gate No.2 and as and when Ambulance 108 arrived to assist for emergency patient, while he was at gate No.2 at 7:45, there was a bomb-blast in the parking area because of which the compound wall was broker and three motor cycles were set ablaze on account of the sound of bomb, he experienced the numbness (Dhak) in the ear and he received injury on his ear due to metal pieces flying from the place and the permanent mark has remained. This witness has been shown the document mark 97/600, which is a handwriting document and in the margin on the first page and at the end of the complaint, he has made signatures at three places, he confirmed the contents of the complaint, which is thereafter, exhibited vide Exh.500. In the cross-examination, on behalf of the defence counsel, he has answered to the question put with regard to his location when he instructed to remain at gate No.2. He has also given his location near the garden and laboratory where he was instructed to remain present. He has denied the suggestion that he was never given an instruction to remain present at gate No.2 and that he has in his complaint never referred to the instruction to remain present at gate No.2.

10.137 He has answered positively to the question that on account of the blast, he was unable to hear and had immediately gone for the treatment in emergency trauma ward and for next four to five days, he

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was not able to hear. In his complaint, he has reported regarding the injury sustained on two ears to which also he answered that later on he came to know about that both the ears had received some difficulty.

10.138 He has denied the suggestion regarding the location of the parking area, where he was standing and not being the parking area which is given on contract. The place of parking which he was conveying was the laboratory side at around 25 to 30 feet distance. He has also denied that in his reply dated 08.08.2008 with the police, he has stated that he did not know whether the bomb-blast had taken place near gate No.2. A note is made with regard to the existence of such sentences in such statement. He has also denied that that in his complaint at Exh.500, he was not able to hear and the police on the other hand had written down the complaint and that he was working in a municipality, to support the police case, giving such deposition. No other material cross is made of this witness. This witness also establish the scene of offence.

10.139 The Court has perused the evidence of PW No.129-Shri Tejas Ashwinbhai Gadani at Exh.980. He has deposed that he is doing the business of tailoring in a shop located in Maninagar and on 26.07.2008, at around 7:30 pm at his business place he received information of bomb-blast in various places at Ahmedabad and therefore, he closed his shop and along with his father on two wheeler scooter was returning home and at around 7:45 pm, he was crossing L.G.Hospital and while passing near gate No.2, there was a bomb-blast because of which he received injury out of some iron particles on his left hand and his left hand started bleeding heavily. He himself had experienced this bomb-blast which resulted into fire and his father took him to the nearby friend's place for timely bandage and was thereafter, taken to the doctor

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at Hari Clinic, where he was given primary treatment and taken to L.G.Hospital. During the treatment, he has conveyed to the treating doctor that he has received injuries which are caused on account of the bomb-blast. This witness has been cross-examined, whereas his injury certificate has been admitted at Exh.7136. This witness supports the prosecution about the incident of bomb blast and the location of the same.

10.140 The Court has perused in this connection PW No.133-Girishkumar Chimanlal Chauhan at Exh.986, who is an employee of the Fire Brigade as a volunteer with Ahmedabad Municipal Corporation and was assigned duty at L.G. Hospital. On 26.07.2008, he was assigned duty at L.G.Hospital along with other volunteers. He was specifically given night shift and for that at around 6:00 pm, he reached L.G. Hospital. He had parked his motorcycle in the parking near main gate of L.G.Hospital, at that time, on account of the serial blast in Ahmedabad, patients were being brought to the hospital in Ambulance. This witness was assisting the staff for removing the injured from the vehicles and one of the injured had informed him about the blasts having taken place at various places in Ahmedabad and another injured informed him that his daughter is waiting outside the hospital and therefore, asked this witness to go and inquired about her and for this purpose, he went towards gate No.2, at that time, there was a huge blast sustained grievous injury on his right leg and on his left hand. He could see people running around in injured condition and he saw one car which was burning and damaged badly in the parking area. He could sense that blast had taken place in the said vehicle and other cars and two wheelers were also burning. The metal sheets of the parking shed were also blown. The boundary wall of the L.G.Hospital was also damaged. During the

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treatment, he has conveyed to the treating doctor that the injury was sustained on account of the blast. This witness is also not cross-examined and his certificate of injury at Exh.7319 has been admitted by the defence. Over and above the above referred witnesses, the prosecution has also examined PW No.130-Naimeshbhai Labhubhai Chauhan vide Exh.981, PW No.132-Amitbhai Pravinbhai Jethwa at Exh.985, injury certificate at Ex.7137, PW No.136-Shashikant Ganpatrav Patil vide Exh.989, Medical certificate at Exh.7134 and PW No.991-Kishorbhai Trikambhai Patel vide Exh.6918. Over all perusal of the evidence of these witnesses and documents, the prosecution has been able to establish the incident of blast at 7:45 pm in L.G.Hospital Compound reported in Maninagar Police Station. The evidence of this witness conclusively establish the incident of bomb blast, its timing and the scene of offence for the prosecution.

10.141 The Court has perused the deposition of PW No.5-Chaudhary Krushnakant Mangaldas at Exh.499 in connection with the bomb-blast in the compound of the L.G.Hospital at Maninagar Police Station vide C.R.No.II-206 of 2008. He has deposed that at the relevant time, he was posted as Surveyor of Building Department in L.G.Hospital. He was on duty on 26.07.2008 and on account of the blast at various places in Ahmedabad reported specially at Maninagar, he was assigned duty to remain present at gate No.2 near Emergency Ward and according to instruction received from his higher officer, he was present at gate No.2 and assisted as and when Ambulance 108 arrived. While he was at gate No.2 at 7:45, there was a bomb-blast in the parking area because of which the compound wall was broken and three motor cycles were set ablaze. He experienced the numbness (Dhak) in the ear and he sustained injury on his ear due to metal pieces flying from the place due to which

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a permanent mark has remained. This witness has been shown the document mark 97/600, which is a handwritten document and in the margin on the first page and at the end of the complaint, he has made signatures at three places, he confirmed the contents of the complaint, which is thereafter, exhibited vide Exh.500.

10.142 In the cross-examination, on behalf of the defence counsel, he has answered to the question put with regard to his location when he was instructed to remain at gate No.2. He has also given his location near the garden and laboratory where he was instructed to remain present. He has denied the suggestion that he was never given an instruction to remain present at gate No.2 and that he has in his complaint never referred to the instruction to remain present at gate No.2. He has answered in affirmative to the question that on account of the blast, he was unable to hear and had immediately gone for the treatment in emergency trauma ward and for next four to five days, he was not able to hear. In his complaint, he has reported regarding the injury sustained on two ears to which he answered that later on he came to know about the difficulty in both the ears.

10.143 He has denied the suggestion regarding the location of the parking area, where he was standing and not being the parking area which is given on contract. The place of parking which he was conveying was the laboratory side at around 25 to 30 feet distance. He has also denied that in his reply dated 08.08.2008 with the police, he has stated that he did not know whether the bomb-blast had taken place near gate No.2. A note is made with regard to the existence of such sentences in such statement. He has also denied that that in his complaint at Exh.500, he was not able to hear and the police on the other hand had written down the complaint and that he was working in a municipality,

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to support the police case, giving such deposition. No other material cross is made of this witness.

10.144 The Court has perused the evidence of the witnesses who have deposed about the blast that took place at L.G. Hospital and the damage caused as a result of it. The Court has perused the evidence of PW No.397-Dipali Vasantkumar Bhatiya at Exh.2303 who was serving as a nurse at L.G. Hospital and has deposed that, on 26.07.2008 she took her Activa Scooter for attending duty and had parked it near Gate No.2 of L.G. Hospital. While she was on duty and treating the persons who had got injured in the blasts that had occurred at Ahmedabad, a blast took place at around 7:30 p.m. near Gate No.2 in the staff parking area. Upon coming outside to check, she saw the road had sustained damage and that, a Maruti Funti car parked there had caught fire and various other vehicles, including both, four-wheeler and two-wheeler were engulfed in flames and had sustained damage. She has deposed that her Activa Scooter which was parked there had sustained damage in the blast causing a loss of approximately Rs.35,000/- and that the police had recorded her statement during the course of investigation. There appears to be no cross examination of this witness.

10.145 Similarly, the Court has perused the evidence of P.W. No.398-Sonalben Vaksibhai Pandor at Exh.2304 who was also serving as a nurse at L.G. Hospital and has deposed that she used an Activa scooter for the purpose of commuting to her place of work and on 26.07.2008, she had parked it near Gate No.2 and due to the blast that occurred near Gate No.2, damage had occurred to the road and various other two-wheeler and four-wheeler vehicles parked there including a Maruti Funti car were engulfed in flames. Her scooter was also damaged as it caught fire thereby resulting in a damage of Rs.40,000/- and she has

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deposed that the police had recorded her statement in regard to this incident. In her cross examination, she has deposed that she came out of the building upon completing her duty at around 9 p.m. and saw from outside the building, the vehicles that had caught fire. Apart from this, there is no cross examination of this witness.

10.146 The Court has thereafter perused the evidence of PW No.399 Vijaykumar Parsottambhai Chavda at Exh.2305 who was serving as a driver in the Traffic Department of Ahmedabad Municipal Corporation at the relevant time and has deposed that on 26.07.2008, he was assigned the duty of driving a Maruti Esteem car and he went to drop the Municipal Corporator Dakshaben Joshi for a meeting. Thereafter, at around 6:15 to 6:45 p.m., upon receiving information regarding a blast that had took place at Jawaharchowk, Maninagar he went along with her to the said location. Meanwhile, upon receiving information regarding another blast, they proceeded to L.G. Hospital wherein he dropped her off and thereafter proceeded to park the vehicle in the staff parking area. He has deposed that a blast took place at around 7:30 to 7:45 p.m. near Gate No.2 in the compound of L.G. Hospital wherein vehicles were parked. He has deposed that he saw a thick cloud of smoke which had formed and that attempt was made by the fire brigade personnel to extinguish the fire. Further, he observed that the vehicle he parked had got completely burnt along with other vehicles including a Maruti Funti. He has deposed that he sustained a loss of Rs.4,00,000/- due to the damage that occurred to the vehicle and that the blast had took place from the white colored Maruti Funti car and that a statement in regard to the incident was recorded by the police. Further, in the cross examination he has deposed that the vehicles had got displaced due to the water which was sprayed to douse the flames. He has denied the

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suggestion that he arrived at the location after the fire was extinguished and that no damage was caused to the hospital building apart from the parking shed. He has confirmed that apart from the vehicles, no other items had got burnt in the blast.

10.147 Thereafter, the Court has perused the evidence of PW No.400-Harish Natwarlal Shah at Exh.2306 who is engaged in the work of repairing X-ray machines and has deposed that on 26.07.2008, he went to L.G. Hospital to repair the Siemens X-ray machine and had parked his Maruti Funti vehicle in the staff parking area near Gate No.2. While he was working, at around 7:30 to 7:45 p.m., a blast occurred and he saw that, in the parking area his vehicle along with other vehicles had caught fire and due to fear, he left the hospital premises and went home. The next day upon coming back, he saw that his vehicle along with other vehicles had got completely destroyed due to the fire and that it caused him a monetary loss of Rs. 1,25,000/-. He has deposed that a statement in that regard had been recorded by the police. There appears to be no cross examination of this witness.

10.148 The Court has also perused the evidence of PW No.410 Rameshbhai Rajabhai Gondaliya at Exh.2357 who was running a hair salon named “Metro Hair Art” which is situated opposite L.G. Hospital and has deposed that on 26.07.2008, at around 7:30 to 7:45 p.m., he heard a loud explosion from the direction of the staff parking area which is situated near the closed gate of L.G. Hospital and that, upon coming out from his shop, he saw that the tin roofing in the parking area had blown in the air and got scattered thereby resulting in damage to the glass pane of his shop. He has deposed that there was panic amongst the people and that the fire brigade made efforts to extinguish the fire and that the vehicles in the parking area had sustained damage due to the fire

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caused by the explosion. He has deposed that he was unaware of the owner of the vehicles and has confirmed that several people had also got injured in the incident and that a statement in that regard has been recorded by the police. The Court has also perused the evidence of a co-worker of this witness who was working at the hair salon namely, PW No.411-Ashwinkumar Lakshmanbhai Chauhan at Exh.2358 who has supported the deposition given by PW No.410 Rameshbhai Rajabhai Gondaliya regarding the blast that took place in the parking area of L.G. Hospital. There appears to be no cross examination of this witness.

10.149 The Court has thereafter perused the evidence of PW No.712 Dipak Priyavadan Desai at Exh.3478 who has deposed that he was residing in the area near L.G. Hospital and that, on 26.07.2008 at around 7:30 to 7:45 p.m., an explosion had occurred near L.G. Hospital and the intensity of the explosion had affected his flat due to which, this witness and other residents of the flat had come downstairs. Upon looking at the area near L.G. Hospital, flames were seen and it appeared that the parking area along with the hospital building and roofing of the parking area had sustained damage in the explosion. He has deposed that the police and fire brigade arrived at the spot and that he later came to know about the persons who had sustained injuries in the blast. He has deposed that the police recorded his statement on 27.07.2008. In his cross examination, he has denied that he lodged any complaint and has confirmed that he gave a police statement which was read by him however, he does not recall whether he signed it and has affirmed that he was not given a copy of his statement. He has denied the suggestion that he was unaware of the incident and that he was giving a false deposition at the behest of the police.

10.150 The Court has thereafter perused the evidence of PW

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No.715-Jigarbhai Jayvantbhai Anjariya at Exh.3488 who has deposed that on 26.07.2008, while he was on his way home, an explosion took place in the parking area of L.G. Hospital due to which the roofing of tin sheets were blown away and damage was sustained by the walls and the vehicles parked nearby. Thereafter, the police personnel and fire brigade arrived at the location and on 27.07.2008 statement of this witness was recorded by the police. This witness has thereafter been cross examined regarding the timing and his presence in office on the said date and the time taken by him to reach home from the office. He has deposed that he does not recollect the exact time at which he was questioned by the police. He has also been cross examined regarding the distance at which his flat is from the place of occurrence and has deposed that as a result of the blast, glass panes of the building were broken however, he does not know whether a panchnama was prepared in this regard. He has also admitted that he does not recall whether statements of other flat owners were recorded and whether he informed the police about the broken glass panes of the window. He has denied the suggestion that he was not present at the time of the blast.

10.151 The Court has perused the evidence of PW No.721-Trikamlal Lakshmanbhai Koshti at Exh.3498 who has deposed that he was discharging his duty as a security guard at the main gate of L.G. Hospital on the date of the incident i.e., on 26.07.2008. He has deposed that at about 7 p.m. several ambulances and private vehicles carrying persons who had sustained injuries in the blasts were brought to the hospital. Thereafter, at around 7:45 p.m. an explosion occurred in the staff parking area which resulted in an outbreak of fire and the tin sheet roofing of the parking area was blown away. Further, as a result of the blast, the vehicles sustained damage as it got burnt and the trees caught

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fire. The explosion had occurred from the car parked in the area and the metal sheet had got blown away and scattered at various places. The gasket of the car was found in a corner of the hospital wall due to which, the wall had also sustained damage. He has deposed that the staff of the hospital had also sustained injury and that one person namely; Chaudhary Saheb sustained an injury on the left ear. Shortly thereafter, the police and fire brigade arrived at the location. A statement in this regard was recorded by the police on 05.08.2008. This witness has thereafter been cross examined wherein he has deposed that he was on duty at Gate No.1 and that as there are trees in between, Gate No.2 is not visible. He was also questioned regarding the distance at which he was from the location where the blast took place and he has admitted that he did not know about the cause of the explosion at the time of incident and that he did not leave his place of duty and go anywhere else. He has denied having any personal knowledge of the action taken by the police and has also admitted that he got to know about the injury sustained by Chaudhary Saheb on his ear from the people. He has also admitted that he never saw the gasket and that he was called to the police station five or six days after the incident and that he is illiterate and his statement was not read over to him by the police after recording it.

10.152 The Court has perused the evidence of PW No.723-Dilipbhai Ishwarbhai Parmar at Exh.3500 who has deposed that he was running a garage shop near L.G. Hospital and that on 26.07.2008, at about 7:45 to 8 p.m. a loud explosion took place near Gate No.2 of L.G. Hospital and that the vehicles parked at that area sustained damage and got burnt. Also, the wall of the hospital had collapsed and he has deposed that he went to the place of incident upon hearing the sound of the explosion wherein a large number of people had gathered. A statement in that

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regard was recorded by the police on 02.08.2008. He has thereafter been cross examined regarding the location of the garage and he has denied the suggestion that he did not know the cause of explosion. He has confirmed that it was a bomb blast and that he had no previous experience or knowledge or received any training regarding bombs. He has deposed that the police arrived at the location and that on 02.08.2008 his statement was recorded by the police at the garage. He has also denied the suggestion that he had neither seen nor heard anything regarding the incident and that he was giving a false deposition to assist the police. Further, in his cross examination he has deposed that he had never seen a car that caught fire merely due to overheating. Apart from this, there appears to be no cross examination of this witness.

10.153 The Court has thereafter perused the evidence of PW No.724 Gautam Nathubhai Patel at Exh.3501 who has deposed that he was running a tea stall named 'Patel Tea Stall' at the crossroad near L.G. Hospital. He has given a similar deposition regarding an explosion that occurred near Gate No.2 of L.G. Hospital at around 8 p.m. and that upon reaching the location, he saw that the tin sheet roofing was blown away. Also, the vehicles sustained damage as it caught fire and the wall of the building had collapsed. Thereafter, the police personnel and fire brigade arrived at the location and many persons had sustained injuries and were taken to L.G. Hospital itself for treatment. A statement in this regard was recorded by the police on 02.08.2008. Thereafter, in his cross examination he was questioned regarding the distance at which his shop was located from the place of incident and he has confirmed that the explosion took place in the compound and it was not visible from his tea stall. He has deposed that his shop remained open on the days following the incident however, no statement was recorded by the police until

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02.08.2008 and that, it was recorded at the tea stall however, he does not recall the name of the police officer who recorded the statement. He has denied the suggestion that the police officer merely recorded his name and address and then left. He has deposed that he never voluntarily went to give a statement regarding the incident and has confirmed that he got to know about the injured persons through other people.

10.154 The Court has perused the evidence of PW No.725-Kamlesh Ramkishan Koshti at Exh.3502 who has deposed that he was employed as a junior clerk at Shreyas Co-operative Society, wherein he was working at the medical shop which was located in the compound of L.G. Hospital. He has deposed that on 26.07.2008, while he was on duty, he observed injured persons in the blasts that occurred in various areas of Ahmedabad were brought to the hospital at around 6:45 to 7 p.m. for treatment due to which there was a rush at the hospital and also at the medical shop. At around 7:45 p.m. an explosion took place near Gate No.2 of L.G. Hospital which was at a distance of 80 meters from the store which caused a loud explosion and even resulted in a temporary numbness in the ears. Upon looking, he saw that there was an outbreak of fire and there was panic amongst the people. Shortly thereafter, the police and the fire brigade arrived and cordoned off the area and at night, he saw that near Gate No.2 in the parking area, parts of the vehicles which sustained damage in the blast were scattered and had also fallen in the garden of the hospital. One such gas cylinder tank of the vehicle was hurled by the explosion and fell near the hospital building. There was a moped which got burnt, a tree which caught fire and other motorcycles and vehicles which got burnt. Also, the tin shed of the parking had blown away and the compound wall had collapsed. The explosion also caused injuries to persons however; he does not know their name. A

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statement in this regard was recorded by the police on 10.08.2008. The witness thereafter in his cross examination has admitted that as he was busy with his work, he did not immediately visit the place of occurrence and that he went there two to two and a half hours later when the police arrived. He has also deposed that his shop is situated diagonally opposite Gate No.2 and that the said gate is not fully visible from the shop. He has also deposed that he regularly attended duty until 09.08.2008 and that during that period, the police did not record his statement nor did he give one. He has deposed that he has studied up to standard 10 and that he knows Gujarati and admitted that the police neither gave his statement for him to read nor read it out to him nor take his signature on it.

10.155 The Court has thereafter perused the evidence of PW No.734 Rameshbhai Bhikhabhai Gurjar at Exh.3519 who has deposed that he was employed as a cleaning worker at L.G. Hospital at the relevant time. On 26.07.2008, while he was on duty in the surgical ward of L.G. Hospital, at around 6:30 to 7 p.m., injured persons from bomb blasts in various parts of the city were brought for treatment due to which there was a rush and he was called to the emergency ward to assist. He has deposed that at around 7:45 p.m., an explosion took place in the parking area of the hospital compound upon which, the witness went outside wherein he saw that a bomb had exploded near the vehicles parked in the staff parking area, resulting in fire and thereby caused damage to the vehicles and parts of vehicle had got scattered. Thereafter, the police and fire brigade arrived at the location. A hospital ward boy namely, Naimeshbhai Chauhan who had gone out to help shift a patient, fell down while running to save the patient thereby resulting in injury to his leg. Apart from him, there were various other people who had sustained

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injuries however; he does not specifically recollect the same. His statement in this regard was recorded by the police on 31.07.2008. In the cross examination of this witness, he has deposed that for 4 to 5 days after the incident he did not voluntarily give any statement to the police regarding the incident. He has deposed that he was engaged in cleaning work at the time of the blast and that the compound is located at a distance of about 100 to 150 feet from the emergency ward and that due to the blast, the glasses of the emergency ward had broken. He has admitted that he does not know who outside was injured or what damage was caused.

10.156 The Court has perused the evidence of PW No.736-Devangbhai Bharatbhai Gaur at Exh.3522 who has deposed that he was running a shop named "Nandan Medical and Provision Store" which is situated opposite L.G. Hospital and that on 26.07.2008, at around 7:45 to 8 p.m., while he was at the shop, a blast occurred in the parking area of L.G. Hospital due to which, vehicles and the roofing of the parking area was flung to a distance. Thereafter, the police and fire brigade arrived and he observed that several vehicles parked in the area had got damaged and a statement in this regard was recorded by the police on 27.07.2008. Thereafter, in the cross examination of this witness, he has admitted that his shop is situated opposite the L.G. Hospital and that on the date of incident, he did not leave his shop to inspect the place of the occurrence. Apart from this, there appears to be no cross examination of this witness.

10.157 The Court has thereafter perused the deposition of PW No.704-Amarsinh Bhikhusinh Nimavat at Exh.3448 who is in the police department and was working as a Police Inspector, Maninagar Police Station at the relevant time. He has deposed that on 26.07.2008, at

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around 6:30 p.m., he received information regarding an explosion that took place at Jawahar Chowk upon which, he went to the spot and found that many people had gathered there. Subsequently, he received information about blasts that took place behind the AMTS Maninagar Bus Stand, at Maninagar Chaar Rasta and at L.G. Hospital. Therefore, necessary security arrangements (bandobast) were made and officers were deployed to secure the place where the explosion took place.

10.158 Thereafter, this witness recorded the complaint of PW No.4-Harshadbhai Chandubhai Halani who was injured in the blast at Maninagar Chaar Rasta and was receiving treatment at L.G. Hospital which mentioned regarding one Chiragbhai Shah who sustained injuries in the blasts as a result of which, he passed away. Thereafter, F.S.L., forensic and Bomb Disposal Squad were summoned to the places where explosions took place and panchnamas were conducted in the presence of panch witnesses. Similarly, complaint regarding the blast that took place behind AMTS Bus Stand was recorded by P.S.I. D.G. Vaghela and complaint regarding the blast that took place at Jawahar Chowk was recorded by P.S.I. B.L. Desai for which this witness conducted panchnama upon being handed over further investigation. Thereafter, one Krushnakant Chaudhary filed a complaint regarding the blast that took place at Gate No.2 of L.G. Hospital which was registered as C.R. No.II-206/2008 for which panchnama was made. Thereafter, upon instructions of the Commissioner of Police, the investigation of all four offences was handed over to the Crime Branch.

10.159 Exh.497 is the complaint given by PW No.4-Harshadbhai Chandubhai Halani which was recorded by this witness and he has confirmed regarding the contents of the complaint being recorded as per the narration of the complainant and has also identified his signature on

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the complaint. Exh.584 is the report forwarded to the Officer in charge of the police station for registration of F.I.R. No.203/08 based on complaint of Harshadbhai Halani under Section 157 of Code of Criminal Procedure and this witness has identified his signature on it and has also identified the endorsement made by the P.S.O.,

10.160 Exh.1752 is the panchnama prepared in relation to F.I.R. No.203/08 made in the presence of two panchas under which muddamal was seized and this witness has identified his signature on it along with the signatures of the two panchas. Exhs. 1753 to 1764 are panchnama slips affixed during seizure of muddamal which have been confirmed by this witness along with the signatures of the two panchas and himself. Further, this witness has also confirmed the requisition letter sent to the in charge of bomb squad at Exh.3405 which is in connection with F.I.R. nos.203/08, 204/08, 205/08 and 206/08 and this witness has identified his signature and the opinion of the BDS officer recorded on the document. Exh.2025 is the panchnama drawn on 27.07.2008 in respect of the muddamal seized near Om Paan House which is besides Mahalaxmi Building and the panchnama along with the signature of the two panchas and himself has been identified by this witness. He has also identified the panchnama slip which is exhibited as Exh.2028 and is bearing signatures of panch witnesses and himself relating to the muddamal seized during the aforesaid panchnama which is exhibited as Exh.2025. Thereafter, this witness has identified Mark No.97/476 which is the report issued by the F.S.L. Officer and Mark No.97/479 is the panchnama relating to clothing and samples of deceased Chirag Chandravadan Shah which was handed over to ASI Mohanbhai Mansukhbhai after the post-mortem was conducted and a panchnama was made before two panch witnesses along with signatures of the

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panch witnesses and himself which has been identified by this witness.

10.161 A total of six samples were seized for the purpose of analysis and the panchnama was drawn as per the narration of panch witnesses and is exhibited as Exh.3449. Mark 97/480 is the note for dispatching to FSL the mudammal which was seized relating to F.I.R. No.203/08 and bears the signature and seal of this witness as the dispatching officer which has been identified by this witness along with the certificate issued by the Assistant Commissioner of Police of Ahmedabad City and was exhibited as Exh.3450. Thereafter, four panchnama slips related to the samples of deceased Chirag Chandravadan Shah handed over by Mohanbhai Mansukhbhai at Mark 'S' were identified by this witness and were collectively exhibited as Exh.3451. Further, this witness has identified the items listed in the muddamal list which is exhibited vide Exh.3197 in Sessions Case No.61/2009.

10.162 This witness has also confirmed the complaint given by Mayurbhai Dhirajlal Solanki to PSI of Maninagar Police Station which is exhibited vide Exh.530 and based on which FIR No.204/08 was registered and another complaint at Exh.585 which is the complaint recorded by P.S.I. B.L. Desai which was transferred after it was registered and bore the endorsement of P.S.O. directing such transfer. Exh.1731 is the panchnama prepared by this witness in connection with F.I.R. No.204/08 and the signatures of the panch witnesses and himself have been identified by this witness. Exhs.1732 to 1738 are panchnama slips in connection with muddamal seized as per panchnama which is exhibited at Exh.1731 and the signatures on such slips have been identified by this witness. Exh.2022 is the panchnama dated 27.07.2008 relating to seizure of muddamal from the area in front of Shivani Complex which is in Jawahar Chowk which bore the signatures of the

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panch witnesses and himself and has been identified by this witness. Exh.2023/A is the panch slip relating to the muddamal seized under the panchnama which is exhibited vide Exh.2022. Mark No.97/548 is the copy of the forwarding letter sent to F.S.L. related to muddamal seized in FIR No.204/08 which has been confirmed by this witness and came to be exhibited vide Exh.3452. Thereafter, he has also identified items listed under the muddamal list at Exh.3453 in Sessions Case No.321/09. Thereafter, this witness has confirmed the complaint which is exhibited vide Exh.534 lodged by Jagdishbhai Bheraji Mena before the P.S.I. of Maninagar Police Station and based on which F.I.R. No.205/08 came to be registered. He has also confirmed the report which is exhibited as Exh.586 made by P.S.I. D.G. Vaghela based on which the F.I.R. came to be registered and investigation was handed over. Exh.1741 is the panchnama made regarding F.I.R. No.205/08 which bore the signatures of the panch witnesses and himself and has been identified by him. Further, Exhs.1742 to 1748 are the panch slip relating to the muddamal seized under the panchnama which is exhibited vide Exh.1741.

10.163 This witness has deposed in his cross examination that upon receiving the information regarding the blast that occurred at Jawahar Chowk at 6:40 p.m., he reached the place of incident within 5 to 10 minutes and secured the area and thereafter went to the other three places where explosions had occurred which were located within 10 minute distance. He has deposed that no eye witnesses were found at any of the places where the explosions occurred and that he has not recorded statements of the persons at any of the four places. He has denied suggestions of him not going to the place of incident and undertaking necessary procedure and that, upon instructions of the senior police officers he has lodged a false complaint. Thereafter, he has

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admitted that he has not obtained any medical certificate before recording the complaint of the injured witness PW No.4-Harshadbhai Chandubhai Halani and that he does not recollect the presence of any other person while he was recording the said complaint. Further, he has admitted that he made no attempt to record complaint of other injured witnesses at the hospital and that he does not know regarding the location where other complaints were recorded. He has also admitted that he did not collect any fingerprint report from the place of explosion and that no live bomb was recovered in the course of his investigation. Further, he confirmed that he summoned for F.S.L. and Bomb Disposal team and that he made panchnamas at the place of explosion however, he did not possess any documentary proof of his initial visit. Thereafter, he has deposed that on the day following the date of incident, the investigation was handed over to Crime Branch however, he did not recall the time of such transfer.

10.164 Upon perusing the evidence led by this witness, the Court finds it to be consistent and credible as he has undertaken prompt action in the course of his duty by going to the place of incident, securing the place and initiating necessary procedure such as, summoning F.S.L. and Bomb Disposal Squad and drawing panchnama. Further, this witness has confirmed the documents and identified the signature on such documents and the evidence of this witness cannot be discarded on the basis of certain procedural irregularities particularly when his evidence has been supported by the evidence of the complainant and they do not materially affect the substance of his evidence regarding the occurrence of blasts and the aftermath of such blasts.

Sarkhej Police Station-C.R. No.I-181/08

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10.165 Learned Additional Advocate General thereafter, took up the case of bomb-blast in AMTS bus reported with Sarkhej Police Station, leaving two persons dead and nine injured. He referred to Exh.1901 which is the panchnama of scene of offense proved by examining PW No.348-Intekhab Alam Fazalulrehman Shaikh vide Exh.1900. Referring to the panchnama, he submitted that the bus affected by the blast was lying on the road, the sign of explosion was visible. From the side, where it was seen that the front portion of the bus behind the driver's seat on the side and on the top was blown away. He also focused on the presence of ball-bearing lying around and embedded into the other parts and submitted that the directions of travel of the ball bearing was from inside of the bust towards outside. He submitted that the blast took place on the floor of the bus on seat No.2 behind the driver and exactly above the CNG tank. It is submitted that as the blast had taken in the middle of the road and on account of the time when the blast took place i.e. evening, the vehicle was removed to safer and isolated place for completing the panchnama which was referred to as Exh.1902.

10.166 The Court has perused the panchnama at Exh.1901, which would indicate that originally the blast had taken place behind seat No.2 just above the CNG tanks which did not fortunately explode. The narration in the panchnama would indicate that around the right hand side of the bus, metal part was blown and the top ceiling of the bus also had blown and in the area around the explosion, ball-bearings were lying in scattered manner inside and outside the bus. The panchnama was drawn in two parts on account of the location of the place and fading in day light. The panchnama of the inside of the bus was carried out after removing the bus to an uncrowded area on the next day vide Exh.1902 prove by some witness, the second panchnama was exhibited. Exh.5615

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is the inspection report carried out by the FSL officer, who was along with FSL investigation Van. Exh.5615 is proved by PW No.832-Kishor Arvindbhai Sharma (Exh.5612). The relevant part in the inspection report is item No.6, which is a cloth bag lying near seat No.2 which appears to be the cloth containing the bomb and the description made in the panchnama is with regard to the cloth bag bearing small holes which are exact holes of the ball-bearing upon the explosion. The combined reading of Exhs.1901, 1902 and Exh.5615 would indicate that the impact of the explosion is from inside to outside as the metal body of the bus shell is bending towards the outside.

10.167 The Court has perused Exh.5853 which is the observation and final opinion of the FSL on the articles seized under the panchnama from the scene of offense. This is an opinion given by the Chemical Department of the FSL. The article shows the presence and traces of the explosive material of Ammonium Nitrite, and mixure of Petroleum Hydrocarbon oil known as Ammonium Nitrite based and Nitrite Fuel Oil (NFO). The other articles which were seized like ball-bearing etc. were sent to the Physics Department of the FSL. He has referred to Exh.5808 which is the final opinion of the Physics Department of the FSL on various metallic articles which were recovered from the scene of offense and collected small metal articles like rivet, ball-bearing (Chhara), Visor and metal sheets and the opinion of the FSL is usage of these small articles as project-lines in the bomb-blast.

10.168 Learned Special Public Prosecutor has thereafter, drawn attention of this Court to the evidence of a witness, who is an informant of the offense registered at Sarkhej Police Station. He has referred to PW No.17-Mansangji Becharji Thakor at Exh.537. This witness is the driver of AMTS Bus, who had joined the duty in the afternoon hours and while

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was plying the bus, the conductor informed him about an abundant large purse on the back side of the driver seat. There was a blast between 3rd and 4th seat and immediately this witness halted bus. He has deposed that the injuries were sustained and extensive damage to the AMTS bus had taken place. He has submitted that the line of cross-examination on behalf of the defence was that the bus was passing through an area thicking populated by Muslims and therefore, from the cross-examination, the defence tried to carve out a case that the blast had also taken place in an area which is having Muslim population to defy the theory of attacking Hindu areas. However, it is the submission of learned Special Public Prosecutor that co-incidentally, the bomb exploded when the bus was travelling from Muslim area otherwise the bomb was planted when the bus had begun its journey from an area, where it was not a Muslim populated area.

10.169 The Court has perused the deposition of PW No.17-Mansangji Becharji Thakor at Exh.537, who is the informant of the offense of C.R.No.I-181 of 2008, which is exhibited 538 after identification of the signature of this witness in the margin and of the complaint and ascertaining the content. In his evidence-in-chief, he has deposed that on 26.07.2008, he was assigned duty. At approximately 1:30 PM, on route No.150 which was to begin from Sarangpur to Chinubhai Nagar, Odhav and accordingly, after reaching Chinubhai Nagar, in his second trip, he started from Sarkhej and reached Chinubhai Nagar and once again from Chinubhai Nagar, he started at 17:40 hours towards Sarkhej and bus was carrying around 30 to 40 passengers and while returning towards Sarkhej when he was crossing Juhapura, the conductor had informed him that in the place between seat Nos.3 and 4 behind him, one huge black bag in abandoned condition is lying and

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somebody appears to have forgotten it and therefore, this witness informed that such purse be given at the Sarkhej control point. At around 6:45, while he was taking the bus towards Sarkhej, there was a huge blast from the place where the purse was lying, he halted the bus and the passengers started to escape and certain passengers were injured. Some passengers were bleeding. He has therefore, went to Sarkhej Police Station and gave the information about the incident. The only cross-examination conducted was about the route of the bus and the population of which community on route. The witness having given the account of the incident, immediately, after the blast having taken place, his account is required to be believed in toto insofar as planting of bomb in the bus, blast, injuries and the route within which the bus was plying. Even from the brief cross-examination, there is no doubt about the trustfulness of this witness.

Ramol Police Station-C.R. No.I-321/08

10.170 Learned Additional Advocate General thereafter took this Court to the incident which is registered at Ramol Police Station vide C.R. No.I-321/08, where four deaths were reported and other six citizens were injured. He took this Court through Exh.1828 being panchnama of scene of offence, which was proved by examining PW No.343-Krushnakumar Ravishankar Shukla, vide Exh.1827. This panchnama describes use of cycle for the purpose of planting bombs. It records remains of the bomb after explosion and also debris collected for the purpose of investigation.

10.171 The Court has perused Exh.5791, which is the opinion and observations of the Physics Laboratory of FSL of the articles which were seized at the time of executing panchnama of scene of offence vide

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Exh.1828 in the second incident of Ramol Police Station. This document was proved by examining PW No.841-Kundanbhai Jivrajbhai Golaniya (Exh.5783). During the deposition of this witness, other reports of the Physics Laboratory of FSL have also been exhibited, which is as under:-

"1. Sample-A/1 is found to be a part of electrical wiring typically used in vehicles such as a car or a bike.

2. Sample-B/1 appears to be a connected part of Sample-A/1.

3. The pellets found in Sample-E1, Sample-F1, Sample-E, Sample-F, and Sample-G primarily contain the metal Iron (Fe), and trace amounts of Calcium (Ca) and Manganese (Mn).

4. The heat marks observed on the bicycle in Sample-J1, as well as the damage caused to the said bicycle, could have occurred due to a bomb explosion.

5. The serial number 2 FB 37228 was legible on the frame of the bicycle in Sample-J1, which is a sealed sample."

10.172 Learned Additional Advocate General thereafter referred to Exh.3359, which is the visit report of the FSL officer visiting on the site of incident, which is referred as "Inve- Van Report" and is proved by examining PW No.830-Amrutlal Vashrambhai Hinglajiya, Exh.5566.

10.173 The Court has perused Exh.3359, which consists of the document, first being letter addressed by Ramol Police Station, Ahmedabad to the FSL officer, Gandhinagar for planning to visit bomb site and providing with necessary guidance for collecting evidence for FSL purpose. It also consists of the Inve Van Report, which only describes device in exploded condition and the samples collected as such. Perusal of this document indicates description of cycle in damaged condition and in the debris switches (relay) which is part of the timer

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and wires of different colours which has a pin on the other hand, were located. Some bloodstains were also found in and around the site of explosion and thereafter, the document enumerates nine articles which were seized for the purpose of being sent to FSL.

10.174 Learned Additional Advocate General referred to Exh.5759, which is the final report of the Chemical Department of FSL. This opinion pertains to the items collected under panchnama being Exh.1828.

10.175 Reference was made to Exh.5791, which is report of the Physics Department of FSL and contains opinion of the Physics Department of the articles seized under panchnama Exh.1828. It is submitted that the opinion expressed by the Physics Department is quite identical with regard to opinion expressed by the Physics Department of the articles seized at other scene of offence of serial bomb blasts.

10.176 Shri Mr. Amit Patel; learned Special Public Prosecutor has thereafter referred to the deposition of PW No.146-Sanjay Ramjibhai Paswan at Exh.1018. Upon perusing the deposition of this witess, it appears that this witness was had doing business of hand craft of fruit at Hatkeshwar Circle. Along with him one Murarilal Agrawal was also having hand craft and his brother in law; Omprakash. On 26-07-2008 at around 6.30 in the evening, just near his Fruit Lorry, the blast had taken place, because of which he had lost his consciousness and regain his consciousness when he was in the Civil Hospital. He had sustained injuries on his head, neck, chest and also on his mouth and teeth. He was admitted in Civil Hospital and had remained under treatment for almost two months.

10.177 In his support, the prosecution has examined treating Doctor; PW No.288-Dr. Yasminben Mohammadshafi Hussaini at Exh.1551. In whose deposition, it is coming out that metal particles were removed

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from his head and had suffered fracture on skull. Exh.1552 is Medical Certificate of treatment.

10.178 For the same incident, learned Special Public Prosecutor has thereafter referred to evidence of PW No.144- Hemalataben Manilal Purabiya at Exh.1016. She had visited at Hatkeshwar Circle at around 6.00 in the evening for purchase of medicine along with her husband and mother in law and were waiting at Hatkeshwar Circle for Autorickshaw. When the bomb blast took place, because of which, all three of them sustained injuries and her mother in law expired on the spot, while she and her husband sustained injuries on account of ball-baring. They were removed to hospital in 108 Ambulance to Civil Hospital, where they had stated about the injuries caused due to bomb blast to treating Doctor. She has deposed that other injured persons in the bomb blast, had also succumbed to injuries. No cross examination was conducted of this witness.

10.179 He has referred to treating Doctor; PW No.322-Dr. Bhairavi Balvant Pandey, examined at Exh.1666, who exhibited Medical Certificate at Exh.1668.

10.180 Over and above, two witnesses referred to by learned Special Public Prosecutor in connection with bomb blast reported at Ramol Police Station, the prosecution has also examined PW No.142-Sheikh Mohmmaddyunus Abdulmunaf at Exh.1010, who has sustained injuries and the Medical Certificate of injuries was exhibited at Exh.7182. PW No.145- Mekwan Francis Kantibhai at Exh.1017, whose Medical Certificate was exhibited at Exh.7180. PW No.148-Lilaben Sonaji Parmar at Exh.1020, whose Medical Certificate was exhibited at Exh.7181. PW No.149-Panchal Renukaben Vinodbhai at Exh.1021. This witness was examined with regard to injuries sustained by Rishi

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Vinodbhai Panchal, whose Medical Certificate was exhibited at Exh.7179.

10.181 Medical Certificates in connection with PW No.145-Mekwan Francis Kantibhai, PW No.148-Lilaben Sonaji Parmar and PW 149-Panchal Renukaben Vinodbhai were admitted by the Defense Counsel, in connection with which Pursis vide Exh.7118 was passed on the Record. Exh.7118 is a Pursis, which is declaration by the Advocates appearing on behalf of the accused stating that they have no objection for exhibiting documents out of list of documents submitted vide Exh.97, which was placed on record on 18-07-2018. Accordingly, Medical Certificates were given exhibit numbers.

10.182 The Court may refer to PW No.149-Panchal Renukaben Vinodbhai at Exh.1021, who has deposed that on 26-07-2008 along with her one and half year old child; Rishi, she had visited vegetable market at Hatkeshwar Circle, where there was bomb blast, because of which the pellets from the bomb blast hit her son. Because of injuries, he was taken to L. G. Hospital for treatment and after some treatment, he was discharged. This witness was not cross examined and Medical Certificate issued vide Exh.7179 of the injuries sustained by her son, was admitted and thereby exhibited as such.

10.183 The combined reading of aforesaid evidences clearly establishes the factum of blast from the bomb, which was placed on cycle near Hatkeshwar Circle and injuries sustained by injured witness and others, where that injury certificates have been admitted by Defense Counsel.

10.184 Learned Special Public Prosecutor has thereafter taken this Court to evidence of PW No.687-Dalabhai Arjanbhai Desai, Exh.3353 in connection with offence registered with Ramol Police Station being C.R.

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No.I-321/2008. This witness was performing duty of Senior Police Inspector at Ramol Police Station on 26-07-2008 and information was received with regard to blast(Reference: Ramol Police Station being C.R. No.I-321/2008).

10.185 Learned Special Public Prosecutor has taken this Court through FIR also and the contents thereof, giving out the description of the cycle, which was used for the planting of bomb and the situation prevailing post the blast, four persons had died and therefore, Section 302 was invoked for registration of FIR. This witness has identified his signature in the margin and at the bottom of FIR and therefore, same was exhibited vide Exh.3356. Through this witness, the Report of PSO was also exhibited.

10.186 Learned Special Public Prosecutor has submitted that the reports regarding activities referred to in FIR given by the respective Team like the Bomb Disposal Squad was exhibited at Exh.3358 and he has also referred to invoking of provisions under the Unlawful Activities (Prevention) Act, 1967 (UAPA). Exh.3356 is FIR and Exh.3357 is the Report exhibited through this witness.

10.187 The Court has perused the deposition of PW No.687 at Exh.3353-Dalabhai Arjanbhai Desai, who was on duty as Senior Police Inspector at Ramol Police Station on 26-07-2008 and upon information of blast near Hatkeshwar Circle, he has proceeded to spot and taken the complaint in detail of one Dalsinh Dhanraj Paswan. This offence was for Section 307, 326, 324 and 120(B) of IPC, Section 3 and 4 of the Explosive Substances Act, 1908 and Section 3 and 10 of the Unlawful Activities (Prevention) Act, 1967 (UAPA).

10.188 After recording of the complaint, this witness has given the Report towards PSO for registration of FIR. Thereafter, investigation

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was taken over by this witness. Regarding action taken, he had summoned FSL Officer and Bomb Defused Team and had also executed panchnama in presence of two panchwitness; Tusharbhai Sureshbhai and Krushnakant. This witness has described articles, which were found at place of offence and given detail description of such articles, which includes Detonator, Timer Clock, wires of different colours, pin and other articles of plastic and copper.

10.189 He has also given description as to how the devise was fitted with such articles. Witness also described bicycle and the damage caused to it with the assistance of his Subordinate. Inquest panchnama of deceased persons were undertaken and on account of four deaths reported, the Report was forwarded for adding Section-302 of IPC, which was forwarded to Metropolitan Magistrate Court. Written complaint of Dalsinh Dhanraj Paswan was identified as Exh.510 and Exh.552 was identified at the Report given by him for registration of FIR under his signature. Exh.1828 was identified as panchnama of scene of offence. He has identified signatures of two panchnama and his own signature as counter signature on the panchnama at Exh.1828.

10.190 Corresponding panch slips on the Muddamal articles were also identified by this witness vide Exhs.1829 to 1836. This witness is shown original record of Sessions Case No.95 of 2009, wherein the Report made to the Metropolitan Magistrate Court No.7 for adding Section 302. The office copy of the very document is marked as 3352/1, which is produced by this witness and exhibited at Exh.3354. This witness has also identified Muddamal Article No.10, which is cycle, which was seized during the panchnama.

10.191 This witness has also deposed that on 27-07-2008, while he was patrolling the area in view of serial blast on 26-07-2008 at around

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8.42 hours, he received message from the Police Control about bomb lying in garbage bin near Bage Firdosh Police Line. Upon his reaching there, he showed suspected bomb with timer wrapped in a paper and therefore, he cordoned area and summoned FSL Officers as well as Bomb Disposal Staff. Upon arrival of Bomb Disposal Staff, suspected article was checked and was found to be live bomb, which was technically and carefully defused, detonator and timers were separated and white colour explosive substance was found. Inside the bomb, there were copper metal and ball-bearings. Timer clock was showing time set as 12.00. Panchnama in this regard was prepared in the presence of two panchwitnesses namely Bhavesh Ramesh and Punamchand Ramlal. He has identified signature and the panchnama was made part of the investigation. The report was also sent for registration of FIR. Report of Bomb Disposal Team was kept with investigation case papers and statements of 17 witnesses were recorded and thereafter, under order of Police Commissioner, investigation was handed over to P.I. Shri Jankat. This witness has exhibited Mark-3352/2 as Exh.3355, which is Report made to his office for summoning FSL Report at the scene of offence. The complaint given by this witness on behalf of the State was Mark-97/1014, which after proper identification of the complaint and his signature, same was exhibited as Exh.3356 and the Report thus made (Mark-97/1013) is exhibited as Exh.3357. Exh.97/963 is Report of summoning FSL and on the back side of this document is Report of FSL Inway Van, which is given Exh.3359. This witness was cross examined with regard to his career from beginning. On 26-07-2008, information regarding bomb was received by him through informant and Police Station. He was thereafter questioned with regard to record maintained in the Police Station like Station Diary, Telephone Vardhi Book, FIR

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registered etc. With regard to Vardhi given by PSO, this witness has answered that he did not recollect whether such Vardhi was given in writing to him through electronic medium, as he was out of Police Station at the time of incident. He has however denied that he has no evidence about Vardhi received from PSO in this regard. He was also cross examined about exact place, where he received Vardhi and that he had no recollection of what further inquiry did he make from PSO with regard to information given to him.

10.192 He was also questioned with regard to time, when he received information and by what time, he would be able to reach the place of incident. When he reached, many people had gathered around and there, out of those people present, many had heard bomb blast and many had witnessed the same. However, he had not taken the complaint of any individual, who had witnessed the bomb blast. He was also cross examined with regard to the complaint given by him and provision of law under which such complaint was sent by way of Report to PSO and that in the complaint, reference is made to one unknown person as accused.

10.193 This witness has thereafter questioned with regard to invoking of provision of the Unlawful Activities (Prevention) Act, 1967 (UAPA) and the power of investigation of case under the said Act. He has deposed that during his investigation, he had investigated to find out persons, who were involved in the offence, whether belonging to particular community, but could not reveal where he had received information and from whose statement, he could derive information. He has answered that though at the time of registration of two FIRs, he had no information regarding which Community or which Organization was involved, he has invoked the Unlawful Activities (Prevention) Act, 1967

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(UAPA). He has denied suggestion that FIR was registered after panchnama and that offence of Unlawful Activities (Prevention) Act, 1967 (UAPA) was added only after instruction received from the Crime Branch, Ahmedabad.

10.194 The Court has also perused Exh.552, which is in connection with offence registered with Ramol Police Station being C.R. No.I-321/2008 for corresponding Station Diary No.24/2008, for which Report was given by Police Inspector of Ramol Police Station regarding offence on 26-07-2008 at 18.40 hours and recorded at 21.15 hours, wherein amongst other Sections, Section-307, etc. of IPC and Explosive Substances Act, 1908, sections of Unlawful Activities (Prevention) Act, 1967 (UAPA) were also mentioned. In the report, Exh.552, Report was forwarded to Crime Branch, Ahmedabad.

10.195 The Court has perused the evidence of PW No.754-Ajay Jekhanbhai Chaurasia at Exh.3543 who has deposed about the blast that took place at Hatkeshwar Circle and the damage caused as a result of it. This witness was carrying on a store in the name of "Vikas Store" at Hatkeshwar Circle and has deposed that, on 26.07.2008 at about 6:30 p.m., an explosion took place near Hatkeshwar Circle where the vegetable market is held due to which, two to three persons were lying there in a bleeding condition and people were running helter and skelter. The explosion took place on a bicycle and due to the blast, people had sustained injuries however, he is unaware of the number of such injured persons. The statement of this witness in relation to the incident has been recorded by the police. In the cross examination of this witness, he has denied the suggestion that he had not seen the incident with his own eyes and that he had gone to the place of incident. He has deposed that his shop is situated in a complex and that he came out upon hearing the

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explosion and thereafter, the police arrived. He has also denied the suggestion that the police dispersed the crowd and thereafter all the shopkeepers closed their shops and left. He has affirmed that his statement has been recorded by the police on the date of incident.

Ramol Police Station-C.R. No.322/08

10.196 Learned Additional Advocate General then took this Court through the incident reported at Ramol, where an unexploded bomb was found in the dustbin of Municipal Corporation. He referred to PW No.694-Rakeshsinh Durbinsinh Yadav, who was examined vide Exh.3404, who was member of the Bomb Disposal Squad and had participated in the activity of defusing unexploded bomb. In his deposition, he has referred to the activity which he had undertaken of defusing the active bomb. He also referred to the cross-examination, where answers given by this witness indicated the nature of explosion to be of huge density category. This witness has also opined that as the bomb had remained unexploded, and upon investigation, the contents of the bomb were identified. He thereafter referred to Exh.3406, which is observation and opinion of PW No.694-Rakeshsinh Durbinsinh Yadav. This is a document with regard to disposal and destruction of detonators, two in number which were seized from the scene of offence at Ramol.

10.197 Learned Additional Advocate General referred to Exh.5920, which is final report of the Chemical Department of FSL, which was exhibited through PW No.849-Gauridutt Dayanidhi Sharma at Exh.5908. The observations and conclusions in this report showed similarities in the chemical substance used in other serial bomb explosions.

10.198 Learned Additional Advocate General took this Court to Exh.5806, which is report of the Physics Department of FSL. In this

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documents, Physical Department has given its observations and opinion regarding physics aspect of making and contents of unexploded bomb. One of the relevant opinions given was regarding clock which was in operative condition and it was opined that such clock was capable of being utilized as timer in the entire device (bomb).

10.199 Learned Additional Advocate General continued reading of relevant documents in the Ramol incident of unexploded bomb and referred to Exh.1839, which is panchnama of scene of offence, which also referred to seizure of the articles from the scene of offence, which was identified as bomb. This document gave description of the device and its constituent articles.

10.200 In the opinion of the Court, Exh.1839 is an important document, which is panchnama which was exhibited through PW No.344-Bhavesh Rameshmumar Mali (Exh.1838). This panchnama is executed at the scene where location of unexploded bomb was reported. The panchnama records in short the activity undertaken by the Bomb Disposal Squad and thereafter in great detail records particulars which formed the device which was identified as a timer bomb.

(1) One time bomb with a semicircular wooden frame, on which strips of tin and red and blue coloured tape were affixed. A hole was made on one side of the frame through which a wire was drawn out. Upon measurement, the length of the wooden frame was found to be approximately 30 cm and the width approximately 15 cm. On the inner side of the tin strips, iron pellets were fitted using a white greasy substance. The total weight of the same is approximately 1.250 kilograms.

(2) In one plastic bag, a white greasy substance was found, which, according to the bomb squad personnel, is an explosive substance. Its

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weight is approximately 650 grams.

(3) In another plastic bag, iron pellets were found, weighing approximately 290 grams.

(4) Two electric detonators.

(5) One red-coloured alarm clock of Prince Company, on which the number 4 is written in blue colour. An additional 9-volt cell is attached on the side. The alarm was set for 12 o'clock. The connection of the alarm clock was made with the electric detonators.

(6) One copy of Gujarat Samachar newspaper, dated 5th June 2008, Thursday, consisting of only pages number 1–2 and 15–16.

(7) One copy of Sandesh newspaper, dated 13th April 2008, Sunday, consisting of only pages number 5, 6, 7, 8, 9, 10, 11, and 12.

10.201 The Court has perused Exh.3357 pertaining to offence registered with Ramol Police Station being C.R. No.I-322/2008, for which Report was made by this witness to Police Station In-charge; Amaldar, in which reference was made to Police Station Diary Entry and Report under Section 157 of Cr.P.C. and forwarded investigation to City Crime Branch, Ahmedabad, wherein amongst offences under IPC, Explosive Substances Act, 1908, sections of Unlawful Activities (Prevention) Act, 1967 (UAPA) were also stated.

10.202 The Court has also perused Exh.3356, which is compliant dated 27-07-2008 of Senior Police Inspector, Ramol Police Station being C.R. No.I-322/2008, where also amongst other provisions, offence under Unlawful Activities (Prevention) Act, 1967 (UAPA) have also been mentioned.

10.203 This in the opinion of the Court is sufficient to hold that in both cases, offence registered with Ramol Police Station being C.R. No.I-321/2008 and C.R. No.I-322/2008 from very beginning, relevant

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sections of IPC, Explosive Substances Act, 1908 and sections of Unlawful Activities (Prevention) Act, 1967 (UAPA) were already mentioned. Therefore, it has to be accepted that invoking of Unlawful Activities (Prevention) Act, 1967 (UAPA) was not after thought, but from beginning on the basis of material available, relevant sections were mentioned.

10.204 The Court has thereafter perused the evidence of the witnesses who have deposed regarding the bomb which was found inside a municipality dustbin near Hatkeshwar Bage Firdosh Police Line Sector-2.

10.205 The Court has perused the evidence of PW No.1001-Kiritbhai Aaljibhai Chauhan at Exh.6974, who was working as an operator in a company and has deposed that on 27.07.2008, as there was no stock in the factory, it was closed and therefore, he was at home. At around 8:30 a.m. he left home on his motorcycle to fill petrol and while passing by Bage Firdosh Police Line Sector-2, he saw that few people had gathered near a municipality dustbin due to which he stopped there and he saw that there was a bomb inside the dustbin. At that time, a person named Ladubhai who was working as a sanitation contractor was present and as he had to make a phone call to the police helpline number regarding the bomb, this witness handed over his phone to him. Ladubhai informed the police and shortly thereafter, the police arrived and he left the place. Also, the statement of this witness in relation to this incident has been recorded by the police. In the cross examination of this witness, he has deposed that there were around 100 people who were standing around the dustbin and that he is unaware as to for how long they had been standing there or for what purpose. While he was passing by, he was at distance of 70 to 80 feet and he heard the

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discussions amongst the people of the crowd regarding a dangerous substance which was inside the dustbin due to which none of the people were going near the dustbin. The person named Ladubhai was in the crowd and this witness has affirmed that he gave his phone to him to make a call to the police and that Ladubhai had given his name and address to the police as an informant. He has also affirmed that he has not gone near the dustbin or put his face inside it to see and that the police arrived while he was standing in the crowd and thereafter, he had to leave within two to five minutes as he had other work.

10.206 The Court has thereafter perused the evidence of the informant, PW No.1003-Ladubhai Tulsibhai Parmar at Exh.6976 who was working under a contract in Bhaipura ward for collection of household waste. He has deposed that on 27.07.2008, while he was standing near the corner of his society, one person named Amitbai Jethwa who was working with him under a contract came and told him regarding a bomb like thing lying in the dustbin at Bage Firdosh Police Line due to which he too went there and he saw something resembling a long rectangular bomb of red colour. He has deposed that a crowd had gathered as other people came to know about it. He informed the police from the phone of one Kiritbhai regarding the said bomb and shortly thereafter, the police arrived and carried out the necessary proceedings and the statement of this witness has been recorded by the police two days after the incident. In the cross examination of this witness, he has affirmed that the garbage lying in the dustbin was that which was collected from the nearby houses and from the Police Line. He has deposed that his phone was lying at home and has affirmed that he had not personally seen a bomb prior to this incident although he had seen on television. He has deposed that he is unaware as to from when the

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bomb like object was lying there and has affirmed that he came to know that the said object was a bomb upon the information given by Amitbhai Jethwa.

Naroda Police Station: C.R. No.I-400/08

10.207 Learned Additional Advocate General has thereafter referred to the Naroda incident, wherein the explosion took place on a cycle near Kuldevi Tea Stall resulting in death of three persons and injury to 21 persons. In this regard, he referred to Exh.2056, being the panchnama of scene of offence, as well as the FSL reports placed on record.

10.208 The Court finds that Exh.2056 is the panchnama of scene of offence which took place on 27.07.2008 at Thakkarnagar Cross Roads which is under the jurisdiction of Naroda Police Station which came to be proved by examining PW No.356-Dineshbhai Chandulal Thakkar, vide Exh.2055. By this document, the prosecution has sought to prove the scene of offence, the planting of the bomb on the bicycle and the damage caused as a result of it. It appears that deliberately a young person was made to park the bicycle with the bag on its carrier (as seen by the complainant) and thereafter the said explosion has occurred. It is recorded that the rim, tyre, tube, of the front portion of the cycle sustained damage and that a black Activa scooter and a Hero Honda Splendor Plus motorcycle were lying damaged near the bicycle. Also, seven other bicycles were found lying scattered at the scene of offence. Further, it also records the arrival of an F.S.L. Officer who instructed the seizure of articles at the scene of offence.

10.209 The Court has also perused Exh.3460, which is the yadi for the FSL visit and it shows that immediately after the incident, FSL assistance was sought for inspection of the scene of offence. The FSL

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report records presence of a damaged bicycle, plastic bag fragments, wooden pieces with red tape, metal fragments, wire resembling part of detonator and blood stains at the spot. Samples of these articles were collected and directed to be forwarded for further examination.

10.210 The Court has considered Exh.5770, which is the FSL report of the Directorate of Forensic Science prepared by PW No.840-J.F. Mansuri, examined vide Exh.5700. By this document, the prosecution has sought to prove the chemical composition of the explosive substance and the nature of the device used. The report indicates presence of ammonium nitrate based explosive (ANFO), along with components of detonator and metallic pellets used as shrapnel, and opines that the device was an I.E.D. of time-delay type. It appears that the chemical composition is consistent with that used in other incidents and also explains the structure of the bomb device.

10.211 The Court can co-relate this document with Exh.5750, being the FSL opinion which also indicates presence of chemical traces used for preparing the bomb on the bicycle. Also, the report at Exh.5787 by the Physics Department of Directorate of Forensic Science, prepared by PW No.841-K.J. Golaniya examined vide Exh.5783 pertains to examination of the damaged bicycle and records presence of dent and heat marks on various parts thereof and opines that such damage could have been caused due to a bomb explosion.

10.212 Therefore, the conjoint reading of the aforesaid documents establishes the scene of offence, the use of a bicycle for planting the explosive device and the damage caused as a result of it. Further, even the scientific evidence proves presence of explosive substance and impact marks consistent with a bomb explosion.

10.213 Learned Special Public Prosecutor has thereafter, referred to

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the bomb-blast explosion incident reported at Naroda Police Station and in this connection has referred to PW No.275-Dr. Suresh Kantilal Jhaveri vid Exh.1411, who is a doctor, who had examined the injured witness and the certificate of injury was also proved by this witness however, the injured person has not been examined by the prosecution. However, for the very incident of Naroda, reference is made to PW No.214-Rameshbhai Khemabhai Solanki, who is examined at Exh.1145. This witness is a pedal Rickshaw driver, who sustained injuries and has also made reference to such injuries in his deposition. PW No.210-Vrajlal Jethabhai Patel is examined at Exh.1139. This witness has suffered injury and has received treatment, both privately as well as in the Civil Hospital. Exh.1438 is the deposition of the treating doctor in whose deposition in para-24, a narration is made with regard to which injury is sustained by the witness and matched with the treatment and the opinion given by the treating doctor.

10.214 Learned Special Public Prosecutor has continued with the incident reported at Naroda Police Station near Kuldevi Tea Stall by examining PW No.269-Hasmukhbhai Maganbhai Padhiyar at Exh.1349.

10.215 This witness has suffered injury on the left leg. In his deposition he has stated that initially he was taken to the Civil Hospital for treatment, but on account of the blast over there, he was thereafter, removed to private hospital namely Kakadiya Hospital, where he has received treatment. There is no cross-examination in this regard. In support of the version given by this witness, learned Special Public Prosecutor has examined PW No.281-Dr. Aditya Indulal Upadhyay at Exh.1503 and this witness has exhibited the medical certificate at Exh.1506.

10.216 The Court has considered the evidence of this treating doctor

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and medical certificate issued, the description of injury sustained on the legs and the opinion that such injury could be caused on account of the bomb-blast. It is found that pellet was inserted in the body and was required to be removed surgically and therefore, the opinion given by the doctor in his deposition is that a projectile with great force out of a bomb-blast can create such injury.

10.217 Learned Special Public Prosecutor has thereafter, submitted that many of the witnesses have given evidence of similar nature and therefore, has prayed for referring only to some of these witnesses. Accordingly, he has referred to PW No.203-Dayadas Mirchumal Virvani at Exh.1120, who is also a Pedal Rickshaw driver, who has regular picking stop near the site, where the bomb-blast took place and was waiting there for taking of the passengers when the bomb-blast took place. He was initially taken to Dhanvantari Hospital, from there to Kakadiya Hospital and finally to Civil Hospital, where he was examined by the treating doctor, who is examined vide Exh.1581 and has proved the certificate at Exh.1585.The treating doctor in his deposition has admitted the case history to indicate that the injuries could be sustained on account of the bomb-blast and the injury caused is deep and grievous, which can be caused by explosion of bomb.

10.218 Yet another, witness of similar nature i.e. to say a pedal Rickshaw driver being PW No.214-Rameshbhai Khemabhai Solanki, examined vide Exh.1145. This witness has deposed that on account of the bomb-blast, he himself has suffered injuries, along with him he has also named other person, who received injuries on account of the blast. This witness is considered even qua the other injured witnesses, could not be examined as witness for the reason of they having expired pending the trial. Reference is made to one witness Shankar.

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10.219 In support of the evidence of the aforesaid injured witness, a treating doctor has been examined vide Exh.1666 and has produced certificate at Exh.1667. In the case history of the certificate, it is recorded that the injury was sustained due to bomb-blast. The certificate also describes the nature of injury.

10.220 The Court has perused the deposition of PW No.322-Dr. Bhairvi Balvant Pandey, who has examined the injuries of the injured witness-Bharatbhai Velabhai Pardhi, who was brought to the hospital for treatment and history was conveyed that the injuries on the head, left hand and right leg was sustained due to bomb-blast at Bapunagar and this witness has given details of the injuries sustained and exhibited the injury certificate at Exh.1667. This witness has also examined another injured witness namely Hemlataben Manilal Purabiya. There is no cross-examination to the witness, thereby, the injuries sustained and the history referred to by this witness is admitted by the defence.

10.221 The Court in regard to the offence which has been registered at Naroda Police Station vide C.R. No.I-400/2008 has perused the deposition of the complainant PW No.11-Shaileshbhai Nanubhai Patel at Exh.521 who has deposed that on the date of the incident he stopped by Kuldevi Tea Stall at around 6:30 p.m. to have tea and that the blast took place 5 to 7 minutes after he reached there and there were several people at the stall. He has deposed that while he was having tea, he noticed a bicycle with a bag on the steering and saw a young man aged 26 to 27 years walking away who was not seen after the blast occurred. This witness has deposed that he was having a cigarette when the blast took place and that he ran in the opposite direction of the blast when it occurred. He has deposed that there was chaos at the location and that many people had sustained injuries who were taken to hospital in private

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vehicles however, this witness had not sustained any injuries. This incident took place at 6:45 p.m. and this witness stayed at the location thereafter and he gave a complaint to the police after they arrived at the location at around 7:30 p.m. to 7:45 p.m. Mark No.97/372 is the handwritten complaint and he has confirmed the truthfulness of the complaint and has also identified his signature on it and is exhibited as Exh.522. He has deposed that on the next date following the incident i.e. on 27th he was taken to the place of incident by the police in order to show the location and that he has not participated in any other procedure apart from the aforesaid.

10.222 In the cross examination of this witness he has deposed that upon reading the complaint at Exh.522 he did not feel that anything had been left out or has been wrongly recorded by the police. However, he has admitted he had not stated certain details like, him being on leave from work in the afternoon, that the incident took place 5 to 7 minutes after he reached the tea stall, that the blast took place while he was returning after buying a cigarette, that he ran in the opposite direction of the blast, that he stayed thereafter at the location as the same was not enquired by the police. He has also denied that he gave a statement to the police that "At the above date, time and place...with the intent to spread terror..." He has denied the suggestion that he took the injured person to the hospital however, he has admitted that he arranged rickshaws for the injured persons. Further, he has denied the suggestion of having filed a complaint at the instance of any person. He has admitted regarding his association with Bapunagar Patel Samaj which is not associated with any political party and acknowledged that he was aware of certain political figures like Praveen Togadia, Tarun Barot and Goradhan Zalafia. He has also admitted that organizations like Bajrang

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Dal, Durga Sena and Vishwa Hindu Parishad were active in the area however; he has denied that he was acting under their influence and has also affirmed that the complaint was lodge voluntarily by him and not under the instructions of any person. He has also deposed that he did not visit the police station after lodging of the complaint and has denied the suggestion that he was not present at the place of incident or that he did not witness the incident. Upon perusing the deposition of this witness, the Court finds it to be consistent and reliable insofar as his presence at the place of incident, observations made by him, and lodging of the complaint is concerned. Further, even in the cross examination there is nothing so as to caste a doubt on the evidence of this witness.

10.223 The Court has thereafter perused the deposition of the police officer PW No.706-Lalsinh Jeetsinh Solanki at Exh.3459 who recorded the complaint of the aforesaid witness in connection with offence registered at Naroda Police Station vide C.R. No.I-400/2008. He has deposed that he was working as Second Police Inspector, Naroda Police Station at the relevant time and that on 6:30 p.m., upon receiving information about an explosion that took place near Naroda Bhagol, he proceeded to the spot and was carrying out necessary procedure when he received information through the Police Control regarding another explosion that had taken place near Thakkarnagar Chaar Rasta upon which, he handed over the charge to P.S.I. Patel and proceeded to go to the second location where the blast took place. Upon reaching there, he observed that the blast had taken place near Kuldevi Tea Stall and bicycles and other items were found scattered at the location. He thereafter promptly informed the B.D.S. and F.S.L. teams and the higher-ups and cordoned off the area. Thereafter, the complaint of one Shaileshbhai Nanubhai Patel (PW No.11) was recorded and thereafter

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forwarded to the police station for registering the complaint. The further investigation was conducted by this witness wherein, he recorded statements of two injured eye witnesses and upon receiving information from the Civil Hospital regarding a deceased named Kanubhai Laxmanbhai Jogani, P.S.I. Taviyad was sent for conducting post-mortem and other necessary procedures. Further, upon receiving information from Kakadiya Hospital, this witness proceeded to the hospital and recorded the statements of the injured witnesses. Also, information was received from Shardaben medical hospital regarding two deceased persons and injured persons for which, P.S.I. A.V. Patel was sent to the location for conducting further procedures.

10.224 As three persons had died, the Metropolitan Court No.18 was reported for adding Section 302 of the Indian Penal Code. The witness has also recorded statements of injured witnesses at Civil Hospital and clothes worn by injured persons during the incident were seized through their relatives under separate panchnamas. Similarly, the clothes worn by the deceased persons were seized by the police officers and a panchnama was made in that regard. The panchnama of place of offence was made in the presence of two panch witnesses and as per instructions of the F.S.L. officer, various articles were seized which included blue colored plastic bag, pieces of wood affixed with red colored tape, iron pellets, a plastic bag and a torn shirt. The blood sample near the tea stall was seized and sealed separately. Further, the cycle used in the offence along with various other scattered cycles and footwear were seized. The investigation was thereafter transferred to the Crime Branch as per the instructions received.

10.225 Exh.522 is the complaint which has been confirmed by this witness as the one given by the complainant Shaileshbhai Nanubhai

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Patel and he has also identified the signatures of the complainant and him on such complaint. This witness has also identified Exh.567 which is the report forwarded to the P.S.O. bearing the signature of this witness for registering the complaint and on the basis of which, F.I.R. No. 400/08 came to be registered and the further investigation was handed over to this witness.

10.226 Exh.2056 is the panchnama of the scene of offence which has been identified by this witness and under which articles were seized in the presence of two panch witnesses. He has identified the signatures of both the panch witnesses at the margin and at the end as well as his signature. Mark No.373/2 is the document and upon being shown, he has confirmed the same to be the carbon copy of the report given to the F.S.L. Officer for conducting inspection at the location in connection with F.I.R. No.400/08 which bears the signature of the F.S.L. Officer A.V. Hingrajya and also contains the report of the F.S.L. Officer on the reverse side which is exhibited as Exh.3460. Similarly, he has also identified Mark 97/437 which is the carbon copy of the report submitted to the F.S.L. Officer for on-site inspection along with the report of the F.S.L. officer on the reverse side in connection with F.I.R. No.401/08 which is exhibited as Exh.3463. This witness has also identified the panchnama of clothes of injured persons along with the signatures of the panch witnesses and him therein which are exhibited as Exhs.2144, 2164 and 2160. Exh.2156 is the panchnama of seizure of clothes of deceased Kanubhai Laxmanbhai produced by a police constable and this witness has identified the signatures of the two panch witnesses and him therein. Similarly, Mark No.97/381 is the panchnama of clothes of deceased person named Siyaram Devram Ojha which is exhibited as Exh.3461 and Exh.2178 is the panchnama of the deceased person named

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Bhagwanbhai which has been identified by this witness along with the signatures therein. Exh.3462 is the report submitted to the Metropolitan Magistrate Court No.18 in Sessions Case No.342/09 for adding Section 302 of the Indian Penal Code in F.I.R. No.400/08 of Naroda Police Station which is exhibited as Exh.3462. He has also identified the articles which were seized from the place of offence in the presence of two panch witnesses in connection with Sessions Case No.342/09, Muddamal List Exh.1125 at Serial Nos.6, 17 to 28. He has also identified in connection with Session Case No.342/09, Muddamal List Exh.1125 from serial no.1 to 5, 10 to 13 which are the clothes of the injured witnesses seized in the presence of two panch witnesses and from serial nos. 6 to 9, 14 to 16 and 29 to 32 which are the clothes of the deceased persons seized in the presence of two panch witnesses.

10.227 In the cross examination of this witness, he has deposed that the injured persons were not present while he was recording the complaint however, he had earlier recorded their statements at the location. He has admitted that the time of registration of complaint has not been mentioned and has also confirmed that the complainant had not sustained any injuries as a result of the explosion. He has deposed that there were several other persons apart from the complainant at the location who were questioned about the incident however; he does not recall the responses given by them. He has admitted that some injured persons were taken for treatment but he was unaware about the details as to where they were taken for treatment. He has also admitted that although he was aware about injured persons, he was unaware about the deceased persons at the time he reached the location. He has also admitted that while recording the statements of the injured persons, they had not stated anything about the presence of the complainant.

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10.228 Upon perusing the evidence of this witness, nothing has come on record to caste a doubt on the veracity of this witness. The deposition of this witness appears to be natural and truthful and the mere fact that this witness is a police officer is not sufficient to discard the evidence of this witness.

10.229 The Court has perused the evidence of PW No.751-Lakhabhai Punmaji Prajapati at Exh.3539 who has deposed about the blast that took place in front of "Ashapura Tea Stall" at Thakkarnagar and the injuries sustained by people as a result of it. This witness was carrying on a store in the name of "Ashapura Tea Stall" and has deposed that, on 26.07.2008 at about 6:30 to 6:45 p.m., an explosion took place in front of his tea stall wherein the labourers were present and having refreshments. He saw a bicycle with a bag hung on it. Due to the blast, several people had sustained injuries although he cannot state with certainty as to the number of injured persons. Thereafter, the 108 Ambulance was called which arrived and took the injured persons to the hospital. The police also arrived and carried out the necessary proceedings and the police had made inquiries with this witness on 27.07.2008 and on 29.07.2008 and recorded his statement in relation to the incident. In the cross examination of this witness, he has deposed that at the time of the incident his attention was on preparing the tea and that upon the explosion taking place, he looked around. He has affirmed that after the explosion, the people started running and that he closed his stall and went away. The statement of this witness has been recorded by the police on the next day and was read over to him. He has affirmed that he does not know to read or write in Gujarati and that he does not know what exactly was written by the police.

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Naroda Police Station I-C.R.No.401 of 2008

10.230 With reference to the serial blast incident reported at Naroda Police Station being I-C.R.No.401 of 2008, learned Special Public Prosecutor referred to PW No.211-Shri Rupji Dhulaji Damor at Exh.1142 and submitted that this witness was a Mason and after completing his masonry work and was returning home and had stopped at a tea stall, at that stage, the blast had taken place causing injury in head and stomach to this witness and also his companion one Prabhat. Learned APP has relied upon the evidence of doctor PW No.292-Dr. Bharatbhai Natwarlal Dave at Exh.1574, who has given primary treatment, thereby substantiating the version of PW No.211-Rupji Dhulaji Damor. It is submitted that cross-examination was done by the respondent qua both the witnesses.

10.231 Upon perusal of Exh.1142, the Court finds that the evidence in chief of PW No.211-Rupji Dhulaji Damor indicates that on the fateful day, while he was returning home in the evening after completing his masonry work along with his labourer Prabhatbhai and took a tea break at Paramshakti Tea Stall, where many people were present and there was a big bomb-blast and out of the blast, pellets and other articles were thrown out which caught him on his head and stomach and started bleeding. He was treated by one Dr. Bharat Dave. PW No.292-treating doctor Bharatbhai Natwarlal Dave is examined vide Exh.1574, who is treating doctor of PW No.211-Rupji Dhulaji Damor. In his deposition, he has described the injuries sustained by this witness and he had issued a certificate for injury vide Exh.1575. Both the witnesses have not been cross-examined by the defence and hence, the factum of bomb-blast and injury sustained thereto is admitted.

10.232 Learned Special Public Prosecutor has thereafter, referred to

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evidence of PW No.9-Mohabbatsinh Udesinh Dabhi at Exh.515, who is an independent and who was working at the tea stall and in his deposition he has accurately described the location of the bomb and has also sustained injury. This witness was medically treated by doctor, who examined vide Exh.1640. This witness has also not been cross-examined.

10.233 The Court has perused the deposition of PW No.9-Mohabbatsinh Udesinh Dabhi who is examined vide Exh.515, who is a resident of Ratanpur, Kathlal and at the relevant time was working at Paramshakti Tea Stall and on the fateful day he had joined a duty as usual between 8:00 am and in the evening on 26.07.2008 around 6:30 P.M. there was a blast took near the tea stall, where approximately 15-20 persons were present and because of the blast, people started running here and there. This witness sustained injury on account of the palates, ball-bearing and glass particles on his right land. He also indicated that many people sustained such injury.

10.234 He has deposed that he could re-collect that one cycle was lying with a plastic bag being hanged on the front of the handle and from that plastic bag, the bomb-blast took place. This witness was examined by treating doctor Ketan Soni at his hospital and was given medical treatment. This witness was cross-examined by the defence with regard to the location.

10.235 The prosecution has examined PW No.9- Mohabbatsinh Udesinh Dabhi at Exh.515 in connection with the bomb-blast which had reported at Naroda Police Station and the same had taken place, which is near to the Tea Kitley, where this witness was working. The timing of the Kitley from morning 5:00 am to 11:00 PM in the night and on 26.07.2018, he had joined the duty at 8:00 and on the same day at around 6:30 PM justice besides of Tea Kitley there was a bomb-blast

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causing commotion amongst the people. He was able to identify the root of the blast to be a cycle on which handle a plastic bag was hanging, from where the blast took place. This witness being a informant has identified the signature on his handwritten complaint and was thereby exhibited vide Exh.516**.**

10.236 This witness has also deposed with regard to the treatment he has received on account of the injury he had sustained and identified the clothes that were collected as muddamal which was wearing at the time of incident.

10.237 In the cross-examination, questions were posed with regard to his working at the Tea Kitley and the distance at which the bomb-blast has taken place from his working place. The questions were also posed with regard to numbers and place of parking of cycle and number of people who were around his Kitley for tea. Questions were also posed with regard to the injury sustained by him and whether the fact of such treatment has been recorded in his FIR and the treatment received by him by private doctor and the Civil Hospital. He has denied the suggestion that there was no investigation qua the muddamal article Tshirt as well as identification of the place.

10.238 Considering the aforesaid, this witness being an eyewitness to the incident has given a correct version of the incident and has also sustained injury which is opined to be an injury sustained on account of the bomb-blast considering the medical evidence which has come on record vide Exh.1640 through treating doctor. The Court finds no reason to doubt the version of this witness, thereby confirmed that the serial blast which is reported in the FIR recoded vide C.R. No.I-401 of 2008 at Naroda Police Station is being of the serial blast which has taken place in Ahmedabad.

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10.239 The Court has also perused the version of the PW No.313 treating doctor-Dr. Ketanbhai Trikamlal Soni vide Exh.1640, who is a treating doctor of PW No.9-Mohabbatsinh Udesinh Dabhi. This witness has confirmed in the history that the injured witness has disclosed that injury is caused on account of the bomb-blast and this witness has also opined independently that the nature of injury sustained can be on account of the bomb-blast and the projectile with great force colliding with the body of the injured causing such injury. The medical certificate is exhibited vide Exh.1641.

10.240 Considering the fact that this witness has not been examined by the defence and therefore, the certificate and the opinion by the treating doctor is required to be accepted.

10.241 The Court in regard to the offence which has been registered at Naroda Police Station vide C.R. No.I-401/2008 has perused the deposition of the complainant PW No.9- Mohabbatsinh Udesinh Dabhi at Exh.515 who has deposed that at the relevant time he was working at Paramshakti Tea Stall and on the fateful day i.e., on 26.07.2008 he had joined duty as usual at 8:00 am and in the evening at around 6:30 to 6:45 p.m. a blast took place near the tea stall, where approximately 15-20 persons were present and because of the blast, people started running here and there. This witness sustained injury on account of the shrapnel and glass on his right leg. He also indicated that many people sustained such injury. He has deposed that he could re-collect that one cycle was lying with a plastic bag which was hung on the front of the handle and the explosion took place from the bag. This witness was given medical treatment and thereafter he came back to the location wherein his complaint was recorded by the police. Upon being shown Mark 97-435 , he has identified his signature present in the margin on the rear side of

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the first page and at the end of the complaint. He has also identified his signature which acknowledged the receipt of copy of complaint and has also confirmed the truthfulness of the contents and is exhibited as Exh.516. He has deposed that on the next day after filing of complaint, he handed over the muddamal shirt which was worn by him at the time of the incident to the police. In connection with Sessions Case No.300/09, this witness upon being shown Exh.517 which is the muddamal list consisting of a total of 9 articles and upon opening the sealed packet at serial no.1, he has identified it to be the same shirt which was worn by him at the time of the incident. He has deposed that he had shown the place of incident to the police.

10.242 In the cross-examination, questions were posed with regard to his working at the Tea stall and the distance at which the bomb-blast had taken place from his working place. Further, questions were posed with regard to number and place of parking of cycles and the number of people who were around his stall for tea. Questions were also posed with regard to the injury sustained by him and whether the fact of such treatment was recorded in the complaint. He has denied the suggestion that the muddamal shirt identified by him was not the one which was worn by him at the time of the incident and that he had not submitted it to the police. He has also denied the suggestion that he did not show the place of incident to the police. Upon perusing the evidence of this witness, it appears that, this witness being an eyewitness to the incident has given a correct version of the incident and has also sustained injury due to the explosion. Also, even from the cross examination of this witness there is nothing to caste a doubt about the truthfulness of this witness.

10.243 The Court has thereafter perused the deposition of the police

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officer PW No.503-Ashwinkumar Vinodchandra Patel at Exh.2937 who recorded the complaint of the aforesaid witness on 26.07.2008 in connection with offence registered at Naroda Police Station vide C.R. No.I-401/2008. He has deposed that he was working as Police Sub-Inspector, Naroda Police Station and upon being shown the complaint at Exh.516 he has confirmed that it was recorded as per the narration of the complainant which was signed at the end by the complainant and thereafter countersigned by this witness. He has deposed that he thereafter informed the P.S.O. regarding the said complaint and has identified the signature on the report made in this regard which is exhibited as Exh.569 and has also confirmed the truthfulness of the facts therein. He has deposed that he thereafter went to Shardaben Hospital wherein he conducted the inquest panchnama of two deceased persons which has been identified by him and is exhibited as Exhs.1256 and 1257. He has affirmed the truthfulness of the contents therein and that it was signed by the two panch witnesses and himself. He has deposed that he prepared a panchnama of scene of offence and has identified the said panchnama which is exhibited as Exh.1867. He has confirmed the truthfulness of the contents of the panchnama and has affirmed that it bore the signatures of the panch witnesses and himself. In the said panchnama, various muddamal articles were seized including, a wooden box, plastic bag, shrapnel and a bicycle and he has deposed that he would be able to identify the articles upon being shown to him. He has deposed that he had seized the clothes of the complainant and two other persons and he has identified the said panchnama made in that regard which is exhibited as Exh.2327 bearing signatures of the panch witnesses and himself. He has identified the muddamal articles item nos.1 to 4 and item no.6 which are exhibited vide Exh.517 in connection

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with Sessions Case No.300/09, and has confirmed it to be the same which was seized by him in the aforesaid panchnama.

10.244 In the cross examination of this witness, he has admitted that the complaint given by the complainant named Mohabbatsinh was recorded at the police station and questions were thereafter put forth regarding whether he visited the location before recording the complaint and the distance at which the police station was located from the place where the blast occurred. He has admitted that upon hearing the sound of the blast, the police officers reached the location and that this witness questioned some people at the location but no complaint was recorded by him on the spot. He has also deposed that he did not summon the panch witnesses or conduct the panchnama on the same day and that the panchnama at Exh.1867 was drawn on 27.07.2008 in the afternoon however, he was unable to recall the exact time and was also unable to identify the handwriting on the panchnama. He has also admitted that during preparation of the panchnama, the F.S.L. officer was present at the location however, no written document was provided and oral instructions were given. He has also confirmed that no complaint was registered prior to the complaint given by Mohabbatsinh and that the said complaint was recorded at around 9:30 p.m. He has denied the suggestion that no procedures were conducted by him as deposed by him in his examination in chief. He has deposed that he reached the location after the incident had occurred and that although he knew it was a cognizable offence, no complaint was lodged by him as he was securing the place (bandobast).

10.245 Upon perusing the evidence led by this witness, the Court finds it to be consistent and credible as he has undertaken prompt action in the course of his duty by going to the place of incident, securing the

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place and initiating necessary procedures which are corroborated by documentary evidence. Further, the delay in recording complaint has been sufficiently explained and although there are some minor discrepancies, there is nothing coming out in the cross examination of this witness so as to discredit his evidence.

10.246 **T**he Court has perused the evidence of PW No.749-Sanjay Bharatbhai Patel at Exh.3537 who has deposed about the blast that took place near "Paramshakti Tea Store" and the damage caused as a result of it. This witness was carrying on a store in the name of "G.K. Paan Centre" in the Naroda Bhagol area and has deposed that, on 26.07.2008 at about 6:30 to 6:45 p.m., an explosion took place in front of "Paramshakti Tea Store" which is near his shop and wherein people were drinking tea. Due to the blast, the people started running and the shrapnel from the blast had scattered. There was a bicycle lying in front of "Paramshakti Tea Store" and it appeared that the blast had occurred from it. In the said blast, one Mohobatsinh who was employed at the tea stall had sustained injuries and the glass panes of the shops which were situated in the same row of the shop of this witness had broken. He is unaware as to whether any other person had sustained injuries and the statement of this witness was recorded by the police on the next day of the incident. In the cross examination of this witness, he has deposed that he does not know Mohobatsinh and that he had not given anything in writing to the police. He has deposed that the police has written whatever they wanted by themselves.

<u>Khadia Police Station-C.R. No.71/08</u>

10.247 Learned Additional Advocate General then took this Court

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through the incident reported at Khadia, where the blast had taken place on the bicycle at three places namely, near M. Narandas Medical Stores, Gokhle Pan Parlour and Milan Kirana Stores resulting in the death of five persons and injury to 46 persons. In this regard, Exh.1718 was referred to which is the panchnama of scene of offence proved by examining P.W. No.333-Rakeshbhai Sureshbhai Mehta vide Exh.1717. Thereafter, Exh.7956 was referred to by learned Additional Advocate General, which is opinion of the Physics Department of FSL containing analysis of the articles seized during site visit by the FSL Officer and consisted of debris like clothes, plastic, metals, etc. which showed signs of damage due to explosion.

10.248 Exh.7956 is the report of the Physics Department of the FSL, which is proved by PW No.1112- Samir Subhashchandra Joshi examined at Exh.7952. This document is analysis of the debris which was collected from the site and which consisted of articles like clothes, plastic, metal sheets, etc. and according to signs of damage on these articles, it was opined that the damage thus caused is on account of the bomb explosion. Reference was made to ball bearings on the articles like clothes and metal sheets and the nature of impression caused was indicating projectiles hit of ball bearings causing damage to the metals on cycle due to bomb explosion.

10.249 Learned Special Public Prosecutor referred to PW No.84-Maheshbhai @ Raju Chandulal Gajjar and injured eyewitness, who was examined vide Exh.882. This witness had several injuries on legs and had received treatment at V.S.Hospital. Learned Special Public Prosecutor submitted that the defence did not prefer cross-examination and therefore, there was no challenge to the fact of blast and injury. He has taken this Court to the Medical Certificate at Exh.1364, which is

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exhibited by examining the treating doctor, who is examined at Exh.1362.

10.250 The Court has perused the Medical Certificate of the injured eyewitness PW No.84-Maheshbhai Chandubhai Gajjar vide Exh.1364, which shows that there is puncture wound which could be caused by the bomb-blast. The injury certificate at Exh.1364 also refers to the cause of such injury to bomb-blast.

10.251 Learned Special Public Prosecutor submitted that though sufficient injured witnesses have been examined, he may restrict his reference to certain witnesses, who were injured in the bomb-blast registered at Khadiya Police Station to avoid repetition. Thereafter, he has referred to PW No.57-Indiraben Ishwarbhai Modi, who is examined at Exh.806. In his deposition, she has indicated the reason for she was at the scene of offense, where she was injured on both her legs. He has referred to Exh.1367, which is the medical injury certificate of this witness which is exhibited through the treating doctor, who was examined vide Exh.1362.

10.252 The Court has perused the evidence of PW No.57-Indiraben Ishwarbhai Modi,which indicates that this witness was a resident and has also small time business by make shift shop in frond of her residence which is just in vicinity of the bomb-blast and on account of the bomb-blast, which took place in the evening hours, when she was at her business place received injuries on both her legs and was taken for treatment to V.S. Hospital, where she was treated for the sample injury sustained by him. In the cross-examination, the questions were posed, questioning the location of the bomb-blast however, considering the evidence of this witness, the scene where the bomb-blast had taken place is firmly established.

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10.253 Learned Special Public Prosecutor has thereafter, taken this Court to the evidence of PW No.55-Krupalbhai Jitendrakumar Gandhi, who is examined vide Exh.796, who had also suffered injury on account of the blast near Gokhle Pan Corner while he was passing through on motorcycle. Exh.1370 is the medical certificate of treatment of this witness, which is exhibited vide by examining treating doctor vide Exh.1362.

10.254 Upon perusal of the deposition of this witness, it indicates that at the relevant time i.e. around 6:30 PM in the evening, this witness was passing on his motorcycle from near 'Gokhle Pan Corner', where he experienced bomb-blast and on account of the projectile, his right side body was injured. Exh.1370, which is the medical certificate of this witness exhibited through treating doctor examined vide Exh.1362 indicates that this witness had suffered puncture wound on right side of his body and the opinion of the treating doctor is to the extent that the injury is possible on account of the bomb-blast.Considering the medical case papers, it appears that this witness was treated as indoor patient for four days and on behalf of the defence, there is no cross-examination.

10.255 Learned Special Public Prosecutor has thereafter, referred to PW No.58-Bhupendra Bansilal Thakor, examined at Exh.807, who was a passerby near the medical shop, where one of the three blats took place and was injured on his chest, stomach and limbs and he was admitted as indoor patient.

10.256 Learned Special Public Prosecutor has thereafter, referred to Exh.1392, which is the medical certificate, which is exhibited by examining the treating doctor as PW No.273-Dr. Mehul Manubhai Jagirdar, who is opined the injury is of grievous nature and the projectile like metallic ball-bearings were required to be removed surgically.

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10.257 The Court has perused the deposition of PW No.58-Bhupendra Bansilal Thakor, who has deposed that he was an innocent passerby near the medical shop named M.Narandas & Co., where he experienced the bomb-blast and suffered injuries on his chest, stomach and also on his limbs. He has deposed that on account of the injuries thus sustained, he has suffered with permanent disability.

10.258 Perusal of the injury certificate would indicate that witness was required to be surgically operated for removal of metallic ball-bearings which were found from the small intestine and the injuries sustained were of grievous nature.

10.259 Learned Special Public Prosecutor has taken this Court to PW No.70-Ashokbhai Chimanlal Soni (Champaneriya), who in his deposition at Exh.856 has deposed that he had visited dentist at Sarangpur and thereafter, purchased medicines, visiting medical store namely M.Narandas, when he experienced two blasts successively. Thereafter, he was removed to a private hospital and then to Civil Hospital and then again for his final treatment to private hospital. To substantiate his argument and injury, a reference is made to Exh.1477/1478 which are medical case papers and the deposition of private doctor at Exh.1540, where history of bomb-blast was also given by the injured witness.

10.260 The Court has perused the evidence of PW No.70-Ashokbhai Chimanlal Soni (Champaneriya), as well as injury certificate and medical case papers at Exh.1477/1478 and Exh.1450 would indicate that the witness was at the very medical store, near which the first blast had taken place, out of three in quick succession. According to his version, he had gone to dentist for his treatment and thereafter, visiting the medical store for purchase of medicines and therefore, in due course, he

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was present at the scene of offense when incident of bomb-blast took place.

10.261 Perusal of the medical case papers and injury certificate, it is opined by the treating doctor that the injuries sustained by this are possible by the bomb-blast.

10.262 Learned Special Public Prosecutor has thereafter, referred to PW No.59-Devang Mahendrabhai Dudhiya, who is at Exh.808, who at the relevant time was visiting the market in that area for purchase of Datan. He suffered injury due to bomb-blast on account of projectile as well as burn injury. In this connection, the doctor was examined vide Exh.1590 and the certificate of injury was exhibited vide Exh.1591 which demonstrated the burn injuries on the limbs, which is caused by the bomb-blast.

10.263 The Court has perused evidence of PW No.59- Devang Mahendrabhai Dudhiya which is corroborated by the injury sustained by him, which is placed on record by way of Exh.1591 to show the nature of injury sustained on account of the serial bomb-blast.When this witness was visiting the market for his daily source and his presence at the scene of offense is quite natural**.** Similarly, another witness PW No.79-Ishwarlal Bechardas Bhavsar had also gone to the medical store for purchase of medicine, who was examined vide Exh.876 and because of the injury sustained, he was admitted in L.G.Hospital.

10.264 The Court has therefore, perused a purshis Exh.7118 which is a declaration by the defence counsel for admitting such injury certificate to be exhibited.

PW No.60 Exh.809-Naimesh Dhimantray Dalal-Injury certificate is admitted by defence at Exh.7157

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PW No.63 Exh.825-Prajapati Mukesh Nathubhai-Injury certificate is admitted by defence at Exh.7155

PW No.64 Exh.826-Raju Babubhai Thakor-Injury certificate is admitted by defence at Exh.7158

PW No.65 Exh.827-Shailesh Dhanjibhai Chunara-Injury certificate is admitted by defence at Exh.7147

PW No.69 Exh.855-Jinesh Girishbhai Shah-Injury certificate is admitted by defence at Exh.7150

PW No.72 Exh.863-Gaurangbhai Bipinchandra Patel-Injury certificate is admitted by defence at Exh.7153

PW No.75 Exh.866-Jigar Yogeshbhai Parmar-Injury certificate is admitted by defence at Exh.7148

PW No.79 Exh.876-Ishwarlal Bechardas Bhavsar-Injury certificate is admitted by defence at Exh.7159, 7160 and 7161.

PW No.80 Exh.877-Ajay Jagannath Sabkale-Injury certificate is admitted by defence at Exh.7152

PW No.81 Exh.878-Solanki Vipul Jayrambhai-Injury certificate is admitted by defence at Exh.7154

PW No.82 Exh.879-Rekhaben Jivanlal Joshi-Injury certificate is admitted by defence at Exh.7154

PW No.85 Exh.883-Bhagyesh Vinodchandra Trivedi-Discharge card produced through PW No.85- Exh.884

PW No.91 Exh.903-Aarif Iqbalbhai Mansuri-Injury certificate is admitted by defence at Exh.7146

PW No.97 Exh.911-Madanlal Bhanubhai Vanzara-Injury certificate is admitted by defence at Exh.7156

Injured Girish Laldas Kosti not examined because of his death-Injury certificate is admitted by defence at Exh.7151

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PW No.83 Exh.881-Jayendrakumar Natvarlal Patel

10.265 The Court has perused evidence of PW No.10-Kadarbhai Karimbhai Ajmeri vide Exh.518, who is a natural witness, and was doing business of cutlery on a make shift shop (handcart) and near his place of business, the blast has taken place because of which he has sustained injuries. The witness has deposed in due course and there is no challenge to the version and therefore, the question as is described by this witness has to be accepted.

10.266 Learned Special Public Prosecutor has submitted that several medical certificates of the witnesses were examined were admitted by the defence side and therefore, the prosecution had not examined the treating doctor for the purpose of exhibiting such medical certificates.

10.267 The Court has perused the deposition of the complainant PW No.2-Hitesh Ramchandra Rana at Exh.486 who has deposed that on 26.07.2008 at around 6:30 p.m. he had went to pick up his son from tuition. On his way back home after picking up his son, he heard a loud explosion while they were passing by the area near Raipur Chakla Police Station, near a medical shop named M. Narayandas which was next to a roadside cart. From the sound of the explosion, this witness felt that a gas cylinder had burst. However, upon seeing an old man lying nearby this witness realized that a bomb blast had occurred. Upon hearing the people shouting that a bomb blast had occurred, this witness ran to the opposite side of the road and meanwhile, another explosion occurred. The second explosion occurred at Gokhale Paan House which is situated opposite the police station and this witness and his son sustained injuries as a result of the said explosion. This witness sustained injuries on his right thigh and left knee whereas his son sustained injuries on his lower

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abdomen, private parts and on his thigh. The said injuries occurred due to the shrapnel from the blast and both, the witness and his son were bleeding as a result of the injury. A large crowd had gathered at the place of incident and several others had also got injured as a result of the blast. Thereafter, this witness and his son were taken to the hospital by their neighbor wherein he got to know that several other injured persons who were injured in the blasts had been brought to the hospital for treatment. Thereafter, he filed the complaint at the hospital and upon being shown the complaint at Mark 97/689, he has confirmed the contents of the complaint and has identified his signature on it which came to be exhibited vide Exh.487. This witness was thereafter questioned on 28.07.2008 by a police officer.

10.268 This witness has thereafter been cross examined regarding the time taken by the witness to reach the tuition from his home, the route taken by him on his way back and the location of certain places such as, Gokhale Paan House and the medical shop. This witness has thereafter been cross examined with regard to the complaint at Exh.487 wherein he has admitted that he has not read the complaint before signing it and that he omitted to inform in his statement before the police that he initially believed the explosion was due to a blast of gas cylinder. Thereafter, this witness has deposed that in his complaint he has stated about the occurrence of the explosion however, he has omitted to mention that the explosion took place near the cart which was placed near the medical shop. In this regard, the Special Public Prosecutor had clarified that the contradiction is limited to the phrase that 'explosion took place near the cart' and this was also admitted by the advocate on behalf of the accused. He has deposed that the complaint was recorded as per the narration of this witness and that he has not received a copy of

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the complaint.

10.269 In the cross examination this witness has further deposed that when the first explosion occurred, the public initially believed that it was due to bursting of a gas cylinder and gathered at the site however, upon realizing that it was a bomb blast there was panic amongst the people. Further, he has deposed that both, this witness and his son got injured due to the second explosion that took place when they were trying to run away and were thereafter taken to the hospital for treatment. He has also deposed that the complaint was recorded on the same day at around 11:30 p.m. This witness has also deposed that he observed a cycle and scooter that had got damaged as a result of the said explosion and that apart from this; he had not observed damage to any other vehicle.

10.270 Upon perusing the entire deposition of this witness, the evidence of this witness is found to be reliable insofar as his presence at the place of incident, the injuries sustained by him and his minor son and the sequence of events narrated by this witness are concerned. Further, although there are minor contradictions in the cross examination of this witness, they have been clarified and are not of a nature so as to affect the truthfulness of the evidence led by this witness.

10.271 The Court has thereafter perused the deposition of the police officer who recorded the complaint given by the aforesaid witness namely, PW No.702 Pradipbhai Gijubhai Patel at Exh.3444 who was working as a Second Police Inspector at Khadiya Police Station at the relevant time. He has deposed that on 26.07.2008, blasts had occurred at three different locations. This witness was patrolling the area near Chakleshwar Mahadev Khadia in a government vehicle and upon hearing about the bomb explosion at around 6:30 p.m., he went to the three places where the blasts had occurred that were located in the

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vicinity of each other namely, (i) near M. Narayandas Medical Store, Raipur Chakla; (ii) near Gokhale Paan House and (iii) near Milan Kirana Store, Sarangpur Chakla. Upon inspecting all the three locations, it was found that the bomb was planted on the bicycle and that several people had sustained injuries. The sites were cordoned off by the staff members and the injured persons were sent for treatment in private vehicles and 108 ambulances to V.S. Hospital and L.G. Hopsital along with their relatives.

10.272 Thereafter, this witness along with the staff members went to V.S. Hospital wherein he recorded the complaint of the injured person namely, PW No.2-Hitesh Ramchandra Rana and his signature was obtained. Further, based on this complaint an F.I.R. was registered and a report under Section 157 of the Code of Criminal Procedure was prepared and further investigation was taken over by this witness. The F.S.L. and B.D.S. teams were called to the site and superior officers were informed. Also, two panch witnesses were called for making panchnama of scene of offence and the first site i.e., near M. Narayandas Medical Store, the area where the explosion took place was identified by one Shailesh Dhanjibhai Chunara. At this site, a Hero Jet bicycle, partially burnt cloth and iron pieces (shrapnel) were found. The second site where the explosion took place was outside Gokhale Paan House and the site of explosion was identified by one Harshadbhai Navinchandra Pandya where, one black colored Hero bicycle, the frame number of which was duly noted in the presence of panch witnesses, copper strips, wooden strips, pieces of cloth and iron shrapnel were found. This witness thereafter went to the third site where explosion took place which was near Milan Kirana Store at Sarangpur Chakla which was identified by one Rajeshbhai Manharlal Kayasth wherein

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partly burnt cloth pieces, iron shrapnel and a silver colored Hero bicycle, the frame number of which was noted as per the panch witnesses were found. Also, a F.S.L. officer, Jagdish Sharma conducted inspection and under his directions muddamal, including cycles were seized from all the three places where explosion took place. The muddamal except for cycles were sealed with slips bearing signatures of the panch witnesses and the police. The panchnama commenced at around 12:15 a.m. and concluded at 3:30 a.m. The F.S.L. report, panchnama, inquest forms and injury certificates of the injured and deceased persons were kept for the purpose of investigation. The further investigation was handed over to the Crime Branch as per the instructions of the Police Commissioner received through the Police Control Room.

10.273 Exh.487 is the complaint recorded by this witness and he has confirmed that it was recorded as per the narration of the complainant and thereafter signed by both, the complainant and this witness. He has identified the signatures present on the back side of the first page of Exh.487 as well as at the end of the complaint. Exh.615 is the report sent to P.S.O. at Khadia Police Station bearing the signature of this witness which has been identified by him. He has also identified the endorsement made by the P.S.O. on the document while forwarding the investigation papers to him. The said report came to be registered as F.I.R. No.71/2008 at Khadia Police Station and was assigned to this witness for investigation. He has confirmed that Exh.1718 is the panchnama which has been prepared as per the narration of the panch witnesses regarding the items which were seized from the place of explosion and has also identified the signatures of the panch witnesses and him on the document. He has also identified the panch slips at Exh.1719 and Exhs.1721 to Exh.1725 bearing the signatures of the two

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panch witnesses and him. The signature on the panch slip at Exh.1720 which has been cut out due to the seal has been identified by this witness. This witness has confirmed that all the panch slips are those which had been affixed to the muddamal sealed during the panchnama. Thereafter, upon being shown Mark No.3440/1, he has identified it as the office copy of the intimation letter sent to the F.S.L. officer and his signature on it which is exhibited as Exh.3445. Mark No.97/691 is the report issued for site inspection by the F.S.L. officer which has been identified by this witness. He has also identified the muddamal items which were seized during the panchnama which consisted of Items Nos.1 to 3 being the cycles and Item Nos. 4 to 10 being the other muddamal under Exh.2131 of Sessions Case No.82/09.

10.274 In the cross examination, this witness has admitted that at the time of the explosion he was at a distance of 200 metres from the place of explosion and that no intimation was received from the Police Control Room or from any other person. He has deposed that he reached the place within 3 to 4 minutes and that, all the three places where the explosion took place were at a distance of 2 to 7 minutes from each other. He has deposed that he remained at the place of explosion for two hours wherein he made arrangements for controlling the crowd and maintaining peace before he proceeded to the hospital. He got to know that a cognizable offence has been committed upon reaching the place of explosion and therefore, he intimated the P.S.O. through his personal phone. He has deposed that, he has not attempted to give a complaint himself as a complainant and that he has not recorded the complaint of any injured or deceased persons at the place of explosion. He has admitted that a complaint pertaining to a cognizable offence should be recorded immediately however, as priority was given to provide

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immediate medical injured, the complaint was recorded two hours after the occurrence of the incident. The complaint was recorded as per the deposition of this witness at 8:30 p.m. and was formally registered at the police station at 11 p.m. This witness has thereafter been cross examined regarding whether he personally went to get the complaint registered to which he has answered in the affirmative.

10.275 Further, in the cross examination of this witness he has deposed that he returned to the place of incident and conducted a panchnama of scene of offence in the presence of the panch witnesses and that, he met a person named Shaileshbhai Chunara whose statement was not recorded. He has denied the suggestion that in the absence of recording of such statement, it could not be ascertained whether he had witnessed the incident or the location where the explosion occurred. He has deposed that the panchnama commenced at 12:15 a.m. and that he informed the F.S.L. through the Police Control Room and not by written intimation. Further, he has deposed that the panchnama did not mention details regarding the time when such intimation was received and the time of arrival of F.S.L. team. He has admitted that the documents made at the place of offence were not in his handwriting and that he does not recollect the name of the police officer who had written it. However, he has deposed that the signatures on such documents were of him. Upon being asked he has replied that during the seizure, neither were the cycles wrapped in cloth or plastic nor were any marks or panch slips signed by the panch witnesses affixed on it. He has denied the suggestion that the cycles which were kept in the police station were not sent for F.S.L. examination. He also admits that he does not recall the condition in which the said cycles were kept at the police station.

10.276 Thereafter, he has deposed that the investigation of the case

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was handed over to the Crime Branch, Ahmedabad after completing the panchnama on 27.07.2008 at 3:30 a.m. He has deposed that before handing over the investigation, he had no information about the accused persons involved and that subsequent to handing over of the investigation, he did not carry out any further panchnama or record any statements. He has also denied suggestions that the complaint was not recorded as per the narration of the complainant and that; the panchnama at Exh.1718 was falsely prepared in the presence of panch witnesses and F.S.L.

10.277 Upon perusal of the evidence of this witness, it reflects a prompt action taken on part of the police officer upon hearing the explosion in reaching the place of explosion, undertaking necessary procedure for maintaining law and order, sending the injured to the hospital, recording of complaint and making of panchnama. Although there appears to be a delay in lodging complaint, the same has been justified as the priority was to send the injured persons to the hospital. There appears to be lapse in documenting the time of intimation received and arrival of F.S.L. officers, and the absence of affixing panch slips or marks while seizing the cycles and the storage thereafter. However, the deposition of the police officer is required to be accepted insofar as the occurrence of blasts, his arrival at the place of explosion, carrying out necessary procedure including recording of complaint, which is also supported by the evidence of the complainant and the making of panchnama of scene of offence and the seizure of muddamal which have been duly seized and affixed with panch slips.

10.278 The Court has perused the evidence of the witnesses who have deposed regarding the damage occurred and injuries sustained due to the blasts that have took place 1) behind M. Narayandas Medical

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Shop, Raipur Chakla, 2) opposite Gokhale Paan House, Raipur Chakla and 3) in front of Milan Kirana Store at Sarangpur Chakla.

10.279 The Court has perused the evidence of PW No.413-Faruk Usmangani Sharifjiwala at Exh.2360 who was serving as a driver of the 108 Emergency Ambulances and was assigned duty on 26.07.2008 in the Khadia area. He has deposed that while he was on duty, two persons informed them about the bomb blast that had took place at Raipur Chakla upon which, he immediately reached there and brought five persons in the ambulance out of which, two persons had died and the remaining three persons were alive and were taken to V.S. Hospital for treatment. Thereafter, they came back to their location and subsequently went again to Raipur Chakla however, no person was found there. Upon getting to know regarding the blast that had took place near Sarangpur Chakla, he went there however, no person was found there either. Therefore, they returned to the location. The statement of this witness in this regard has been recorded by the police. In the cross examination of this witness on the behalf of an advocate representing one of the accused, he has affirmed that he came to know about the persons who had sustained injuries in the blast from the persons who were present at Raipur Chakla and has further affirmed that he had taken two deceased and three injured persons in the vehicle. He has not agreed with the suggestion put forth in the cross examination that the ambulance in such circumstances, is meant to carry only the injured persons and not the deceased.

10.280 The Court has thereafter perused the evidence of PW No.785-Jaliben Naranbhai Rabari at Exh.4088 who resides with her family at Sarangpur Chakla area and is engaged in animal husbandry. This witness has deposed regarding a blast that took place on 26.07.2008

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near the house at Sarangpur Chakla due to which two jersey cows sustained injuries and both of them died. The value of each of these cows is about Rs.25,000/-. The statement of this witness in relation to this incident has been recorded by the police on 29.07.2008. In the cross examination of this witness on the behalf of an advocate representing one of the accused, she has affirmed that the injuries to the cows occurred on the road and that she has no documentary proof regarding the ownership of the cows. This witness has also deposed that she does not know whether she had gone to the police station voluntarily and had given a statement in this regard. She has affirmed that she was at her house from the date of the incident until the date when her statement was recorded. She has deposed that the injury to the cows took place at around 6 to 7 p.m.

10.281 The Court has thereafter perused the evidence of PW No.1002-Rajeshbhai Manharlal Kayasth at Exh.6975 who was carrying on a vegetable cart at Sarangpur Chakla and has deposed that on 26.07.2008, at about 6:30 p.m. an explosion occurred in front of Milan Kirana Stores which was closed at that time due to which, two cows had died and four to five people had sustained injuries. The people were running helter and skelter and thereafter, on the said date he took the cart and left the place. He has deposed that he showed the place of incident to the police at about 2 to 2:30 a.m. in the night and that his statement was recorded by the police on 13.08.2008. In the cross examination of this witness, he has affirmed that he has not sustained any injuries and that he did not go to Khadia police station to lodge a complaint regarding the blast. He has deposed that at about 11 p.m. he went off to sleep at his house which is situated above Milan Kirana Stores and thereafter, the police arrived at Milan Kirana Stores during the night,

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woke him up and told him to come for signing as a panch. He has also affirmed that the police called him downstairs and obtained his signature on the panchnama and was thereafter asked to leave. Apart from this, there appears to be no material cross examination of this witness.

10.282 The Court has thereafter perused the evidence of PW No.1015-Jatin Navinchandra Pandya at Exh.7005 who was carrying on a business in the name of "Gokhale Paan House" at Raipur Chakla and has deposed that on 26.07.2008, at about 6:30 p.m. an explosion occurred on the road close to the medical shop "M. Narandas and Company" and shortly thereafter, another blast occurred on the road in front of the shop of this witness due to which an employee named Ankit Modi who was working at the shop of this witness had sustained injuries from shrapnel of the blast. Thereafter, the ambulance arrived and the injured person namely, Ankit Modi was taken to V.S. Hospital wherein the doctor declared him dead. This witness remained at the hospital throughout the night and the post-mortem of this witness was carried out. Also, outside his shop, a two wheeled black colored Activa which was owned by this witness and used for the purpose of commuting was left outside the shop itself as he went to the hospital along with Ankit Modi. He has deposed that the blast took place on a bicycle and the statement of this witness was recorded by the police on 27.07.2008. In the cross examination of this witness, he has deposed that both the shops are situated adjacent to each other and that there is a footpath in front of both the shops wherein two wheelers are parked. He has deposed that he had not submitted any documentary proof to show that Ankit was working at his shop and that even till date, he does not possess any documentary proof in order to show the same. He has deposed that while he was at the hospital throughout the night, the police had come several times however, the

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police had not conducted any inquiry and neither did he voluntarily give any information to the police. He has also affirmed that before going to the hospital, he had not made any attempt to know whether it was a bomb blast or the where exactly such a blast had took place.

Bapunagar Police Station C.R. No.I-220/2008

10.283 Shri Mr. Amit Patel; learned Special Public Prosecutor has then taken this Court through evidence pertaining to Bomb reported at Bapunagar Police Station vide C.R. No.I-220/2008, where reportedly two bombs exploded placed on cycle one at Sardar Patel Diamond Market and another at near Shriji Ice-cream Parlor in front of Tea Stall.

10.284 In this connection, learned Special Public Prosecutor referred to PW No.192 at Exh.1093; Bachubhai Narsinhbhai Patel, who in his deposition stated that he was working within Sardar Patel Diamond Market and 26-07-2008 in the evening at around 6.30 hours, he along with his friend were standing at Diamond Pan corner, where others were also standing, at that time, bomb blast took place and many of the people standing there, were injured and he himself and his friend; Anil also sustained injuries. He sustained injuries on his chest and his friend; Anil was also injured. For the preliminary treatment, he was taken to Dhanvantri Hospital and thereafter, he was taken to Civil Hospital in Ambulance for further treatment. He was not aware of the injuries sustained by his friend; Anil. Upon being asked by treating Doctor, to whom he has conveyed that he received injuries due to blast, which took place at Sardar Patel Diamond Market. This witness is not cross examined.

10.285 In support of this witness, the prosecution has examined PW No.276; Dr. Hetal Chetan Badheka; Treating Doctor, who was examined

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vide Exh.1438. This witness while performing duty as Medical Officerat Civil Hospital at Ahmedabad, had given treatment to several injured witnesses one of them being PW No.192-Bachubhai Narsinhbhai Patel at Exh.1093. In Para-21 of her deposition, she has referred to injuries described and treated by her to witness PW No.192-Bachubhai Narsinhbhai Patel at Exh.1093 was brought by his friend Mansukhbhai Patel for treatment. She has deposed that in the history, the injured witness stated that he has received injuries in bomb blast near Sardar Patel Diamond Market, Bapunagar and sustained injuries on his chest, for which she has treated him and referred to Surgical Unit. Medical Certificate thus issued was Exhibited at Exh.1459.

10.286 The Court has perused the deposition of PW No.192-Bachubhai Narsinhbhai Patel at Exh.1093, who in his deposition has deposed that he along with friend; Anil who was working in the Diamond Market were standing at Pan Shop. There were other persons, who were also standing there, when blast took place, causing injuries to several people standing there and injuries on chest to this witness. He has also deposed that his friend; Anil was also injured and both of them were taken for medical treatment. This witness was not cross examined, but in support of injuries sustained by this witness, PW No.276-Dr. Hetal Chetan Badheka examined at Exh.1438, this Doctor while on duty in Civil Hospital had given treatment to several injured persons from the bomb blasts. This witness had also received treatment at her hands. In her deposition, she has conveyed history given by witness that he sustained injuries on account of bomb blast. He was brought there for treatment on 26-07-2008 by his friend and during treatment, it was found that he has sustained injuries on chest in the form of abrasion and for which he was referred to Surgical Unit and Medical Certificate was

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exhibited through this witness vide Exh.1459. This witness has also opined that injuries sustained are possible due to bomb blast.

10.287 In connection with this very offence, the prosecution has examined PW No.194-Kantibhai Laljibhai Patel vide Exh.1095, who has deposed that on 26-07-2008, he was waiting at Pan corner along with Dilipbhai, Bachubhai and others and other people were also standing there, when the blast took place, causing injuries to his hand, chest and waist. Injuries sustained were due to pellets, for which, he was immediately taken for treatment to Dhanvantri Hospital and then to Civil Hospital. During the course of treatment, he had conveyed that injuries were sustained on account of bomb blast. This witness was not cross examined.

10.288 In support of this witness, the prosecution has relied upon evidence of PW No.276-Dr. Hetal Chetan Badheka at Exh.1438. Medical Certificate issued for the treatment is at Exh.1460.

10.289 The Court has also perused the evidence of PW No.194-Kantibhai Laljibhai Patel vide Exh.1095 is injured witness, who also sustained injuries on account of blast, which took place near Sardar Patel Diamond Market. In the deposition, he has indicated that he was waiting at Pan Galla along with his friend; Dilipbhai and Bachubhai and along with him, there were other persons also waiting in the open place. While they were discussing about their business, at that time, the blast took place and he sustained injuries on his hands, chest and waist due to explosion of pellets from the bomb. He was also bleeding and therefore was taken to Dhanvantri Hospital for preliminary treatment and thereafter, to Civil Hospital. He has also deposed that on account of blast, one Anilbhai also sustained injuries and had expired due to injuries. There does not appear to be any cross examination of this witness.

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10.290 Over and above the evidence of aforementioned two witnesses, the prosecution has also examined PW No.193- Dilipbhai Ramjibhai Gohel at Exh.1094, who was also treated by same Doctor examined at PW No.276-Dr. Hetal Chetan Badheka. PW No.197-Sureshbhai Ukabhai Bhayani at Exh.1099, who was given treatment by treating Doctor PW No.295-Dr. Chintanbhai Arvindbhai Patel, who was examined at Exh.1581. PW No.199-Bhagvanprasad Harjiprasad Soni at Exh.1101, who was examined by treating Doctor PW No.303-Kinjal Hasmukhbhai Doshi at Exh.1608. PW No.196-Motilal Bhajanlal Mehta at Exh.1098, whose certificate of injuries was exhibited by treating Doctor PW No.45-Dr. Bhavna Chanakyakumar Patel at Exh.717. It appears that PW No.194-Kantibhai Laljibhai Patel at Exh.1095 was also examined by treating Doctor PW No.295-Dr. Chintanbhai Arvindbhai Patel, at Exh.1581.

10.291 The Court may refer to the evidence of PW No.6; Rameshbhai Chhaganbhai Chandpara at Exh.504. This witness is the complainant of the FIR being C.R. No.I-220/2008 and he has deposed that he is doing trading of diamonds and after completing his daily routine at Sardar Patel Diamond Market at Bapunagar, approximately in the evening hours, he came out of the market and went to the place, where he has parked his motorcycle near Diamond Pan Parlor and while he was approaching his motorcycle at around distance of 7 to 8 foot, there was a cycle with plastic bag tied around its handle, blasted and from the blast, pellets, nails etc. flew out and pierced. This witness on his right hand thereby sustained injuries. Another 5 to 7 persons, who were around also suffered with injuries.This witness had suffered injuries on his hand as well as on his waist. He has deposed that on account of the blast and commotion, he was stunned and was taken to

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Dhanvantri Hospital for treatment. At that time, while he was being taken to Dhanvantri Hospital in an area near Shriji Ice-cream Parlor, an Ice-cream shop, there was blast again on the plastic bag hanging around the cycle, which he also had witnessed and he was taken there from to Kakadia Hospital and was finally treated there. This witness has identified his signature in the margin of the compliant given by him, which was counter signed by the Police Inspector and through this witness, the complaint came to be exhibited vide Exh.505.

10.292 In the cross examination, this witness has deposed that at the time of incident, several other vehicles were parked and he experienced blast. He felt that blast had come from cycle. He felt quite afraid and was stunned and his ears going shock, which continued for some time. On questions being asked with relating to which ear he experienced shock, he was not able to say for sure, but he deposed that 4 to 5 people took him to the Hospital, which he reached within 5 minutes and was thereafter, given treatment. He had waited at Dhanvantri Hospital for a period of 45 minutes and thereafter was taken to Kakadia Hospital, which was around 12 minutes away. He was given treatment at Kakadia Hospital in emergency and there only the Police had made an inquiry from him, though he did not remember name of the Police Person, who had made an inquiry from him. Whatever inquiry was made from him, was being written.

10.293 With regard to second blast at Shriji Ice-cream Pan Parlor, he has deposed in the cross that distance between first and second was of 4 to 5 minutes walking distance. He denied the suggestion that while going towards DhanvantriHospital, Shriji Ice-cream Parlor was not coming on that way. With regard to treatment in the cross examination, this witness has deposed that after treatment at Kakadia Hospital, he had

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straightway gone to his home and after 10 to 15 days, he had gone to Civil Hospital for treatment. He has deposed that after 2 days of incident, once again, he had gone to Kakadia Hospital, but with regard to his treatment at Civil Hospital, he has not produced any Police papers. He had retained those papers with him only. He has confirmed the suggestion that he had not given information with regard to treatment at Civil Hospital to the Police. He has denied the suggestion that he himself has no information about the bomb blast, but on account of several blasts taken place around Ahmedabad City, on the instruction of Police, he has given this complaint. This witness has reiterated that he has witnessed other people also getting injured. He was contradicted with regard to fact of bag being of plastic, was not stated in his compliant and that he has not informed the Police that in the bomb blast, nailsalso flew out. But the witness has confirmed that iron pellets were flying, was stated. However, in the complaint at Exh.505, the referenceis made to the nails.

10.294 The Court has perused Exh.505 in connection with contradiction of witness not having stated about nails flying out of the blast. In Exh.505, it is recorded that out of the blast, iron pellets and etc. were flying causing injuries.

10.295 In support of this witness in so far as injuries are concerned, the Court may refer to PW No.281-Dr. Aditya Indulal Upadhyay at Exh.1503, who at the relevant time was Visiting Surgeon at Kakadia Hospital and he has examined and treated PW No.6-Rameshbhai Chhaganbhai Chandpara, who has sustained injuries out of bomb blast. He has described injuries on his right hand on account of metal pellet, which was found embeddedin his right hand and injuries on his waist caused due to two metal pellets and after surgery, he had removed those

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pellets. This witness has issued Certificate at Exh.1504. This witness has not been cross examined.

10.296 In view of the aforesaid evidence, in the opinion of the Court, the prosecution has established two blasts one at Diamond Pan corner at Sardar Patel Diamond Market and another at near Shriji Ice-cream Parlor in front of Tea Stall and injuries sustained on account of the blast. Extensive cross examination of informant; PW No.6- Rameshbhai Chhaganbhai Chandpara is unable to create any doubt on the scene of offene or veracity of the witness.

10.297 The Court in regard to the offence which has been registered at Bapunagar Police Station vide C.R. No.I-220/2008 has perused the deposition of the complainant PW No.6-Rameshbhai Chhaganbhai Chandpara at Exh.504 who has deposed that at the relevant timehe was engaged in the business of trading diamonds and after completing his daily routine at Sardar Patel Diamond Market at Bapunagar, at around 6:30 to 6:45 p.m., he left the market and went to the place where he parked his bike which was near Diamond Pan Parlor. He has deposed that while he was approaching his bike and while he was at a distance of around 7 to 8 feet, a blast occurred from a cycle with plastic bag tied on its handle and as a result, pellets and nails flew out and pierced the witness on his right hand and back resulting in injuries. There were around 5 to 7 other persons who had also sustained injuries due to the explosion. He has deposed that on account of the blast and commotion, he was stunned and was taken to Dhanvantri Hospital for treatment. At that time, while he was being taken to Dhanvantri Hospital another explosion took place in the area near an ice-cream shop named Shreeji Parlor from the plastic bag hanging on a cycle which was witnessed by him. He was thereafter to Kakadiya Hospital and was finally treated

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there and he also gave a complaint regarding the incident at Bapunagar Police Station. Upon being shown Mark 97-317, this witness has identified his signature in the margin of the complaint given by him, which was counter signed by the Police Inspector and the said complaint was exhibited vide Exh.505. He has deposed that even after recording the complaint, he was further questioned and his statement was recorded by the police.

10.298 In the cross examination, this witness has deposed that at the time of incident, several other vehicles were parked and he felt that the blast had occurred from the cycle. He felt quite afraid and was stunned and he experienced ringing in his ears, which lasted for some time however, he has denied the suggestion that he was unable to hear after the blast. On questions being asked relating to which ear he experienced ringing, he has deposed that he experienced ringing in his right ear and was unable to tell with surety whether it affected his left ear. He deposed that 4 to 5 people took him to the Hospital, which he reached within 5 minutes and was thereafter, given treatment. He deposed that he waited at Dhanvantri Hospital for a period of 4 to 5 minutes and was thereafter taken to Kakadiya Hospital, which was around 12 minutes away. He was given treatment at Kakadiya Hospital in emergency wherein the inquiry was conducted by the police however; he did not recall the name of the police officer. The inquiry made by the police officer was recorded as per his statement and he has denied the suggestion that the complaint was written by the police officer arbitrarily by himself.

10.299 With regard to the second blast at Shreeji Parlor, he has deposed in the cross examination that the distance between the first and second location was at a walking distance of 4 to 5 minutes. He denied the suggestion that Dhanvantri Hospital and Shreeji Ice-cream Parlor are

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not on the same route. With regard to treatment in the cross examination, this witness has deposed that after treatment at Kakadiya Hospital, he had straightway gone to his home and after 10 to 15 days, he had gone to Civil Hospital for treatment. He has deposed that after 2 days of incident, once again, he had gone to Kakadiya Hospital, but with regard to his treatment at Civil Hospital, he has not produced any papers to the police and had retained those papers with himself. He has confirmed the suggestion that he had not given information with regard to treatment at Civil Hospital to the police. He has denied the suggestion that he himself has no information about the bomb blast, but on account of several blasts taken place around Ahmedabad City, on the instruction of Police, he has given this complaint. This witness has reiterated that he has witnessed other people also getting injured. He was contradicted with regard to fact of bag being of plastic, was not stated in his complaint and that he has not informed the Police that in the bomb blast, nails also flew out. But the witness has confirmed that he stated that iron pellets were flying. However, in the complaint at Exh.505, the reference is made to the nails. The Court has perused Exh.505 in connection with contradiction of witness not having stated about nails flying out of the blast. In Exh.505, it is recorded that out of the blast, iron pellets and etc. were flying causing injuries.

10.300 Therefore, this witness having given the account of the incident immediately after the blast took place; his account is required to be believed insofar as the occurrence of the blast and the injuries sustained due to the blast are concerned. Even from the cross examination, there is nothing to caste a doubt about the truthfulness of this witness.

10.301 The Court has thereafter perused the deposition of the police

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officer PW No.705-Keshavlal Premjibhai Gajipara at Exh.3458 who recorded the complaint of the aforesaid witness in connection with offence registered at Bapunagar Police Station vide C.R. No.I-220/2008. He has deposed that he was working as Senior Police Inspector, Bapunagar Police Station at the relevant time and that around 6:15 to 6:30 p.m., he was informed that a blast had took place near Sardar Diamond Market and he therefore proceeded to Dhanvantri Hospital wherein he found injured persons who were brought for treatment. Upon reaching the location where the blast took place, it appeared that the blast occurred due to an explosive substance which was placed on a cycle. Thereafter, he proceeded to check other vehicles which were parked in the area and upon noticing a suspicious bag which was placed on a bicycle, a message was sent to the Control Room requesting for F.S.L. and Bomb Disposal Squad. Also, the crowd was cleared off from the nearby area. Shortly thereafter, an explosion occurred from the bag which was placed on the bicycle. He was thereafter informed by the P.S.O. of Bapunagar Police Station that the injured persons had been taken to Kakadiya Hospital upon which, he instructed staff to secure the location where the blast occurred and proceeded to Kakadiya Hospital to record the complaint given by the complainant which was thereafter forwarded to the P.S.O. for registration of offence. At the instance of a police constable named Dineshbhai, the location where the first explosion occurred was pointed out and a panchnama was made in that regard. Thereafter, upon arrival of the F.S.L. Officer Hingrajiya, and under his instructions seizure of articles were made such as, a white slippery substance which was seen scattered over the motorcycles that had sustained damage in the blast, blood stains on the nearby scooters, burnt bag, wooden fragments, wires connected to detonators and around

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20 to 25 metal pellets lying at a distance of 7 to 8 feet. Similarly, from the location where the second explosion occurred, similar white slippery substance on nearby vehicles, wires with detonators, pieces of wood, burnt military colored bag, pieces of shirt and newspaper and small round metal pellets were collected. Thereafter, as per the instructions received, the investigation was handed over to Crime Branch at around 3 a.m. to P.I. Patel. This witness has also deposed that both the bicycles were seized by them.

10.302 Exh.505 is the complaint which has been confirmed by this witness to be the one given by the complainant Rameshbhai Chhaganbhai Chandpara and that it was recorded as per his narration and that, it was signed by the complainant on the reverse side of the first page and at the end of the complaint. Further, it was countersigned by this witness and he has identified the signatures of both, the complainant and himself on the complaint. Exh.611 is the report which was prepared and forwarded to P.S.O. of Bapunagar Police Station for registration of the offence under Section 157 of the Code of Criminal Procedure based on which, F.I.R. No.220/08 was registered and this witness has confirmed the said report and has also identified his signature on it. Exh.1890 is the panchnama of scene of offence which this witness has confirmed to be made in the presence of two panch witnesses and which describes the muddamal articles which were seized from the location bearing the signature of both the panch witnesses and himself which has been identified by him. Exhs.1879 to 1889 and Exhs.1891 to 1897 are the panchnama slips which are related to the panchnama which is exhibited as Exh.1890 and which correspond to the muddamal articles which were seized bearing signatures of both the panch witnesses and him which has been identified by this witness. Thereafter, upon being

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shown the seized muddamal articles at Serial Nos.1 to 17 of the muddamal list exhibited at Exh.2065 in connection with Sessions Case No.341/09, this witness has confirmed it to be the same articles which were seized and listed in the panchnama.

10.303 Thereafter, in the cross examination of this witness he has admitted that he did not make any documentary record of the information received by him regarding the explosion. He has deposed that when he arrived at the location where the blast took place, no injured persons were found and has denied the suggestion that upon not finding any injured persons at the location, he went to the hospital to record the complaint. He has also deposed that at the location of the blast, the crowd was agitated and that he did not question the persons who were at the location as there was a possibility of another bomb being found in a vehicle and therefore, he prioritized to secure the area. He was thereafter questioned regarding the distance between the two places where the blast took place and the radius within which the metal pellets were found. He has denied the suggestion that the items were seized only within 8-10 feet radius and has admitted that the panchnama did not mention of the distance within which the muddamal articles were seized. He has deposed that although the second blast took place in his presence, no attempt was made to file a separate complaint and that he does not recall whether his statement in that regard was recorded in that regard. He has deposed that after the blast, he attempted to collect evidence including blood stains and samples of explosive material from the vehicles lying nearby at both the locations which were thereafter handed over to the P.I. of the Crime Branch. He has deposed that he does not recall the number of police officers on duty and that he orally instructed to secure the scene however, no documentary record has been

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made in that regard. Further, he has admitted that no identification marks were affixed on the bicycle which was seized and he has confirmed that he possessed the official seal of Bapunagar Police Station and that no procedure was required on his part in order to use or affix the seal.

10.304 The Court upon perusing the evidence of this witness finds it to be consistent and credible as the recording of the complaint appears to have been made in the regular course of his duty which is supported by the deposition of the complainant himself and also having promptly undertaken subsequent procedures. Further, in the cross examination, there appears to be some lapse such as, not affixing any identification mark on the bicycles, not filing a separate complaint with regard to the second blast although he was present at the time of the blast, etc. However, it is not of a nature so as to discredit the evidence of this witness.

10.305 The Court has perused the evidence of the witnesses who have deposed regarding the damage occurred and injuries sustained due to the blasts that have took place near Sardar Patel Diamond Market, Bapunagar.

10.306 The Court has perused the evidence of PW No.748-Mahendrakumar Babulal Rajput at Exh.3536 who was working as a security guard and was assigned on duty at the main gate of the Sardar Patel Diamond Market, Bapunagar at the relevant time. He has deposed that on 26.07.2008, at about 6:30 to 6:45 p.m. while he was on duty, a loud explosion occurred in the parking area of the Diamond Market and upon going there he saw that people were running helter and skelter and some people had sustained injuries and were bleeding. He has deposed that a bicycle was lying at the location and that the injured persons were taken to the hospital by vehicle. Thereafter, in the parking area which is

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opposite Prabhu Tea Stall another bag was found hanging on a bicycle and upon suspicion that the said bag also contained a bomb, all persons standing nearby were removed and thereafter, that bomb also exploded. However, as the people had already been moved away, no such injury had been caused. He has deposed that one Anilbhai Patel had died in the said incident. The statement of this witness has been recorded by the police on the next day. In the cross examination of this witness, he has deposed that the parking of the Diamond Market is situated outside and that as a part of his duty, he had to keep a check on the persons entering and leaving. He has deposed that the parking is situated four steps away from the gate and the vehicles of the people who come to Diamond Market are parked there however, he does not know as to which vehicles are parked by whom and that he cannot say as to on what the said explosion took place. He has also admitted that he cannot state as to what was the kind of bag and the colour of it. He has deposed that he had only heard the sound of the blast and that he does not know anything further.

10.307 The Court has thereafter perused the evidence of PW No.994-Ravishankar Shivshankar Trivedi at Exh.6937 who was carrying on business in the name of "Gayatri Diamond Weighing Centre" at Diamond Market in Bapunagar and has deposed that on 26.07.2008 at about 6:30 p.m. after finishing his market work, he had come back and had parked his Activa near Dhanvantri Hospital. He has deposed that shortly thereafter, a bomb blast occurred near Sardar Patel Diamond Market due to which people started running helter and skelter. He has deposed that one person namely, Bharatbhai who was working as a broker had informed him regarding a bomb which was on a bicycle upon which, he immediately moved away from there. Shortly thereafter, the

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bomb exploded due to which there was a panic amongst the people. He has deposed that in the explosion that occurred near Diamond Paan Centre, one person had died and about seven people had sustained injuries and that a statement of this witness in regard to the incident was recorded by the police on the next day. In the cross examination of this witness, he has admitted that he had not gone to the police station to get his statement recorded and that the police had not read over his statement to him.

Kalol Police Station C.R. No.I-220/2008

10.308 Learned Additional Advocate General has thereafter referred to the Kalol incident, wherein an unexploded device was found in an unclaimed box inside an A.M.T.S. bus, which was subsequently removed and placed outside near Arvind Mill, Khatraj. In this regard, reliance is placed on the deposition of the conductor of the A.M.T.S. bus i.e. PW No.678-Ajmalbhai Salubhai Padariya, panch witness, and the documents on record such as, panchnamas and FSL reports to submit that the said object was an explosive device which was detected and defused.

10.309 The Court has perused the evidence of PW No.678-Ajmalbhai Salubhai Padariya examined vide Exh.3336, who was working as the conductor of the A.M.T.S. bus, and has deposed that on 26.07.2008, while the bus was stationed at Arvind Mill, he noticed an unclaimed box wrapped in cloth beneath the rear seat of the bus. On suspicion, the same was brought to the notice of the driver and one of the passengers removed the said box and placed it at some distance from the bus. However, the witness has stated that he did not identify the person who removed the box nor did he ascertain who had brought the

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same into the bus. He has further admitted that he himself did not inform the police and that he left with the due to the request of the passengers. Therefore, although the presence of an unattended suspicious object was noticed, the witness did not remain present thereafter nor did he take steps to inform the police directly.

10.310 The Court has also perused the evidence of PW No.686-Prithvibhai Ramabhai Parmar, a member of the Anti-Sabotage Squad, examined vide Exh.3348, who has deposed that upon reaching near Arvind Mill, a suspicious box was found, which was initially examined through the dog squad and which indicated presence of suspicious substance. Thereafter, the box was examined using explosive detector and NLJD instrument, both of which confirmed presence of explosive substance. He has further deposed that thereafter the process for defusing the bomb was undertaken and upon opening the box, components such as detonator, battery, alarm clock and shrapnel fitted together were found, which were separated and the device was successfully defused. In cross-examination, the witness was questioned with regard to his service, absence of personal record of duty, functioning of the control room and procedural aspects of his deployment. However, nothing material has emerged so as to discredit his evidence with regard to the detection of the explosive device and the successful defusing operation carried out by the squad.

10.311 From Exh.2080, the panchnama of scene of offence proved through PW No.359-Mohanji Balaji Thakor examined vide Exh.2079, it appears that the suspicious box found near Arvind Mill, Khatraj was an explosive device which had already been defused by the Anti-Sabotage Squad prior to the panchnama. The panchnama records the separated components of the bomb, including detonators, batteries, alarm clock

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mechanism, wiring and shrapnel affixed with adhesive substance, along with packing materials used in its assembly. It appears that upon examination by the FSL officer at the spot, the device was confirmed to be an explosive, and all components were thereafter seized in sealed condition.

10.312 From Exh.1923, the panchnama of scene of offence was drawn in presence of PW No.349-Dineshji Arjanji Thakor vide Exh.1922, it appears that the AMTS bus was inspected in presence of the driver and conductor, and the conductor identified the precise location beneath the rear seat near the passenger door where the suspicious white cardboard box was first noticed which was thereafter removed by a passenger and placed outside the bus at a short distance. No incriminating article was found inside the bus. Therefore, the panchnama establishes the original location of the object within the bus and its subsequent removal to the place where it was found in the open.

10.313 From the Investigation Van Report of the Directorate of Forensic Science vide Exh.5567, it appears that the FSL Officer, upon examination of the scene, found presence of ammonium nitrate-based substance, two detonators, shrapnel, battery, wiring and alarm clock mechanism, constituting all essential components of an explosive device. The report further opines that the device was an Improvised Explosive Device (IED) using ANFO as explosive material, thereby confirming that the recovered articles were parts of a defused bomb.

10.314 The Court can relate this document with the FSL report vide Exh.5716, wherein it appears that the seized muddamal articles, including ammonium nitrate-based substance, detonators, shrapnel, alarm clock, battery and wiring system, were subjected to chemical analysis, which confirmed presence of ammonium nitrate and petroleum

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hydrocarbons constituting ANFO, along with high explosive components such as PETN and Lead Azide in the detonators.

10.315 Further, Exh.7964 is the report of the Physics Department which establishes that the detonators were functional, the clock and battery were in working condition, and the components were capable of electrical continuity, thereby confirming the working condition of the device.

10.316 Thus, from the evidence of the aforesaid witnesses and the documents on record, it clearly appears that the suspicious box contained a fully assembled explosive device which was subsequently defused by the Bomb Disposal Squad. The presence of ammonium nitrate-based explosive material, detonators, timing device and shrapnel stands duly established, and the device has been scientifically confirmed to be a time-delay Improvised Explosive Device (IED).

10.317 Learned Special Public Prosecutor has referred to the incident, reported as unexploded bomb which was reported by Assistant Commissioner of Police, who is examined as PW No.695-Rasikbhai Virjibhai Nandasana vide Exh.3408. According to this witness, upon an telephonic information received, he had immediately proceeded to the address given where the suspected box was located. Upon reaching, he had controlled traffic and cordoned the area and summoned bomb disposal squad. In his complaint, he has described the contents of the box and arrival of the FSL team and prima-facie evidence given that the box contained explosive devise. The seizure activity having been taken by him. This witness has identified the seized muddamal. It is submitted that the cross-examination conducted his of very formal nature, which does not in any way caused any doubt on the evidence of this witness. Learned APP has taken this Court through para-14, which are the

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contradictions recorded and para-15, where the cross were put with regard to the actual action taken by this witness. Though, cross-examination was also made by questioning the exact place of incident to create doubt to convey that there is a change in the place of incident during the course of investigating.

10.318 The Court has perused the evidence of PW No.695-Rasikbhai Virjibhai Nandasana vide Exh.3408, who was working as Assistant Commissioner of Police 'I" Division and at the relevant time was posted as Police Inspector at Kalol Police Station and on 26.07.2008, when he was present at the police station at 19:45 hours, he received a phone call from the security officer of Arvind Mill located at village Khatraj through the PSO that near Arvind Mill main gate, suspected article is found which is wrapped in a cloth and in the form of box. Assembling team, this witness has immediately reached the site and as the site was near the cross road, he controlled the traffic and cordoned the area. By informing through wireless to the control team asked for bomb disposal squad and also summoned for FSL team. The witness has explained in detailed the size and shape of the box and the content of the box which was under the supervision of bomb disposal squad staff was dissected and contents were separated sofar as the part of investigation and thereafter, his complaint mark 97/1082 was exhibited as Exh.3409. The panchnama of seizure of muddamal is also exhibited vide Exh.2080 and the corresponding panch slips were jointly exhibited at Exh.3410. The forwarding letter (Ravangi Nondh) to the FSL of the seized articles were exhibited as Exh.3411.

10.319 This witness was cross examined on behalf of the Advocate representing certain accused. The questions were put with regard to procedure undertaken at the Police Station upon receiving information

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from Security Guard of Company and who had attended phone call and there is no specific mention in this regard. As per information received, it was only suspicious box, which would not amount to cognizable offence. Line of cross examination was to point out procedural infirmity in receiving information and noting it down in the register. However, to specific question regarding making of entry of information in Police Station, which was answered that any information received is required to be first verified and after genuineness of such information, note is made in the Police Station. It is also responsibility of the Police Officer, who gets the complaint registered to find out the genuineness of the complaint.

10.320 Thereafter, questions were put with regard to action taken by the witness upon receiving information to reach place, where the incident was reported. Upon reaching, preliminary inquiry was made with Security Officer of the Company; UdhamsinhDungara. However, with regard to such inquiry, no written note is made.

10.321 Witness was further cross examined by another Lawyer representing another set of accused. Questions were put with regard to geographical location surrounding the place of incident to indicate that place where the suspected box was found at the relevant time, was a crowded area.

10.322 Question was also put with regard to AMTS Bus and to ascertain genuineness of the box, suspected to contain bomb from the AMTS Bus and action undertaken for defusing the bomb by summoning Bomb Disposal Team.

10.323 This witness was also questioned with regard to timing of his duty as well as duty of his Subordinate and other Officers. These questions were put specifically to create doubt as to whether witness was

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actually on duty and performed action, as he claimed. Question was also put in similar fashion with regard to summoning of FSL Team, Bomb Squad and Sniffer Dog Squad.

10.324 In the opinion of the Court, despite elaborate cross examination, nothing fruitful came on record to doubt the veracity of this witness and duties performed by him. Lastly, question was also put whether with regard to incident, any videography or photography has taken place.

10.325 Remaining Advocates representing other set of accused have adopted cross examination.

10.326 The Court has perused the evidence of the witnesses namely, the driver and conductor of the bus who have deposed regarding a suspicious object which was found on the bus relating to the blast that took place near Municipality bus route No.66/3, Khatraj Village Area which is near Arvind Mill Gate.

10.327 The Court has perused the evidence of PW No.677-Ranjitsinh Kachraji Vaghela at Exh.3335 who has deposed that on 26.07.2008, he was on duty as the driver of bus route No.66/3 and that the route of the bus was from Kalupur Terminus to Arvind Mill with bus stops at various places on the way. The bus reached Arvind Mill at around 7:30 p.m. and while the bus was being reversed, the conductor informed him of a suspicious object which was lying near the right hand side of the rear door of the bus under the second seat from the entrance however, they did nothing and left the object there itself and got down. Thereafter, around 7-8 staff persons from Arvind Mills informed regarding the bomb blast that had took place however, they denied having knowledge about any such incident. Further, he has deposed that, after the passengers had boarded the bus they were asked regarding who

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the object belonged to however, no one claimed ownership and one of the passengers placed the object near the parking and informed the security after which, they left. The police called them next day in the morning in order to interrogate them and record a statement in this regard. Even on one other occasion, the Crime Branch, Ahmedabad called them and informed regarding the incident.

10.328 In the cross examination of this witness he has deposed that he does not recollect whether the conductor or he inspected the bus before taking charge. Further, he does not recollect the number of people who boarded the bus and the belongings carried by them. He has admitted that from the time of taking charge of the bus i.e, at 2 p.m. until they reached Aravind Mills at around 7:30 p.m., no suspicious object came to their notice and that he came to know about the object after the conductor informed him. He has also admitted that he is unaware as to what the suspicious object was, whether it was a box or a bundle and that he or the conductor did not inform anyone about the object. He has denied the suggestion that the suspicious object does not exist and has deposed that he did not know whether any such suspicious object is required to be deposited. He has also admitted that he did not stop any person who carried the suspicious object or question him regarding the ownership of the object. He has also denied the suggestion that while the bus was in motion, the object was thrown outside and the security officer informed him that it contained a bomb. Further, he has denied the suggestion that he is giving false evidence out of the fear of being involved in the case.

10.329 In the further cross examination of this witness on behalf of the advocate representing another set of accused, he has denied the suggestion that the police interrogated him on the day of the incident and

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has deposed that on that night, the police did not call him or check the bus. He deposited the bus at Naroda Memco and has denied the suggestion that the bus was shown to the police. Further, he has deposed that he is unaware whether after the incident the bus was taken to laboratory by the police and checked. He has affirmed that in the deposition he has informed the police that he had no information regarding the person who placed the bomb.

10.330 In the further cross examination of this witness on behalf of the advocate representing another set of accused, he has deposed that he was sitting on the passenger seat after the passengers boarded and was aware of the suspicious object at that time and that, neither he nor the conductor attempted to remove the said object from the bus as they had no suspicion regarding the object. He has deposed that no inquiry was conducted by him or the conductor about the person who kept the suspicious object outside and that he is unaware regarding where it was kept.

10.331 The Court has thereafter perused the evidence of PW No.678-Ajmal Sallubhai Padariya at Exh.3336 who has deposed that he was working as a conductor and that on 26.07.2008, his duty commenced at 2 p.m. from Kalupur bus depot on bus route No.66/3 from Naroda to Arvind Mill and that at around 7:30 p.m., the bus reached Arvind Mil, wherein he noticed a box which was wrapped in a cloth lying under the second seat near the rear door upon which he informed the driver of the bus. At that time, while some of the passengers were getting off the bus and some passengers were boarding the bus, it was informed by one of the passengers regarding the blasts that had took place in Ahmedabad upon which, one of the passengers found the object to be suspicious and placed it outside. Thereafter, the

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passenger informed the security who then informed the police and they departed as their duty time was running. He has deposed that his statement in this regard was recorded by the police on the next day and that on 08.09.2008, his statement was recorded by the Crime Branch.

10.332 In the cross examination of this witness, he has admitted the fact that in his police statement he has not mentioned that the box was wrapped in a cloth. He has deposed that he saw the box while the bus was being reversed and that he is unaware as to who brought it or since when it was in the bus. He has admitted that he did not check the bus before taking charge and that he is unaware of the persons who had boarded the bus and the belongings carried by them. He has admitted that he did not stop the person from carrying away the suspicious object and that he has not given any identification of such person to the police. He has denied the suggestion that no such box was found or not placed outside by the passenger or that the driver had thrown it out. He has admitted that he did not inform the police regarding the object as the security had already informed the police. He has deposed that he thought that the bus should not be driven away but as the passengers became frightened, it was driven away. He has deposed that he did not think that the suspicious object would explode and thought that it might belong to some passenger.

10.333 In the further cross examination of this witness on behalf of the advocate representing another set of accused, he has deposed that he has not voluntarily informed the police or any person regarding the incident and has denied the suggestion that the bus was checked in his presence on the night of the incident. He has also admitted that upon being shown some of the arrested persons by the police, he could not identify any of them. He has further admitted that he did not look inside

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or examine the box.

10.334 In the further cross examination of this witness on behalf of the advocate representing an accused, he has deposed that no identification of the passengers had been conducted by the police on 27th.

10.335 Thereafter, there appears to be further cross examination of this witness on behalf of the advocate representing another set of accused, wherein he has affirmed that the passenger had placed the box on the side after getting down from the bus and has denied the suggestion that it had been placed on the rear side of the bus or on the road behind the bus. He has affirmed that he has not written in his statement that the cardboard box was placed on the road behind the bus. He has denied the suggestion that on the day prior to recording of his statement, he was unaware as to on which route how many passengers had boarded. He has further deposed that he had not given any description as to the size or colour of the box and has affirmed that he was not present at the time when the box was seized by the police and therefore, he cannot sate as to whether it was the same box that was seen by him. Apart from this, there appears to be no material cross of this witness.

Amraiwadi Police Station: C.R. No.I-273/2008

10.336 Learned Special Public Prosecutor has thereafter referred to bomb blast, which was reported at Amraiwadi Poilce Station vide C.R. No.I-273/2008 on cycle, which was parked New Harinarayan Park Complex.

10.337 The prosecution has examined PW No.141-Hiraben Revabhai Parmar at Exh.1009 and treating Doctor; PW No.276-Dr. Hetal Chetan Badheka at Exh.1438. According to the prosecution, this

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witness had gone to Hatkeshwar Circle for purchase of vegetable and while she was at New Harinarayan Park Complex, where the vegetable market assembled, there was big blast. Because of which, she suffered injuries on her knees and waist. She sustained injuries on account of the pellets, which flew out of the explosion. There was commotion, where people were running here and there and in 108 Ambulance, she was removed to L.G. Hospital, where his Son and Daughter in law were directly called. From L.G. Hospital, she was taken to private Doctor for further treatment. While her treatment was going on at L.G. Hospital, there was blast in the L.G. Hospital itself. This witness has referred to cycle, which was lying from where the bomb blast was initiated. There is no cross examination of this witness.

10.338 PW No.276-Dr. Hetal Chetan Badheka; Treating Doctor at Exh.1438, who has treated and examined this injured witness and exhibited Medical Certificate at Exh.1461.

10.339 This witness (PW No.141-Hiraben) having not been cross examined, has given truthful version of the incident, which took place as she was in due course of her daily routine, had visited Vegetable market, which has gathered around New Harinarayan Park Complex for purchase of vegetables, when the bomb blast took place, injuring her on her knees and waist. She has also deposed with regard to other persons being present there and she was immediately removed by 108 Ambulance to L.G. Hospital for the treatment. She has deposed that when she was undergoing treatment, the bomb blast took place at L.G. Hospital also and therefor, her Son and Daughter in law arrived at L.G. Hospital and took her for the treatment at private Hospital. As there is no challenge to the version of this witness, the prosecution has established the incident of bomb blast at the place of incident and the injuries

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sustained.

10.340 The Court has perused the deposition of the complainant PW No.3-Pushpkant Keshavlal Parmar at Exh.494 who has deposed that at the relevant timehe was working as a police officer and was assigned patrolling duty along with another Police Constable Maheshbhai Swaroopsinh. On 26.07.2008 at around 6:50 p.m. while he was patrolling near Rauf ni Chali which is located in the Amraiwadi area, they were informed regarding a bomb blast that had took place near Hatkeshwar Circle upon which, they immediately proceeded to the said location wherein he observed that a crowd had gathered near a shop named 'Jyoti Mobile' and they were shouting that a bomb blast had occurred. The witness thereafter proceeded to inspect the location wherein he observed a bicycle on which a cloth bag was placed which was torn from below and beneath it, shrapnel and pieces of cloth were observed. Thereafter, the Police Inspector was informed who arrived at the location along with the staff. Also, he got to know that a lady named Hiraben Revabhai had sustained injuries to her leg and was taken for medical treatment. He has deposed that the incident took place at 6:45 p.m. and that it was a crowded area with a vegetable market located nearby. He thereafter submitted a complaint in this regard. Upon being shown the document at Mark 97/345 comprising of three pages including page no.1767 which is a handwritten on both sides, this witness has confirmed it to be the complaint submitted by him. He has affirmed the truthfulness of the contents of the complaint and has also identified his signature on it along with that of P.I. Gehlot and is exhibited as Exh.495. He has deposed that regarding this complaint, a statement was recorded by P.I. Sindhi of Crime Branch on 30.07.2008.

10.341 In the cross examination of this witness, he has deposed that

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the complaint given by him was likely recorded at the location on 26.07.2008 at around 7 p.m. or 7:30 p.m. and that the injured lady named HIraben was not present at the location when he arrived and that he came to know hearsay that a lady name Hiraben had sustained injuries. He has also deposed that he did not observe anything else at the location apart from a torn bag, shrapnel and pieces of cloth. He has deposed that upon seeing people running in panic, he got to know about the said incident and that he thereafter informed the P.I. who was at the police station through mobile phone. He was thereafter questioned regarding the time take by him to reach the place of incident and he has admitted that he submitted the complaint after inspecting the location. However, he has admitted that he did not inform everything that he observed at the location through the phone and that he merely informed P.I. Gehlot regarding the blast that took place and asked him to come to the location. He has deposed that the shrapnel which was observed by him at the location were of varying sizes, both large and small and that the smaller ones were of a size slightly larger than the ones used in air guns.

10.342 Upon perusing the deposition lead by this witness, it clearly establishes that his presence at the scene of offence was in the course of his official duty and upon getting to know about the blast, he promptly informed the P.I. and his evidence is required to be believed insofar as the occurrence of the blast is concerned and there is nothing coming out in the cross examination of this witness so as to completely discard the evidence led by him.

10.343 The Court has thereafter perused the deposition of the police officer PW No.730-Punamchand Rambhai Gehlot at Exh.3510 who recorded the complaint of the aforesaid witness in connection with

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offence registered at Amraiwadi Police Station vide C.R. No.273/2008. He has deposed that he was working as Police Inspector, Amraiwadi Police Station at the relevant time and that around 6:50 to 6:55 p.m., he was informed by a Police Constable named Pushpakant Keshavlal (PW No.3) who was on patrolling duty regarding the explosion that had occurred near Hatkeshwar Circle and that a large crowd had gathered there and several people had sustained injuries as a result of the explosion upon which, this witness immediately proceeded to the place of offence along with other police officers. The area was cordoned off and security arrangements were made. Also, the complaint of the police constable Pushpakant Keshavlal (PW No.3) was recorded and thereafter forwarded to the police station for registration of an offence. Also, the F.S.L. officer and dog squad were informed to reach the location where the explosion occurred. The complaint was registered as C.R. No.273/08 and the investigation was handed over to this witness. The F.S.L. Officer Hingrajya arrived at the location and the panchnama of scene of offence was made in the presence of two panch witnesses and articles were seized from the location. The panchnama was conducted between 9 p.m. to 11 p.m. and a preliminary report was given by the F.S.L. officer upon examination. The statements of other police constables were recorded and the injured person namely, Heeraben Revabhai was admitted for treatment at Shubhecha Hospital and therefore, this witness proceeded to the hospital and recorded her statement and also the statement of her son namely, Bharatbhai Revabhai. Also, the medical officer was requested to issue a medical certificate regarding her treatment. The bicycle which was seized was inspected, a fingerprint test was conducted and the forwarding letter was prepared to send the seized muddamal to the F.S.L. Thereafter, upon obtaining the certificate from the Assistant

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Commissioner of Police, the seized muddamal was sent to F.S.L. Further, upon receiving instructions from the Police Commissioner of Ahmedabad, the investigation of the offence was handed over to P.I. Sindhi from the Crime Branch along with the case papers and case diary.

10.344 Exh.495 has been confirmed by this witness to be the complaint given by the Police Constable Pushpakant Keshavlal which was recorded by him and he has also identified the signature of the complainant as well as himself. Exh.548 is the report which has been confirmed by this witness as the one sent to the officer in charge of the police station on the basis of which, the offence was registered and further investigation was handed over to this witness bearing his signature along with the endorsement made by the P.S.O. which has been identified by him. Exh.1852 is the panchnama of scene of offence which has been confirmed by this witness as the one prepared in the presence of two panch witnesses under which various muddamal articles were seized and the document bore the signature of both the panch witnesses and himself which has been identified by him. Exhs.1853 to 1858 are the panchnama slips which has been confirmed by this witness to be the one which was affixed at the time of seizure and sealing of muddamal, bearing signatures of the two panch witnesses and himself. Mark No.97/346(1) has been confirmed by this witness to be the carbon copy of the report given to F.S.L. Officer bearing his signature and that of the F.S.L. Officer confirming the receipt of this witness which has been identified by him. Also, the F.S.L. report has been attached on the reverse side of the document and is exhibited as Exh.3511. Upon being shown the document at Mark 3440/2, he has confirmed that the seized muddamal articles were sent to F.S.L. along with the forwarding letter and that the certificate of authority was issued by A.C.P. bearing

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signatures of the A.C.P. and this witness which has been identified by him and is exhibited as Exh.3512. Mark 3440/3 is the receipt which was issued by the F.S.L. upon receiving the muddamal articles which was sent through Police Constable Amthabhai and is exhibited as Exh.3513. Thereafter, upon being shown Article Nos. 1 to 7 of the document exhibited as Exh.2276 in connection with Sessions Case No.347/09, he has confirmed it to be the same articles which were seized from the location in the presence of two panch witnesses.

10.345 This witness has thereafter been cross examined wherein he has deposed that he was present at the police station on the date of the incident and that no information was received regarding the incident by any injured person at the police station. He has confirmed that the complaint of the complainant was recorded by him at the location and has denied the suggestion that he was not informed about the incident by the complainant before lodging the complaint. He has admitted that he is aware of the procedure relating to a cognizable offence and that upon receipt of information relating to a cognizable offence through any medium; it should be recorded immediately however, he had not made any such entry in the station diary, or the vardhi book or any such register at the police station. Further, he has deposed that he reached the location within 5 minutes of receiving the information and that there were other people present at the location. He has confirmed that the complainant was not present at the location during the blast and that there were other people who had witnessed the blast however, he did not record their complaint. He had thereafter been put forth questions relating to the distance of the police station from the location and regarding the patrolling duty done by him on the said date. Further, he has deposed that neither did he receive information nor did the

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complaint mention about any organization or person who might be involved in the offence. He has deposed that he handed over the investigation on the next day at 1:30 p.m. He has deposed that the complaint was handwritten by his writer and that he does not recall the person who wrote the report at Exh.548. He has admitted that none of the documents relating to the incident are in his handwriting and that the F.S.L. letter at Exh.3511 does not mention the time and that it was prepared after the arrival of the F.S.L. officer at the location which was thereafter handed over to him. He has deposed that he informed the F.S.L. officer through his personal phone about the incident at around 7 p.m. and that the F.S.L. officer arrived at the location at 9 p.m. He has confirmed the correctness of time (9 p.m.) which was mentioned on the panchnama at Exh.1852 and that the F.S.L. officer arrived during the preparation of panchnama however, this fact has not been mentioned in the panchnama. He has denied the suggestions that the F.S.L. officer arrived at 10:30 p.m. or that he left the scene before the panchnama was completed. However, he has admitted that there is no signature of the F.S.L. officer on the panchnama so as to acknowledge his presence.

10.346 Further, in the cross examination he has affirmed the suggestion that the muddamal bicycle in the panchnama at Exh.1852 was not wrapped in cloth or tied in rope and thereafter affixed and sealed in presence of panch witnesses. He has also confirmed that no identification marks were affixed on the bicycle and that the panchnama did not mention that the fingerprints were to be taken from it. Also, no report was given by the F.S.L. officer at the location regarding any fingerprints. He has denied the suggestion that the complaint at Exh.495 was not recorded as per the narration of the complainant and that the panchnama at Exh.1852 was not prepared in the presence of the panch

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witnesses, was not recorded as per their narration and was merely signed by the panch witnesses upon completion of panchnama. He has also denied that he merely signed the documents that were made during the course of investigation without being aware of its contents. Upon perusing the deposition of this witness, it mentions about the necessary procedure carried out by him after receiving the information about the incident. There appears to be some procedural irregularities which have come up in the cross examination of this witness however, it is not of a nature so as to entirely discredit the evidence led by this witness.

10.347 The Court has perused the evidence of the witnesses who have deposed regarding the damage occurred and injuries sustained due to the blast that has took place at the vegetable market near Harinarayan Complex, Hatkeshwar Crossroads, Amraiwadi.

10.348 The Court has perused the evidence of PW No.752-Rajubhai Sureshbhai Marathi at Exh.3540 who was carrying on a soda cart near New Harinarayan Flat and has deposed that he keeps the cart near the place where the vegetable market is held and that there are 500 to 600 carts near that place. He has deposed that the market gets highly crowded between 5:30 to 8 p.m. and that on 26.07.2008, at around 6:45 p.m. there was a loud explosion due to which, three to four women had been struck by the shrapnel and there was panic amongst the people. However, he is unaware of the identity of those women and as to what caused the said blasts. Thereafter, the police arrived and the injured persons were taken for treatment in 108 Ambulances. The statement of this witness has been recorded by the police. In the cross examination of this witness, he has deposed that he had never heard a bomb blast prior to this incident and has denied the suggestion that the sound of the bomb blast and the sound of a tyre burst are the same. He has also denied the

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suggestion that he has deposed that a bomb blast took place on the basis of information received from the people and has affirmed that he had seen the blast with his own eyes. He has deposed that he left his cart and went to the location of the blast after the blast took place and that he saw the shrapnel from the blast. He has deposed that the blast took place at a distance of 30 meters from his cart and has denied the suggestion that the bomb exploded near his cart and has affirmed that it took place on a bicycle opposite the cart. He has admitted that all of them ran away after the blast occurred and that he is unaware of the actual injuries sustained by the injured persons.

10.349 The Court has thereafter perused the evidence of PW No.750-Sunerilal Kalicharan Varma at Exh.3538 who was carrying on a vegetable cart in the vegetable market near Harinarayan Complex, Hatkeshwar Crossroads, Amraiwadi and has deposed that on 26.07.2008, an explosion occurred in front of Jyoti Mobiles in the vegetable market due to which people started running away. Further, he has deposed that the said explosion had taken place on a bicycle due to which the shrapnel and pieces of plastic had scattered and one lady had sustained injuries. Thereafter, 108 Ambulance arrived and carried the injured person away for treatment. The police arrived thereafter and removed the cart vendors. The statement of this witness was recorded by the police after two days. In the cross examination of this witness, he has deposed that the place where the cart vendors stand with their carts is around 500 meters long and that none of them had a license however, some of them had permits. He has deposed that “Jyoti Mobiles” is situated at a distance of 20 to 25 feet from his cart and that he remained at his cart after the explosion took place. He has affirmed that he is unaware as to how the said explosion took place and that he has not

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heard any such explosion prior to this incident. He has denied the suggestion that the sound could have been that of a tyre burst and has affirmed that he had not actually seen the explosion. He has thereafter deposed that he cannot speak or write in Gujarati and that he can read and understand a little Gujarati. He has affirmed that he had not given anything in writing to the police in Gujarati.

Danilimda Police Station: C.R. No.I-140/08

10.350 Learned Special Public Prosecutor has thereafter referred to the deposition of the complainant PW No.19-Bhimcharan Ramdas Manohar at Exh.542 who got injured due to the bomb blast that took place near Hanumanji Temple at Narol Circle and this witness has deposed regarding the injuries sustained by him, and to others including children. This witness has also confirmed the complaint given by him and his signature on it. Further, attention was drawn to deposition of PW No.731-Janakbhai Ravatbhai Wada at Exh.3514 who is the police officer who recorded the complaint given by the aforesaid witness namely, PW No.19-Bhimcharan Ramdas Manohar which is registered at Danilimda Police Station. This witness has deposed regarding the information received by him that a bomb blast had took place near Hanumanji Temple at Narol Circle, confirmed the panchnama of the place of offence and also, the muddamal that was seized from the place of offence.

10.351 The Court has perused the deposition of the complainant PW No.19-Bhimcharan Ramdas Manohar at Exh.542 who has deposed that on 26.07.2008, at around 6:15 to 6:30 p.m. while he was standing near the motorcycle, a sudden blast occurred at the spot due to which he sustained injuries on his left hand and left leg. Further, he has deposed

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that several others including children had got injured who were shifted to hospital for treatment. This witness gave a complaint in this regard and upon being shown the document bearing mark No. 97/801 which is the complaint that has been exhibited as Exh.543; this witness has confirmed the complaint, his signature and the contents thereof. Further, this witness has deposed that he was sent for treatment to L.G. Hospital and on the next day i.e., on 27.07.2008 at around 10 a.m., he went to the place of offence wherein he met the panchas, identified and showed the place of offence to the police. Also, a statement in that regard was recorded by the police. This witness has been cross examined wherein he has deposed that he is unaware about who committed the offence or how it took place. Apart from this, there is no substantial cross of this witness.

10.352 Therefore, this witness having given the account of the incident immediately after the blast took place; his account is required to be believed in toto insofar as the occurrence of the blast and the injuries sustained due to the blast are concerned. Even from the cross examination, there is nothing to caste a doubt about the truthfulness of this witness.

10.353 The Court has thereafter perused the evidence of PW No.731-Janakbhai Ravatbhai Wada at Exh.3514, who is in the police department and was working as a Senior Police Inspector, Danilimda Police Station at the relevant time. He has deposed that on 26.07.2008 while he was on patrolling duty, at around 6:45 to 7 p.m., he heard a message which was conveyed from the Control Room to Vatva Police Station regarding a bomb blast that had taken place near Hanumanji Temple at Narol Circle upon which, he along with the staff members, immediately proceeded to the scene of occurrence near the rear side of

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the temple and found that a bomb blast had taken place and one Bhimcharan Ramdas Manohar had sustained injuries. Further, he has deposed that the said area was cordoned and security (bandobast) was ensured with the help of staff members.

10.354 The injured person i.e., PW No.19-Bhimcharan Ramdas Manohar had given a complaint which was recorded on the spot itself and was signed by both, the injured person and this witness. Further, based on this complaint a First Information Report came to be registered bearing C.R. No.I-140/08. Also, a report under Section 157 of the Code of Criminal Procedure was sent to the police station. This witness has further deposed that he submitted a visitation report to his superior, recorded statements of witnesses and summoned F.S.L. officers on the spot.

10.355 Further, he has deposed that on 27.07.2008, at around 10:15 a.m., two panchas were called and a panchnama of the scene of offence was made in their presence which contained details of the items seized from the spot. The panchnama concluded at around 12:15 p.m. and was bearing the signatures of both, the panchas and the police officers. Further, the muddamal which was seized was forwarded to the P.S.O., acknowledgment of which was received and kept on record. Also, during this time, the FSL officers arrived at the spot at that time and the necessary procedures were carried out as per their instructions. The further investigation of this offence was the handed over to the S.O.G. Crime Branch as per the instructions of the Police Commissioner.

10.356 This witness has then confirmed the complaint which was recorded at the instance of PW No.19-Bhimcharan Ramdas Manohar, exhibited as Exh.543. This witness has also identified the signature of the complainant as well as his own signature on the said complaint.

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Further, he has also confirmed Mark No.546, which was the report whereby the charge was handed over to Danilimda Police Station and wherein it was also endorsed that the P.S.O. had returned the documents for further investigation. This witness has also identified his signature on the aforesaid report. The witness has thereafter identified the panchnama of scene of offence near Sankatmochan Hanumanji Temple which has been marked as Mark No.1798. In regard to the panchnama, this witness has deposed that the panchnama was drawn in the presence of two panchas and has identified the signature of the panchas as well as his own signature. Similarly, he has also identified panchnama slips from Exh.1799 to Exh.1801 and his signature therein. This witness has identified the letter which was sent to summon the F.S.L. officers which was duly signed by the F.S.L. officers and by him; and marked as No. 97/803 along with the carbon copy of the same. Also, he has identified and confirmed the F.S.L. report which was annexed to it. He has thereafter identified articles 1 to 10 from the muddamal list at Exh.922 in Sessions Case No. 339/09 as those seized during the panchnama.

10.357 This witness has thereafter been cross-examined regarding the time taken by him to reach the place of offence, the time at which complaint was recorded, the time at which the F.S.L. officers arrived and his presence at the place of offence. Further, he has deposed that during the investigation it was discovered that the incident was linked to certain individuals or terrorist organizations however, no visits were made to investigate these groups.

10.358 Upon perusing the evidence of this witness, nothing has come on record to caste a doubt on the veracity of this witness. The deposition of this witness appears to be natural and truthful and the mere fact that this witness is a police officer is not sufficient to discard the

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evidence of this witness.

10.359 This witness is also important for the purpose of the steps taken during investigation. From over all deposition of this witness the investigation has proceeded in a correct direction and no doubt can be cast on the manner of investigation carried out to term it as against the provsions of law or is malafide in any manner.

10.360 The Court has perused the evidence of the witnesses who have deposed regarding the damage occurred and injuries sustained due to the blasts that have took place near Sankat Mochan Hanumanji Temple, Narol Crossroads.

10.361 The Court has perused the evidence of PW No.747-Arjun Arvindbhai Khatri at Exh.3535 who performs worship (puja) at Sankat Mochan Hanumanji Temple which is situated near Narol Chaar Rasta (crossroad). He has deposed that on 26.07.2008, this witness and his younger brother were present at the temple and since it was a Saturday, more devotees were present on that day. He has deposed that at around 6:30 p.m. he had come out of the temple to use the bathroom whereas his younger brother remained inside the temple. He has deposed that he saw an ice-cream cart vendor near which a bicycle was present and that, he had asked the ice-cream vendor to bring the water container once it is filled. He has deposed that after going to the washroom in the Corporation Building and coming out, an explosion took place at around 6:45 p.m. besides the temple and that shortly thereafter; another explosion took place in front of “Mittal Sales” located opposite Narol Traffic Office due to which people started running helter and skelter. This witness ran to the place besides the temple where the explosion took place wherein he saw that the ice-cream vendor and two other persons had sustained injuries and that one child who was aged around

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five years had also sustained injuries. He called the 108 Emergency Ambulance service from his mobile phone which arrived and took the injured persons. Thereafter, the police arrived and carried out further proceedings. In the cross examination of this witness, he has affirmed the fact that the police recorded his statement an hour after the incident took place and that near the said ice-cream cart there were no other vehicles apart from the bicycle. He has deposed that he has no knowledge about the incident as at the time of the incident, this witness was in the bathroom and after the incident, he as well as the other people had run away.

10.362 The Court has perused the evidence of PW No.1029-Riteshbhai Vinodbhai Patel at Exh.7036 who is engaged in the business of building construction and has deposed that the police conducted his inquiry on 30.07.2008. He has deposed that on 26.07.2008, he had gone to Isanpur for supervision of the construction work and that as a payment had to be made to a person, at around 6:30 p.m. he went to Narol Circle on his Bajaj Discover Motorcycle which was then parked behind Sankat Mochan Hanumanji Temple near Narol Circle and then proceeded to complete the payment. At that time, a bomb blast took place behind him and he saw from a distance that the blast had occurred from a bicycle which was lying near the motorcycle. Thereafter, another blast took place on the road opposite Sankat Mochan Hanumanji Temple due to which people started running helter and skelter. He left his Bajaj motorcycle at the location and went home and later went to take his motorcycle wherein he saw that the front headlight and the side glass of the motorcycle had got damaged. The police recorded the statement of this witness in relation to the incident. In the cross examination of this witness, he has deposed that he went to make the payment and therefore

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had agreed to meet near the temple. He has admitted the fact that in his police statement he has stated that the blast took place when he went to Bhavani Cold Drinks to buy water and that he had called the other person namely, Rakeshbhai to collect his payment near the temple. He has deposed further, that the blasts took place at an interval of around five to seven minutes. He has admitted that he remained at the spot for about ten minutes after the second blast took place and that during that time, the police had arrived and cordoned off the area. He has deposed that his motorcycle was lying there however, he had not made any request to the police to take it back. He has deposed that there was no other damage to his motorcycle except the broken headlight and that at the time of panchnama, damage caused to his motorcycle was not noted. He has deposed that he does not recollect as to what damage was caused to the motorcycle but has admitted that it was broken. He had informed the police that the blast took place on the bicycle when they had come however, this witness was not asked his name or address and has admitted that had he not gone back to collect his motorcycle, the police would not have conducted any inquiry. He has deposed that he is unaware as to where the second blast took place and that even at the location of the second blast, a bicycle was lying. He has deposed that he had met Rakeshbhai to give the payment before he went to buy water and that he is unaware whether the police had recorded his statement and has admitted that he has not taken any receipt in regard to the payment made. He has denied the suggestions made that on the date of the incident he had not gone to Sankat Mochan Hanumanji Temple to make payment to Rakeshbhai, no such blast had took place in his presence, no such motorcycle was parked there and that no damage had occurred to it. He has also denied the suggestion that he is giving a false testimony in

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order to assist the police.

Isanpur Police Station: C.R. No.I-190/08

10.363 Learned Special Public Prosecutor has thereafter referred to the deposition of the complainant PW No.12-Amathabhai Govabhai Rabari at Exh.527 who sustained injuries due to the bomb blast that took place near Abhimanyu Complex at Govindwadi and has thereafter given a complaint in that regard which has been registered at Isanpur Police Station. Thereafter, Learned Special Public Prosecutor drew the attention of the Court to the deposition of PW No.701-Babulal Kanjibhai Sandhani at Exh.3441 who is the Police Inspector that recorded the complaint and has deposed that upon receiving information of the blast that took place near Govindwadi on 26.07.2008, he immediately reached the place of offence and arranged for medical aid and initiated necessary security measures. This witness has deposed that the F.I.R. was registered based on the complaint of an injured victim namely, Amathabhai Govabhai Rabari (PW No.12). Thereafter, this witness has deposed regarding carrying out necessary procedures such as, drawing of panchnama, seizure of articles, summoning of F.S.L. and dog squad and has identified and confirmed the documents made in this regard.

10.364 The Court has perused the evidence of PW No.12-Amathabhai Govabhai Rabari at Exh.527, who is engaged in the business of selling milk and at the relevant time when the blast took place, he was present at the vegetable market situated at Govindwadi. This witness has deposed that on 26.07.2008, at around 5:30 p.m., he had gone to the vegetable market to purchase vegetables and that, his wife; Champaben also arrived there at around 6 p.m. upon being called by him. He has further deposed that around 6:30 p.m. he heard a loud

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explosion that took place near Abhimanyu complex in the vegetable market. Due to the aforesaid explosion, both the witness and his wife sustained injuries. Further, he has also deposed that around 8 to 10 other individuals had got injured due to the said explosion. Thereafter, the ambulance was called and all the injured persons were taken to L.G. Hospital for treatment. This witness has deposed that he gave a complaint in that regard from L.G. Hospital itself at around 8:30 p.m. on the same day. This witness upon being shown the document bearing mark No. 97/902 which is the complaint that has been exhibited as Exh.528; he has confirmed the complaint, his signature and the contents thereof. Further, this witness has deposed that his statement was recorded twice by the police and that he underwent medical treatment and surgeries at L.G. Hospital itself which was for duration of about six months.

10.365 This witness has deposed in his cross examination that he was taken immediately to the hospital for treatment after the explosion and has confirmed that 8-10 people were injured due to the explosion however, he was not aware of the description of the injuries actually sustained by them. Further, he has deposed that he does not remember the date on which the subsequent statement was recorded by the police. Apart from this, there is no substantial cross of this witness.

10.366 Upon perusal of the entire deposition of this witness, his presence at the scene of incident is duly established and the injuries sustained by him and his wife corroborate the deposition of this witness. Further, the lodging of the F.I.R. promptly on the same day itself from the hospital lends credibility to the evidence of this witness. Nothing substantial has come on record upon perusal of the cross examination of this witness so as to caste a doubt on the version of this witness and

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therefore, the evidence of this witness is considered to be credible and truthful.

10.367 The Court has thereafter perused the evidence of PW No.701-Babulal Kanjibhai Sandhani at Exh.3441, who is in the police department and was working as a Police Inspector, Isanpur Police Station at the relevant time. He has deposed that on 26.07.2008, while he was present at the police station, he had received information from the Isanpur Mobile Unit that a bomb blast had occurred near Govindwadi. Upon receiving the said information, this witness along with another Police Inspector and police staff immediately rushed to the place situated near Abhimanyu Complex situated at Govindwadi Char Rasta wherein a vegetable market was located. There was a situation of chaos at the place of incident and there were people who had sustained injuries therefore, arrangements were made to send the injured persons for treatment to the hospital. Also, the place where the said incident occurred was cordoned off and the superior officers were informed in that regard. Further, even the F.S.L. team, dog squad and Bomb Disposal Squad were informed through the control room as the said offence was a serious one.

10.368 Further, this witness has deposed that upon receiving information that the injured persons had been admitted to L.G. Hospital, this witness proceeded to L.G. Hospital and instructed the other Police Inspector namely, M.A. Khokhar to remain at the spot along with the staff to ensure security. Upon reaching the hospital, he inquired one Amathabhai Govabhai Rabari (PW No.12) who had sustained injuries in the incident and recorded a complaint. Further, based on the said complaint, an offence was registered at the police station and a report under Section 157 of the Code of Criminal Procedure was prepared. This

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witness upon receiving directions for further investigation, conveyed information to senior officers and also called two panch witnesses at the place of incident.

10.369 Further, a panchnama was prepared in the presence of the said panch witnesses and the articles found from the place of incident were seized and sealed in their presence. The panchnama was conducted between 9:00 p.m. to 11:30 p.m. and also, a report was sent to the PSO acknowledging custody of the seized muddamal. Further, this witness has deposed that statements of other injured persons were also recorded which were supporting the contents of the F.I.R. and has been placed on record. Further, upon the death of Dipikaben Desai due to injuries sustained by the bomb blast, PSI Rathod was asked to prepare necessary documentation which was then forwarded to this witness. As an offence under Section 302 of the Indian Penal Code was disclosed, a report was sent to the Metropolitan Magistrate, Court No.1 on 27.07.2008 in writing.

10.370 This witness has identified the muddamal seized from the place of incident and the complaint of Amathabhai Govabhai Rabari (PW No.12) at Exh.3448. He has further confirmed that the same was recorded as per the narration made by the complainant and identified their signatures thereof. This witness has also confirmed the report for registration of F.I.R. at Exh.575 which was bearing his signature on the basis of which C.R.No.I-190/08 was registered and investigation was commenced. Thereafter, he has confirmed the panchnama of scene of offence at Exh.1778 which was bearing signatures of the panch witnesses and this witness and has deposed that it was drawn as per the narration given by the panch witnesses. He has also confirmed the report at Exh.3442 which was sent to the Magistrate for adding the charge of

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Section 302 of Indian Penal Code. Further, this witness has confirmed the requisition letter which was sent to F.S.L. Surat at Exh.3443 and has also identified the signature of the second P.I. namely, M.A. Khokhar on the report. The witness has identified the muddamal articles which were seized from the place of incident in the presence of panchas and which have been exhibited at Exh.2101 (Item Nos.1 to 6). He has also identified the panch slips which were bearing the signatures of the panchas and this witness at Exh.1774 to Exh.1777.

10.371 This witness has thereafter been cross examined regarding the time taken by him to reach the place of incident after receiving the said information and his presence at the place of incident. Thereafter, during the cross examination he has deposed the recording of the F.I.R. commenced at around 8 p.m. and that, it was completed by 8:30 p.m. and that the said F.I.R. was sent to the police station through an officer. This witness has further deposed that when he went to the place of offence for the first time, he stayed there for one and half hour and he had not met any eyewitnesses or injured witnesses and meanwhile, he made arrangements for security and for tracing out the accused. Further, he has deposed that although he did not receive information about the offence from any individual who was present at the place of location, he inferred the same from the situation that the offence was cognizable and therefore an F.I.R. was required to be registered promptly. Although it was a cognizable offence, the F.I.R. was not lodged in the name of the State due to incomplete knowledge and information. Further, he has deposed that the F.S.L. officers had arrived prior to the commencement of the panchnama i.e., between 8:45 to 9 p.m. Further, he has deposed that the investigation was handed over to P.I. of Crime Branch and that he had no information about the accused until the time of transfer of

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investigation.

10.372 In the opinion of the Court, despite elaborate cross examination, nothing fruitful has come on record to doubt the veracity of this witness and the duties performed by him and therefore, the evidence of this witness is required to be accepted. The perusal of this evidence would also go on to indicate that the witness in his capacity of the investigation has carried out investigation with due care and step by step the invetigatiuon was being caried out

10.373 The Court has also perused the evidence of the witnesses who have deposed about the blast that took place near the vegetable market at Govindwadi and the damage caused as a result of it. The Court has perused the evidence of PW No.675-Rameshbhai Mulchandbhai Bhavsar at Exh.3333 who was carrying on a paan stall near Govindwadi Crossroads and that on 26.07.2008, at around 6:15 to 6:30 p.m., an explosion took place in the vegetable market at Govindwadi due to which there was a helter and skelter amongst the people. As some people had sustained injuries in the incident, a phone call was made and 108 ambulances arrived at the location for taking the injured persons to the hospital. A statement of this witness with respect to the incident was recorded by the police on the same day. In the cross examination of this witness, he has admitted the fact that he remained at the stall until late night on the date of incident and that he did not carry out any special work or see any activity taking place at the spot. In the further cross examination of this witness, he has deposed that he had not seen as to what damage had took place in the nearby area due to the blast and that he is unaware as to the number of people who sustained injuries.

10.374 The Court has also perused the evidence of PW No.676-Ramashankar Rameshwarbhai Bhavsar at Exh.3334 who was carrying

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on a fruit cart near Govindwadi vegetable market and has given a similar deposition regarding the explosion that took place on 26.07.2008, at around 6:15 to 6:30 p.m. at the vegetable market due to which there was a helter-skelter amongst people and that the injured persons were sent to the hospital in ambulance. He has deposed that he did not go to the place of incident and that his statement was recorded by the police on the next day. In the cross examination of this witness, he has admitted that he does not have any specific knowledge regarding the incident.

10.375 The Court has perused the evidence of PW No.681-Pappubhai Shivchandbhai Sharma at Exh.3342 who was working at "Maruti Cold Paan Parlour" in Govindwadi area and has given a similar deposition regarding the explosion that took place on 26.07.2008, at around 6:00 to 6:30 p.m. at the vegetable market due to which there was a helter-skelter amongst people and that the injured persons were sent to the hospital in ambulance. He has further deposed that upon going to the place of incident, he saw an old bicycle with its handle which was lying detached around which, some cloth had been wrapped. He also observed blood which was lying at the spot and a dog which had died. His statement was recorded by the police on the next day. In the cross examination of this witness, he has deposed that he is unaware about the fact of the brand of the cycle and has further deposed that he closed the shop and went home at about 8 to 8:30 p.m.

10.376 The Court has perused the evidence of PW No.682-Chandubhai Ramubhai Dantani at Exh.3343 who was engaged in the business of selling clothes in Govindwadi area at Isanpur and has deposed regarding the explosion that took place on 26.07.2008, at around 6:00 to 6:30 p.m. at the vegetable market due to which there was a helter-skelter amongst people and persons who were in the nearby

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areas where the explosion occurred, had sustained injuries. Further, several injured persons were taken to a building named “Abhimanyu Complex” and upon going at the location, he saw an old bicycle with its steering detached, and cloth wrapped on it. He also saw blood at the spot and observed a dog lying dead at the spot. Thereafter, the ambulance came and the injured persons were taken for treatment. The statement of this witness was recorded by the police on the next day. There appears to be no cross examination of this witness and his evidence regarding the incident and observations made at the place of incident corroborates with the evidence of PW No.681-Pappubhai Shivchandbhai Sharma at Exh.3342.

10.377 The Court has perused the evidence of PW No.753-Rajubhai Kanubhai Bhavsar at Exh.3542 who has deposed that while he was on his way back home and passing by “Sarjan Hospital” at around 6:30 p.m., he heard the sound of an explosion that took place near Govindwadi vegetable market due to which there was a helter and skelter amongst the people. Further, while he was standing at the hospital, he saw that the ambulance arrived in order to take the injured persons for treatment and meanwhile, the police also arrived at the location. He has deposed that the explosion took place on a cycle which was near “Abhimanyu Complex” and his statement in regard to the incident was recorded by the police. In the cross examination of this witness, he has deposed that he has no personal knowledge about the incident.

10.378 The Court has perused the evidence of PW No.783-Dilipkumar Mafatlal Thakkar at Exh.4081 who was carrying on L.I.C. work at a shop in Abhimanyu Complex situated in Govindwadi area and has given a similar deposition regarding the explosion that took place on

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26.07.2008, at around 6:15 to 6:30 p.m. at the vegetable market due to which there was a helter-skelter amongst people and some persons had sustained injuries. One such person had sustained injury on his left leg and went running to the opposite side of the office of this witness. He has deposed that one person had called the 108 ambulance and that some persons had sent the injured persons to the hospital for treatment. Upon going to the location, he saw that the bomb had exploded on an old cycle and its handle was lying separately. He also observed a dog that had died at the spot and a statement of this witness has been recorded by the police. In the cross examination of this witness he has admitted the fact that he was inside the shop when the explosion took place and that he thereafter came outside. However, he has not voluntarily went and made any statement to the police in this regard and he has confirmed that the police came to him to record his statement and that between the date of incident and date of recording of statement, he was present at his office regularly.

Kalupur Police Station (C.R.No.123 of 2008)

10.379 Learned Special Public Prosecutor has thereafter, taken this Court to the incident of bomb explosion reported at Kalupur Police Station being C.R.No.I-123 of 2008. Witness PW No.89-Shri Hemant Madhukar Parab is examined vide Exh.901 and has also suffered injury. He was taken for treatment to V.S. Hospital, where he was examined and treated and the treating doctor has been examined vide Exh.1362. The conjoint reading of these two exhibits would demonstrate the nature of injuries in the form of abrasion sustained by this witness. Exh.1362 being the deposition of the treating doctor has described the injuries two abrasions and a puncture wound on the back side of the knee of 1 C.M.

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and the cut on the foot of the injured witness and in the puncture wound, a foreign object was seen and therefore, was referred to the Orthopedic hospital. He has produced Exh.1363. Exh.1363 is the injury certificate of PW No.176-Mukesh Gordhandas Lalani. In the history he has stated that the injury is caused on account of the bomb-blast. The examination is indicative of the treatment received for various injuries he has sustained on account of the bomb-blast.

10.380 The Court has perused the deposition of the complainant PW No.7-Asudomal Thakordas Makhija at Exh.507 who has deposed that he was running a shop named “Janta Paan House” and that on 26.07.2008, at around 6 p.m. to 6:45 p.m. an explosion took place in the parking area which is located at a distance of around 8 to 10 feet from his shop. He has deposed that there were two customers, namely Bachan and one another whose name he does not recollect, who purchased cigarettes from him and were standing near the bike in the parking area and that the explosion took place on a bicycle which was near the bike. There were plastic pieces and pieces of cloth on the carrier of the bicycle and there were iron pellets scattered under the bicycle. There was a chaos as a result of the explosion and the police arrived within 15 minutes. The shops located nearby were closed and this witness was instructed by the police to remain at the location and he gave a complaint to the police regarding the incident that took place upon being questioned. Upon being shown Mark No.97 which is a two page handwritten complaint with writing on all the four sides , he has identified his signatures on the complaint and has affirmed the truthfulness of the contents of the complaint and is exhibited as Exh.508. Thereafter, on the next day he showed the place where the explosion took place i.e., on 27.07.2008 at around 2:30 a.m. He was questioned by the police on 29.07.2008 and

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also, he got to know from others that three to four individuals had got injured in the incident.

10.381 This witness has thereafter been cross examined wherein he has denied that he knew the full names of the two customers who visited his shop and that he wrongly stated that he did not recall the name of the person accompanying the customer named Bachan. He has further deposed that he heard about the other blasts that took place in the city from the public and that he was not informed by the police regarding the same. He has affirmed that he had no personal knowledge of the people who got injured in the blasts and that while his complaint was being recorded, a few police officials were present including, a senior police officer and a writer from Kalupur police station however, there was no deliberation with the said officers before the time of lodging of complaint although, some questions were put forth to him at the time of recording of the complaint. He has denied the suggestion that he had wrongly stated that pieces of cloth and plastic were found on the carrier of the bicycle.

10.382 Upon perusing the deposition of this witness, the Court finds it to be consistent and reliable insofar as his presence at the place of incident, observations made by him, and lodging of the complaint is concerned. Further, even in the cross examination there is nothing so as to caste a doubt on the evidence of this witness.

10.383 The Court has thereafter perused the evidence of PW No.498-Narottambhai Joitaram Patel at Exh.2928, who is in the police department and was working as a Police Sub-Inspector, Kalupur Police Station at the relevant time. He has deposed that while he was on investigation duty at the Kalupur police station, one Asudomal Thakordas Makhija (PW No.7) had appeared before him and lodged a

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complaint regarding the bomb blast that took place on 26.07.2008 at around 6:30 to 6:45 p.m. near Janta Paan House which is opposite Chetan Cloth Market, Sarangpur Darwaja and that the said complaint was recorded as per the narration of the complainant, read over to him and signed by the complainant in his presence. He also affixed his signature to the said complaint and a copy of the complaint was handed over to the complainant which was duly acknowledged. The original complaint has been exhibited as Exh.508 which was confirmed and the signatures on such complaint of the complainant and him were identified by this witness. He has further deposed that after recording of the complaint, he forwarded the complaint along with the report to the officer in charge for registration of F.I.R. and that, he also informed the senior police officers. Exh.578 is the aforesaid report which has been duly identified by this witness along with his signature and the endorsement of the P.S.O. on it, noting that the further investigation was handed over to a senior Police Inspector.

10.384 In the cross examination of this witness he has admitted that the complainant had not sustained any injuries in the incident and that he had not visited the location where the bomb blast took place either before or after the recording of the complaint. Upon perusing the evidence of this witness, nothing has come on record to caste a doubt on the veracity of this witness. The deposition of this witness appears to be natural and truthful and the mere fact that this witness is a police officer is not sufficient to discard the evidence of this witness.

Vatva Police Station (C.R.No.218 of 2008)

10.385 Learned Special Public Prosecutor thereafter, referred to the bomb-blast incident reported at Vatva Police Station under FIR being

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C.R. No.218 of 2008 and referred to PW No.10-Kadarbhai Karimbhai Ajmeri, who is also a complainant examined vide Exh.518-Kadarbhai Karimbhai Ajmeri who was running a cutlery shop on a handcart when the bomb planted on a bicycle took place near to his handcart. He has also heard the second blast in the same locality. He has referred to certificate of injury at Exh.1487 exhibited by treating doctor, who is examined vide Exh.1477. In the certificate itself, an opinion has expressed that the injury was caused on account of the bomb-blast.

10.386 The Court has perused the deposition of the complainant PW No.10-Kadarbhai Karimbhai Ajmeri at Exh.518 who has deposed that he was running amobile cutlery shop on a handcart which was stationed on the footpath opposite Mittal Chambers located at Narol Circle and that, on 26.07.2008, a bomb explosion occurred on the rear side of his handcart which was planted on a bicycle due to which he sustained injuries on his back. There was chaos and two to three other individuals had got injured and 108 ambulance arrived at the location. He had also heard a blast that took place on the same day near Hanumanji Temple which is located on the opposite side regarding which, he filed a complaint. Upon being shown the document at Mark 97-871 which contained a handwritten complaint, he has affirmed the truthfulness of contents of the complaint and has also identified his signature at the end of the complaint and is exhibited as Exh.519. Thereafter, he had shown the place of incident to the police and had also handed over the shirt he was wearing at the time of incident. Upon opening the sealed packet and being shown the shirt in Sessions Case No. 364/2009 at Exh.520 which is listed at Serial No.1, he has identified it to be the same shirt he was wearing on the date of incident which was handed over to the police.

10.387 This witness has been cross examined regarding the religion

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of the people who undertake business in the area and who have got injured to which he has answered that, people from both Hindu and Muslim religion undertake business in the said area and have got injured. Thereafter, this witness has affirmed that two to three people had got injured in the incident and that he himself had sustained minor injuries. He has deposed that he does not recollect the police officer to whom he showed the place of incident. He has denied suggestions that the explosion did not take place in his presence and that he did not sustain any injuries or that the muddamal shirt is not his and he did not submit any shirt to the police. There is no other material cross of this witness.

10.388 Upon perusal of the deposition of this witness, it is clearly coming out that he was an eyewitness to the explosion that occurred and his evidence is further corroborated by the nature of injuries sustained by him, the complaint filed and the muddamal shirt which was worn by him on the date of the incident and therefore, his evidence is required to be accepted.

10.389 The Court has thereafter perused the evidence of PW No.699-Baddevbhai Lavjibhai Chaudhary at Exh.3433, who is in the police department and was working as a Police Inspector, Vatva Police Station at the relevant time. On 26.07.2008, while patrolling he received a message at 6:50 p.m. from the Control Room direcdting him to go to Narol Circle and upon going there, he found that an explosion had occurred in front of Mittal Chambers on a bicycle. The area was cordoned off and he found an injured person, namely one Kadarbhai Ajmeri (PW No.10) who was injured and present at the location and upon inquiring, he expressed his willingness to lodge a complaint and therefore a complaint was noted down as per the narration of the complainant and his signature was obtained and thereafter countersigned

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by this witness. He reported the incident to P.S.O. for registering the complaint and accordingly, F.I.R. No.218/08 came to be registered and investigation was handed over to this witness. The F.S.L. officer was informed to come to the location through the Control Room however, as similar blasts had taken place in the city, there was a delay and the location was secured accordingly.

10.390 Upon receiving information of arrival of police officers, two panch witnesses were summoned for preparing panchnama of scene of offence. Upon arrival of the F.S.L. officer, the place of explosion was shown by the complainant and the officer inspected the site and seized various articles such as, a 22 inch Hercules Bicycle, a torn cloth bag and a torn plastic bag, pieces of wood, pellets, battery, part of detonator, wire and a sticky substance on the cycle which was scraped and seized accordingly. The items were placed in boxes and panch slips bearing signatures of the panch witnesses and this witness were affixed on it and were sealed with the seal of P.S.I. Vatva. The bicycle which was seized was separately sealed. The panchnama was accordingly made in the presence of the panch witnesses and signed by both, the panch witnesses and this witness. Also, a list of items for inspection was handed over to the F.S.L. officer who in turn, gave his investigation van report. The seized muddamal were sent to P.S.O. Vatva for obtaining acknowledgment and was placed on record. He also recorded statements of other injured witnesses and as per the instructions of the Police Commissioner of Ahmedabad, the further investigation was handed over to the Crime Branch and the case papers were handed over to P.I. Shukla. He had also issued a memo for medical examination of injured persons during the time the investigation was with him.

10.391 Exh.519 is the complaint which was recorded by this witness

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and he has affirmed that the contents of the complaint were written as per the narration of the complainant and has also identified the signatures of the complainant and himself as the recording officer on such document. Exh.572 is the report for registration of the complaint bearing the signature of this witness and has been identified by him. Exh.1792 is the panchnama of scene of offence and it has been affirmed by this witness that it is written as per the narration of the panch witnesses and has also identified the signatures of the two panch witnesses and himself on the reverse side of the first page and at the end of the panchnama. Exhs.1793 to 1795 are the panchnama slips and this witness has affirmed that they were affixed during the sealing of the muddamal at the location and has also identified the signature of the two panch witnesses and him. Upon being shown the document at Mark 97/873, this witness has affirmed that it is the report given to the F.S.L. which bore his signature and on the rear side of the document there is an investigation van report submitted by the F.S.L. report and has also identified his signature on the front of the said document and is exhibited as Exh.3434. He has also identified the muddamal items which were seized in presence of the panch witnesses which are listed at Serial Nos. 1 to 7 in the muddamal list at Exh.520 in Sessions Case No.364/09 and has affirmed that it is the same muddamal which was seized in presence of panch witnesses.

10.392 This witness in the cross examination has been put forth question regarding whether he had any documentary evidence of the information received by him from the control room to which, he has denied and has deposed that he does not recall whether the vardhi received by him was recorded in the logbook or vardhi book. He has also deposed that he reached the location at 6:55 p.m. and that he

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remained at the scene for two to three hours and secured the location, recorded the complaint and the statements of other injured witnesses. He has also deposed that he reported to P.S.O. for registering the complaint and that he had no written record of the message sent to summon the F.S.L. or documentary evidence regarding the inability of F.S.L. to reach the location in time. He deposed that he handed over the investigation to P.I. Shukla of Crime Branch as per instructions of Police Commissioner at 2 p.m. He has deposed that the panchnama was made at 11:30 a.m. and that the F.S.L. arrived as per the request made on the previous day however, the document at Exh.3434 addressed to F.S.L. did not mention the time or any written requisition. He has also deposed that the bicycle was not packed, sealed or affixed with slips bearing signatures of the panch witnesses and that the panchnama at Exh.1792 did not mention the time of arrival or signatures of the F.S.L. officer. He has admitted that the statements of officers who cordoned off the area had not been recorded and the panchnama did not mention about their presence. He has also deposed that no written order was issued to cordon off the area and that there is no supporting document apart from his oral statement. He did not recall the time at which he was assigned the investigation and has admitted that no panchnama or videography was conducted on the first day. He has deposed that the articles were sealed with slips which bore signatures of the panch witnesses and the seal of the P.I. except for the cycle and he does not recall for how long the items were in his custody.

10.393 Upon perusing the evidence led by this witness, the Court finds it to be consistent and credible as he has undertaken prompt action in the course of his duty by going to the place of incident, securing the place and initiating necessary procedure such as, summoning F.S.L.,

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recording complaint, statements of injured witnesses and drawing of panchnama. Further, this witness has confirmed the documents and identified the signature on such documents and the evidence of this witness cannot be discarded on the basis of certain procedural irregularities particularly when his evidence has been supported by the evidence of the complainant and they do not materially affect the substance of the evidence led by him. The perusal of th e evidence of this withess it shows that the witness has acted in due course of his duties and taken prompt steps therefore if this witness is unable to recollect minor details like entry being made in the vardhi book can not discredit the witness for the depostion that he has given.

Odhav Police Station: C.R. No.I-338/08

10.394 The Court in regard to the offence which has been registered at Odhav Police Station vide C.R. No.I-338/2008 has perused the deposition of the complainant PW No.16-Shivprasad Bhagwan Bahera at Exh.535 who has deposed that on 26.07.2008, he went to purchase vegetables at Rajendra Vehra area wherein there were small vegetable carts. He parked his cycle next to a small bicycle which was lying on the road near New Kamdar Post Office. While he was buying vegetables, a blast occurred at around 6:45 p.m. and dust flew in the air along with small pieces of cloth which was witnessed by him. The small cycle fell on the cycle of the witness and the blast occurred from underneath the seat of small bicycle as a result of which the seat of the cycle broke and the mudguard, carrier sustained damage. He has deposed that the police arrived at around 9 p.m. at the place of incident on the same day and thereafter he lodged a complaint about the incident at the place of incident itself. Upon being shown and read over the complaint bearing

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Mark No.97/1036 bearing internal page nos.5063 and 5064, he has confirmed the truthfulness of the complaint and has also identified his signature on it which was in English, and has deposed that he is unable to write in Gujarati and that the police wrote down the complaint as per his narration which is exhibited as Exh.536. On the day following the incident, this witness has showed the place of incident to the police and thereafter he took his bicycle and returned back. Another statement of this witness was recorded by the police on 04.08.2008.

10.395 In the cross examination of this witness, he has been put forth questions regarding his understanding of Gujarati to which, he has deposed that he does not know to read, write or speak in Gujarati but he understands Gujarati to a extent of 90% and he has denied the suggestion that he did not understand the complaint when it was read out to him by the Special Public Prosecutor. The witness has admitted that neither did he nor anyone else sustain injuries nor damage due to the blast and that even his cycle had not sustained damage. He has deposed that the complaint was recorded at around 9 p.m. and that he did not recall the name of the police officer who recorded it. He has denied the suggestion made that he was not present at the place of incident and had no knowledge of the incident and that he had filed a false complaint. Further, it is to be noted that the deposition made by this witness was primarily in Hindi although he understands Gujarati. The questions put forth and the answers received were in Hindi language which has been thereafter translated to Gujarati. Upon perusing the evidence of this witness, it appears to be consistent and truthful and even in the cross examination, there is nothing coming out so as to caste a doubt on the evidence of this witness.

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Odhav Police Station: C.R. No.I-339/08

10.396 The Court in regard to the offence which has been registered at Odhav Police Station vide C.R. No.I-339/2008 has perused the deposition of the complainant PW No.14-Rajubhai Asharam Kushwaha at Exh.531 who has deposed that at the relevant time, he was running a pakodi stall near Khodiyarnagar Crossroads which is near Mayur Dairy and that there were other vendors who were selling pakodis, vegetables, etc. in the nearby area. He has deposed that on 26.07.2008 at around 6:30 to 6:45 p.m., he was at his shop facing the NH-8 highway and there were 7-8 customers at his shop and a vegetable cart nearby when a bomb blast took place which emitted smoke and shrapnel. There was panic amongst the people and the blast had occurred from a cloth bag which was near his stall as a result of which fruits and vegetables were flung into the air. He lodged a complaint about the incident and the contents were explained to him in Hindi by the police before he signed it. Upon being shown the handwritten complaint bearing Mark 97/1057 bearing internal page nos. 5185 and 5186, he has affirmed the truthfulness of the contents of the complaint and has also identified his signature on it and is exhibited as Exh.532. He has deposed that on 27.07.2008 at around 7:30 a.m. he showed the place of incident to the police and further statements were recorded by the police on 28.07.2008 and 04.08.2008.

10.397 Further, in the cross examination of this witness he has deposed that he does not know to read or write in Gujarati and that the complaint was recorded by the police at his shop at around 10:30 p.m. He has denied the suggestion that the location of the blast was known by the police and has affirmed that the exact location was pointed out by him. He has admitted that he did not sustain any injuries in the incident and that he did not go to the hospital for treatment. He has denied the

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suggestion that no blast had took place near his stall and that he was made a complainant later on by the police. Upon perusing the evidence of this witness, it appears to be consistent and truthful and even in the cross examination, there is nothing coming out so as to caste a doubt on the evidence of this witness.

Surat Incidents:

10.398 Learned Additional Advocate General has submitted that, after the Ahmedabad blasts, several cities, including Surat, were put on high alert. During this period, several instances of unclaimed and suspicious objects being noticed were reported, leading to immediate action by the Bomb Disposal Squad. This exercise by the Bomb Disposal Squad continued till 09.08.2008. The first such incident was at Kapodara, wherein the first FIR came to be registered.

10.399 Learned Special Public Prosecutor has thereafter referred to incident, regarding the offence, which was reported at Surat by taking this Court through the evidence of informant themselves.

Kapodra Police Station- II CR No.175 of 2008

10.400 Learned Additional Advocate General has referred to the Kapodara incident registered vide II-CR No.175 of 2008, wherein the bomb was found lying in an unclaimed black WagonR car. In this regard, he has referred to the deposition of witnesses, the panchnamas and the FSL reports to establish the recovery and detection of the explosive devices, the defusing of bomb by the Bomb Disposal Squad and the subsequent procedure regarding the seizure of the articles of the explosive device and scientific examination of the same.

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10.401 The Court in this regard has perused the panchnama of scene of offence vide Exh.2385, perusal of which indicates that the FSL Officer framed a prima facie opinion of it being a bomb and therefore car was shifted to another location, from where panchnama was carried out and thereafter all the components of bomb were seized from the car. In this regard, the Court has also perused deposition of PW No.422-Ramvinodsinh Ramvirsinh Rajpoot, Exh.2384 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2730, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7574, FSL reports Exhs.5714, 5650, 2779 and 2749 to establish the location of the seized car and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of the Deputy Controller of Explosives, Exh.5601 and deposition of PW No.831-Asendrasingh Bansidharsingh, Exh.5594, who has deposed that as the explosive device fell under Schedule-I of the Explosive Substances Act, he needed permission to hold such substance. It also appears that the detonators, which were left out after conducting the examination were destroyed.

10.402 Learned Special Public Prosecutor thereafter, has referred to the offences which are registered at police stations at Surat, where live and unexploded bombs have been traced at various public place and have been reported at Police Stations with concerned jurisdiction. He has thereafter, referred to four offenses which are registered at Kapodra

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Police Station, the first of it being registered as C.R.No.II-175 of 2008, where unexploded and live bomb was found at Sitanagar Chokdi beside Puna General Hospital, which was planted in Wagor R Car and the car also consisted of other material.

10.403 Learned Special Public Prosecutor has drawn our attention to PW No.547-Lalit Bhurabhai Sanghani at Exh.3007, who is the owner of the shop and has found the suspect vehicle parked in front of his shop in an abandoned condition with a sticker of doctor on the wind screen. He informed the police authority about the condition of the car. Learned Special Public Prosecutor has also stated that this witness has identified the same car which was lying in the premises of the Crime Branch at the time of trial. PW No.616-Devani Dharmesh Maganbhai is also a shop owner examined vide Exh.3252. It is submitted that he has given the similar evidence as he also is a shop owner and has seen the car parked with the doctor symbol. He had seen this vehicle for two days parked at the same place giving rise to suspicion. Learned APP has stated that other witnesses have also been examined to establish the case of the prosecution that the car was parked and had carried explosive material and also live bomb.

10.404 The Court has perused the evidence of PW No.547-Lalit Bhurabhai Sanghani at Exh.3007, who is having a shop in Ambika Apartment at the ground floor in the name of "Saurashtra Hardware". He had seen the car with the doctor symbol in front of his shop and as there was a symbol of doctor and hospital is just across the road, initially he did not suspect anything. On 26.07.2008 when he came to his shop in the morning, at that time also, the car was lying there which created a suspicion in his mind and made inquiry nearby, but no owner was identified and therefore, he informed Kapodra Police Station, who upon

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arrival, broke the glass of the vehicle and opened the vehicle, from which material for bomb making was found. This witness has identified the vehicle as such it was at the relevant time lying at the Crime Branch Police Station, Raykhad, Ahmedabad. In the cross-examination, he was put questions with regard to exact location of the vehicle and that he had in the previous night, not complained about the car parked there. He was also asked about the distance between his shop to Kapodra Police Station and the fact of phone call being made to the police station and who answered that call. In the cross-examination, he has deposed that the glass of the vehicle was broken on the right hand side of the driver and while the investigating was going on, he was watching the same from a distance. No material cross is therefore, made out and therefore, the evidence of this witness insofar as the location of the vehicle and contents of the vehicle with bomb making material, is required to be accepted.

10.405 The other witness examined at Exh.3252 is the evidence of PW No.616-Dharmesh Maganbhai Devani, who was doing business in the name of "Puna Medical Store", which is just below the Puna General Hospital. On 26.07.2008, he had noticed a vehicle parked with the doctor symbol at around 8:00 PM, when he was closing his business and on the next day on 27.07.2008, at around 10:00 o'clock, the vehicle was still lying there and therefore, inquiry was being made by the owner of Saurashtra Hardware. As this witness also did not have any knowledge about the ownership of the vehicle, he also suspected which was reported to the police authority and the police officers immediately arrived and their investigating revealed that inside the car, they found material for making explosive bomb. The police has undertaken due investigating. In the cross-examination, this witness was questioned

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about the educational qualification. He had answered that he had not gone close to the vehicle. He had also questioned with regard to the investigation being carried out and number of people who had gathered during this period. He was also questioned with regard to arrival of police officers and whether such police officers were high ranking police officers. He was also questioned with regard to the fact of his presence in Surat on that day. Overall reading of evidence of both these witnesses, they appeared to be truthful witnesses and have given correct version of their evidence, what they have witnessed. The Court is of the view that there is no challenge to the version of these witnesses with regard to the location and contents of car. Over and above, these two witnesses, the prosecution has also relied upon the evidence recorded of PW No.558-Mansukhbhai Bhurabhai Sanghani vide Exh.3025, PW No.586-Shaileshbhai Nagjibhai Dhebariya vide Exh.3120, PW No.622-Harshadbhai Narbheshankar Teraiya vide Exh.3263 and PW No.637 Harish Dipaji Purohit vide Exh.3281.

10.406 Learned Special Public Prosecutor has referred to report PW No.1049-Mahendrasinh Ratansinh Chavda vide Exh.7079, who is Police Inspector and Informant of the offence reported in Kapodra Police Station as C.R. No.II-175/2008. Referring to evidence in chief, learned Special Public Prosecutor submitted that this witness had received call with regard to Black Wagon R car parked opposite Puna General Hospital. After reaching, he called for Bomb Disposal Squad and after opening the Car, large number of articles were seized. Such articles were ingredients of making bomb. It also contains 16kg of Nuts, ball-bearings, etc., and thereby establishing the purpose behind accumulating of such articles in the car. This witness has also referred to changes made in the Registration number of the car.

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10.407 It is submitted that this witness was futile cross examined with regard to the process for transferring the investigation from Local Police Station to Crime Branch at Surat. This witness was also cross examined about his information of such planting of bomb activities, red alert in the State after Malegao blast and working and functionaries of 'Abhinav Bharat' and its connection with RSS. To which, this witness has denied of any information, he is aware of. It is submitted that in the line of question by the defence is suggestive of the line of defence that Investigating Agency were not vigilant enough to investigate with regard to availability of detonators and other articles in the nearby shops and as to investigate source of such articles, as if to establish that there was deliberate non-investigation in these lines, as Investigators had from beginning decided their line of investigation.

10.408 The Court has perused the evidence of PW No.1049-Mahendrasinh Ratansinh Chavda, Exh.7079 who is a Police Inspector posted at Kapodra Police Station at relevant time and he has deposed that while on duty of patrolling, he received information that opposite to Hardware shop and Puna General Hospital, blackWagon R Car with Registration No.GJ-6-CD-3569 is suspected to have planted bombs. As a result, Team of Police Sub Inspector and Constables reached the place and found certain other Police Officers already present there. Witness found informed car lying in suspicious manner unclaimed and therefore, summoned Bomb Squad. The car being locked was opened by breaking glass window and the articles lying within were seized under the panchnama. The nature of articles found were meant for the purpose of manufacturing explosives bomb. Action was taken to disperse the crowd and the car was safely taken to Umra Police Station in open ground, where the contents of car were removed safely, which included

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detonators, wires, still boxes, batteries, clocks, etc. and all these articles were seized under the panchnama. Amongst articles seized were brown colour paste in a metal sheet box, which was identified by FSL Officer as Ammonia Nitrate and fuel oil mixture and weighed upto 16kgs and 500gms. Samples of which were also drawn. Registration number of the vehicle as well as identification by engine and chassis numbers were also recorded in the panchnama. This panchnama was shown to witness, who identified his signature on each page in the margin and which was given Exh.2385.

10.409 This witness was also shown Mark 102/144, the complaint given by him on behalf of the State, wherein the Report bore his signature and was registered as C.R. No.II-175 of 2008 and the complaint was given Exh.7080 after ascertaining his signature in the margin of the complaint. This witness was also shown Exh.2729, Exh.2730 respectively which are the Reports under his signature to summon Bomb Disposal and FSL Squad.

10.410 This witness was also shown Muddamal Articles of Sessions Case No.412 of 209 under Muddamal List Exh.2336 and after closed look with Article Nos.1, 3 to 22, he identified these articles to be very articles, which were seized in the panchnama.

10.411 With regard to Alphabets in radium material in English, seized at Item No.23 of Muddamal list at Exh.2336 and also numerical in radium material. This witness has identified signatures of panch witnesses on the panch slip; Exh.2386 and Exh.2401.

10.412 This witness has also referred to action taken on 27-07-2008 with regard to red colour Maruti Wagon R Car bearing No. GJ-6-CD-2908 found near Baroda Prestige, Varachha Road, Opposite Sonal Bhel House in the jurisdiction of this very Police Station, suspected to contain

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explosive material. This complaint was givenby this witness to Police Sub-Inspector; Mr. B.R. Halpati, which was written down as per his instructions and having recorded as such as put his signature under the complaint and thereafter, FIR No.II-176 of 2008 was registered with Kapodara Police Station and forwarded for investigation to DCB Police Station, at Surat. This witness was shown Exh.2841, FIR registered by Police Sub-Inspector; Mr. B.R. Halpati. He has identified signatures on each page of that informant and has also identified his own signature. On 29-7-2008, within jurisdiction of Police Station of this witness, the complaint was given by Police Sub-Inspector; Mr. B.R. Halpati, in his presence, about finding of two green colour boxes with explosive having been found placed on the angles of an Advertising Board, located near Overbridge of Hirabaug Circle.

10.413 FIR being C.R. No.II-179/2008was registered with Kapodara Police Station. This witness has given the Report for registration of the FIR and making corresponding entries into Station Diary.

10.414 Exh.2843 is identified as the compliant given by Police Sub-Inspector; Mr. B.R. Halpati. The witness has identified his signatures on each page counter signed by this witness. Thereafter, this witness has also referred to incident of 30-07-2008 regarding the incident of his jurisdiction, in which it was reported that bombs were located in bag hanged on mango tree Near Swimming Pool located at Nana Varachha, Maharana Pratap Udhyan (Garden). This complaint was by Police Sub-Inspector; Mr.Chaganbhai Jivaji Damor in presence of this witness and therefore, signature of informant was identified by witness and his own counter signed is also identified. This witness has sent the Report under his signature to PSO for registration of the offence and accordingly, FIR being C.R. No.II-180/2008 wasregistered with Kapodara Police Station.

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The complaint at Exh.2853 is identified by this witness for the signature of informant; PSI Mr.Chaganbhai Jivaji Damor on each page and his own counter signature.

10.415 On 31-07-2008, panchnama at Exh.2402 was drawn in presence of two panchnama, wherein informant; PSI Mr.Chaganbhai Jivaji Damor has identified the place, where suspected article was placed.

10.416 In connection with aforesaid incident on 31-07-2008, this witness has recorded evidence of several witnesses. Thereafter, he has deposed about action taken by him towards investigation and finally handed over investigation to Assistant Commissioner of Police, 'B' Division, Surat.

10.417 This witness has been extensively cross examined initially for the purpose of exact time, when he received information. However, he had no information that the location of the bomb has anything to do with other places where the bomb blast had taken place. He had only some information with regard to bomb blast having taken place in Ahmedabad and apart from Ahmedabad, he had no information of any other blast.

10.418 With regard to evidence in chief, this witness was questioned that he has no written documents, which establishes the fact that when he received information of bombs, he was on patrolling duty.

10.419 This witness was thereafter questioned about Special Department 'IB' and its functioning of collecting intelligence and in its activities, 'IB' has to collect information for input of various Politicians, Police Officers and also of Terrorists and Anti National Activities and in event of receiving any such input, higher-ups are required to be informed.

10.420 This witness was questioned about functioning of 'ATS' and

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'SOG' and the jurisdiction of these organizations running through out Gujarat and any investigation can be handled by these Agencies. This witness was questioned regarding functioning of 'LCB' and its purpose. This witness was questioned with regard to 'Malegaon' bomb blast and pursuant to such blast, there was red alert in Gujarat and because of such activities, watch is kept over activities of people indulging in such activities.

10.421 This witness has knowledge of Hyderabad blast, but did not know, whether red alert was issued in this connection from 18-05-2007 onward. Questions were put with regard to Ajmer blast, 'Samjhauta Express' blast and blast in Modasa. To which this witness has gathered information. This witness was thereafter put certain questions with regard to Ashram of Asaram Bapu, Pragya Singh Thakur, Aseemanand Colonel Purohit and Sunil Joshi. However, he was not aware about whether these persons were running organization namely 'Abhinav Bharat' nor was he aware that they were connected with VHP, Bajarangdal and RSS and that he was not aware that they were organizing camps for training of people associated with the aforesaid organizations. This witness is also not aware about hoardings put up with slogans, which are Pro-Hindu and various camps organized for giving weapon trainings either to men and women associated with aforesaid organizations.

10.422 He was thereafter questioned about nature of population predominantly residing in Varachha, who are predominantly from Saurashtra. This witness was questioned about the activity of blasting stones with use of detonator and wherever these blasting activities take place, Register is mentioned in the Police Station for mentioning use of detonator. He is also questioned about the process of maintaining

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weapons and registerlicense of weapons maintained with Police Station and many persons having been given license in the area of Kapodara and Varachha. He has specifically denied that the Builders and other people for breaking down buildings and stones, detonators are being used and whenever Police Officer is posted in Kapodara Police Station, he is required to inspect registers maintained for the purpose of arms license and explosive material license. This witness has answered that he had an occasion to inspect such registers, however, has denied that the Police has to maintain stock of explosive substance, but has deposed that stock register of explosive substance is required to be maintained by the License holder and verification is to be carried out. Any sale of explosive substance, License holder has to maintain register of sale and also maintained stock of the detonators and maintain register of sale of such detonators. However, this witness has claimed ignorance whether such stock register and sale register are to be sent to the Police Station.

10.423 The witness has answered that license of aforesaid nature are issued by Commissioner Office. List of such License holder is shared with every Police Station and accordingly, at Kapodara Police Station also, such list was sent. He has agreed to the suggestion that arms license have been given to many people in Surat, however, has not agreed to question that license of explosive substance are issued in abundance in the City of Surat and surrounding areas. He has agreed that license shops for sale of explosive substance are located in and around Surat and information with regard to the owners of such shops and shops are always available at the Police Station.

10.424 Thereafter, this witness has been cross examined with regard to procedure of recording information received. Thereafter, he was particularly questioned with regard to information in connection with the

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Wagon R received on 27-07-2008 and the fact that this information was with regard to cognizable offence. He has agreed to question that when such information is received verbatim, such information is required to be recorded. However, with regard to information received by him, he has not recorded it verbatim, as he has received same on his mobile number, which he has maintained till date.

10.425 This witness was thereafter questioned about the precaution taken by him before reaching the spot particularly for summoning Bomb Disposal Squad and FSL Squad. He has denied that he has taken any photographs or videographs upon reaching the spot, where the car was lying. He was thereafter questioned with regard to incident of 30-07-2008 and questions were put that on that day, rally of the then C.M. was organized, however, he has denied any knowledge with regard to same. With regard to complaint given by Police Sub-Inspector; Mr.Chaganbhai Jivaji Damor, this witness has stated that he had no personal information, but has recorded as per the complaint given to him and Police Sub-Inspector; Mr.Chaganbhai Jivaji Damor was informed by one Karsanbhai Nadiya on telephone about this information, which was disclosed during the investigation. This witness was also questioned with regard to telephonic 'Vardhi' and at the time of writing down of the complaint, he had no occasion to see 'Vardhi' given in this regard. However, after perusing the record, he has stated that during his investigation, information was received through one Tulsibhai Savani from his mobile number. During investigation, this witness has not contacted said Tulsibhai, though he had no reason not to do so. The compliant regarding Kapodara Police Station being C.R. No.II-180/2008 was written by himself on the spot, where informant; Police Sub-Inspector; Mr.Chaganbhai Jivaji Damor was narrating and writer was

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writing it down, which was later on signed by this witness. However, there is no reference to the fact that the complaint was written on the spot.

10.426 With regard to compliant given by Police Sub-Inspector; Mr.Chaganbhai Jivaji Damor, the witness had an occasion to meet the informer and his statement was recorded. However, whether this witness was present there at the time of panchnama is not known. This witness has not called Tulsibhai Savani by making phone call and the place where the bombs were found, there was small watchman room, which the witness indicated was a little bit far. The witness has stated that the spot which was found, was crowded and he could easily get the panch witnesses. He had no scope to interrogate the panch witnesses and had not gone to all panch-witness, but had sent someone to call for them. With regard to presence of watchman, he was not aware about 24 hours presence of the watchman in his room and that the room was located towards main gate and this witness cannot say whether anybody can see bags of bomb hanging from that spot. Specific question was put whether this witness has questioned informant that how did he know that bag which was hanging20 feet high contained bomb, to which this witness has answered that on account of bombs found at other places in Surat, it was assumed that there would be bomb inside.

10.427 This witness was thereafter questioned with regard to action taken by him during period of three days, when investigation had remained with him, which included panchnama executed and the details contained in the panchnama. The witness has answered that panchnama was drawn by PSI and articles seized under panchnama were by PSI.

10.428 This witness was questioned with regard to offence registered with Kapodra Police Station as C.R. No.II-175/2008, where

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witness himself is informant. Specific question was put that he himself had not revealed information and the informant also did not reveal any information to others, then how come other people reached the spot. To which, this witness has answered that on account of Ahmedabad Bomb Blast, wherever unclaimed vehicles were found, people used to gather around. Witness was questioned that in his area, how many unclaimed vehicles were found. To which, witness answered that he cannot say for sure. However, as and when places, where unclaimed vehicles were reported, concerned Subordinates of the area were informed to keep watch over it. With regard to incident of 27-07-2008, information was received of vehicle, which certainly contained bomb, which was opposite to the Saurashtra Hardware shop. However, he has denied the questions that iron ball-bearings, nuts and bolt were procured from Saurashtra Hardware. He was specifically questioned that in Hardware shop, such articles are being sold. To which, he has answered that he was aware of iron articles being sold like iron angles, iron holders, hinges, etc. Though he has stated that in Hardware shop, nuts and bolt can be available. Upon reaching the spot, this witness did not make any effort to contact informant, but before touching upon closed vehicle, no scientific method was used. Questions were put with regard to opening of the car by use of delicate key or efforts to photograph or videograph, action being taken, being repetitive questions, to which, no fruitful conclusions could be drawn.

10.429 Overall perusal of the evidence of this witness would indicate that witness has acted in due course of his duty. Actions are bonafide from the questions put in the cross examination, though attempt was made by defence from line of questioning, as an Investigating Officer, the witness has not vigilantly investigated to find

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the source of explosive articles, though sufficient scope was available by inspecting the record maintained by Police Station regarding fire arms and explosive substance. However, such line of cross examination, in the opinion of the Court, does not lead to definite conclusion that witness before embarking upon investigation had predetermined theory of investigation and because of such predetermined theory had refrained from taking steps to trace out the source like explosive substances. In para-20 of the cross examination, another line of defence is also evident to the extent that planting of the bomb was done by Police itself before filing of such complaint. However, such questions were out-rightly rejected by the witness.

10.430 The Court may refer to evidence of PW No.328- Karsanbhai Nadiyabhai Chaudhary vide Exh.1690, who was working as PSO at Kapodara Police Station and he supports the case of PW No.1049-Mahendrasinh Ratansinh Chavda, who has registered FIR in his name in front of this witness. He has referred to the 'Yadi' and 'Suchipatra' received by him for registration of FIR. He has made entry in the Station Diary vide Entry No.20 on page-52, which was produced by identifying his own hand writing and was exhibited at Exh.1691.

10.431 This witness has also exhibited Mark 599/145 at Exh.1692 forwarding documents of investigation to DCB Police Station. This witness has also referred to Entry No.21 in Station Diary No.52 and 53, which entry was identified to be in his own handwriting and such Station diary entry was given Exh.1693. This witness exhibited Mark 599/2 at Exh.1694, under which he has forwarded documents of investigation to DCB Police Station.

10.432 On 29-7-2008, while this witness was on duty in Kapodara Police Station at 21.30 hours, he has received the complaint of Police

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Sub-Inspector; Mr. B.R. Halpati, which was recorded in front of P.I. Shri M.R. Chavda along with the Report and 'Suchipatra' for registration of FIR. In this regard, Station Diary entry was made on Page-59 at Entry No.13. Copy of which was exhibited vide Exh.1695. This witness has also prepared 'Yadi' of forwarding investigation case papers to DCB Police Station vide Exh.1696. This witness has not been cross examined. Accordingly, evidence of PW No.1049-Mahendrasinh Ratansinh Chavda at Exh.7079 is substantiated by evidence of PW No.328-Karsanbhai Nadiyabhai Chaudhary vide Exh.1690.

Kapodra Police Station-II CR No.176 of 2008

10.433 Learned Additional Advocate General has referred to the Kapodara incident registered vide II-CR No.176 of 2008, wherein the bomb was found lying in an unclaimed WagonR car. In this regard, he has referred to the deposition of witnesses, the panchnamas and the FSL reports to establish the recovery and detection of the explosive devices, the defusing of bomb by the Bomb Disposal Squad and the subsequent procedure regarding the seizure of the articles of the explosive device and scientific examination of the same.

10.434 The Court in this regard has perused the panchnama of scene of offence vide Exh.2413, perusal of which indicates that the FSL Officer framed a prima facie opinion of it being a bomb and therefore car was shifted to another location, from where panchnama was carried out and thereafter all the components of bomb were seized from the car. In this regard, the Court has also perused deposition of PW No.425-Vijaysingh Shersingh Bhadoriya, Exh.2409 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal

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Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2767, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7572, FSL reports Exhs.5847, 5655, 2785 and 2750 to establish the location of the seized car and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of the Deputy Controller of Explosives, Exh.5601 and deposition of PW No.831-Asendrasingh Bansidharsingh, Exh.5594, who has deposed that as the explosive device fell under Schedule-I of the Explosive Substances Act, he needed permission to hold such substance. It also appears that the detonators, which were left out after conducting the examination were destroyed.

10.435 Learned Special Public Prosecutor has in connection with this offence where four unexploded live bombs were found in a Wagor R Car at Varachha-Baroda Prestige area has read the evidence of PW No.557-Jaydeep Narottambhai Patel vide Exh.3023. He was doing the business of Ice-cream Parlour in Hirabaug area. This witness was conscious of serial blast taken place in Ahmedabad and Bangalore in the previous dates and therefore, was alerted by the police and therefore, he was vigilant. One Wagon R car in Maroon Colour was parked near Sonal Bhel Shop and upon inquiry with the watchman, he was informed that since 26.07.2008, some unknown person has parked car there. This witness had immediately indicated to the police, which arrived at the spot and made its inquiry. From the car, live bombs and material for explosive bomb were found and the statement of this witness was immediately recorded by the DCB Police Station. In the cross-

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examination, the only question that was put up to this witness is that he had not informed about who had parked that vehicle. That he himself had not conveyed anything about the car to the police, but he denied that he is giving any false deposition.

10.436 Another witness referred to by the learned Special Public Prosecutor is PW No.585-Vinodbhai Gordhanbhai Kapuriya vide Exh.3119. This witness had informed the police about the car being parked. He was working at the Bhel Centre and has not been cross-examined.

10.437 Learned Special Public Prosecutor has thereafter referred to evidence of PW No.462-Babubhai Ramabhai Halpati; Exh.2840, who is informant of offence registered with Kapodara Police Station upon information received of car lying in abandoned condition.

10.438 The Court has perused the deposition of PW No.462-Babubhai Ramabhai Halpati; Exh.2840 is retired Police Officer; who at the relevant time was working as PSI at Kapodara Police Station and while on duty, on 27-07-2008 in connection with serial blast at Ahmedabad, while he was on duty checking vehicles, information was received about an abandoned car of Maruti Suzuki Make lying opposite Sonal Bhel House in Baroda Prestige, Doctor House area and he immediately left to reach spot. Upon reaching, from the glass window, he could see bundle, which appeared to be suspicious and therefore, area was cordoned and Bomb Disposal Squad was summoned. Bomb Disposal Squad broke open the glass and after opening the door, four live bombs were found, which were defused by Bomb Disposal Squad and upon information, FSL Officer also arrived on the spot.

10.439 With regard to action taken there on the spot, panchnama was drawn and all the articles, which were found from bundle were recorded,

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which primary contained brown and yellow colour paste material in the metal sheet box, nut bolt and ball-bearings, petrol containers5-5 liters each (3) and small boxes of Castrol oil. Shape of the manufactured bomb was also recorded. FSL identified Ammonia Nitrate, detonators and circuitwithDuracell batteries, which were fitted into manufactured bomb and in the car, there were also old newspapers.

10.440 Panchnama; Exh.2413 was shown to this witness, who has identified signature of the panchwitness as well as his own signature. Apparently, this witness has given details, which were recorded in the panchnama as well. This witness has also identified his signature on the original complaint Mark 102/1 and has also ascertained the contents were true to the knowledge and thereafter, upon objections by defence, tentative Exh.2841 was given to the complaint. This witness has also confirmed Exh.2842 to be report summoning FSL Officer.This witness has also identified Article Nos.1 to 26, which is part of Muddamal list; Exh.2350.

10.441 The witness has deposed with regard to incident of 29-07-2008, when he was on checking of the points. He saw the crowd gathered near Baroda Prestige, Hirabaugh Circle and he also halted to find that on the angle of the hoardings adjacent to overbridge, green colour bags were hanging suspected to be bomb and therefore, he informed his officers and Fire brigade as well Bomb Disposal Squad. Fire Brigade arrived and Bomb Disposal Squad also arrived. Bombs were removed from the angle and public was dispersed.Bomb Disposal Squad defused the bomb on the spot. Because of gathering of the crowd, bombs were taken to Kapodara Police Station, where FSL Officers were summoned and they had carried out inspection of bombs. This witness

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described the structure of the bombs and the contents therein. He also records action of seizing articles under supervision of FSL Officers. He identified signature of the panchwitnesses at Exh.2429 and counter signature of his own as witness. This witness has given details, which are recorded in the panchnama.

10.442 Mark 102/177 is original complaint, whose signature has been identified by his own signature by the witness, as well as signature of informant Shri M. R. Chavda and therefore, upon objection being taken, tentative Exh.2843 is given. The objection raised is to the extent that as prior to the noting of the complaint, panchnama was executed and therefore, it is merely statement and hence, exhibiting of the same was objected by defence. This witness was thereafter shown Muddamal Article List 2349 of the panchnama drawn on 30-07-2008. This witness has gone through each and every Muddamal article and identified the same as material seized under the panchnama. This witness was also shown Article-27 Vehicle, which was seized under Muddamal List Exh.2350 and has identified the car to be same vehicle. Witness was cross examined with regard to observation made with regard to whether he has observed Engine Number or chassis number. To which, he has denied.

10.443 He was also questioned with regard to his duty hours and area of his duty and maintenance of any Register with regard to his checking duty. To which, the witness has answered that daily activities entered into Duty Diary. Record with regard to his duty on 27-07-2008 was already handed over to his Superior Officers.

10.444 The Court has perused the cross examination of this witness, but nothing fruitful has come out with regard to evidence recorded on behalf of this witness. This witness has only as a part of his duty, has

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acted in furtherance of the investigation, which was carried out by his Superior Officer and has acted under instructions.

10.445 Evidence of this witness is supporting evidence of PW No.1049-Mahendrasinh Ratansinh Chavda at Exh.7079.

Kapodra Police Station-II CR No.179 of 2008

10.446 The Court in connection with the offence registered at Kapodara Police Station being C.R. No.II-179 of 2008, has perused the panchnama of scene of offence vide Exh.2429, perusal of which indicates that unexploded bombs were found from two different places in Kapodra area, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.427-Amratbhai Somabhai Desai, Exh.2428 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Map Exh.7570 and FSL reports Exhs.5740 and 5656 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of the Deputy Controller of Explosives, Exh.5605 and deposition of PW No.831-Asendrasingh Bansidharsingh, Exh.5594, who has deposed that as the explosive device fell under Schedule-I of the Explosive Substances Act, he needed permission to hold such substance. It also appears that the detonators, which were left out after conducting the examination were destroyed.

10.447 Thereafter, C.R.No.II-179 of 2008 has been registered with

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Kapodra Police Station as it was reported that unexploded and live bombs have been found at Hirabaug Circle, for which PW No.561-Devrajbhai Dhanjibhai Kanthariya vide Exh.3029 was examined. For the same offense, he has referred to PW No.565-Ashokbhai Gobarbhai Dholariya vide Exh.3036.

10.448 At Kapodra Police Station C.R.No.II-180 of 2008 was also registered for unexploded and live bomb traced at Varachha Maharana Pratap Udhyan for which reference was made to evidence of PW No.548-Jagdishbhai Ramanbhai Patel vide Exh.3008.

10.449 The Court has perused the evidence of PW No.585-Vinodbhai Gordhanbhai Kapuriya vide Exh.3119 who is running a Bhel Centre in Baroda Prestige Area and on 26.07.2008, in the vicinity of his shop, one red coloured car being Maruti Wagon R was parked. At the relevant time, when he was trying to park in front of the shop, this witness has asked him not to park over there and thereafter, he had found on the next date i.e. on 27.07.2008, the same car was parked there and therefore, being suspected vehicle, the police had inquired about the same and found that the car had contained explosive material. In cross-examination, he has answered that he himself had not made inspection of the car and that he had not given information to the police, but some other business persons must have given such information. Other witnesses examined during the trial are PW No.621-Narendra Arjan Maniya vide Exh.3262, PW 624-Ashwinbhai Ranchhodbhai Bariya vide Exh.3265, PW No.635-Bhupatbhai Naranbhai Lakhani vide Exh.3279, PW No.659-Ashokbhai Gordhabhai Akbari vide Exh.3311 and PW No.664-Manoj Radheshyam Shah, vide Exh.3317. The Court having perused the evidence of these witnesses, the deposition is very identical in nature and there does not appear to be any cross-examination by the

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defence of these witnesses.

10.450 Similarly, for offence being C.R.No.II-179 of 2008, other witness being PW No.587-Ashokbhai Babubhai Bhimani vide Exh.3121, PW No.613-Hemantsinh Amarsinh Tantmiya vide Exh.3249, PW No.629-Navinchandra Odhavji Thakkar vide Exh.3271, PW No.636-Jayeshbhai Mansukhbhai Rajodiya vide Exh.3280, PW No.647-Valaram Khetaramji Jat vide Exh.3293 and PW No.652-Pareshbhai Arjanbhai Vaghela, vide Exh.3299 have been examined. Perusal of their evidences which are on identical line would reveal that each of these witnesses were doing same business or the other in the vicinity of the Hirabaug Circle, near which there is an over-bridge and adjacent to the over-bridge, there is a public sign board and on the angle of such sign board, four bombs were placed. On 29.07.2008 in the morning hours, police were able to locate two bombs at different angle of the structure which were removed by the police and defused. There is no substantial cross of these witnesses.

4. Kapodra Police Station-II CR No.180 of 2008

10.451 The Court in connection with the offence registered at Kapodara Police Station being C.R. No.II-180 of 2008, has perused the panchnama of scene of offence vide Exh.2491, perusal of which indicates that unexploded bombs were found from one place in Kapodra area, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.430-Laxmanbhai Ramjibhai Rafadiya, Exh.2490 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of

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the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Map Exh.7568 and FSL reports Exhs.5773 and 5657 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of the Deputy Controller of Explosives, Exh.5694 and deposition of PW No.839-Dr.Anujkumar Shivprasad Srivastava, Exh.5692, who has deposed that as the explosive device fell under Schedule-I of the Explosive Substances Act, he needed permission to hold such substance. It also appears that the detonators, which were left out after conducting the examination were destroyed.

10.452 With regard to the Kapodra Police Station, C.R. No.II-180 of 2008 at Varachha Maharana Pratap Udyyan, one unexploded live bomb was found for which, the prosecution has examined PW No.548-Jagdishbhai Ramanbhai Patel vide Exh.3008, PW No.559-Kanjibhai Zaverbhai Beladiya vide Exh.3026, PW No.566-Kuldeep Ramsevak Ravat vide Exh.3037, PW No.604- Raghavbhai Ramjibhai Sojitra vide Exh.3240, PW No.623- Munnabhai Bansidhar Mishra vide Exh.3264, PW No.627- Tulshibhai Savjibhai Savani vide Exh.3269, PW No.640-Mukeshbhai Dashrathprasad Dahiya, vide Exh.3285 and PW No.655-Rameshbhai Bhimjibhai Dobariya, vide Exh.3304.

10.453 The Court having perused the evidence of witness PW No.548- Jagdishbhai Ramanbhai Patel vide Exh.3008. He has deposed that he was doing business of Ground-Nut (Kharising) on a handcart and on 30.07.2008, in the afternoon hours, when he was at his business place, one customer came and asked for the Ground-Nut and he sat near the Mango Tree where he accidentally found a bomb tied to the Mango Tree and therefore, the customer made call on 100 number and within half an

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hour, the police had arrived and other people had also gathered. The police had removed the crowd and undertaken the activity for defusing the bomb. After defusing, the police had removed the bomb from the place. In this connection, his statement was recorded. While in the cross-examination, this witness was crosse examined with regard to the timing and number of shops around the place where the bomb was located and that the person who traced out the bomb was not earlier seen by him. This witness has answered that throughout the activity of removal and defusing of bomb, he had seen activity from 25 meters away. There is no other specific cross of this witness.

10.454 Another witness, the evidence of which is perused by the Court is PW No.627-Tulshibhai Savjibhai Savani at Exh.3269. This witness is a diamond broker. On 30.07.2008, he had visited Maharana Pratap Udhyan to collect information regarding Swimming Pool which was located at Maharana Pratap Udhyan and therefore, he halted below Mango Tree, at that time, he could locate a plastic bag of Green colour (Parrot like) hanging from the tree and as he was aware of the bomb-blast reported in T.V. and unexploded bomb found in Surat, he immediately alerted police by him mobile phone. The police having arrived and cordoned the area and removed the crowd from nearby place. The police defused the bomb and proceeded with their further inquiry. In the cross-examination, the defence tried to test the credibility of this witness with regard to his membership in the Swimming Pool. This witness has also deposed that while the area was being cordoned, many people were standing at a distance and he had also seen the police activity from distance and the police has taken his phone and address. There is no specifically cross of this witness.

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DCB Police Station-II CR No.3019 of 2008

10.455 The Court has perused evidences relating to an offence which has been registered at D.C.B. police station being C.R. No.II-3019/2008 where an unexploded live bomb was found at City Light Road which is opposite Nupur Hospital. The Court in connection with the offence, has perused the panchnama of scene of offence vide Exh.2708, perusal of which indicates that unexploded bombs were found from one place at City light Road, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.442-Bharatbhai Sureshbai Patil, Exh.2707 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and the deposition of P.W. No.449-Rameshbhai Somabhai Patel at Exh.2930, who was serving as a Police Inspector and had carried out procedure to defuse the bomb. The Court has thereafter perused Map Exhs.7559, 7560 and FSL reports Exhs.2728, 5708 and 5664 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of the Deputy Controller of Explosives, Exh.5599 and deposition of PW No.831-Aasendrasingh Bansidharsingh, Exh.5594, who has deposed that as the explosive device fell under Schedule-I of the Explosive Substances Act, he needed permission to hold such substance. It also appears that the detonators, which were left out after conducting the examination were destroyed.

10.456 In regard to the aforesaid offence, the Court has perused the testimony of PW No.555-Shivkumar Ramprasad Vijayvargiya at

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Exh.3021 who has deposed that he is running a business named "New Janta IceCream Parlour" in the City Light Area at Surat and that, on 27.07.2008 he got to know about a live bomb that was found near Nupur Hospital. Further, he has also deposed that he got to know that on the previous day i.e. on 26.07.2008 during a drive by the demolition department of the Surat Municipal Corporation, religious discourse banners were removed from the circle in front of the shop of the witness and during that process, a municipal employee had mistakenly taken a live bomb for a radio-like device and upon knowing that it is a bomb, he placed it in the green grass divider near the circle opposite Nupur Hospital. There appears to be no substantial cross of this witness. The Court has also perused the testimony of PW-573 Dongar Mahadu Bangale at Exh.3073 and PW-583 Rajeshsinh Shamshersinh Rajput at Exh.3116 who have given depositions of an identical nature. There appears to be no material cross of these witnesses and they support the evidence led by PW-555 Shivkumar Ramprasad Vijayvargiya regarding the placing of the bomb in the divider which is opposite Nupur Hospital.

10.457 Further, the Court has also perused the evidence of PW-614 Saniya Purushottam Linka at Exh.3250 who has deposed that he was working as a watchman at Nupur Hospital and that on 27.07.2008 he saw that a crowd had gathered in front of the hospital and upon going there, he got to know a bomb had been planted in the grass on the central divider near the circle opposite the divider and saw the police undertaking the necessary procedure and handed over a pair of scissors to them. There appears to be no material cross of this witness and his evidence regarding the location and the recovery of the bomb appears to be credible.

10.458 The Court has also perused the evidence of PW-658 Kamlesh

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Krishnakant Modi at Exh.3310 who has deposed that he was working as a Technical Assistant in the Encroachment Department of Surat Municipal Corporation and that, on 26.07.2008 while he was removing banners at City Lights Circle along with another worker named Lallubhai (PW-668), he found a green colored packet resembling a radio device and assuming it to be of no use, instructed him to discard it. Thereafter, the said packet was left near the divider opposite Nupur Hospital. Subsequently, on the next day upon seeing similar looking packets that were discovered to be bombs being defused on television, this witness felt suspicious and informed one Jitendra Bhatt (PW-670) who subsequently informed the police who carried out the requisite procedure.

10.459 Further, in this regard, the Court has perused the evidence of PW-668 Lallubhai Thakorbhai Patel at Exh.3321 who has deposed that he was working as a beldaar at Surat Municipal Corporation and that, on 26.07.2008, he was employed for removal of unauthorized banners near City Lights Circle and upon noticing an object that appeared to be a FM Radio, he placed it in the Municipal vehicle. However, upon being reprimanded by his superior officer for picking up an unknown item, he placed the same near the divider outside Nupur Hospital. This witness has deposed in his cross examination that he was unaware of the nature of the object at the time. Apart from this, there appears to be no substantial cross of this witness.

10.460 The Court has thereafter perused the deposition of PW No.670-Jitendra @ Pappu Ravikant Bhatt at Exh.3325 who has deposed that on 27.07.2008, upon receiving a phone call from one PW No.658-Kamlesh Krishnakant Modi at Exh.3310 informing him that a beldaar had mistakenly brought a parcel from the area near Janta Icecream

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Circle which he mistakenly considered it to be a FM radio and accordingly instructed him to discard it near Nupur Hospital. Thereafter, upon seeing a similar parcel in the news which was connected to the bomb blast, he immediately informed this witness as he felt suspicious and as Kamlesh Modi (PW No.658) was away, he asked this witness to inform the police. Upon which, this witness immediately went to the police station and informed the authorities and guided them to the police station wherein the police opened the green colored polythene wrapped parcel which was confirmed to be a bomb and immediately undertook the necessary procedure for its disposal. This witness has also been cross examined wherein he has clarified that the information he gave to the police was based on what Kamlesh Modi (PW NO.658) told him. Apart from this, there appears to be no material cross of this witness.

10.461 Upon reading the evidence of these witnesses, it appears that the bomb was mistaken for a radio and was therefore, placed near the divider outside Nupur Hospital on 26.07.2008. However, upon realizing that it could be a bomb, the police was promptly informed and the bomb was recovered and thereafter defused. The line of events narrated by the witnesses in this regard appears to corroborate each other and is consistent. Further, there is nothing in the cross examination of these witnesses so as to discredit the truthfulness of these witnesses and therefore, their evidence regarding the location and recovery of the bomb is required to be accepted.

10.462 Drawing attention to evidence of PW No.499-Rameshbhai Somabhai Patel, vide Exh.2930, who is the informant and a police officer. In his deposition, he has deposed that he himself has defused the bomb and had called for the superior officer.

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10.463 The Court has perused the evidence of PW No.499-Rameshbhai Somabhai Patel at Exh.2930, who is in the police department and at the relevant time was posted as Police Inspector, Umra Police Station and on 27.07.2008 at approximately 11:15, he received information that on the road divider, opposite to Nupur Hospital on City Light Road, a suspicious box looking like Radio was lying, on the basis of which, he immediately proceeded to site and saw suspicious article lying in the divider which was packed by Cellotape co-relating the object with the TV news broadcasted regarding the explosions in Ahmedabad City. He himself called for the scissor and stopped the traffic and disconnected the circuit wires and defused the bomb and thereafter, immediately informed the superior officer and took the suspicious article in the open land near the police station. The Bomb Disposal Squad and the FSL Squad arrived at and the panchnama was prepared to demonstrate the content of the suspicious box. In this regard, the complaint was sent to the DCB Police Station. The seized article under the Panchnama was properly packed with the panch slip.

10.464 Mark 102/500, which is the original complaint which was sent by this witness and upon an identification of his signature and ascertaining the contents of the same was exhibited as Exh.2931. Panchnama Exh.2550 was also shown to this witness, who has identified the signatures of the panch witness and his own signature in whose presence panchnama was prepared.

10.465 On 03.08.2008, while the witness was present at his police station, he received phone call from Traffic S.P. that in a bus-stand near the Chowpati, the bomb is traced inside the advertising hoarding on the top of the bus-stop. With the team, he immediately proceed and they found that the green colour plastic bag was tied to a angle of the

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hoarding on the bus-stop and therefore, the witness informed before the officer, Bomb Disposal Squad and FSL Expert for them to arrive. In the meantime, he arranged 'Bandobast' for the traffic and public.

10.466 Upon arrival of the Bomb Disposal Squad, the bomb packet removed from the bus-stop and was taken to the place in Chowpati Garden and in presence of the panch witness as well as FSL Officer, the bomb was defused. The panchnama was prepared in detail with regard to the content and make of the bomb and in this connection, panchnama was prepared and the articles were seized with proper panch slips and this witness gave his complaint on behalf of the State which was registered as C.R.No.I-651 of 2008 with Umra Police Station and then the investigation was handed over to DCB Crime Branch. Mark 102/530 being the original complaint was exhibited at Exh.2930. This witness also had identified the content and signature of panchnama and his own signature on the panchnama drawn at Exh.2694. This witness has also identified his signature at Exh.2738, which is the report asking for the scientific officer of FSL Surat to reach at the scene of offence which was countersigned by Shri N.D.Patel for having received the report. During the investigation, this witness was also shown the article 1 to 13 of the muddamal list Exh.2338, which has identified to the articles seized under the very panchnama.

10.467 This witness has cross-examined with regard to his educational qualification. In his cross-examination, he has deposed that he has taken Commando training at Mussoorie with the regard to the bomb and explosive and is aware of various parts of bomb. He has agreed that prior to 27.07.2008, he had no occasion to defuse the bomb. He has also agreed that no panchnama was drawn with regard to the tracing of the bomb near Nupur Hospital. Nurpur Hospital is located in

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residential area and he has not made any inquiry around Nupur Hospital nor did he inquire about the person, who informed about the bomb near Nupur Hospital. When the information was received by him, he was on patrolling and whether such entry of patrolling is made in his log-book, he stated that he is not aware of. He was thereafter, cross-examined with regard to the incident on 03.08.2008 and has deposed that he received information from ACP Traffic and when this witness reached the place, the ACP Traffic was not present. However, he confirmed that at Chowpati, there was movement of people, but he has not made any inquiry from people in and around. He has confirmed that at the time of preparing panchnama Exh.2694, the FSL and Bomb Disposal Squad hd also arrived. However, he has denied that the panchas were called for after the bomb was defused.

10.468 He has deposed that prior to 27.07.2008, he had knowledge of the Ahmedabad bomb blasts and that the bombs which were found in Surat had not exploded. With regard to the Chowpati incident, he himself had not contacted ACP Traffic, but has denied that the FIR was given by him regarding Chowpati and Nupur Hospital incident upon the instruction of superior officer. He has denied that no bomb was found near Nupur Hospital and has also denied that signatures were obtained on prepared panchnama.

10.469 He was further cross-examined with regard to the situation prevailing when he arrived at the place where the bomb was located and has deposed that around 8 to 10 people had gathered there, but has denied that these people were actually looking inside the bomb. He has deposed that the FSL and defuse squad was called by him, but cannot say the exact time of arrival. In the meantime, he had controlled the traffic and while the team arrived, he was around 25 to 30 feet away and

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that he had not himself opened the bomb. He has deposed that while the bomb defusing activity was going on, panchnama was also being prepared. He has deposed that he does not know as to who has called the panch witness, but he had inquired about their name. He has confirmed that in Chowpati incident, the panchnama was prepared before the complaint being given. After how much time of the panchnama complaint was given he was not aware of, but complaint was given at Chowpati itself. He has denied the suggestion that he did not know the name of the panch witnesses before registration of the FIR, but has not written the names of panchas in the FIR. He has clarified writing of name in the complaint is not necessary. Rest of the advocates appearing for the accused adopted the cross-examination.

10.470 This witness is an information of two offenses registered at Umra Police Station for leading the unexploded bomb at two different places namely Nupur Hospital and Chowpati for which FIRs being C.R.No.I-3019 of 2018 and 651 of 2008 have been registered. The action taken by this witness is supported by the evidence of PW No.324-Ramsingbhai Nathubhai Chaudhary vide Exh.1672. The said witness was posted as PSO in DCB Police Station and while he was on duty at 20:00 hours, he had received one complaint from R.S. Patel. He made entry in the register maintained by the DCB Police Station and after making entry No.12, FIR came to be registered, wherein the informant's name was shown as Shri R.S.Patel, Police Inspector, Umra Police Station. This witness had produced the entry made by him in his own handwriting in the station diary, which he had produced before the Court and upon identifying his own handwriting, produced original as well as photo copy, which is exhibited as 1673. Yadi received mark 599/501 was also identified by this witness at Exh.1674. After registering of the

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offense, the investigating was handed over to the Police Inspector, DCB Shri P.M.Parmar. This witness has not been cross-examined. Accordingly, the genuineness of PW No.499- Rameshbhai Somabhai Patel has been supported by evidence of PW No.324-Ramsingbhai Nathubhai Chaudhary and the registration of the FIR and the content thereof, the prosecution has been able to prove insofar as two incidents of locating unexploded bombs in area of Nupur Hospital and Chowpati falling under Umra Police Station is established.

Katargam Police Station-II CR No.203 of 2008

10.471 The Court connection with the offence registered at Katargam Police Station being C.R. No.II-203 of 2008, has perused the panchnama of scene of offence vide Exh.2502, perusal of which indicates that unexploded bombs were found from inside Gajera Circle, Katargam in one light green and black coloured bags, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.431-Rajeshkumar Somchand Shah, Exh.2501 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Map Exh.7578, FSL reports Exhs.5726, 5661 and 5864 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.472 The Court has perused the evidence of PW No.552-

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Bharatbhai Ambalal Patel at Exh.3016 who has deposed that he runs a business named "Geeta Traders" near Gajera Circle in Katargam area and that, on 29.07.2008, while he was at the shop he was informed by one of the grass cutting workers near Gajera Circle that there was a suspicious bomb like object in the grass. Thereafter, he promptly informed the police and they came along with the bomb disposal squad and recovered three bombs which were then defused. There is no material cross of this witness and his deposition as far as the location and recovery of bomb is required to be accepted.

10.473 Thereafter, the Court has perused the testimony of PW No.615-Ashwinbhai Pragjibhai Patel at Exh.3251 who was working as the Assistant Health Inspector and that, on 29.07.2008 while he was supervising the cleaning work near Gajera Circle, he was informed the laborers that suspicious parcels were found at three different spots. As he was aware of the ongoing situation and upon noticing the visual similarity to the objects shown on television, he immediately informed the police control room from a nearby shop. Thereafter, the police and bomb disposal squad arrived at the location and defused the bomb. This witness has been cross examined regarding his presence at the place of location, police statement and the time taken by police to arrive. Upon looking at the deposition of this witness it is required to be accepted so far as the location and recovery of bomb is concerned. Also, the Court has also perused the deposition of PW No.581-Vitthalbhai Devrajbhai Vohra at Exh.3114, PW No.619-Dineshbhai Jetaji Prajapati at Exh.3260, PW No.646-Rasikbhai Khodabhai Patel at Exh.3291 and PW No.648-Dineshbhai Karsanbhai Jogadiya at Exh.3294 who have given deposition of similar nature regarding the location and recovery of the bomb from Gajera Circle. There appears to be no material cross of these

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witnesses and their deposition is required to be believed insofar as the location, recovery and subsequent defusal of the bomb are concerned.

Katargam Police Station-II CR No.208 of 2008

10.474 The Court in connection with the offence registered at Katargam Police Station being C.R. No.II-208 of 2008, has perused the panchnama of scene of offence vide Exh.2531, perusal of which indicates that one unexploded bomb was from one place in Katargam area, which was defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.432-Bharatbhai Jadavbhai Tank, Exh.2350 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2741, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7576 and FSL reports Exhs.5871 and 5653 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.475 The Court in this connection with this offence where one unexploded live bomb was found from 'East to West' Road in the corner of Amreli Bridge from Katargam, has perused the evidence of PW No.554-Arpit Kanakbhai Patel at Exh.3020 who has deposed that, on 09.08.2008 while he was returning to Amroli, after meeting his friend he noticed that a group of people had gathered near the Lanka Vijay

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Hanumanji Temple at the end of Amroli Bridge. Thereafter, upon going there he saw that a red colored bomb like object was lying near the roadside bushes and garbage. As he had seen visually similar kind of objects on television that were bombs, he informed the police control room and then the police arrived along with the bomb disposal squad and carried out the procedure to defuse the bomb. He was cross examined regarding his presence when the bomb was being defused and regarding the material recovered from the bomb. Upon looking at the entire deposition of this witness, his deposition as far as the location and recovery of bomb is required to be accepted. The Court has also examined the deposaition of other witnesses in this regard namely, PW No.582-Yogeshbhai Rameshbhai Patel at Exh.3115, PW No.620-Sandipbhai Gamabhai Patel at Exh.3261 and PW No.626-Sukhdev Mithalal Prajapati at Exh.3267 who are carrying out some or the other business in the nearby area and have given deposition of an identical nature regarding the recovery of bomb from the corner of Amreli Bridge. There appears to be no material cross of these witnesses. The Court is of the view that there is no challenge to the version of these witnesses with regard to the location and recovery of the bomb and therefore, their evidence to that extent is required to be accepted.

Mahidharpura Police Station-II CR No.208 of 2008

10.476 The Court in connection with the offence registered at Mahidharpura Police Station being C.R. No.II-208 of 2008, has perused the panchnama of scene of offence vide Exh.2666, perusal of which indicates that one unexploded bomb was found from Mayank Meltar Shutter, Mahidharpura Hira Bazar in one orange-yellow coloured bag, which were defused by the Bomb Disposal Squad and at that time,

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officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.439-Jitendra Chandrakantbhai Sadiwala, Exh.2665 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Map Exh.7576, FSL reports Exhs.5743, 5662 and 5947 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.477 The Court has thereafter perused evidence relating to two offences which have been registered at Mahidharpura police station. The first offence being, C.R. No.II-208 of 2008 where one unexploded live bomb was found in Mahidharpura Hira Bazar at Mayank Metlar Shutter. The Court has perused the evidence of PW No.551-Ajaykumar Sumantilal Shah at Exh.3015. This witness has deposed that he is engaged in the business of diamond brokerage from many years in Mahidharpura Diamond Market, Surat and that, on 29.07.2008 at around 2:30 pm he noticed a cloth bag lying near the shutter of a nearby shop which is owned by one Ghanshyambhai which raised his suspicion. Upon inspecting it along with Ghanshyambhai, it appeared to be suspicious and thereafter, the witness immediately approached the police and they came along with the bomb disposal squad who confirmed that the bag contained an explosive device and thereafter carried out the necessary procedure. Upon looking at the testimony of the witness, it appears to be credible with regards to the contents of the bag and the recovery of the bomb.

10.478 In this regard, the Court has also perused the deposition of

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PW No.562-Narayan Natwarlal Zilitwala at Exh.3031 who has deposed similar facts regarding the aforesaid witness (PW No.551-Ajaykumar Sumantilal Shah) noticing a suspicious bag and upon seeing a wire like material started shouting 'bomb bomb' and the witness along with the others gathered at the spot and got to know that the bag was found from the recess above the shutter of Mayank Metalers. He has also deposed that thereafter the police along with the bomb disposal squad came and they confirmed the bag to contain an explosive device which was then defused. In addition to the above two witnesses, deposition of an identical nature have been given by PW No.577-Ishwarlal Umaji Kansara at Exh.3104, PW No.609-Ashok Thakarsinh Shah at Exh.3245, PW No.634-Mihir Satishbhai Rajpara at Exh.3276, PW No.645-Chandrakant Chimanlal Morakhiya at Exh.3290, PW No.663-Sunil Pratnarayan Pandey at Exh.3316 and PW No.669-Karshanbhai Devsibhai Patel at Exh.3324 who are carrying out business in the nearby area. They have been cross examined with respect to their presence at the place of incident and apart from that, there appears to be no material cross. Therefore, in the opinion of the Court, the evidence of these witnesses can be considered reliable insofar as the recovery of bomb and the subsequent procedures undertaken to defuse the bomb is concerned.

Mahidharpura Police Station-II CR No.209 of 2008

10.479 The Court in connection with the offence registered at Mahidharpura Police Station being C.R. No.II-209 of 2008, has perused the panchnama of scene of offence vide Exh.2666, perusal of which indicates that one unexploded bomb was found from behind Genius Investment Shop Board, Mahidharpura Hira Bazar in one orange-yellow coloured bag, which were defused by the Bomb Disposal Squad and at

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that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.439-Jitendra Chandrakantbhai Sadiwala, Exh.2665 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2737, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7566 and FSL reports Exhs.5745, 5659 and 5947 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.480 The Court has thereafter perused evidence related to another offence reported with the same police station being C.R. No.II-209/2008 where one unexploded live bomb was found from Shrinivas House, behind Genius Investment Shop Board which is located at Mahidharpura Hira Bazar, Jaddha Khadi on Kamnath Road. The Court has perused the evidence of PW No.572-Kanhaiyalal Hastimal Nagar at Exh.3072. This witness has deposed that he used to run a business in the name of "Annapurna Chavana and Farsan Mart" in Mahidharpura area and that, in the evening on 30.07.2008 he saw a suspicious individual standing near Shri Ram Nivas Building for about half an hour who was looking towards the Genius Instruments Shop Board. On the next day, a group of children were playing cricket nearby and as their ball went behind the Genius Instruments Shop Board, they went to retrieve the ball and upon seeing the bomb, they started shouting. He has further deposed that the people from the neighborhood gathered upon hearing the shouts and

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informed the police who arrived with the bomb disposal squad and defused the bomb. There is no substantial cross of this witness and his testimony can be relied upon insofar as the location of the bomb is required to be accepted.

10.481 Thereafter the Court has examined the deposition of PW No.574-Jawahar Haribhai Chawla at Exh.3074 who received information from his friend on 30.07.2008 that a bomb was found behind the signboard of Genius Instruments located at his building on Kamnath Road. Thereafter, the said witness immediately proceeded to the location and saw that the police officials and bomb disposal squad were defusing the bomb. There is no substantial cross of this witness. In addition to the above two witnesses, deposition of a similar nature have been given by PW No.580-Uttamdas Chetandas Sant at Exh.3113, PW No.618-Mayurbhai Bharatbhai Patel at Exh.3259, PW No.628-Kartik Rashmikant Joshi at Exh.3270, PW No.632-Dipakbhai Amratbhai Patel at Exh.3274 and PW No.649-Kishor Pravinkant Joshi at Exh.3295 regarding the recovery of bomb from behind the signboard of Genius Instruments. There appears to be no material cross of these witnesses and their deposition is required to be believed regarding the location where the bomb was planted, recovery of the said bomb and the subsequent defusing of the bomb by the bomb squad.

Umara Police Station-II CR No.651 of 2008

10.482 The Court in connection with the offence registered at Umara Police Station being C.R. No.II-651 of 2008, has perused the panchnama of scene of offence vide Exh.2491, perusal of which indicates that unexploded bombs were found from one place in Umara area, which was defused by the Bomb Disposal Squad and at that time, officers of

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FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.441-Narsinhbhai @ Narsang Karmanbhai Patel, Exh.2693 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2739, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7562 and FSL reports Exhs.5763 and 5663 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts. The Court has also perused report of Bharat Electronics Ltd. Bengaluru, Exh.8099 and deposition of PW No.1130-Manoj Mahavirprasad Jain, Exh.8097, who has deposed that the timer and circuit were fully functional and complete and time was set at 24.15 hours.

10.483 The Court has thereafter referred to evidences relating to an offence which has been registered at Umara police station being C.R. No.II-651/2008 where an unexploded live bomb was found from an advertisement hoarding in Athva line Chowpati Garden which is in front of City Bus Stop.

10.484 In this regard, the Court has perused the evidence of PW No.556-Bhagvat Ramdas Patil at Exh.3022 who has deposed that he was working as a laborer who was engaged in fitting and removing advertisement boards. In the course of the said work, on 03.08.2008, while he was removing an old advertisement and installing a new one at Chowpati Bus Stand, he noticed a green colored packet with protruding

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wires which had been tucked in the backseat area of the bus stop structure. Upon noticing the same, he immediately informed the police control room by dialing 100. Shortly thereafter, the traffic police personnel and other officers arrived at the place and cordoned off the area and initiated the necessary procedures. There appears to be no substantial cross of this witness and his deposition is to be accepted so far as the contents of the bomb and the location where it was found is concerned. Further, the Court has also perused the evidence of PW No.584-Anilbhai Balwantbhai Soni at Exh.3118 who has deposed that he was engaged in the business of renting out advertisement boards in Surat and is the employer of the aforesaid witness (PW No.556-Bhagvat Ramdas Patil at Exh.3022) and on 03.08.2008 this witness had instructed him to remove the old advertisement and to affix a new one as the rental term had expired. Thereafter, he has deposed that the worker (aforesaid witness) informed him that a suspicious bomb like object was found from behind the bus stop where the board was installed. Therefore, this witness went to the spot and instructed the worker not to touch the object which upon looking, appeared to be in a suspicious green colored plastic bag. Further, he has deposed that his worker informed the police and that the police came along with the bomb disposal squad who carried out the necessary procedure. There appears to be no substantial cross of this witness. Upon perusing the evidence of both the aforesaid witnesses namely, PW No.556-Bhagvat Ramdas Patil and PW No.584-Anilbhai Balwantbhai Soni, it clearly establishes the recovery of a bomb from the said location and additionally, their depositions are consistent and corroborate each other regarding the intimation to police upon finding the suspicious bag and subsequent defusal thereafter by the bomb squad. Therefore, it is the view of the Court that the evidence of

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these witnesses is required to be believed insofar as the location and recovery of the bomb are concerned.

10.485 Thereafter, the Court in this regard has also perused the deposition of PW No.567-Ramesh Ravindra Sahu at Exh.3038 who was working at a manager at the "Sugar and Spice Stall" which is located in the Chowpatty area of Surat and that he was informed on 03.08.2008 regarding the bomb at a nearby bus stand and upon going there, he saw the police was present who carried the bomb to Chowpatty Garden and defused the same. This witness has been cross examined regarding his presence at the time when the said bomb was being defused. Apart from this, there is no substantial cross of this witness and his evidence supports the evidence of the other two witnesses regarding the location and recovery of the bomb.

Varachha Police Station-II CR No.363 of 2008

10.486 The Court in connection with the offence registered at Varachha Police Station being C.R. No.II-363 of 2008, has perused the panchnama of scene of offence vide Exh.2681, perusal of which indicates that one unexploded bomb was found beneath Electric Transformer of Sub-station in one green coloured plastic bag, which was defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.440-Krushnakant Chaturbhai Prajapati, Exh.2680 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2731, which establishes the

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incriminating material seized being ammonium nitrate and fuel oil, which was used for making explosive device. The Court has thereafter perused Map Exh.7589, FSL reports Exhs.5929 and 5658 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.487 The Learned Special Public Prosecutor has thereafter referred to five offences which have been registered at Varachha police station. The first offence being, C.R. No.II-363/2008 where one unexploded live bomb was found at Varachha L.H. Road, Old Shaktivijay Society in a small substation of Torrent Power Company.

10.488 Thereafter, in this regard, Learned Special Public Prosecutor has drawn our attention to the deposition of PW No.549-Bhavesh Lavjibhai Patel at Exh.3009 who was running a garage. He was informed by one of the two boys playing near the substation that there was something lying near the substation and upon looking, he found that a packed bomb was present inside a green colored plastic bag. He informed the police who came along with the bomb disposal team, moved the people away and thereafter took away the bomb with them. Further, a similar deposition has been given by PW No.569-Nikunj Maganlal Kotadiya at Exh.3042, who used to run the garage shop along with the aforementioned witness PW No.549-Bhavesh Lavjibhai Patel. Also, other witnesses have been examined in this regard to establish the case of the prosecution regarding an unexploded live bomb being found near a small substation of Torrent Power Company.

10.489 The Court has perused the evidence of PW No.549-Bhavesh Lavjibhai Patel vide Exh.3009 who was operating a motor garage named "Umiya Motor Garage" and that on 28.07.2008, he was informed about

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a suspicious thing lying near the substation. He went and saw that a packed bomb was present in a green coloured plastic bag and immediately informed the police. The police arrived within 15-20 minutes and upon showing them the place, they commenced their procedure and carried away the bomb with them. In the cross examination, this witness was questioned regarding how he arrived upon the conclusion that the said substance was a bomb. Further, this witness has deposed in his cross examination regarding arrival of the police and that they conducted their procedure and left. There is no other specific cross of this witness.

10.490 Another witness, the evidence of which is perused by the Court is PW No.569-Nikunj Maganlal Kotadiya at Exh.3042 who used to run the garage shop along with the above mentioned witness PW No.549-Bhavesh Lavjibhai Patel who is his uncle. This witness has deposed similar facts. In his cross examination he has stated that the power house was 10-12 feet away from the garage and that a crowd had gathered near the spot. There is no other specific cross of this witness.

10.491 Another witness examined in this regard is PW No.570-Satish Chunilal Mistri at Exh.3043 who used to run a textile shop. He came to know about the bomb blasts that took place in various places in Ahmedabad on 26.07.2008 and that on 28.07.2008, a crowd had gathered near the transformer of Torrent Power Company and upon seeing that, he went to the location where he found a suspicious substance wrapped in a green colored plastic bag. Further, he has deposed that as someone called the police, they arrived at the location and inspected. Also, the bomb disposal squad and F.S.L. authorities were called and thereafter the said bomb was defused. He has stated that a statement in this regard has been given at the Varachha police station on

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30.07.2008. However, in his cross examination he has denied the fact of making any voluntary statement and that neither is he aware about the bomb disposal squad or the F.S.L., nor of the bomb defusal procedure carried out by them. It is observed that the lack of knowledge of this witness about the authorities and the procedure carried out by them doesn't affect the primary substance of the information deposed by him in the examination in chief.

10.492 The other witness perused by the Court in this regard is PW No.605-Nileshbhai Laljibhai Patel at Exh.3241 who is the owner of a textile shop and has deposed similar facts. Further, in his cross examination he has stated that the police cordoned off the area and that he was observing the cordoned off area from the first floor, about 20 feet away. There is no other specific cross of this witness.

10.493 Another witness examined in this regard is PW No.625-Sanjay Nandlal Mistri at Exh.3266 who has deposed that two bombs were found inside green colored packets from the divider of Bhawani Circle and that the necessary procedure was carried out after the police arrived. There is no other specific cross of this witness.

10.494 Similarly for this offence, other witnesses examined are PW No.630-Alkesh Bavchandbhai Pethani at Exh.3272, PW No.641-Babubhai Arjunbhai Patil at Exh.3286 and PW No.650-Mukesh Vinubhai Jethva at Exh.3297. They have deposed similar facts regarding them carrying out business in the vicinity of the area where the substation of Torrent Power Company is located and finding a suspicious substance wrapped in a green plastic bag. Thereafter, they have deposed regarding the arrival of police and bomb disposal squad and them carrying out the necessary procedure. There is no substantial cross of these witnesses.

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10.495 Upon perusal of deposition of the aforesaid witnesses, it establishes the recovery of a live bomb near the Torrent Power Company on 28.07.2008. Further, their deposition regarding the intimation made to police and the subsequent defusal of the bomb appears to be credible and therefore, the deposition of the witnesses is considered to be reliable insofar as the recovery and defusing of the bomb is concerned.

10.496 The intention to terrorize public and cause terror amongst the general public can be inferred even from the proved sites of planting of the bomb i.e., near a mini substation or a hoarding in the middle of the busy public road or at or near the hospital which would be buzzing with activity immediately post the blast which is sufficient for the court to infer the intent of the accused. It also requires the court to infer that an exercise was undertaken for placing the bombs at places which are vulnerable and cause maximum damage in terms of life and property. It is not that the unexploded bombs were placed and found randomly.

Varachha Police Station-II CR No.364 of 2008

10.497 The Court in connection with the offence registered at Varachha Police Station being C.R. No.II-364 of 2008, has perused the panchnama of scene of offence vide Exh.2453, perusal of which indicates that unexploded bombs were found from Baroda Prestige Bazar, Nr.Samarpan Kapad Kendra, Plot No.132, Nr.Ramzan Ali Building and from Pipal Tree, Matavadi JB Shopping, Opp.Bansari Pan Parlour, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.429-Sanjaybhai Ratibhai Kapuriya, Exh.2452 to establish the aforesaid fact. The Court has also perused deposition of

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PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Maps Exhs.7583, 7584 and 7585 and FSL report Exh.5960 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.498 Learned Special Public Prosecutor has thereafter referred to another offence reported with the same police station being C.R. No. II - 364/08 where:

i) One unexploded live bomb was found at Baroda Prestige Bazar, Nr. Samarpan Kapad Kendra,

ii) One unexploded live bomb was found at Plot No. 132, Nr. Ramzan Ali Building and

iii) One unexploded live bomb was found at Matavadi J.B. Shopping, Opp. Banarasi Pan Parlour, from a Peepal tree.

10.499 In this connection, Learned Special Public Prosecutor has read the evidence of PW No.550-Janak Ratibhai Gohil at Exh.3010 who deposed in his testimony that a bomb was found near Omkar Jewellers and another bomb in the electric meter box of an adjacent shop which were defused by the bomb disposal squad. Thereafter, in this regard Learned Special Public Prosecutor has read out the evidence of PW No.631-Vitthalbhai Anandbhai Dakhra at Exh.3273 who observed a green cover containing a box hanging from the branch of a peepal tree when he went to Bansari Paan Centre located near J.B. Shopping Centre and informed about it to a traffic police and thereafter, the said bomb was defused.

10.500 The Court has perused the evidence of PW No.550-Janakbhai Ratibhai Gohil at Exh.3010 who is the owner of a readymade garment

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shop. He has deposed that on 29.07.2008, at around 10:45 am while he was at his showroom he observed a crowd near Omkar Jewellers where a bomb was found on the shutter. He further deposed that another bomb was seen in the electric meter of an adjacent shop by a hawker who informed the police. The police and the bomb disposal squad arrived shortly thereafter and the bombs were defused and taken away. There is no other specific cross of this witness. Other witnesses who have given similar testimonies are that of PW No.563-Kailashbhai Higrajbhai Charan at Exh.3032, PW No.606-Milan Chandubhai Rupareliya at Exh.3242, PW No.651-Ramanbhai Gigabhai Patel at Exh.3298 and PW No.657-Mohanbhai Nadarmal Jain at Exh.3309 who are running shops in the nearby area.

10.501 Another witness perused by this Court is that of PW No.662-Mohanlal Khanaramji Mali at Exh.3315 who was engaged in the business of selling cutlery near 'Samarpan Kapad Kendra' which is located in Baroda Prestige Market. On 29.07.2008, upon hearing people shouting, he went to the place and saw a bomb wrapped in light yellow (popti) colored paper near the shutter of Omkar Fashion. Thereafter, the police made an announcement to report similar suspicious items. He noticed a suspicious item in an electric meter box nearby and informed the police, who came along with the bomb disposal squad and defused the bomb. There is no other specific cross of this witness.

10.502 Thereafter the Court has perused the evidence of PW No.631-Vitthalbhai Anandbhai Dakhra at Exh.3273 who is engaged in diamond trading and brokerage business and that on 29.07.2008 he went to Bansari Paan Centre located near J.B. Shopping Centre wherein, he noticed a green cover which contained a box hanging from the branch of a peepal tree. He informed the same to a nearby traffic police officer.

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Thereafter, the police and bomb squad came and carried out the necessary procedures to defuse the bomb. He was thereafter cross examined regarding the box and his presence at the place. There is no other specific cross of this witness. Another witness examined in this regard is PW No.642-Dharmesh Narsinhbhai Delvadiya at Exh.3287 who runs "Bansari Paan Centre" along with his brother and that, he got to know about the bomb upon hearing the shouts of "bomb bomb" by the people. Thereafter, the police arrived. There is no other specific cross of this witness.

10.503 Upon perusing the deposition of the aforesaid witnesses, it establishes the fact of recovery of unexploded bombs on 29.07.2008 from various places in the market. The aforesaid witnesses have deposed regarding them personally seeing the bombs or getting to know about the planting of bombs because of public commotion which was thereafter followed by giving information to the police and subsequent defusal of the bomb by the bomb squad. Further, there is nothing coming out in the cross examination of these witnesses so as to discredit their testimony and therefore, the Court finds the deposition of these witnesses reliable in proving the recovery of the unexploded bombs in Surat.

Varachha Police Station-II CR No.365 of 2008

10.504 The Court in connection with the offence registered at Varachha Police Station being C.R. No.II-365 of 2008, has perused the panchnama of scene of offence vide Exh.2566, perusal of which indicates that unexploded bombs were found from five different places in Varachha area, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the

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components of bomb were seized. In this regard, the Court has also perused deposition of PW No.435-Bhimjibhai Virjibhai Dhameliya, Exh.2565 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Maps Exhs.7591 and 7592 and FSL reports Exhs.5880 and 5654 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.505 Learned Special Public Prosecutor has thereafter referred to another offence reported with the same police station being C.R. No. II - 365/08 where :

i) One unexploded live bomb was found at Varachha Over Bridge, Poll No. 98 from an hoarding iron angle,

ii) One unexploded live bomb was found at Varachha Mini Bazaar, Mohan Ni Chali, Near Anil Chokshi Weight from banyan tree,

iii) One unexploded live bomb was found at Varachha Mini Bazaar, Mohan ni Chali, Near Anil Chokshi Weight on the iron sheet opposite tree,

iv) One unexploded live bomb was found at Mohan Ni Chali, Over bridge and

v) Two unexploded live bombs were found at Bhavna Ford Overbridge, from hoardings.

10.506 In this connection, Learned Special Public Prosecutor has read the evidence of PW No.553-Jayesh Laxmanbhai Bhattu at Exh.3017 who has deposed that upon noticing a green colored box affixed to hoarding no. 98 on Sardar bridge, he called the police and

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thereafter the bomb was defused. Further, Learned Special Public Prosecutor has also read out the evidence of PW No.564-Nareshbhai Parshuram Rajgor at Exh.3033 who has deposed that he saw one bomb each being recovered from the hoarding fixed on Pole No. 98 of the overbridge, from a banyan tree near the weighing machine of Anilbhai Choksi in Mohan ni Chawl and from the iron sheet opposite to the weighing machine of Anilbhai Choksi.

10.507 The Court has perused the evidence of PW No.553-Jayesh Laxmanbhai Bhattu at Exh.3017 who deposed in his testimony that on 29.07.2008, he was on his way to his office wherein he noticed a green colored box affixed to Hoarding No.98 on Sardar Bridge and thereafter, he informed the police who came along with the bomb disposal squad and defused the bomb. He was cross examined regarding the height at which the hoarding was, how the bomb was attached to the hoarding and how he noticed it. There is no other specific cross of this witness and therefore, his evidence can be considered reliable insofar as the recovery and defusal of bomb from Hoarding No.98 on Sardar Bridge is concerned.

10.508 Another witness examined in this regard is PW No.564-Nareshbhai Parshuram Rajgor at Exh.3033. He has deposed that he was employed at Sai Metalwala in Varachha Mini Hira Bazaar for trading diamonds. Further, he has deposed that on 29.07.2008, he saw a large crowd had gathered near the over bridge and upon going there he saw that a bomb was recovered from the hoarding fixed on Pole No.98 of the over bridge and subsequently, he saw one bomb being recovered from a banyan tree near the weighing machine of Anilbhai Choksi in Mohan ni Chawl and another bomb from the iron sheet which is opposite to the aforesaid place (weighing machine of Anilbhai Choksi). He has further

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deposed that all these bombs were defused and taken away. He has been cross examined regarding whether he could identify a bomb, whether he could see such the place from where the bomb was recovered from his workplace and regarding his presence at the place. Apart from this, there is no other specific cross of this witness. Upon perusal of the evidence of this witness it appears that it supports the deposition of PW No.553-Jayesh Laxmanbhai Bhattu insofar as the recovery of the bomb from Hoarding No.98 on Sardar Bridge is concerned. Further, the testimony of this witness also clearly establishes the fact of recovery of bombs from the banyan tree and the iron sheet located in the nearby area on 29.07.2008.

10.509 Another evidence perused by this Court is that of PW No.568-Paresh Batukbhai Thakkar at Exh.3041 who has deposed that he was working as a manager at “Pakwan Guest House” on Varachha Road. On 29.07.2008, he saw a crowd had gathered below the over bridge opposite the guest house and he went and saw that a suspicious substance had been placed on the hoarding of the over bridge and that shortly thereafter; police arrived and undertook the necessary procedure. There is no other specific cross of this witness. There are similar depositions which have been given by PW-607 Mansukhbhai Hirjibhai Dhameliya at Exh.3243 who had a cart present near Varachha overbridge at the time of incident and, PW-638 Ghanshyambhai Ravjibhai Gajera at Exh.3282 who used to run a shop named “Reena Paan House” near Pakwan Hotel on Varachha Road regarding recovery of the bomb from hoarding attached to the overbridge on 29.07.2008. There is no material cross of these witnesses. The Court has also perused the evidence of PW-643 Pritesh Anilbhai Choksi at Exh.3288. He has deposed that he runs the shop named “Choksi Weight Centre” and that, on 28.07.2008

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while he was working at the shop he saw multiple bombs being recovered from various locations in the vicinity of the shop namely, from a hoarding near the over bridge, from a banyan tree near his shop, from a hoarding opposite his shop, from near Alpha Restaurant and from the premises of Bhavna Ford showroom. He was thereafter cross examined regarding the place and the height at which the bomb was placed and his presence on the date of incident. Apart from this, there is no other specific cross. Upon looking at the deposition of the witness in its entirety, it is observed that although there is some discrepancy regarding the date of incident, there is an overall consistency in his deposition and can therefore be considered reliable.

Varachha Police Station-II CR No.366 of 2008

10.510 The Court in connection with the offence registered at Varachha Police Station being C.R. No.II-366 of 2008, has perused the panchnama of scene of offence vide Exh.2566, perusal of which indicates that unexploded bombs were found from three different places in Varachha area, which were defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.437-Anilbhai Maganbhai Sojitra, Exh.2630 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has thereafter perused Maps Exhs.7580 and 7581 and FSL reports Exhs.5868 and 5652 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in

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Ahmedabad blasts.

10.511 Learned Special Public Prosecutor has thereafter referred to another offence reported with the same police station being C.R. No. II - 366/08 where:

i) One unexploded live bomb was found at Varachha Ashwinikumar Road, situated at Bhavani Gems circle North side divider from between the grass.

ii) One unexploded live bomb was found Bhavani Gems Circle from east side between plants and grass from divider.

iii) One unexploded live bomb was found from B/h Sardar Police Chowky, Kranti Ground, from east-south side between grass.

Learned Special Public Prosecutor has read out the deposition of PW No.608-Bhavesh Ghanshyam Zalavadiya at Exh.3244 in this regard who has deposed that he came to know about the news of bombs being planted in Surat City and in the Varachha area and that, while he was on his way back home he found a suspicious object on the north side divider of Bhavani Circle and had therefore promptly informed the police. Further, he also found a similar substance on the nearby divider on the road towards Hiranagar and that both the bombs were defused.

10.512 The Court has perused the evidence of PW No.608-Bhavesh Ghanshyam Zalavadiya at Exh.3244. He has deposed that on 29.07.2008 while he was on his way back to home after picking up his niece from school, he noticed a suspicious object resembling a bomb on the divider to the north of the Bhavani Circle and he informed the police officer who was on duty nearby who in turn, informed his superiors. Thereafter, the police authorities arrived and also, a bomb-like object which was

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greenish in colour was found on the adjacent divider on the road towards Hiranagar regarding which he informed the police. The police arrived and carried out the necessary procedure to defuse the bombs. This witness has been cross examined regarding whether his police statement was recorded and apart from that, there is no specific cross of this witness. The deposition can be relied upon looking at the consistency of the material particulars and his conduct at the time of incident to promptly inform the police authorities.

10.513 Thereafter, the Court has perused the evidence of PW No.610-Raju Lakhabhai Makwana at Exh.3246 and the said witness has deposed that he runs a cutlery business in the name of "Soham Novelties Store" in Baroda Prestige Market and that, on 30.07.2008 while he was present at his shop, a crowd had begun to gather in a nearby shop and people were talking about a bomb which was on the first floor. Upon which, he went and saw a bomb near a pillar on the first floor and that, on the previous day, similar bombs were found from shops in that market. Further he has deposed that as someone informed the police, they arrived along with the bomb disposal squad and carried out the further procedure. Also, he has stated the said bomb was first found by Ranchhodbhai who is the uncle of Lakhabhai and whose shop is nearby the shop of this witness. He has deposed in his cross examination that the suspicious item was found on 30.07.2008 and that he had not gone to personally see the suspicious object but he got to know about it merely by word of mouth. Upon looking at the entire deposition of this witness, it appears that although there is a inconsistency in his version regarding whether he personally saw the suspicious object, it appears that a crowd had gathered and the said suspicious object was found on 30.07.2008 and therefore, the deposition of this witness cannot be discarded in its

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entirety.

10.514 Further, in this regard evidence of another witness has been perused by this Court is that of PW No.612-Mohan Namibhai Makwana at Exh.3248 who has deposed that he was engaged in the business of buying and selling diamonds at Mohan Ni Chawl, Mini Bazaar, Varachha and that on 29.07.2008, at around 1:15 p.m. while he was at his workplace a crowd had gathered near the over bridge and upon going there he saw that a live bomb was found in a hoarding on a pillar of the over bridge and that subsequently, bombs were also discovered from a banyan tree near Anilbhai Choksi's weighing machine, from a tin sheet wall which is opposite to Choksi's weighing machine and also two live bombs were recovered from the hoarding which is opposite Alpa Restaurant. This witness was cross examined regarding whether he could identify a live bomb and whether he had informed the police. Apart from this, there is no other material cross of this witness and his testimony is found to be reliable insofar as the recovery of the bombs is concerned.

Varachha Police Station-II CR No.367 of 2008

10.515 The Court in connection with the offence registered at Varachha Police Station being C.R. No.II-367 of 2008, has perused the panchnama of scene of offence vide Exh.2441, perusal of which indicates that unexploded bombs were found from one place in Varachha area, which was defused by the Bomb Disposal Squad and at that time, officers of FSL were also present and thereafter all the components of bomb were seized. In this regard, the Court has also perused deposition of PW No.248-Kiritbhai Ravjibhai Thakkar, Exh.2440 to establish the aforesaid fact. The Court has also perused deposition of PW No.1137-

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Jesingbhai Mohanbhai Patel, Exh.8156, who was member of the Bomb Disposal Squad and had carried out procedure to defuse the bomb. The Court has also perused the FSL report Exh.2735, which establishes the incriminating material seized being ammonium nitrate and fuel oil, which was used for explosion. The Court has thereafter perused Map Exh.7587 and FSL reports Exhs.5944 and 5651 to establish the location and to establish the incriminating material, wherein it appears that the contents of the explosive material were same as were used in Ahmedabad blasts.

10.516 Learned Special Public Prosecutor has thereafter referred to another offence reported with the same police station being C.R. No.II-367/08 wherein one unexploded live bomb was found from the first floor of Shri Kishan Complex, near Radhe Fashion in between the drainage pipe and wall and which is located at Varachha Baroda Prestige, Premgali.

10.517 In this regard, Learned Special Public Prosecutor has read out the evidence of PW No.560-Ranchod Jivabhai Makwana at Exh.3027 who found a bomb like object from the second floor of a building named “Kishan Complex” at the time when he went to inspect his nephew’s shop which is located nearby upon getting to know about the Ahmedabad bomb blast on 26.07.2008 and the recovery of bombs from various places in Surat the previous day. Further, this witness had informed the police upon noticing the bomb like object.

10.518 The Court has perused the evidence of PW No.560-Ranchod Jivabhai Makwana at Exh.3027. He has deposed that he is a rickshaw driver and that upon hearing about the bomb blasts that took place in Ahmedabad on 26.07.2008 and the various planted bombs that were recovered on 29.07.2008 from Surat, he felt the need to inspect his

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nephew's shop named "Soham Novelty Stores" which is located in Khodiyar Shopping Centre on 30.07.2008. There is a building named 'Kishan Complex' which is located nearby the shop of his nephew and upon inspecting the second floor of that building, he saw a bomb like object placed near the wall. He thereafter informed the police who arrived along with the bomb disposal squad and defused the bomb. Thereafter, upon perusing the cross examination of this witness it is coming out that this witness had not gone upstairs to inspect the object and saw it from below which was at a height of approximately five feet in the gap between the slab and the pillar. Apart from this, there is no material cross of this witness. In the opinion of the Court, the conduct of this witness in promptly informing the police and subsequent defusal by the bomb squad, sufficiently establishes the fact of the recovery of the bomb.

10.519 Another witness that has been examined in this regard is PW No.576-Bipin Dhirajlal Jobanputra who has deposed that he runs a shop named "Shreenath Novelty" at Khodiyar Shopping Centre, Baroda Prestige Market and that, on 30.07.2008 a crowd had gathered in front of his shop and that they were looking upwards. Upon looking in the same direction, he found a bomb like object which resembled the bombs that were discovered earlier from the same market on 29.07.2008. Further, he has deposed that Ranchod Makwana (PW No.560) informed the police and that they arrived along with the bomb disposal squad and defused the bomb. There is no substantial cross of this witness. The Court has also perused the deposition of PW No.611-Bhadresh Maganbhai Raycha at Exh.3247, PW No.633-Bharat Ramnikbhai Mathiya at Exh.3275 and PW No.644-Devendra Babubhai Lightwala at Exh.3289 who have given similar deposition regarding the recovery of bomb from "Kishan

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Complex" and who are carrying out some or the other business in the nearby area. There does not appear to be any material cross examination of these witnesses. Upon perusal of the evidence of the aforesaid witnesses, it clearly establishes the fact of recovery of a live bomb from 'Kishan Complex'. Further, the depositions of these witnesses appear to be consistent and corroborate each other and therefore, in the opinion of the Court the evidence of these witnesses can be considered to be reliable for proving the recovery and the defusal of the bomb.

10.520 Under this chapter, while the State has made submissions on the incidents, which were recorded as First Information Report. The Court has also discussed on the basis of evidence, its finding regarding such incidents. The Court has therefore, given its findings on the aspect of incident itself, cause of such incident, damages in terms of life, injuries and properties both the Government and Public and in arriving such findings has also discussed and concluded on the evidence of FSL, the Expert's opinion and the panchnamas pertaining to scene of offence and ascertaining of damages. Based on the aforesaid discussion, the State is able to establish the factum of offences and serial Bomb Blasts in Ahmedabad and bomb planting in Surat as a part of conspiracy.

10.521 On behalf of the State prayer is made to confirm the Judgment and the Sentence awarded by the Special Court.

11. Gist of Submissions in general by the defence counsels and Court's comments

11.1. The accused are represented by Sr. Advocates Shri Nagamuthhu, Shri Thipsay, Ms. Ramakrishnan , Shri Mihir Desai, Shri Asim Pandya, Dr. Yug Chaudhary , Shri Tejas Barot, Ld. Advocates shri Hriday Buch, Shri Somnath Vats, K.G Shaikh ,Shri Arjun Joshi, Ms,

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Roy and Ms. Dwivedi and while making submissions on behalf of their respective Convicts they have also made submissions on the general issues raised and have interse adopted the arguments advanced by all the ld advocates. The Court, considering the commanality of the issue thus addressed generally is dealing with them as common submissions especially the issue based submissions and by consensus lead on general submissions was taken by Dr. Yug Chaudhry..

11.2. Learned Advocate Dr.Yug Mohit Chaudhry today on 09-03-2026 commenced his submissions on behalf of total nine accused being accused No.2-Imran Ibrahim Shaikh, accused No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala, accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri, accused No.16-Abbas Umar Sameja, accused No.27-Mohd. Ismail @ Abdul Rajik @ Musaf @ Furkan Mohammad Ishak Mansuri, accused No.35-Rafiuddin Sarfuddin Kapadia, accused No.37-Kayamuddin @ Musa @ Ashfak @ Abdul Kadir @ Rizwan @ Samir Sarfuddin Kapadiya, accused No.47-Ahmedbava @ Abbu Abubakar Barelvi and accused No.75-Mohd. Rafik @ Javid @ Alamzeb Afridi Maskur Ahmed. In the midst of the argument, Shri Chaudhary has submitted that on behalf of Accused No.7and accused No.27 senior advocate Shri Mr. S.Nagamuthu would make submission.

11.3. Learned Advocate has submitted that he would begin his submissions on general issues pertaining to case of terrorism, such as this and has submitted that the prosecution owes strong duty towards the victims, general public and to the Nation to implicate correct persons as accused and therefore, it is important that investigation is full proof, so that the real perpetrators of such serious crimes are found out and brought to justice.

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11.4. By weak investigation, there is possibility of wrong persons being caught and convicted, which will act as Insurance Policy for the real accused persons, who would still be scot-free and would be inspired to once again indulge in such grave crime. It is submitted that the trial and conviction of wrong person as accused, acts as a greater protection and provides for permanent immunity to real perpetrators of crime and therefore, investigation and the Court should be slow in relying upon frail evidence.

11.5. Learned advocate has submitted that there are two species of evidence; one is strong evidence and another is weak species of evidence. According to him, various decisions rendered by the Hon'ble Apex Court as well as various High Courts specifically in serious cases of bomb blasts and Terror activities, have laid down that what would constitute evidence of strong species and weak species. According to him, evidence to strong species would be as under:

(1) Evidence of eyewitness having seen planter of the bombs;

(2) Accused seen around the site of bombing on CCTV or other electronic medium;

(3) Forensic evidence connecting the accused like finger prints on unexploded bomb or other bomb making materials;

(4) DNA of the accused found on the materials used for the bombs or site where the bombs are made;

(5) Call Detail Record to establish the connectivity amongst the accused of conspiracy;

(6) Seizure of huge quantity of arms, ammunition and explosives, which could be forensically connected to the offence;

(7) Money trail or source of finance;

(8) Residue of chemicals, Gun powers on the body or cloths or

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belongings of the accused;

(9) Prompt and detailed confessional statement, if any.

11.6. Learned Advocate has submitted that this strong evidence is directly connected to apprehension of real culprits. If investigation is strong enough to apprehend genuine accused persons, then aforesaid evidence would definitely be available to investigation. It is submitted that in the present case, lengthy investigation has not even unearthed foundational fact of what is source of finance for planing and gathering materials for the offence.

11.7. Learned Advocate has thereafter narrated species of weak nature of evidence and such evidence is weak as inherently it is vulnerable to manipulation.

(1) Extra judicial confession

(2) Evidence of accomplice / approver

(3) Discovery panchnama under Section 27 of Evidence Act

(4) Conduct of accused under Section 8 of Evidence Act

(5) Confessions of co-accused

11.8. According to learned Advocate aforesaid nature of evidences are required to be accepted with great caution and would definitely need corroboration.

11.9. Thereafter, learned Advocate has made submissions by cursorily undertaking comparative evidence in other serious cases; first of it being Terror attack of 26-11-2008 (Ajmal Kasab), where the evidence relied upon by the prosecution was seemingly of strong nature being CCTV footages displaying Terrorist in action.

11.10. Detailed 164 Statement, a statement which consisted of details, right from conceptualizing of the offence till execution, recovery of arms and ammunition in large quantity.

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11.11. Other case being 1993 Serial Bomb Blasts in Bombay at various sites, killing 257 and injuring 1000, where infamous Terrorist like Dawood Ibrahim, Tiger Memon (having fled the Country) were involved. According to learned Advocate, nature of evidence in this case were of 77 confessions and 20 Recovery panchnamas under Section 27, wherein relevant terrorist materials were recovered. However, not a single point out panchnama for planting or conspiracy was put up before the Court as an evidence and therefore, out of 123 accused charged and tried, 100 accused were convicted and whose confirmation stood till the Apex Court.

11.12. According to learned Advocate, nature of evidence was of very high quality, even approver's evidence was promptly recorded within three months of their arrest, whereas in the present case, approver has made application to turn approver after 11 years.

11.13. According to learned Advocate aforesaid two terror cases should be treated as similar to the present case and therefore, quality of evidence should also be at par.

11.14. Learned Advocate has thereafter narrated instances of other Terror cases, where the Court has not believed evidence of Investigating Agency resulting into acquittal of all the accused. 2008 Train blasts in Mumbai causing 189 deaths and 700 injured led to arrest of 13 accused persons also members of SIMI. Of which, the Sessions Court convicted 12 accused persons and acquitted 1 accused person. However, the Bombay High Court acquitted all the accused. According to learned Advocate, acquittal has resulted as investigation was not credible and apparently, had gone on to manufacture evidence to suit the case of the prosecution and therefore, such investigation was not held to be trustworthy.

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11.15. Another case popularly known as Malegaon blast of 2006, which was investigated by initially ATS and thereafter taken over by NIA, where 12 accused were charge-sheeted, but investigation of NIA led to doubts over investigation by ATS, which was found to have engineered panchnama, where panchanmas were found in a manner, where two panchas were shown to be present at two different places at the same time.

11.16. Investigation was also based on panchnamas, which were verbatim the same and would lead to believe that it was only cut, copy, paste panchnama. According to learned Advocate in the present case also, there are several panchnamas, which can be termed to be verbatim and also overlapping of panch witnesses shown at different places at different time.

11.17. Lastly, learned Advocate has referred to Akshardham case, which also is an example of weak investigation leading to acquittal of all the accused, thereby protecting the real culprits. Thereafter, referring to present case particularly of accused No.27-Mohd. Ismail @ Abdul Rajik @ Musaf @ Furkan Mohammad Ishak Mansuri, who has made voluntary disclosure in Section 27 panchnama, the question is what prevented the Investigating Officer from recording voluntary confession under Section 164 of Cr.P.C., which would have inspired much more confidence, but that action was deliberately avoided by Investigating Officer, as they wanted to engineer evidence. It is submitted that though confession under Section 164 particularly of an accused is evidence, which is of highest quality. However, in the present case, same strong evidence has been weakened by improper procedure followed by investigation. It is submitted that such confessions were recorded after long custody, there is no mention of any Legal Aid being provided to the

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accused to explain consequences, before he was made to confess. The prosecution is required to explain surrounding circumstances, under which confession came to be recorded, not strictly complying with the guidelines meant for recording of confession under Section 164 and the fact that three different accused being investigated under three different crimes under different Investigating Officers, make an application on the same day for making confession.

11.18. Learned Advocate has thereafter referred to eight mistakes that the trial Court committed.

(1) Extreme reliance on inadmissible part of Discovery panchnama

(2) Discovery panchnama / panchnama relied upon, as if the same is substantive evidence

(3) Use of part of Section 27 panchnama, which is confessional in nature and relying upon it against the co-accused

(4) Reliance on voluntary disclosure in Section 27 panchnama at the behest of accused, who himself is acquitted

(5) Use of Section 161 statement as substantive piece of evidence

(6) Failure to put the facts and evidences under Section 313 to the accused and still using it against the accused

(7) Confession of acquitted accused use against co-accused

(8) Identification in Test Identification Parade is taken as substantive evidence

11.19. In the opinion of the Court, the comparison by learned Advocate with other terror related offences particularly for nature of evidence, may not be accepted, simply because of backdrop in which those offences have taken place, as compared to present case. With

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regard to 26-11-2008 Attack cases, CCTV Footages were definitely available, as attack was carried out at Railway Station, which necessarily was under CCTV coverage. As compared to planting of bomb being in a public place and in a manner camouflaged as if, it is a day-to-day activity. An accused person looking like a common man riding a bicycle with a bag hanging on the steering handle is the most common site, which will hardly attract any attention as compared to a person loaded with arms and therefore when parking of car or bicycle is an activity which will not draw anybody's attention, is the modus operandi of a well thought conspiracy and therefore expectedly, would not be covered under any CCTV footages.

11.20. Requirement of eyewitness witnessing a planter of the bomb for the same reason, cannot be expected as in the facts of the present case, modus adopted by accused persons as a part of their well thought conspiracy, is to mix within the crowd, unnoticed, plant the bomb and vanish without waiting for explosion to take place and therefore, the manner in which, the offence has been undertaken in other comparatives by learned Advocate, cannot be accepted as thumb rule or setting a benchmark of nature of evidence to be followed with identically in the present case, where modus of operation, nature of conspiracy and precaution taken by accused to avoid being noticed or being captured as an accused, has now been brought on record by the investigation.

11.21. The Court finds that in the present case, like other cases with which the comparison is drawn by learned Advocate, the prosecution has relied upon evidence like confessional statements, evidence of approver with corroborative evidences. With regard to argument that where several panchnamas purportedly under Section 27 are executed at the behest of the same accused, Investigating Officer ought to have

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considered recording of confessional statement under Section 164 before the Magistrate, which would have invoked more confidence, the Court is of the view that voluntary disclosure with regard to fact is an absolutely different concept than confession to the offence. Voluntary disclosure of the fact does not require confession or admission to any role played by the accused in committing offence, whereas for recording of confessional statement, willingness of accused to voluntarily confess and admit, his role in the offence is starting point and therefore, expecting Investigating Officer to presume that by voluntary disclosure of certain facts amongst confessing to the offence, is beyond the scope of the investigation.

11.22. With regard to submissions on tracing out of finances to fund the Terror activities, there is no comparison with the other aforementioned Terror attacks, the Court finds that the modus adopted in the present case apparently, is self-assisted model, where the local people have participated being led by main conspirators. If entire chronology from the meetings till execution is taken into consideration, entire plot was deliberately kept at low cost and self-financing model. Therefore, the present models cannot be compared with the Terror plot, wherein procurement of arms and ammunition, are a costly affair. Here, procurement was only of commonly available articles like time piece, hardware articles and chemicals, which are commonly available, though regulated.

11.23. Learned advocate Shri Chaudhary continued with his submission on 10.03.2026 by tendering the chronology of investigation conducted qua the convicted accused and submitted that he would by highlighting some of the dates in the chronology make his submissions and the issues that he seeks to raise. Learned advocate submitted that by

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submitting that the Investigating Officer PW No.1-Jogaji Nanjibhai Parmar, a Police Inspector of Shahibaug Police Station, who was examined vide Exh.439 has in para-52 of his cross-examination admitted that he had received a tip off that bomb-blasts are likely to happen. Therefore, if he had any input about the same, firstly, he did not act on it forthwith and that he has not mentioned this fact in the evidence in chief putting to doubt the initiation of investigation.

11.24. The Court is of the opinion that having perused Exh.439 in para-52, wherein the admission of a prior information from his resource was not an answer to any question put in cross-examination, but the witness on his volition had disclosed that there was an intelligence regarding some blasts in Ahmedabad. Therefore, not mentioning the same in evidence in chief, would not create any doubt as the witness on his own had disclosed though it may be at the stage of cross-examination.

11.25. Thereafter, learned advocate submitted that on 26.07.2008, the scene of offense panchnama of the bomb sites were conducted identifying 18 bombs sites where bicycle were used and two bomb sites were cars were placed and two in buses and one exploded in the dustbin. Therefore, on 26.07.2008 and 27.07.2008, the Investigating Officer was already aware the site of the bomb-blasts and the same was in public domain. Therefore, execution of the pointing out panchnama at the behest of the accused persons pursuant to their arrest and pointing out these very places, cannot be treated as discovery panchnama at all and therefore, Section 27 of Indian Evidence Act cannot be invoked.

11.26. Learned advocate submitted that on 27.07.2008, a notification of Commissioner of Police, directing the crime branch to takeover the investigation of all the blasts and therefore, from the beginning the Investigating Agency was conscious that the blasts caused

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in Ahmedabad is a part of larger conspiracy, still each FIR has been investigated separately and this is a method adopted by investigation for prolonged police remand of each of the accused indicating unfairness in the investigation. Learned advocate has referred to one of the remand reports and submitted that in such remand reports also, reference is made to the serial blasts and hence also the Investigating Officer was convinced about larger conspiracy. On the issue of larger conspiracy, learned advocate has also indicated date 02.08.2008, where four investigation teams were crated to investigate the bomb blast cases under the order of DCB Crime Branch (Exh.8641). According to learned advocate, the formation of four teams itself is enough for understanding that the blasts were part of larger conspiracy and therefore, a single offense. Each Investigating Officer of the four teams were working in co-ordination and adopted a systematic investigation and therefore, one Investigating Officer would not claim ignorance of the action undertaken by another Investigating Officer and therefore, successive panchnamas in the form of point out panchnama of the same spot cannot be treated to be leading to a new discovery unknown to Investigating Officer and therefore, such panchnamas are beyond Section 27 of the Indian Evidence Act.

11.27. The Court is of the opinion that if the notification dated 27.07.2008 is to be considered, then the same is on the very next date of the incident and though the blast had taken place in the various areas of Ahmedabad City, it would be too premature to finally conclude that it was an outcome of a larger conspiracy. Each incident was correctly registered with the concerned police station with jurisdiction and initial investigation of drawing the site panchnama and doing other policing activity would obviously be handled by the local police station.

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Therefore, merely because the investigation was ordered by the Crime Branch, it was not required for the Investigating Agency to club all the investigations. Moreover, it was quite uncertain that post 27.07.2008, whether any further blasts would take place. Referring to the statement of PW No.585-Vinodbhai Gordhanbhai Kapuriya, who was examined vide Exh.3119 recorded by DCB Surat, which pertains to parking of a red coloured Maruti Wagon R Car in front of Sonal Bhel House on 26.07.2008 and witness PW No.585-Vinodbhai Gordhanbhai Kapuriya having interacted with the driver of the car for not parking the car in front of his shop still PW No.585-Vinodbhai Gordhanbhai Kapuriya was not called for Test Identification Parade of accused No.63-Mohammad Tanvir @ Talha, who according to prosecution was responsible for planting the bomb laden Maruti Wagon R Car at Sonal Bhel House, instead, the point out panchnama Exh.2794 executed on 27.07.2008 is put forwarded as an evidence of involvement of accused No.63-Mohammad Tanvir @ Talha. This is a folly in the investigation. The Court finds that the evidence of PW No.585-Vinodbhai Gordhanbhai Kapuriya, who is a shop-keeper in front of whose shop Wagon R Car was attempted to be parked by accused No.63-Mohammad Tanvir @ Talha though had only interaction to the extent of not allowing him to park there and that there was no occasion, where accused No.63-Mohammad Tanvir @ Talha would have stepped out of the car and interacted with the witness. Moreover, when the car was being parked in natural course, a witness would not be in a conscious state that he is witnessing a crime in working and therefore is not expected to have paid much attention to the act of parking the car. Therefore, not calling PW No.585-Vinodbhai Gordhanbhai Kapuriya for Test Identification Parade would not damage the other evidence which is is available against the

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said accused by which is identity is established.

11.28. Moreover, the reference to the serial blast in the remand application would be in context of the series blasts in quick succession within the same area, but therefore, would not suggest that on the date of blast, it could be concluded that the blasts were outcome of larger conspiracy and therefore, a single offense ought to have been registered.

11.29. The Court is of the view that though four teams were constituted to investigate the bomb-blasts which took place in Ahmedabad, all the four investigation teams were assigned with independent offenses registered with different police stations. Moreover, from the investigation case papers, it does not appear that one accused who has been in police custody of each of the investigation team has made to undergo repetitive pointing out panchnama of the same place. The pointing out panchnamas of a same place is at the behest of different accused persons at different time and under different investigation officers and therefore, the argument that the point out panchnama did not lead to a discovery unknown to Investigating Officer, may not be accepted.

11.30. The Court also finds that the knowledge of the place connected with the offense was known to the accused person. This fact of knowledge can be brought on record only by way of a known procedure to the investigation and i.e. executing of a panchnama and therefore, the fact of knowledge of the accused about the place connected with an offense would obviously be discovery of fact. Section 3 of the Indian Evidence Act defines that to mean and include anything, state of things, or relation of things, capable of being perceived by the senses and also a mental condition of which any person is conscious.

11.31. Learned advocate submitted that on 16.08.2008, the first

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arrest in the offence took place and on the very date statement of one Riyazhussain Siddiqi was also recorded. His supplementary statement was recorded on 26.08.2008 and 164 statement was recorded on 01.09.2008. From the statement of this witness, it is coming out that this witness had also played an important role in the offense like procuring of cycles, undertaking reccee with other co-accused persons and also attending bomb making classes with co-accused. Despite this, the said Riyazhussain Siddiqui was treated as a witness and not as an accused. Therefore, from the beginning, if the investigation was not sure of its own witness, who later on was declared hostile upon being examined as PW No.1151-Riyazhussain Siddiqui, who was examined at Exh.8265, the entire investigation is therefore, put under serious doubt.

11.32. Learned advocate also submitted that the very statement under Section 161 which became the foundation for the arrest of other accused persons was later on deposed by this witness to have been given under duress as he was reportedly tortured. This also makes the entire case highly doubtful. One more aspect point out is that on 17.08.2008, the remand applications were made and despite such applications, no reference is made to the contents of the statement under Section 161 by Riyazhussain, which is also indicative of the fact that the investigation was not relying upon Riyazhussain as a witness. The documents were placed for Court's consideration were in fact the application by prosecution for production of the accused and permission to handcuff the witness at the stage of production. However, the remand application which is available to the Court for its perusal refers to the evidence available against the nine accused persons whose remand was sought.

11.33. Learned Advocate has thereafter argued that on 18-08-2008, in the remand application seeking further custody, already Investigating

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Officer has mentioned about the conspiracy to carry out serial blasts in Ahmedabad and that investigation had revealed that conspiracy is an outcome of the training in Terrorist camp at Kerala and Halol. Therefore, even when the first point out panchnama was executed at behest of accused No.1- Jahid @ Javed Kutubuddin Shaikh on 27-08-2008 (Exh.6480), Investigating Officer already knew about training camp at Halol and therefore, there is no new fact discovered from point out panchnama at Exh.6480. It is nine days later that Investigating Officer; PW-1163; Shri Mayur J. Chavda at Exh.8638 has recorded this panchnama under Section 27 of the Indian Evidence Act and thereafter, six more panchnamas have been recorded at behest of various accused. Therefore, anything that is recorded in the panchnamas, is required to be treated as barred under Section 25 and 26 of the Indian Evidence Act.

11.34. The Court is of the opinion that extension of remand, which was sought on 18-08-2008, was only on the basis of interrogation carried out at the nascent stage of investigation from the arrested accused, who had merely mentioned Halol to be one of the site of the Terror camp. However, from the Remand Report, there does not appear to be any mention of the exact place, where such camp at Halol was organized and hence to identify the place accurately in the entire Taluka of Halol, which also consists forest area and mountain range, apparently point out panchnama was necessary. Point out panchnama points out the place and the knowledge of the accused of such place and upon reaching such place, several articles connecting to the Terror camp, were also recovered.

11.35. In the opinion of the Court, therefore panchnama at Exh.6480 is required to be treated as panchnama under Section 27, particularly when the same has been established by examining proper

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panch witnesses supported by Investigating Officer's deposition as well.

11.36. With regard to the same date, learned Advocate has submitted that point out panchnama by accused No.15- Abubasar @ Mufti @ Abdul Rashid @ Abdulla Abubakar Shaikh, who pointed out house No.3 of Umravnagar, Vatva, Ahmedabad, where accused No.15- Abubasar @ Mufti @ Abdul Rashid @ Abdulla Abubakar Shaikh had resided with accused No.37- Kayamuddin @ Musa @ Ashfak @ Abdul Kadir @ Rizwan @ Samir Sarfuddin Kapadiya, prior to the bomb blast.

11.37. According to learned Advocate, this panchnama is not required to be believed, as owner of the house; Firoz Dilavar Shaikh, who is PW No.1106 and examined vide Exh.7929, was earlier witness to conspiracy in another Rioting case known as Gulbarg Rioting case and his evidence as a witness to the conspiracy was rejected by the then trial Court of Gulbarg case. It is submitted that in that case, this witness was treated to be got-up witness, yet in the present case also, he is cited as a witness, who does not have credibility. Therefore, when renting out of the house itself is in doubt, point out panchnama under Section 27 of this house, is of no consequence.

11.38. Though, learned Advocate has referred to witness; PW No.1106; Firoz Dilavar Shaikh to be witness in Gulbarg case, he has failed to refer to the judgment in that case and the finding given with regard to this witness. The Court would therefore not take cognizance of this argument. However, learned Advocate has submitted that this panchnama may not be treated as panchnama under Section 27 particularly after almost period of three months, accused No.37- Kayamuddin @ Musa @ Ashfak @ Abdul Kadir @ Rizwan @ Samir Sarfuddin Kapadiya has also pointed out very same offence at Exh.6083 during the investigation of Investigating Officer; Shri V. R. Toliya and

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therefore, there being no discovery, both the panchnamas are not required to be believed.

11.39. The Court is of the view that panchnama at Exh.6434 was executed, wherein there were seizure of articles and there are FSL Reports on the seizures made during this panchnama vide Exh.5935 and Exh.7954. Moreover, this panchnama has been proved by examining PW No.898; Bipinbhai Chhotalal Patel at Exh.6433 and is supported by evidence of Investigating Officer; PW No.1163-Shri Mayur J. Chavda at Exh.8638. The Court does not find any reason to disbelieve the execution of the panchnama.

11.40. Learned Advocate has once again submitted that all these points raised in the course of the argument are pointing out to the inaccuracy in the investigation and the investigation not being carried out in accordance with the law. Learned Advocate has submitted that on the same day, when the accused No.1- Jahid @ Javed Kutubuddin Shaikh's mobile repairing shop was raided, several articles including ball-bearings were seized from the shop, however, no explosive substance was detected in any of the samples collected there and that there is no opinion whether the ball-bearings are similar to those, which are found at the blast site or from the bodies of the victims.

11.41. Learned Advocate has submitted that on 19-08-2008, upon arrest of the accused No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala, panchnama at Exh.6370 is executed at his behest on the voluntary disclosure of several illegal items, which consisted of 1 Air gun, 1 Country made pistol, 2 cartridges, 1 pipe bomb, 1 knife, 19 CD/DVDs and bag containing balloons from his Uncle's residence at Vadodara. It is submitted that voluntary disclosure of this accused does not refer to any kind of conspiracy and therefore, theory of conspiracy is

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not supported even from the voluntary disclosure.

11.42. The Court is of the opinion that panchnama at Exh.6370 is proved by PW No.895- Prakash Manoharlal Tolani at Exh.6369 is supported by deposition of Investigating Officer; PW No.1163-Shri Mayur J. Chavda at Exh.8638 and the articles collected during the panchnama, were sent for FSL and the FSL report is on record vide Exh.5874 through FSL Officer; PW No.846-Hemantkumar Bhalchandra Bhatt at Exh.5838, wherein presence of Potassium nitrate, Nitrate radicals, free Sulphur, free Aluminum and Carbon in Pipe bomb are shown present. Moreover, fire arms are shown to be in working condition.

11.43. Learned Advocate has raised doubt in procurement of panch witness; PW No.895- Prakash Manoharlal Tolani of the panchnama at Exh.6370 by submitting that the panch was asked to become panch, while he was on his way to Swaminarayan Temple. The Court does not find anything objectionable in panch witness PW No.895-Prakash Manoharlal Tolani deposition for standing as a panch and the manner in which, he was summoned to become the panch. In fact, perusal of evidence of PW No.895-Prakash Manoharlal Tolani in this regard is consistent with evidence of Investigating Officer.

11.44. With regard to same date, learned Advocate has submitted that accused No.8-Yunus Mohammadbhai Mansuri house being Row House C-134 at Ajit Mill was searched, wherein several articles were seized under panchnama at Exh.5488. Learned Advocate has submitted that articles seized during the panchnama were sent for FSL and FSL Report at Exh.5957, shows that no explosive substance was found in the articles seized. Moreover, there is no opinion with regard to similarity of ball-bearings, which were found at blast site.

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11.45. The Court is of the opinion that panchnama at Exh.5488 was proved by panch witness PW No.817-Chirag Govindbhai Varsada at Exh.5487. Perusal of the evidence of this witness; PW No.817-Chirag Govindbhai Varsada at Exh.5487, the Court does not find anything to disbelieve version of this witness, who has clearly deposed voluntariness of disclosure made by accused No.8-Yunus Mohammadbhai Mansuri and directions given by taking panch witnesses to the house, where the articles were seized. Articles seized and referred to in the panchnama consisted of books, plastic tapes, several pieces of large and small wires, bolts and ball-bearings. Mere fact that there was no opinion of FSL whether the ball-bearings were similar found at the blast is inconsequential.

11.46. Accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri after three days of his arrest had given disclosure to point out the house, where he along with other accused and SIMI members had got together and discussed bomb blasts. Such disclosure though, does not give any detail regarding offence or any agreement to conspiracy. The house pointed out by this accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri is one Akmal Apartment at Panigate, Vadodara, which belonged to accused No.2-Imran Ibrahim Shaikh from where vide panchnama at Exh.6283, several articles were found and FSL report of these articles at Exh.5957 does not indicate about any explosive materials being recovered.

11.47. According to learned Advocate therefore, there being no discovery of any articles, which would connect to the offence, disclosure made in the panchnama under Section 27 at Exh.6283 is required to be treated as inadmissible.

11.48. In the opinion of the Court, voluntary disclosure as is

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reflected in the panchnama at Exh.6283 proved by panch witness; PW No.878-Yogeshbhai Bipinchandra Kayasth at Exh.6282 and supported by Investigating Officer; PW No.1163-Shri Mayur J. Chavda at Exh.8638 would indicate that the place where the meeting had taken place. The meeting in case of circumstantial evidence for conspiracy is an important circumstance and therefore, to that extent of voluntary disclosure of pointing out of house and the fact of meeting of co-accused will have to be treated as an admissible part of the evidence. Non-finding of any explosive, cannot take out the panchnama out of purview under Section 27, as it is not expected that in every meeting that takes place amongst the co-accused persons, they would carry all the materials that they proposed to use for causing explosion.

11.49. Vide Exh.6359, house of the accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri at Lukman Society, Bharuch was also searched, which consisted of regular household articles and FSL Report at Exh.5957 did not disclose anything to connect with the offence.

11.50. Learned advocate submitted that accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri was arrested and thereafter, his house in Lukman society at Bharuch was searched and the search led to seizure of household articles and the FSL report in this connection vide Exh.5957 did not show any presence of explosive substance. Panchnama Exh.6359 which was proved by panch witness being PW No.894-Hitesh Apabhai Patel, who was examined vide Exh.6358. Therefore, is a NIL panchnama and the prosecution has therefore, sought to base its case on several such NIL panchnamas. The submission of learned advocate may not be accepted on the ground that firstly, the prosecution has not projected this panchnama as voluntary

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disclosure panchnama under Section 27 of the Indian Evidence Act and merely the panchnama appears to be the search and seizure panchnama upon visiting to the residential premises of one of the accused. Similarly, the argument is advanced in connection with panchnama Exh.6290, which is a panchnama executed for the search of the residence of accused No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala. Therefore, this panchnama which is executed only in one part is not even projected by the prosecution to be the disclosure panchnama under Section 27 of the Indian Evidence Act. However, the search led to seizure of various items like Pen drive, Hard Disc and Laptop for which FSL report Exh.5995 was placed on record. This also was not a disclosure panchnama, but only panchnama of search and seizure.

11.51. Learned advocate has submitted that on 22.08.2008, accused No.2-Imran Ibrahim Shaikh gave a disclosure statement to show place, where articles used in training camp at Halol were kept and accordingly, panchnama Exh.6278 was executed, but in such panchnama no other articles which are incriminating in nature were found, but also first aid box with electricity bill was recovered. According to learned advocate, though the Investigating Officer executed a panchnama of the house of accused No.2-Imran Ibrahim Shaikh, who had already disclosed about the training camp at Halol, the Investigating Officer did not proceed to Halol to conduct the panchnama. Panchnama Exh.6278 was proved by PW No.877-Pravin Ishwarbhai Rajput, who was examined vide Exh.6277 and in this panchnama, it is recorded that the accused No.2-Imran Ibrahim Shaikh had disclosed about the articles utilized in the Halol terror camp which he would readily show and accordingly, panchnama was executed with the team being led by the accused in

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presence of panch to a residence in Taivada, Vadi at Vadodara.

11.52. Learned advocate has also questioned the investigation by submitting that PW No.880-Aiyubbhai Kasambhai Malek, who was examined vide Exh.6295, who was working in Lucky Repairing Works for bicycle and he identifies the bicycle at the police station which were recovered from the bomb site. According to learned advocate, this witness has given description of person, who came to buy the bicycle, but he was not called for Test Identification Parade nor did he identify any accused in the Court. Therefore, though a witness who was available to identify a accused was available, the prosecution has deliberately not got the test identification by him.

11.53. The Court is of the view that the witness in his deposition at Exh.6295 himself has deposed that the person whose cycle lock he had repaired, he will be able to identify however, upon seeing of the accused on T.V. Screen, he was not able to identify. So even from the deposition of this witness, it is clear that he was in any case was unable to identify the accused and that too after these many years and had the witness identified the accused on T.V. Screen, such identification would also appear to be unnatural in absence of Test Identification Parade and therefore, this witness cannot be treated to be a witness for identification of a accused however, for the purpose of prosecution, witness of for the purpose of identifying the bicycle which was recovered from the bomb site which the witness has correctly identified.

11.54. Learned advocate has again commented on the role of PW No.1151-Riyazhussain Mohammadhussain Siddiqi was declared hostile on whose statement accused No.63- Mohammad Tanvir @ Talha and accused No.64-Mohammad Zahir were arrested. However, the role of the arrested accused was much lesser if not at par with PW No.1151-

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Riyazhussain Mohammadhussain Siddiqi and therefore, in fact he ought to have been treated as an accused, but the Investigating Officer was still undecided, whether to treat him as an accused or as a witness and therefore, finally PW No.1151-Riyazhussain Mohammadhussain Siddiqi had turned hostile.

11.55. Learned advocate submitted that though identification of a planter of bomb is the best evidence that could have been available, still even in the evidence of PW 880-Aiyubbhai Kasambhai Malek, who identifies the bicycle, the bomb planter is not identified.

11.56. In the opinion of the Court, PW No.880-Aiyubbhai Kasambhai Malek has identified bicycle and the lock of the bicycles by Exh.2894 panchnama and therefore, he is not a witness to the actual planting of the bomb.

11.57. Learned advocate has thereafter, referred to the panchnama Exh.6480, which is a disclosure panchnama at behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh, but the said panchnama is almost after 11 days of the arrest of accused No.1-Jahid @ Javed Kutubuddin Shaikh and 09 days after the Investigating Officer came to know about the camp at Halol and therefore, according to learned advocate, there was no disclosure of a new fact to treat the panchnama as a disclosure panchnama under Section 27 of the Indian Evidence Act. Moreover, during the panchnama, no explosive was found to connect the camp with bomb explosion. Also, the very same place was later on pointed out by various panchnamas at least six times. He has referred to FSL report at Exh.5941 to state that no explosive substance has been found.

11.58. The Court is of the opinion that though the case diary or the remand application did mention Halol as a place, where terror camp had taken place, but the exact location within the Jungle of Halol in

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Pavagadh Mountain was disclosed only upon the point out executed at the behest of accused No.1- Jahid @ Javed Kutubuddin Shaikh which displayed the special knowledge of accused No.1-Jahid @ Javed Kutubuddin Shaikh as to the location of training camp near Helikal stepwell. Moreover, during this panchnama, various articles which connected to the training like pellets, balloons etc. were found from the area pointed out by accused No.1-Jahid @ Javed Kutubuddin Shaikh. Moreover, panch witness being PW No.904-Dipakkumar Jivanlal Dalvadi, who was examined vide Exh.6479 has completely supported the panchnama, wherein a reference is made about the Jihadi speeches delivered during this camp. Therefore, non-finding of any explosive will not be detrimental to the case of prosecution.

11.59. Learned advocate has thereafter, submitted that the date 27.08.2008 being the date of point out panchnama co-incided with the date on which the Investigating Officer came across the so called three eye witnesses, who were present when the Investigating Officer visited the site of alleged terror camp at Halol. The finding of three chance witnesses at a time is more than a coincidence and is not believable. He has drawn our attention to the narration made in those witnesses' version to submit that their presence also appears to be doubtful at the time of the camp.

11.60. Learned advocate has thereafter, referred to 27.08.2008 on which also accused No.63-Mohammad Tanvir @ Talha has given a disclosure statement vide panchnama Exh.2794, where he volunteered to disclose and point out the places where bombs were planted in Surat. The spots were already known to the police and therefore, such panchnama of pointing out such places is of no consequence to help the prosecution case. Moreover, during this panchnama, nothing has been

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discovered or recovered connecting with the bomb.

11.61. In the opinion of the Court, panchnama Exh.2794 was proved by PW No.451-Kalpesh Ishwarbhai Patel, who was examined vide Exh.2793 and supported by the Investigating Officer PW No.1136-Sujata Prakash Majmudar, who was examined vide Exh.8149, wherein the narration made by the accused during the execution of panchnama was recorded and he has volunteered to disclose the places, where the bombs were planted in Surat City at various places. The fact regarding the knowledge of the accused would obviously come on record only on the basis of a voluntary disclosure recorded in the form of panchnama and when the panch witness in his deposition has fully supported the execution of panchnama and no doubt is created in his deposition, then the Court has correctly believed that the fact of the special knowledge of the accused unknown to the Investigating Officer is the point of discovery under Section 27 of the Indian Evidence Act.

11.62. It is submitted that on 28.08.2008, accused No.63-Mohammad Tanvir @ Talha has given voluntary disclosure to point out the house being D-34 Riverview Society, which was the house taken on rent however, the owner of the house who was examined being PW No.1123-Liyakatali Gulamrasulhussain Shaikh, who was examined vide Exh.8078 did not identify any of the accused to be the tenant. Moreover, when the panchnama was carried out, the house was in a locked condition and needed to be broken open for the purpose of executing the panchnama. Therefore, such panchnama cannot be believed as the house was not in exclusive possession of the accused No.63- Mohammad Tanvir @ Talha nor the foundational fact of identity of any accused as a tenant is established, thereby leaving the chain incomplete. The Court is of the opinion that at the behest of accused No.63- Mohammad Tanvir

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@ Talha, a panchnama Exh.2757 was executed and panch witness being PW No.446-Sanjaybhai Gordhanbhai Patel, who was examined vide Exh.2756, which wholly supports the panchnama. The Court has perused the deposition of PW No.446-Sanjaybhai Gordhanbhai Patel, panch witness of Exh.2757 who has completely narrated the recoding of the panchnama and supported the case of the prosecution and has also referred to articles which were seized from the household which included ball-bearings and other articles containing presence of Ammonium Nitrite radicals and Petroleum Hydrocarbons, which is established by FSL report Exh.5776. The panchnama has therefore, led to discovery of the articles, which can be connected with the bombs planted in Surat.

11.63. Learned Advocate has thereafter argued that the mobile phones of the arrested accused were seized under various panchnamas. However, the prosecution has not produced the C.D.R. on the record. According to the learned Advocate, the C.D.R. could have been clinching evidence of the accused being in touch with other accused for the conspiracy and still the prosecution having failed to place on record, therefore invoking Section 114 (g) of the Indian Evidence Act to the extent that if evidence available is withheld, it should be presumed against the prosecution.

11.64. In this regard, the Court is of the view that the prosecutor is the master of the prosecution. It is his domain to place on record the evidence which supports the case of the prosecution unless the defence is able to place on the record that evidence, which supports the defence is available on the record yet not placed for Court's consideration. Therefore, merely by alleging that the Court has not placed on record the C.D.R., then the Court has to presume that the C.D.R. were extracted

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and that such C.D.R. was pointing to the innocence of the accused.

11.65. Learned advocate has thereafter pointed out towards the investigation which was undertaken in connection with accused No.63-Mohammad Tanvir @ Talha, who has pointed out a spot, where he had thrown his mobile phone and had also thrown a pipe bomb as nothing was seized under the panchnama of pointing out being Exh.2796. This panchnama cannot be treated against accused No.63-Mohammad Tanvir @ Talha in any manner. Similarly, evidence of PW No.859-Ahmednur Abdul Rahim Tambuwala, who was examined vide Exh.6018 which also refers to purchase of a car cover by accused No.63-Mohammad Tanvir @ Talha, but PW No.859 could not identify accused No.63-Mohammad Tanvir @ Talha in Court.

11.66. It is therefore, submitted that the prosecution has relied upon such aforementioned evidences which do not link the accused to the offense and what is recorded in panchanma cannot be treated as evidence against the accused especially disclosure of some incriminating fact.

11.67. Learned advocate has submitted that panchnama Exh.6540 is a point out panchnama at the behest of accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad Gulam Khwaja Mansuri, who had pointed out the place, where he had met accused No.14-Abdul Subhan @ Toukir however, nothing incriminating and connecting to the offense is disclosed on the basis of this panchnama. PW No.1138-Gulamhussain Abdulrashid Pathan, who was examined vide Exh.8165 is the owner of house in Bharuch which was rented, according to witness, to one Rafik however, the said Rafik is not examined and the panchnama Exh.6540 refers to recovery of book on electronics devise and other articles including stains on the walls which were drawn by way of samples and

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sent for analysis. The FSL report Exh.5936 shows the presence of Ammonium Nitrite, fuel components of Petroleum Hydrocarbons oil, Ammonium Nitrite fuel oil, however, the prosecution has not established the fact of renting out of the house situated at Sherpura, Bharuch to accused No.43-Anik @ Khalid S/O Shafik Saiyed, accused No.44-Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari and accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani as PW No.1138- Gulamhussain Abdulrashid Pathan has not identified these accused in Court.

11.68. As against this, the Court may observe the evidence of PW No.1138-Gulamhussain Abdulrashid Pathan, who in his deposition, has stated has referred to one Nazirbhai, who acted as a broker who had introduced the tenant. He refers to the deposit and rent decided of which the deposit was paid to this witness upon which he handed over the keys of the house to the tenant, who identified himself as Rafik Shaikh from Maharashtra and upon the witness demanding the ID proof, he made an excuse of not having at present, but would later on give it to the witness. This witness also refers to Wagon R car of silver colour being initial registration No.GJ-06 and also a red colour Wagon R car parked in front of his rented house two three days prior to the incident of blast. He refers to the phone call from the said Rafikbhai mentioning that the said Rafikbhai is going to Rajasthan form some work and post the blast also, Rafikbhai had called on his mobile phone to inform that his family is not allowing him to come to the rented premises to which this witness had deposed that he refused thereafter allow the tenant to come if he is without family.

11.69. This witness also deposed about Test Identification Parade conducted on 16.12.2008 in Gheekanta Court at Ahmedabad and has

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identified three persons. He had identified one Akbar, Faizul and third person who has taken his house on rent.

11.70. Therefore, in the opinion of the Court, this witness is to establish the circumstance of presence and connection of the accused persons with the house as well as two Wagon R cars.

11.71. On the similar lines, learned advocate has argued that PW No.1062-Abdulajim Adbudlhamid Sodagar, who was examined vide Exh.7219, who is employee of the Internet cafe deposed about accused No.2-Imran S/o Ibrahim Shaikh, accused No.7-Mohammad Usman Agarbattiwala, accused No.37-Kayamuddin Kapadiya; who learnt to use and also saw accused No.35-Rafiyuddin Kapadiya and accused No.37-Kayamuddin Kapadiya browsing through Internet is an evidence of no consequence as he has not identified these accused in the Court.

11.72. The Court finds that the aforesaid instances are pointed out to argue that the prosecution has proceeded completely irrelevant evidences, which do not connect the accused with the crime.

11.73. In this connection, the Court may peruse the deposition of PW No.1062-Abdulajim Adbudlhamid Sodagar at Exh.7219. This witness has deposed in support of the circumstance that to undertake the terror activity, the accused persons namely accused No.2-Imran S/o Ibrahim Shaikh and accused No.37-Kayamuddin Kapadiya had learnt computer from this witness also, when he was working as cybercafe employee. These accused No.37-Kayamuddin Kapadiya and another bearded accused whom he identified as accused No.1-Jahid Shaikh had visited for browsing and also learning a particular software 'Page-Maker'. This prosecution witness also identified the entry made in register maintained by Cafe and entry made about usage of a particular computer to learn software. Therefore, this witness has reliably

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established the usage of cybercafe and internet by accused No.1-Jahid Shaikh, accused No.37-Kayamuddin Kapadiya, accused No.7-Mohammad Usman Agarbattiwala. This prosecution witness has also deposed that the accused did not give their identify card before usage of cafe showing their reluctance to disclose their identity.

11.74. Learned advocate made reference to evidence of PW No.571-Ramanbhai Senghabhai Solanki, who was examined vide Exh.3051 to submit that the evidence of this witness does not on any way implicate accused No.15-Mufti Abubasar Shaikh with the offense and therefore, such evidence collected by Investigating Officer is no evidence in the eyes of law. The Court is of the opinion that evidence of PW No.571-Ramanbhai Senghabhai Solanki is not to be looked in isolation. The Court having perused Exh.3051, deposition of PW No.571-Ramanbhai Senghabhai Solanki with the panchnama Exh.3054 which is the Test Identification Parade of accused No.15-Mufti Abubasar Shaikh. This accused is identified by one Rafikh Hssain Abdad, who is running a food stall Hotel in the vicinity who used to serve food and pack tiffin. The panchnama also records the relevance of how said Rafik Hussain Abdad recognized the accused to which it is recorded that the accused used to come to his Hotel with others to have food for 10 consecutive days and sometime carried tiffin for others.

11.75. Both the evidences together go on to establish the presence of accused in Ahmedabad close to the vicinity of the house, where the co-accused have resided in Vatva who otherwise belongs to Azamgadh in Uttar Pradesh. This is one circumstance which the prosecution seeks to prove in the chain of circumstance. Therefore, not a futile exercise. The pointing out activity was carried out by the Magistrate in absence of any police personnel.

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11.76. Learned advocate has thereafter, argued that panchnama Exh.6605 is executed of search of the house of accused No.16-Abbas Sameja, here also though panchnama refers to a mobile number of a SIMI operative of Pakistan, there is no investigation in this regard. Therefore, Investigating Officer is consistently not investigating in right direction.

11.77. In panchnama Exh.6605, reference is made to a small chit with a mobile number and Pakistan and SIMI written along with it. However, PW No.973-Bhupatsinh Gavabhai Mori, Investigation Officer, who was examined vide Exh.6806 and the perusal of his deposition does not indicate that the defence has put up any question in connection with Article 5, the chit of Exh.6605 without putting any question in this regard, it cannot be argued that there is no investigation of this number. This witness was only assigned the task of carrying out a panchnama within his local jurisdiction. The Court also does not find any question put over to the main Investigating Officer in this regard.

11.78. Learned advocate has thereafter, submitted that the point out panchnama Exh.7053 through accused No.16-Abbas Sameja, where he discloses the fact of training in Camp at Halol. Learned advocate commented on the manner in which the panch witnesses were picked while returning from Jagannath Temple and immediately proceeded as panch witness even to far of place at Halol. It is submitted that Exh.7053 cannot be treated as a disclosure panchnama of accused No.16- Abbas Sameja as previously also vide Exh.6443, 7252, 6528, 7798 and 7392, the Investigating Officer had drawn point out panchnamas of the very location in Halol. Moreover, there is no discovery or recovery of any article which would link the disclosure statement to the offense.

11.79. Learned advocate has thereafter submitted that on

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05.10.2008, panchnama Exh.2851 is executed at the behest of accused No.63-Mohammad Tanvir @ Talha pointing out the coin box from where he had made phone calls. There is no recovery or discovery under this panchnama which would link independently to the offense. This panchnama is required to be treated as a NIL panchnama. Learned advocate has therefore, reiterated that the attempt of the investigation is to bring before the Court a very weak type of evidence in the form of NIL panchnama rather than investigating and finding out hither category of evidence like Call Detail Records of the mobiles which were seized during the investigation and instead NIL panchnama of coin boxes are placed for Court's consideration.

11.80. Learned advocate has thereafter submitted that the investigation had proceeded on the statement of some of the vital witnesses, who were referred to as secret witnesses, but during the course of trial, these witnesses have not been examined. Thereby, showing that the prosecution is withholding genuine witnesses or else these witnesses have been forced to become witnesses. He has referred to the evidence of PW 881-Adnan Mohammad Khalid Gujarati, who was examined vide Exh.6299.

11.81. This witness has been declared hostile after the reference to Test Identification Parade of the accused whom he identified. Reference was also made to Secret Witnesses, who were named as "I" and "J". It is submitted that according to investigation, these witnesses had attended meeting of 20-07-2008 where preparation to take revenge etc. was taken in Ahmedabad. However, these witnesses have been dropped vide Exh.9367 by giving reason of being repetitive witnesses. It is submitted that this being last meeting before blast actually took place, if these witnesses were genuine, the prosecution would not have dropped on the

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ground being repetitive, which again shows that the prosecution is not bringing before the Court substantive evidence.

11.82. One more issue argued is that these witnesses in their statement under Section 161 have referred to planters of the bombs, 8 of which were from outside Ahmedabad and 5 were from within Ahmedabad, whereas secret witness has mentioned that all these planters were from outside Ahmedabad, being main reason for dropping the witness.

11.83. In the opinion of the Court, it is the prerogative of the prosecution to examine the witnesses in support of case of the prosecution and if the same are repetitive witnesses, it is open for the prosecution to drop such witnesses, as is done in the present case, as Section-161 statement of these witnesses cannot be brought on record. Therefore, submission of learned Advocate regarding number of planters from within Gujarat or outside Gujarat remains in realm of submission. Moreover, the fact of the meeting prior to date of bomb blast have already been brought on record through other witnesses. Hence, there is justification in treating these witnesses to be repetitive.

11.84. Learned Advocate has thereafter submitted that the prosecution has examined PW No.957-Zakirhussain Abduljabbar Qureshi, who was examined vide Exh.6687, wherein he mentions that the accused No.27-Abdul Rajik has confessed to him about the blast and the accused involved therein. However, it is only on 17-10-2008, three months after offence that PW No.957-Zakirhussain Abduljabbar Qureshi has confided to the Crime Branch about his interaction with accused No.27-Abdul Rajik and this delay creates doubt on the version of PW No.957-Zakirhussain Abduljabbar Qureshi. Therefore, the prosecution ought not to have relied upon evidence of this witness. Learned

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Advocate has submitted that on 25-10-2008, panchnama Exh.5545 was drawn under which the cycle and key was recovered from accused No.27's house. It is submitted that Exh.5545 is pointing out the same house, as was pointed out earlier in the panchnama, which was drawn earlier. Exh.5545 was drawn on 25-10-2008, wherein he has volunteered to disclose to discover cycle and other articles, which are hidden by them along with co-accused; Kayamuddin Kapadia. Accused No.27-Abdul Rajik thereafter discovers one cycle of black colour in the flat of Alamin and the key to the cycle. Various other articles were also seized, which pertains to daily routine. The panchnama was exhibited through PW No.824-Sanjaykumar Shyamjibhai Dhamecha at Exh.5544. Therefore, Exh.5545 is disclosure, which led to cycle, custody of which was with the accused. Another panchnama at Exh.5622 is drawn, wherein accused No.27-Abdul Rajik has pointed out house at Almahmadi Society as a spot, where he collected bombs and the spot, where he handed over bombs to accused No.23-Ayaz Razakmiyan Saiyed and the spot where the bombs were planted and the shops from where cloth bags were purchased. According to learned Advocate, house at Almahmadi Society was already pointed out previously by accused No.1- Jahid S/O Kutubuddin Shaikh vide Exh.6656 and therefore, this disclosure panchnama cannot be used as there is no new fact, which is disclosed. In this regard, the Court has perused Exh.5622, wherein he has disclosed in first part of the panchnama that he would voluntarily show the house in Danilimda and the place where exchange of bomb and planting of bomb have taken place and the place from where cloth bags have been procured. Therefore, the argument that the panchnama discloses only house in Almahmadi Society, which was already disclosed earlier, may not be accepted as in the panchnama, all the three

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points mentioned herein above have also been taken to by this accused.

11.85. It is therefore prayed that their respective appeals be allowed and the accused be given clear acquittal.

(Submissions of learned Senior Advocate Mihir Desai)

11.86. Learned Senior Advocate represents seven appellants, who are awarded death penalty and three appellants, who have been sentenced to life imprisonment. Learned Senior Advocate seeks permission to begin his submission with regard to three appellants of Criminal Appeal No.1917 of 2022, who have been awarded life sentence and they are appellant No.1; Atikurrehman @ Atik Abdulhakim Khilji (accused No.20), appellant No.4; Mohammad Sadik @ Yasir @ Imran @ Sadakat @ Sahadat Ishrar Ahmed Shaikh (accused No.30) and appellant No.10; Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim Babukhan Maniyar (accused No.74).

11.87. Learned Senior Advocate has made submissions on the issues in general and thereafter proceeded to make submissions accused-wise. It is submitted that entire conspiracy can be broadly divided into various meetings held beginning with camp at Vagamon in Kerala in December, 2007, thereafter camp at Halol in January, 2008 and thereafter, several meetings within Ahmedabad, Surat, Bharuch and also Pune. However, it is submitted that in so far as so-called meeting at Pune is concerned, the Special Court itself has not taken the same into consideration and therefore, no submissions are required to be made in this regard.

11.88. It is generally submitted that though some of the accused, who were not present in Halol camp, have still shown to be present. According to the appellant, accused No.18 and accused No.5 were not present at Halol camp, but the Court has proceeded to presume their

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presence.

11.89. It is submitted that the prosecution has based their case on confessions of the accused particularly accused No.2; Imran S/o. Ibrahim Shaikh and accused No.24; Umar @ Ashok Kalabhai Kabira and also evidence of so-called eyewitnesses PW No.957- Zakirhussain Abduljabbar Kureshi at Exh.6687. However, even from the confession or evidence of the witnesses, it is not coming on record that there was any plan of planting the bombs nor does confessions refer to any accused having taken any action to buy material, actual preparation and planting of bombs. It is submitted by learned Senior Advocate that undoubtedly the crime is heinous and the culprits are required to be punished. However, in so far as the appellants whom learned Senior Advocate represents, their role are not coming out about their participation in any of the act related to serial bomb blast. It is submitted that undoubtedly, planting of bombs is one of the part of conspiracy, however, there has to be some strong chain of events to link planting of bombs with so called conspiracy during the meeting at the camps and other cities. According to learned Senior Advocate, there is no link between the meetings, which are sought to be established by the prosecution and the execution of planting of bombs and causing serial blasts.

11.90. Learned Senior Advocate has submitted that on the issue of conspiracy, all the circumstances are required to be established and all these circumstances are required to be linked, so as to point towards conspiracy being hatched. It is submitted that on the issue of larger conspiracy, which resulted into explosion of bombs and planting of bombs, the prosecution is required to interconnect Vagamon camp of Kerala with Halol camp, meetings in Ahmedabad and Surat and the

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circumstance of actual preparation of bombs and thereafter, planting of bombs, as the prosecution has failed to interconnect all these aforesaid issues, the conviction is erroneous.

11.91. It is submitted that it was necessary for the prosecution to place on record some evidence to the extent that hatching of the conspiracy was for causing bomb explosion and planting of bombs. According to him, though the prosecution has placed on record evidence with regard to meeting at Vagamon, Halol and various places at Ahmedabad, still there is no evidence that in these meetings, there was any discussion or decision to plant the bombs. It was necessary for the prosecution to come out with clear cut evidence as to what is the conspiracy and who participated in such conspiracy, which would essentially be established by circumstantial evidence.

11.92. Learned Senior Advocate has thereafter raised an issue of the trial, which was conducted by the Ernakulam Court, which was in connection with alleged terror camp at Vagamon in Kerala and for some of the accused for whom, learned Senior Advocate has made submissions, having been acquitted, therefore, principle of '*issue estoppel*' would be attracted and therefore, the prosecution is precluded from establishing very fact in issue, which was fact in issue before the Ernakulam Court. It is submitted that acquittal of accused persons in Vagamon Camp case at Kerala, was on the basis of prosecution having failed to establish the presence of the accused persons at Vagamon during the Camp. Therefore, one Court has already accepted finding of fact recording non-presence/absence of the accused persons in the camp allegedly organized for terror activities.

11.93. For this issue, learned Senior Advocate has relied upon the decision of the Apex Court in case of ***Ashwini Kumar Allias Ashu and***

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another v/s. State of Punjab reported in (2015) 6 SCC 308 and particularly relied upon Para-20.

11.94. The Court finds that rule regarding 'issue estoppel' relates to admissibility of evidence in subsequent proceedings, whereas facts before the Apex Court was where the principle of 'issue estoppel' was sought to be applied to the findings, where an attempt was to rely on finding at subsequent stage to upset finding of facts recorded on previous occasion. The Court finds that in this very judgment, the Apex Court has relied upon earlier decision in case of ***Sangeetaben Mahendrabhai Patel v/s. State of Gujarat reported in (2012) 7 SCC 621***, wherein principle of 'issue estoppel' was in context of Criminal trial explained that where the issue of fact has been tried by the Competent Court, on an earlier occasion, such finding would constitute '*estoppel*' or '*Res judicata*' against the prosecution, but not as a bar to the trial, but operates only to extent of precluding acceptance and receipt of evidence to disturb the finding of fact, when the accused is tried subsequently for different offence. This rule relates only to admissibility of evidence, which is designed to upset finding of fact recorded in previous trial on a factual issue.

11.95. Referring to case of accused No.15-Abubasar @ Mufti @ Abdul Rashid @ Abdulla Abubakar Shaikh, it is submitted that in the trial by the Ernakulam Court, he was convicted for being present in the camp, but was acquitted of charge of being a member of banned organization 'SIMI' and therefore, to that extent, the accused person could not be called upon once again to answer the same charge.

11.96. It is submitted that all the accused persons except for accused No.15-Abubasar @ Mufti @ Abdul Rashid @ Abdulla Abubakar Shaikh, having been acquitted by the Ernakulam Court and if the case of the

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prosecution is to the effect that camp at Vagamon was starting point of conspiracy, then in that case also, absence of accused persons from that offence will take them out from the role of conspiracy.

11.97. Learned Senior Advocate has cursorily referred to pending matter in case of ***S. G. Vombatkere v/s. Union of India passed in Writ Petition No.682 of 2021 dated 11th May, 2022***, where the Apex Court has passed the order and which is still in effect, which reads as under:

"8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

xxxxxxx

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

Xxxxxxx"

*L*d. Advocate has prayed for clear acquittal of the appellants whom he represents.

Submissions of Learned Advocate Mr. Hriday Buch:

11.98. Submission and discussion of accused Nos.9-Kamruddin @ Raja @ Abdulla Chandmohammad Nagori, 10-Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh, 11-Sibli @ Sabit Abdul Karim, 12-Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori, 21-Mehndihasan @ Viki Abdul Habib Akbarkha Ansari, 28-Afzal @ Afsar @ Raja @ Ajit Singh @ Sanjay Pandey @ Usmani Mutlib Usmani, 42-Mohammad Shakil @ Shakil Yaminkhar Luhar, 43-Anik Shafik Saiyed @ Khalid, 44-Mohd. Akbar Ismail Chaudhary @ Saeed in Criminal Appeal Nos.1710 of 2022 and

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Confirmation Case No.2 of 2022.

11.99. Learned advocate representing the aforesaid convicts, who have been given capital sentence has made submissions initially in general on the points of nature of investigation, conspiracy, nature of evidence, identification and connect of the accused with the offense and thereafter, made submissions individually with regard to the convicts whom he represents. It is submitted that the offense of this magnitude would always invoke strong emotion amongst the Investigating Officers like any other common citizen and would therefore, take up as a challenge and would resort to desperate measure to detect the crime. The present investigation also appears to be a desperate measure to detect the crime and presenting the same to the citizenry.

11.100. It is submitted that the entire theory of the investigation then was developed on the basis of E-mail received at India Today Office and therefore, if the incident and till receipt of the E-mail, the investigation was clueless. As per the deposition of the one of the Investigation Officers, PW No.1000-Hareshkumar Ranchhodlal Muliyana, examined at Exh.6960, which would indicate that even if receipt of E-mail till 3rd August, there was no definite line of investigation and in fact originator of the E-mail have been acquitted.

11.101. It is submitted that a very important witness from the investigating team has not been examined. Learned advocate has submitted that from the evidence of the Investigating Officers, particularly, PW No.1154-Usha Bachubhai Rada, examined at Exh.8340 in para-10 of the deposition, it is mentioned that the team of investigation was headed by Shri Abhay Chudasma, the prosecution has not examined him as witness.

11.102. It is submitted that the foundation of the entire investigation

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and prosecution is bulk evidence of confession, panchnamas and demonstration panchnamas which is not sufficient to bring home the serious charge and would therefore need direct evidence to conclusively establish charge against the appellants-convicts.

11.103. It is submitted that the prosecution has put a case of conspiracy hatched which requires meeting of minds of 78 persons and still want the Court to believe that this meeting of minds and conspiracy remain a tight secret amongst themselves without there being any links.

11.104. It is submitted that even the objective for meeting of minds which are as per the prosecution to take revenge of the Godhra kand incidents are too stale to serve as a current object. The other common intention share is to topple the State Government and to establish 'Islamic Rule' of Sharia are also too far fetched and unconnect with the incident of serial blast.

11.105. The prosecution has relied upon the evidence of secret witnesses, where 26 secret witnesses have been named of which only 10 secret witnesses have been declared examined and three of them have been declared hostile.

11.106. Once again referring to the dropping of important police officer connected with the investigation namely Abhay Chudasma, learned advocate has drawn attention of this Court to Exh.9366 and 9367, which are purshis of dropping of witness, wherein, name of Shri Chudasma appears at Sr. No.67 citing that he is being cited as a witness only on account of him being a sanctioning authority, whereas from the evidence of other Investigating Officers, Shri Chudasma was there from beginning.

11.107. Learned advocate has thereafter, commented upon the manner in which the Investigating Officers have deposed. It is submitted

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that the deposition are in callous manner and have deposed that without the case diary and by making stock answers that they were able to answer the questions posed to them in cross-examination only after perusing the case papers.

11.108. With regard to the conspiracy, he has submitted that as per the case of prosecution, hatching of conspiracy is at three meeting points, firstly at Vagamon (Kerala), then Halol and some place in Dariyapur at Ahmedabad. Learned advocate has submitted that another witness that the prosecution relies upon are PW No.1067-Ambalal Vechatbhai Bariya, examined at Exh.7231, PW No.981-Pravinbhai Hamirbhai Katariya, examined at Exh.6835 and PW No.972-Ramkabhai Devkaranbhai Kesariya examined at Exh.6802. All these witnesses are the chance witnesses who are completely unreliable as it is coming from deposition itself that it is the Investigating Officer who has provoked themselves to become the witness by directly inquiring from them on the very day when the Investigating Officer along with accused had reached there at Halol for execution of panchnama Exh.6480 dated 27.08.2008 at the behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh. Therefore, these witnesses were led by the Investigating Officer to become witnesses and therefore, neither their evidence nor their identification in Test Identification Parade can be treated as a evidence for conspiracy.

11.109. It is submitted that even from their deposition, it is coming out that they had no sufficient time to make a detailed observation of the accused persons as they had witnessed a group of people that too from a distance around 100 meters.

11.110. Learned advocate thereafter, has assailed the evidence of PW No.1105-Idrish Gulabsha Fakir Diwan, who was examined vide Exh.7923, who is the Mujawar of Khundpir Dargah at Pavagadh in

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Halol. It is submitted that though this witness is one of the secret witnesses, is not reliable as there is no Test Identification conducted. He has wrongly identified Imran in Court though it was Imran who had approached him first in point of time. The identification of certain accused though not represented by learned advocate Shri Hriday Buch, but the same was done for the first time in the Court.

11.111. Though this witness is for corroboration to the confessions of three accused who were present in the camp the prosecution has failed to conduct test identification though this witness.

11.112. Therefore, though this witness is for important purpose of holding terror camp, such a witness is not a reliable witness.

11.113. Learned advocate has thereafter, referred to the confessional statement of accused No.21-Mehndihasan @ Viki Abdul Habib Akbarkha Ansari at Exh.8623 and has raised doubt on the confessional statement and submitted that the same cannot be treated as admissible evidence against the appellant as the confessional statement was recorded while he was in custody. He has submitted that the arrest was affected on 09.10.2008 and was on remand till 26.11.2008 and the confessional statement was recorded on 12.11.2008 which he has retracted on 25.11.2008 being Exh.9226. He has referred to the last portion of Exh.8623 to submit that if this confessional statement is to be believed then, after the so-called training, he has left for his home and thereafter, he has not been in contact with anyone else so the role even as per the prosecution is only to the extent of participating in some camp.

11.114. Learned advocate has thereafter referred to PW No.1068-Pragneshbhai Govindbhai Rajput, who was examined vide Exh.7251, who is the panch witness of the pointing out panchnama by accused No.66-Mohammad Shafik @ Dadabhai @ Thakur @ Rafix @ Ali

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Abdulbari Ansari of the Halol Camp. He has referred to para-6 of the panchnama and submitted that by this panchnama, accused No.66 (Mohammad Shafik) has pointed out the place, where the terror camp was conducted, but in cross-examination, particularly in para-6 very callous answers have been given regarding him informing his family for travelling from Ahmedabad all the way to Halol without informing them. With regard to the identity of accused No.66, except for the accused mentioning the name, nothing has been shown as an identity of that accused and therefore, putting the entire panchnama to doubt.

11.115. Thereafter, learned advocate has referred to Exh.8619, which is the confessional statement of co-accused-Imran Ibrahimbhai Shaikh, which was recorded on 14.11.2008, but was retracted on 25.11.2008 vide Exh.9216, the same cannot be treated as admissible evidence. Even if the confessional statement is perused, the same cannot be associated with the bomb blast. He has thereafter, referred to the confessional statement of co-accused No.35-Rafiuddin Safruddin Kapadia, which was recorded on 04.02.2009 and was retracted on 20.06.2009 vide Exh.9351. With regard to the aforesaid confessional statements, it is submitted that there is no connect of the camp at Halol and the bomb blast. Secondly, the statements having been retracted cannot be relied upon. It is submitted that the entire episode of confessional is the theory of one Abhaysinh Chudasma, who was in complete charge of the investigation, but has still not been examined as a witness. Doubting the manner in which the confessional of Imran Ibrahim Shaikh was recorded, learned advocate has referred to Exh.8617, which is an application for recording of confession under Section 164 of the Cr.P.C. and if the order passed by the Magistrate dated 07.11.2008 is perused, then the order is passed as if the recording of the statement is that of a witness and not an accused.

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11.116. However, in this regard, the Court is of the opinion that only the opening para of the order is seen, then it records that the accused is present and thereafter, the accused is forwarded to Court No.11 for recording of statement, where it appears that there is a typographical error and will not therefore, doubt the process of recording the statement.

11.117. Learned advocate by referring to various exhibits being 9188, 9195 and 9187 has submitted that though the order by the Magistrate for judicial custody was from 3:30 PM in due course, the accused were being taken to the judicial custody only after 5:00 o'clock, thereby giving sufficient time to the Investigating Officers to manipulate between 3:30 to 5:00 on each occasion. Therefore, attention is drawn to one particular document being Exh.9187, where the time by which the accused is taken in the jail custody at 20:30 hours i.e. almost 5:00 hours after the order by the Magistrate to be sent to judicial custody. Annexure-C of Exh.9187 is a document dated 18.09.2013, relating to the entry register of 07.11.2011, where the time of entry in the jail is reflected as 20:30 hours for Imran Ibrahim Shaikh and two other co-accused Mahendi Hasan and Umar @ Ashok Kala.

11.118. Based on this, it is argued that the confessional statements of Imarn and Mehandi were under influence of the police.

11.119. It is pertinent to observe that the application by Imran was dated 10.11.2008 and Yadi was sent on 12.11.2008 and confession was recorded on 14.11.2008 and the retraction was on 25.11.2008.

11.120. Therefore, the document which is relied upon does not specify about the entry of the aforesaid accused persons in jail premises at 20:30 hours on that particular day. Therefore, the arguments that the confessional statements were recorded in duress on the basis of timing of grant of judicial custody and entering of the accused into the jail

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premises cannot be accepted. The aforesaid documents have appeared on record along with statement under Section 313 of the Cr.P.C. and have been received under the Right to Information Act.

11.121. Another aspect for not relying upon the confessional statement being under duress with regard to accused No.21-Mehandi Hasan, it is argued that after the recording of the statement of this accused vide Exh.8623 on 12.11.2008, he had applied for retraction on 20.11.2008 and had requested for paper to write such application, but was provided for such paper only on 24.11.2008 and when he retracted on 24.11.2008, he was immediately arrested for offenses at Surat on 01.12.2008. He was on remand till 05.12.2008, but was never taken to Surat for any investigation and therefore, as a pressure tactic, the Investigation Officer has cuff-out his confessional statement. Learned advocate has referred to this chronology on the basis of further statement of the accused vide Exh.143. Therefore, there is a chance that post arrest, accused persons have either been tortured or lured into giving the confession.

11.122. With regard to holding of Halol Camp, learned advocate has submitted that the only evidence of such camp is three chance witnesses, who can corroborate the confessional statement however, if the manner in which these three witnesses have been brought on record as witnesses, then, it is clear that it is in fact the Investigating Officer, who had initiated them as witnesses and they cannot be termed as natural and voluntary witnesses. It is submitted that if the confessional statements are to be discarded having been retracted, then the only the evidence is of three chance witnesses, to which it is submitted that they are not sufficient to establish the holding of terror camp at Halol. The entire theory therefore, of conspiracy and meeting of mind to carry out the

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blasts becomes unsubstantiated.

11.123. It is submitted that it was for the prosecution to establish with cogent evidence and for that reason, the prosecution ought to have examined respected persons from the trust which was maintaining the Dargah however, no such office bearers or other concerned persons of the trust or Dargah management was examined, only one Mujavar was examined.

11.124. Even if the content of the confessional statements are to be read, then also, none of the confessional statements would indicate that the accused persons were sharing a common object of carrying out serial blasts and therefore, there is no supporting conspiracy to cause serial blast.

11.125. With regard to the conspiracy at Vagamon Camp, learned advocate has referred to PW No.998-Anilkumar Damodar Pottnaniyil, who was examined vide Exh.6950 and submitted that the evidence of this witness can hardly be evidence on holding of terror camp as the witness has stumbled upon the investigation by chance. He is a supervisor working in the vicinity and he is made a witness in the year 2008 to a fact which had occurred almost one year back and the only evidence is that he had seen camp being conducted. This witness had stated that the camp was under the name of adventure camp. This is not sufficient to establish the terror camp for conspiracy.

11.126. Thereafter, reference is made to PW No.1147-Geerindran Bhaskaran Nair, who was examined vide Exh.8250, who stood as a panch witness to the panchnama being Exh.8251, which is an exercise, recorded by showing the photographs and identifying the accused through one Anilkumar Damodar Pottnaniyil (PW No.998), wherein out of 26 photographs shown, 21 photographs were identified by accused

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Mohammad Yunus. This witness is also a panch witness of the panchnama vide Exh.8252, wherein Mohamad Yunus has shown the place, where the camp at Vagamon was conducted. This Court finds that Exh.8251 is the panchnama, where PW No.1147 (Geerindran Bhaskaran Nair) was a panch witness and another witness Anilkumar-PW No.998, who was working in the proximity of terror camp at Vagamon at the relevant time and had witnessed group of people participating in the camp shouting slogans and was shown passport size photographs of 100 persons out of whom, the said witness Anilkumar was called upon to identify and Anilkumar identified 26 photographs of the persons, who had attended the camp at Vagamon.

11.127. It is apparent that the witness Anilkumar did not know any details including the name of those persons whose photographs he had identified and while drawing the panchnama, these 26 photographs were shown to accused Mohammad Yunus @ Umar @ Khalid and he had identified the entire list of 21 persons out of 26 with name. This would go on to establish the presence of 21 accused, the photographs of which were identified by witness Anilkumar as having participated in the Vagamon camp and thereafter, name by co-accused Mohammad Yunus. These 21 persons are (1) Imran Shaikh, (2) Mohammed Ansar, (3) Hafiz Hussain @ Adnan, (4) Shakil Ahmed Mali, (5) Dr. Asadulla, (6) Shilbli, (7) Mohammed Shajid Mansuri, (8) Safdar Hussain Nagori, (9) Yasin @ Gulraj, (10) Dr. Anwar Bagwan, (11) Mohhamed Irfan @ Wakib, (12) Nadim Saiyed, (13) Mohommed sami, (14) Kamran @ Fajilat, (15) Dr. Ahmed Beg., (16) Shaduli @ Hariz, (17) Nasir Ahmed Patel, (18) Zahid @ Javed, (19) Amil Parvezm, (20) Mohd. Ismail @ Razzik and (21) Mufti Bashar.

11.128. Though the arguments are advanced in this regard that the

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investigation was almost after period of five years and therefore, there would be great changes on the side which would create doubt on the panchnama executed and pointing out of the place, where the camp had taken place. However, the Court may refer to Exh.8252, which is the panchnama executed at the behest of accused Mohammad Yunus @ Usman Khalid, where the accused had given detail of his travel from Ernakulam Railway Station to Vagamon and leading the panch witnesses and police officers in the police vehicle and pointed out the place, where the tents were pitched in the open land and training being given to them. During this panchnama, the accused had pointed out in detail about the activities being conducted there which included training for making chemical bombs, firing etc. The Court has perused the cross-examination of both the evidences of PW No.998-Anilkumar Damodar Pottnaniyil, who was examined vide Exh.6950 as well as panch witness PW No.1147-Geerindran Bhaskaran Nair, who was examined vide Exh.8250. The Court does not find any reason to doubt the contents of the panchnamas as well as the evidence of these witnesses.

11.129. Learned advocate has referred to PW No.1148-Josaf Joysan, who was examined vid Exh.8253, who is another witness of the pointing out panchnama at Exh.8252. This witness is a panch to the point out panchnama by one Hafiz Hussain, which he had agreed to and has exhibited Exh.8254 panchnama and in this panchnama, Hafiz Hussain has pointed out the place where the terror camp at Vagamon was conducted. Though in cross-examination, this witness was questioned with regard to the manner in which he was summoned and about the delay of the police officers, who are present therein and about another person Sunny, who appears to be co-panch, however, there is nothing suggestive to doubt the deposition of this witness. The argument that this

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witness has failed to identify Hafiz Hussain is of no consequence as during the panchnama, he was introduced to Hafiz. Exh.8254 is the panchnama of pointing out the place and location of the camp by the accused Hafiz Hussain @ Adnan. Exh.8254 records the manner in which the police team was led by the accused Hafiz Hussain @ Adnan in police vehicle and has shown the place of the camp and the activities which took place at various locations within that camp. During this, the accused had also pointed out the place, where the tents were erected, the place where they practiced riding of two wheelers and place where practice for crossing by rope was undertaken.

11.130. Learned advocate has thereafter, referred to deposition of Investigating Officer, PW No.1163-Mayur Jagmalbhai Chavada, who was examined vide Exh.8638, pertaining to recording of witnesses Riyaz and Chhotu and submitted that though these two witnesses were cited as secret witnesses, the prosecution has not examined one Chhotu as he was not traced out, which shows the poor state of affair of the prosecution and the other secret witness Riyaz though examined, was declared hostile.

11.131. It is argued by referring to page No.202 of the deposition of PW No.1163 that the accused-Yunus through whom panchnama Exh.8251 and 8252 regarding photographs of the accused persons and the place at Vagamon, stands acquitted and therefore, the Court in the case of this accused has appreciated the evidence, then similar benefit be also available to the present accused persons. He then referred to page 211 of the evidence of PW No.1163 which referred to the panchnnama executed at behest of accused Zahid Shaikh vide Exh.5581, which was executed by Investigating Officer, V.R.Tolia, who could not be examined on account of his demise. He has thereafter, referred to page-290 where

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the witness has deposed with regard to the investigation which took place at Vagamon and execution of Exh.8254 and submitted that the Investigating Officer has deposed in a callous manner despite this being a very serious investigation. He has then referred to page-316 referring to the executing of panchnama of Halol vide Exh.7053 and questioned being put to this witness regarding his knowledge with regard to the first panchnama of the very place dated 27.08.2008 which he has denied and therefore, it is argued that though this witness has admitted to have exchanged information with other Investigating Officers, he has expressly denied knowledge of previous panchnama dated 27.08.2008 and his inability to answer as to the status of the Dharamshala and Dargah as to whether the same were operational at the relevant time or since when they were inoperational. However, this witness has denied the suggestion that he had the knowledge of other Investigating Officer, having executed panchnama and has executed the present panchnama only to support the previous panchnama. In para-110 of the evidence, the Investigating Officer was cross examined about the manner and method in which panchnama of identification by 100 photographs was undertaken and the role of Mohammad Yunus in executing of such panchnama. It is submitted that the answers given by the Investigating Officer were only to the extent that he can give the answers to the questions only by looking into the case papers and therefore, this Investigating Officer cannot be treated as having carried out in proper manner. The investigation also does not arrive at any conclusion or a consistent theory against the accused person. It is submitted that the evidence with regard to Vagamon Camp cannot be said to be on the basis of independent evidence or fair investigation and therefore, reliability of the panchanams executed at Vagamon are doubtful.

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11.132. It is submitted that though the Court may believe the holding of Camp at Vagamon on account of conviction recorded by Ernakulam Court, still the same cannot be treated to be sufficient evidence of holding a terror camp at Vagamon with a common object to cause serial blast at Ahmedabad.

11.133. Learned advocate has thereafter, referred to Exh.9021, which is the confession of Mohammad Manzer Imam-accused No.76, who is also an accused of offense being tried at Ernakulam at Kerala. Exh.9021, which was retracted by the accused through Exh.9230. Accused No.76-Mohammad Manzer Imam was acquitted by this Court in this offense however, was convicted in Kerala Case for Vagamon Camp.

11.134. Learned advocate has thereafter, argued on the issue of place of conspiracy within Ahmedabad. It is submitted that according to prosecution, a residential premises in Dariyapur, identified as house of grand-father of Samsuddin to be the place, where the accused person had met to conspire.

11.135. Learned advocate has referred to evidence of PW No.957-Zakirhussain Abduljabbar Kureshi, who was examined vide Exh.6687. Learned advocate has generally submitted that this witness is not a reliable witness in view of the improvement made in his version over the version given by this witness in statement under Section 164 of Cr.P.C. According to him, many facts which were mentioned in the deposition were missing in Section 164 statement. It is submitted that the conduct of this witness is doubtful from the beginning as even as per his deposition he was aware of some illegal activity and he has not approached the police. It is submitted that the manner in which this witness decided to make judicial confession is also not coming on record.

11.136. It is submitted that though this witness is also a witness to the

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extra judicial confession of accused-Abdul Razik, the same cannot be treated to be sufficiently reliable evidence as even from his deposition this witness ought to have been treated as an accomplice and the extra judicial confession being weak piece of evidence would need corroboration. Moreover, the so called extra judicial confession of Razik was made at the time of travelling in train to which the Investigating Offices have not made any investigation about the fact of Razik and this witness travelling altogether in one train. Therefore, this witness is not reliable witness. This Court finds, upon perusal of the cross-examination of this witness, that insofar as the judicial confession of Razik is concerned, the defence has not tried to contradict him in the cross-examination by putting necessary questions regarding his travel in Train with Razik and in absence of such challenge to the issue of travel in Train, the defence cannot raise doubt on the fact of the witness travelling with accused Razik.

11.137. With regard to evidence of meeting of the group at Dariyapur at the place of Samsudin's Nana, learned Advocate has submitted that Exh.8266 being statement of Riyazhussain Mohammadhussain Siddiqui under Section 164 of Cr.P.C., cannot be treated as evidence, as the same can be said to have been exhibited only for the purpose of the signature.

11.138. Riyazhussain Mohammadhussain Siddiqui has been examined as PW No.1151 at Exh.8265, wherein he has been declared hostile and has admitted about his signature on certain papers and therefore, even if exhibit is to be believed, then also, it is only for the purpose of signature. Therefore, evidence of this witness does not help the prosecution for establishing the meeting for conspiracy at Dariyapur.

11.139. Learned Advocate has submitted that evidence of Aiyaz Razakmiyan Saiyed; PW No.1141, who is approver, also cannot be

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relied upon, as his evidence does not reflect that there was a conspiracy to carry out bomb blast. However, the Court on perusal of the evidence in chief, this witness has deposed about the program held in Dariyapur at the residence of grand father of Samsudin and he was informed about the meeting by Arif Kagzi, where the witness had attended meeting with other people, wherein he was introduced to Safdar Hussain Nagori, Sibli, Abdul Subhan @ Taukir, Kayamudin Kapadiya, Mufti Abubasar, Zakir, Mohammad Ismail @ Abdul Razik, Arif Kagzi and Samsudin Shaikh were the people, who were present in the earlier meeting also and in the present meeting, mainly speeches were delivered by Safdar Husain Nagori, Abdul Subhan @ Taukir, Samsudin Shaikh and Arif Kagzi. Speeches were for setting up Islamic governance and to resort to Jihadi activities and thereafter, there was viewing of Video Cassettes on VCD Player regarding Taliban, Alqaeda and Hamas and activities like Suicide bombing, Gorilla attack, bomb explosions. Though this witness has been cross examined, aforesaid fact appears to have not been disturbed and the witness has also come out as reliable witness.

11.140. Learned Advocate in the deposition of this witness has referred to the portion of cross examination, wherein reference is made to vacate the premises, which was occupied by Taukir and that he came to know through one Sayeedu Rehman that Taukir and Kayamudin have already left and vacated the premises occupied by them, which was around 15th of that month and thereafter, on 22nd July, he received phone from Kayamudin. It is submitted that version given by this witness is very sketchy and not reliable about what had transpired between him and Kayamudin.

11.141. Thereafter, learned Advocate has referred to Exh.7385; Panchnama drawn at the behest of Tausif Khan @ Atik to point out the

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premises, where the meeting had taken place for conspiring.

11.142. With regard to this, it is submitted that panchnama has brought on record location of the house, located in Dariyapur (Samsudin's Nana house), which was in the ownership of one Hussain Hasambhai Shaikh. Defense has examined this owner Husain Hasambhai Shaikh as defence witness at Exh.9263. Learned Advocate has drawn attention of this Court to Exh.9263, it is submitted that even if nature of construction of this house is taken into consideration, then it is evident that house is not big enough to accommodate any kind of meeting or program that prosecution wants this Court to believe.

11.143. Learned Advocate in this regard has submitted that on the issue of meeting at Dariyapur before blast, the prosecution has evidence of certain witnesses particularly approver and those who have participated in the meeting on one hand and on the another hand is the defence witness; Hussain Hasambhai Shaikh, who is citizen with clean image and has nothing to do with the offense except for being relative to one of the accused. Therefore, say of Hussain Hasambhai Shaikh should be treated as more believable. It is also submitted that though Hussain Hasambhai Shaikh was cited as a witness in the charge-sheet, he was not examined by the prosecution and therefore, he was sought to be examined by the Defense.

11.144. Thereafter, learned Advocate has made submissions on behalf of accused No.28-Afzal @ Afsar @ Raja @ Ajit Singh @ Sanjay Pandey @ Usmani Mutlib Usmani and accused No.69; Aamin @ Raja Aiyub Nazir Shaikh, who have been arraigned as accused in the offense for having some connection with the cars, which have alleged to be used in the incident. In so far as Black Wagon R Car in the offense is concerned, offense was registered of theft of this car at Mumbai,

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wherein accused No.28-Afzal @ Afsar @ Raja @ Ajit Singh @ Sanjay Pandey @ Usmani Mutlib Usmani was tried for the offense of theft at Mumbai and has been acquitted. It is the case of the prosecution that three persons had come in this car from Mumbai and has placed on record evidence of National Highway Authority and Toll Tax Receipts to establish movement of the car on the Highway from Mumbai towards Gujarat. Exh.6640 is evidence of Petrol Pump Attendant and Exh.6642 is evidence of Mechanic, who repaired the car. Both these evidences are of no use to the prosecution, as they did not connect either the car or the accused with the blast, which took place at Ahmedabad. Moreover, there is no continuous evidence to connect the cars movement from Mumbai to Ahmedabad. Exh.6649 is evidence of PW No.951- Gulamhussain Rasulbhai Gayakwad, who has repaired Maruti Alto Car. However, his evidence is not sufficient to connect, as there is no evidence as to who actually placed the car at L.G. Hospital. Exh.6438 is pointing out panchnama drawn at the behest of accused No.28-Afzal @ Afsar @ Raja @ Ajit Singh @ Sanjay Pandey @ Usmani Mutlib Usmani, who has taken Investigation Team during panchnama. The Court has perused this panchnama, which is proved by PW No.899-Shersinh Khusalsinh Mahavar at Exh.6437. This witness has fully supported the case of the prosecution and this document at Exh.6438 does refer to what had taken place on 26-07-2008 of Wagon-R Car of grey colour bearing registration No.GJ-6-CD-9718 and on the night prior thereto, the car being loaded with nut bolt on the back side with gas cylinder and time bomb being adjusted between seat and being taken from Alahmadi Society at Danilimda to Civil Hospital in Shahibaug along with Abdul Razik. He has accurately pointed out place, where he had driven the car and parked it nearby the Trauma Centre.

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11.145. Exh.5556 is panchnama at behest of Mohammad Ismail Abdul Razik. Learned Advocate has referred to Exh.6421; evidence of PW No.896-Durgeshbhai Kanubhai Patel, who is witness of panchnama Exh.6422, which is panchnama by which accused No.42; Mohammad Shakil @ Shakil Yaminkhan Luhar has pointed out the place, where cycle containing the bomb was placed. Learned Advocate has submitted that reliance placed on this panchnama, portion by which the accused giving panchnama, has narrated circumstances, which connecting to the offense, cannot be treated as evidence against him and therefore, such pointing out panchnama of cycle being placed in Mahalaxmi Market, is not sufficient and independent evidence. The prosecution has thereafter referred to Exh.6079, which is panchnama at the behest of accused No.39, accused No.41 and accused No.42, who were jointly taken to premises of FSL at Gandhinagar and through these accused persons in this panchnama the bicycles lying at FSL were identified to be bicycles on which, bomb was placed and had exploded. According to learned Advocate, there is no special marking by Investigating Officer to identify the cycle, which is different and available commonly in the market. Moreover, accused persons, if at all had no clue of how the damaged cycle would look after explosion of bomb and therefore, identification of these materials through accused person, was an exercise in futility and does not help the case of the prosecution.

11.146. Learned Advocate has thereafter referred to Exh.6687, which is statement of witness; PW No.957-Zakirhussain Abduljabbar Qureshi recorded under Section 164 of Cr.P.C.. Learned Advocate has broadly submitted about admissibility of such statement, as the facts, which were recorded in the statement under Section 161, were greatly varying from facts, which emerged in the statement under Section 164 and this

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variance itself creates doubt on the version of the witness. When this variance was brought to the notice, the only answer given by this witness was that the facts which he had not mentioned in the statement under Section 164, recorded later on, was that he did not deem it important and necessary to state all the facts narrated by him earlier and had only narrated important facts. Learned Advocate has assailed evidence of this witness that though it is coming out on record that he was using two mobile numbers and investigation had those two mobile numbers, but no investigation was carried out to establish the credibility of the witness. In fact, the investigation ought to have collected the call detail record, when his mobile location to establish veracity of facts that he has mentioned in his evidence.

11.147. One more aspect with investigation ought to have probed further, is with regard to mobile connectivity between Zakir and Razik. There is no investigation on the point that Razik, who wanted to abscond, wanted to have SIM card on the name of unknown person particularly of Hindu name. However, in the raid by the investigation on the office of accused No.1, no documents of such nature for issuing of fake SIM card was found and therefore, investigation had remained incomplete. Moreover, if the prosecution is to rely upon extra judicial confession made by Razik to this witness, investigation ought to have completed investigation with regard to seat number and actual travel of Zakir and Razik together in the train, where the extra judicial confession has taken place. It is submitted as it is extra judicial confession is weak piece of evidence and further being uncorroborated, the role attributed to accused person by Zakir himself could not be believed.

11.148. One more reason for doubting the evidence of Zakir is fact that he himself was in the custody from 8th July to 8th October and only

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after he agreed to stand as witness, on 17th October, 2008, he was released and his evidence was recorded. In fact, he was accomplice, who has been converted into witness by the prosecution to emphasize his argument about this witness being in custody between July to October.

11.149. Learned Advocate has questioned the prosecution regarding mobile phone recharge. It is submitted that there were no mobile phone recharge of this witness and therefore, it is to be presumed that he was in custody. Otherwise, ordinarily during this period, in natural course, his mobile phone would have been recharged. With this glaring infirmities, this witness has to be discarded as to be thoroughly unreliable.

11.150. Learned Advocate has thereafter commented upon the evidence of Aiyaz Razakmiyan Saiyed; approver, who was examined as PW No.1141 at Exh.8191. First reason to create doubt on the evidence of Aiyaz Razakmiyan Saiyed is chronology in which he made application to become approver and the speed at which such application was facilitated and within no time, the approver was moved to the Court to take by the Jail Authority, therefore, would create doubt. Learned Advocate has drawn attention of this Court to Para-23 and Para-29 to dispute the fact mentioned in these Paras and create doubt by pointing out that if the meeting which took place with Razik is to be believed, then the timing that the witness took to travel from place of his job to meet Razik is an impossibility. Learned Advocate has submitted that the witness has lied on the point of planting of bomb, which is evident from colour of bag that he has mentioned. According to this witness, colour of the bag in which bomb was planted is white bag, whereas from recovery panchnama at Exh.1867 as well as FSL report at Exh.5916, colour of bag recovered from the site was that of grey colour. This witness one more instant for not believing witness, is fact that he mentioned that

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recce of the City was done by him along with Kayamudin on 23-07-2008 and Kayamudin was accompanied by one Asif Usmanbhai Shaikh, who is another secret witness. Asif was dropped, but his statement under Section 164 has been recorded and exhibited as Exh.8020. However, Aiyaz Razakmiyan Saiyed throughout has not mentioned presence of Asif and therefore, his evidence is not believable. Evidence of Aiyaz Razakmiyan Saiyed is also falsified, when he refers to date of 11-07-2008 of having met Taukir in the rented house. However, owner of the house; PW No.1106-Firoz Dilawar Shaikh at Exh.7929 and Exh.7930 does not support version of this witness about meeting of Aiyaz Razakmiyan Saiyed with Kayamudin on 11-07-2008.

11.151. Learned Advocate has also submitted that as per the confession by Imran, Taukir was in Baroda with him and therefore, presence of Taukir on 11-07-2008, as is stated by Aiyaz Razakmiyan Saiyed, becomes doubtful.

11.152. Learned Advocate has thereafter submitted that Aiyaz Razakmiyan Saiyed was lured into becoming approver by coercing him or threatening him into becoming of the approver by showing him that there is strong evidence against him in the form of recovery of key of the cycle, which would directly connect approver; Aiyaz Razakmiyan Saiyed with the offense and that according to learned Advocate is reason why Aiyaz Razakmiyan Saiyed had change of heart to become approver. However, as Aiyaz Razakmiyan Saiyed had become approver only to save his own skin, his evidence cannot be taken into consideration at all.

11.153. Learned Advocate has thereafter commented upon evidence of Investigating Officer; Shri Mayur Chavda and has submitted that investigation does not inspire any confidence, as still 15-08-2008, there was no clue about direction, in which investigation is to be carried out

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and all of sudden, investigation of Shri Toliya stumbled upon one Chotu and Riyaz, which disclose their involvement after interrogation of these two persons by Shri Toliya. However, on account of his sad demise, Shri Toliya has not been examined as witness. Even another Officer involved i.e. Shri Chudasma is also not examined, whereas Shri Chavda has claimed ignorance altogether about Chotu and Riyaz. As submitted earlier, Chotu is dropped, as having not been found, whereas Riyaz has been declared hostile and therefore, going to the route, there is nothing clearly coming on record as to how the crime was detected in the first place.

11.154. Learned Advocate has thereafter taken this Court to Para-8 of the deposition of Investigating Officer; Mr.Chavda and compared the same with Exh.6687, cross examination of witness-Zakir and submitted that there is completely black out as to how the name of Zakir surfaced with the Investigating Officer either as witness or as accomplice. He has reiterated his arguments that Zakir was accomplice who was kept in custody from July to October till he agreed to become approver.

11.155. Learned Advocate has also submitted that this Officer has left the investigation regarding extra judicial confession of Razik to Zakir half away and ought to have brought on record circumstances to establish joint travel together of Zakir and Razik in the train towards Bhopal.

11.156. Lastly, learned Advocate has submitted that evidence of Investigating Officer makes evidence of Zakir more unreliable, as other accused have seen Zakir in custody and that his mobile had remained uncharged for a period between August to October.

11.157. Learned Advocate has thereafter submitted by referring to evidence of Investigating Officer; Usha Bachubhai Rada as PW No.1154

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at Exh.8340 to submit that even as per this witness, Mr.Abhay Chudasma was the main person in whose supervision, the investigation was taking place. Still, he has not been examined as witness by the prosecution. He has submitted that none of Investigating Officers examined have remained present before the Court with the Case Diary and have answered several questions in callous manner, which creates doubt about investigation being carried out sincerely and in correct manner.

11.158. Learned Advocate has therefore challenged the conviction on following grounds:

(A) One weak piece of evidence cannot stand as corroboration to another weak piece of evidence.

(B) Impugned judgment is against principle that no innocent person should be punished, even if 100 accused persons are let off.

(C) Inconsistency in the judgment for sentencing as compared to the role, which is established on evidence.

(D) Extensive reliance on pointing out panchnama and discovery panchnama, which are against principle of that only what is covered, can be discovered, whereas in present case, panchnamas are pointing out to facts, which are already within knowledge of the investigation.

(E) Basic Policy in the conspiracy theory as there cannot be conspiracy of 78 accused persons, as such conspiracy would hardly remain secret for such long time.

(F) Erroneous reliance upon confession of the accused and the co-accused especially when retracted.

(G) Complete unreliability on the Test Identification Parade, as the same have taken place after long lapse of period.

11.159. Learned advocate therefore, has assailed the evidence of PW

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No.1105-Idrish Gulabsha Fakir Diwan, who was examined vide Exh.7923, who is the Munjavar of Khundpir Dargah at Pavagadh in Halol. It is submitted that though this witness is one of the secret witnesses, he is not reliable as there is no test identification conducted. He has wrongly identified Imran in Court though it was Imran who had approached him first in point of time. The identification of certain accused though not represented by learned advocate Shri Buch, but the same was done for the first time in this Court.

11.160. Though this witness is for corroboration to the confession of three accused who were present in the camp, the prosecution has failed to conduct test identification through this witness.

11.161. Therefore, though this witness is for important purpose of holding terror camp such a witness is not a reliable witness.

11.162. Ld. Advocate has therefore prayed for acquitting the accused whom he represents.

12. Pleadings in general by the appellants

CRIMINAL APPEAL No.2106 of 2023:

12.1. By the impugned judgment and order, the appellant-convict has been awarded death penalty

Submissions of learned Advocate for the appellant:

12.2. Learned Senior Advocate Ms.Nitya Ramakrishnan appearing with learned Advocate Mr.Arjun Joshi for the appellant-accused pleaded that the prosecution did not produce lawful sanction under Section 45 of the Unlawful Activities Prevention Act, 1967 ("UAPA"), as it had failed to constitute an independent review mechanism being a High-Powered Committee as contemplated therein, even in the subsequent

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supplementary chargesheets filed against the present Appellant. Hence, the entire trial stands vitiated in the absence of a valid sanction in law.

12.3. It is pleaded that the present Appellant was not even arrested in connection with any of the cases registered in various police-stations of Ahmedabad but was thereafter sent up for trial. It is pleaded that the present appellant has been gravely prejudiced by the clubbing and joint-trial of Surat-case along with the Ahmedabad-case.

12.4. It is pleaded that the impugned judgment is passed without appreciating the fact that there is no legal evidence on record, which can be said to be incriminating against the Appellant. It is pleaded that Section 27 of the Evidence Act cannot be used as a camouflage or a device to introduce confessional statement in a whole-sale manner. Furthermore, Section 8 of the Evidence Act cannot be used to admit a post-arrest conduct of a suspect without anything else as a proven chain of circumstances, that too, when the suspect is in police-custody. Furthermore, it is pleaded that no fact relevant can be said to have been discovered pursuant thereto.

12.5. It is further pleaded that from the alleged pointing out of 21 places where the appellant had allegedly planted the bombs, muddamals were already recovered and seized well before the date of arrest of the present Appellant. Hence, nothing can be said to have been discovered in the eyes of law. The alleged pointing out of various coin-boxes from where the Appellant had allegedly made certain calls but nothing was discovered and hence, nothing can be said to have been discovered in the eyes of law. It is pleaded that the alleged pointing out of the cause-way bridge where the Appellant had allegedly thrown away the pipe-bomb in water without anything being discovered is of no consequence. Further, it is not even the case of the prosecution that pipe-bombs were

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recovered from any of the 21 places from where unexploded bombs were found and nothing was recovered from the place where the appellant had allegedly thrown away a mobile-phone in water.

12.6. It is further pleaded that from the place of pointing out of flat in River-view Society by the Appellant, no incriminating articles were recovered and from the place of pointing out of flat in Master House Building by the Appellant, no incriminating articles were recovered.

12.7. It is pleaded that the entire prosecution case rests on circumstances which are in the form of post-arrest statements. It is pleaded that the present Appellant is shown to be arrested on 26/08/2008. It is pleaded that on 27/08/2008 or 28/08/2008 and thereafter, on 29/08/2008, the present Appellant is alleged to have purchased 15 to 16 kgs. of nuts and bolts from PW No.855-Jayeshbhai Manubhai Patel. Although during the investigation, no muddamal was shown to this witness, only during trial, he claims to have identified an iron-bolt as the article allegedly sold. Furthermore, PW No.855 could not identify the present Appellant during trial.

12.8. It is pleaded that in September 2008, the investigating agency had allegedly taken the present Appellant to the shop of PW No.859-Ahmadnur Abdulrahik Tambuwala who had sold a car-cover to the Appellant. During the investigation, no muddamal was shown to this witness but, for the first time, during the trial, he claims to have identified the said car-cover without any specific mark but admits that other shops also sell similar car-cover. Additionally, no bill or bill-book of this alleged transaction was brought on record. Furthermore, PW No.859- Ahmadnur Abdulrahik Tambuwala could not identify the present Appellant during the trial.

12.9. It is further pleaded that the investigating agency has

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allegedly taken the present Appellant to the shop of PW No.861-Rameshbhai Maneklal Jindal, who alleged that his partner, PW No.954-Abdul Sajidkhan Abdul Majidkhan Pathan, had sold indigo-cloth to the Appellant and produced a bill-book containing a bill in the name of one Rafik without his signature. Although during the investigation, no muddamal was shown to this witness but, for the first time, during the trial, he claims to have identified the said cloth and admits that other shops also sell similar cloth. PW No.984-Radheyshyam Madanlal Thakkar, who has claimed to have sold indigo-cloth to the Appellant and to one Rafik, has not identified the cloth during the investigation. He also admits that other shops also sell similar cloth. Furthermore, PW No.954- Abdul Sajidkhan Abdul Majidkhan Pathan could not identify the present Appellant during trial.

12.10. It is pleaded that when the Appellant has not been identified by any of the witness in Court during their Court deposition, it is a settled proposition of law that the only substantive evidence is identification in the dock during Court evidence.

CRIMINAL APPEAL No.727 of 2024:

12.11. The present appeal is filed by appellants-original accused No.1-Jahid @ Javed Kutubuddin Sheikh, No.2-Imran Ibrahim Sheikh, No.3-Iqbal @ Ikrar Kasam Sheikh, No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala, No.32-Asif @ Hasan Basiruddin Shaikh and No.70-Mohammad Mubin @ Mubin @ Irfan Abdul Sakurkhan being aggrieved by the judgment and order of conviction dated 08.02.2022 and the order of sentence dated 18.02.2022 passed by the learned Special Designated Judge for Speedy Trial of Serial Bomb Blast Cases Court, City Sessions Court, Ahmedabad in Sessions Case

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No.38 of 2009. By the impugned judgment and order, the appellants-accused were awarded death penalty.

Submissions of learned Advocate for the appellants:

12.12. Learned Advocate Mr.Somnath Vatsa appeared for appellant-accused Nos.1, 3, 32 and 70, learned Senior Advocate Mr. S. Nagamuthu appeared with learned Advocate Ms.Payoshi Roy and learned Advocate Mr. Mohammed Hasan Nizami for appellant-accused No.7, learned Advocate Dr. Yug Chaudhry appeared with learned Advocate Ms.Payoshi Roy and learned Advocate Mr.Mohammed Hasan Nizami appellant-accused No.2.

12.13. It is pleaded that the trial Court has wrongly convicted the Appellants herein under the stringent provisions of the UAPA. It is pleaded that the Parliament, in its wisdom, has stipulated very important safeguards in order to protect the rights and interests of accused persons from wrongful prosecution instituted for grave and serious charges vide amendment to Section 45 of the UAPA. It is pleaded that post amendment, Section 45(1) of UAPA reads - "No court shall take cognizance of any offence-". It is pleaded that the bar to “taking of cognizance” is offence related and not case related Therefore, all the offences punishable under the stringent provisions of UAPA are Sessions triable. It is pleaded that the Sessions Court takes cognizance of offence under Section 193 of the Cr.P.C. pursuant to committal under Section 209 of the Cr.P.C. In case of the present appellants, the first Sessions Case which came to be committed was Sessions Case No.38 of 2009 that arose out of C.R. No.236 of 2008 registered with Shahibaug Police Station.

12.14. It is pleaded that the bar on ‘initiation of prosecution’ or

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'taking of cognizance', without the chargesheet papers being reviewed by the High-Powered Committee, as directed in Section 45(2) of the UAPA, is mandatory. It is pleaded that in absence thereof, the trial Court could not have taken cognizance of offences punishable under the UAPA. It is pleaded that though Sessions Case No.38 of 2009 came to be committed on 4/02/2009, the trial Court framed the charges and took cognizance of the offence in the year 2010. The State of Gujarat notified the constitution of the aforesaid 'High-Powered Committee' only in the year 2013. Hence, the impugned judgment and order convicting the present Appellants and awarding death-sentence for offences punishable under the UAPA is untenable and void ab initio in the eyes of law.

12.15. It is pleaded that the impugned judgment has erred in law and on facts, as even otherwise, the sanction accorded against the present Appellants under Section 196 of the Code of Criminal Procedure, Section 45 of UAPA and Section 7 of the Explosives Substances Act, is without due application of mind. It is pleaded that the impugned judgment is passed without appreciating the fact that there is no legal evidence on record which can be said to be incriminating against the appellants and is based on whole sale reception of inadmissible confessional statements despite the specific bar on relying upon confessional statement of an accused under Section 25 of the Evidence Act, which cannot be circumvented by resorting to camouflages or under the nomenclature of Section 27 of the Evidence Act.

12.16. It is pleaded that the impugned judgment is contrary to the settled proposition of law that Section 8 of the Evidence Act cannot be used to admit a post-arrest conduct of a suspect, without anything else, in order to prove a circumstance as part of an unbroken chain of circumstances in a case wholly resting on circumstantial evidence.

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12.17. It is pleaded that the impugned judgment is contrary to the settled proposition of law that no person can be held to be a member of any banned organisation or terrorist organisation without any cogent and sufficient evidence. It is pleaded that such conclusions have been drawn on the basis of conjectures and presumptions.

12.18. It is pleaded that it is a settled proposition of law that the allegations against the present appellants rest on circumstantial evidence. It is a settled proposition of law that burden is on the prosecution to prove each incriminating circumstance constituting an incriminating link, that too, beyond all reasonable doubt and that, each such link should be so joined together so as to constitute an unbroken chain which should unquestionably inculpate the accused and should be inconsistent with the innocence of the accused. It is further pleaded that the circumstances on which conclusion of guilt is drawn, should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and no gap should be left in the chain of evidence. It is pleaded that in the present case, the entire prosecution case rests upon unproven and broken chain of circumstantial evidence.

12.19. It is pleaded that the impugned judgment errs in not considering the explanation offered by the present appellants in their S.313 Cr.P.C. statements, which has been held by the Hon'ble Apex Court to be a very crucial circumstance while appreciating the prosecution evidence. It is pleaded that the present appellant has specifically disclosed that he was kept in illegal custody for a period of about two weeks prior to the date on which he was shown to be arrested on 26/08/2008 and unsurprisingly, all the alleged so-called witnesses have emerged post-arrest of the present appellant.

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12.20. It is pleaded that prosecution has relied upon the discovery-cum-recovery panchnama dated 18.08.2008 vide Exh.5492 whereby, allegedly at the instance of original accused No.1-Jahid Kutubuddin Sheikh, from a mobile shop in Nagori Complex near Dani Limda bus-stand, 10-15 ball-bearings were found with some wax-like object in the presence of FSL, which were seized. It is pleaded that prosecution has also relied upon the discovery-cum-recovery panchanama dated 01.09.2008 vide Exh.5517 allegedly at the instance of original accused No.1-Jahid Kutubuddin Sheikh of a cyber-cafe, near NID, Paldi carried out in the presence of FSL. It is claimed in the said panchanama that in the presence of police, accused No.1- Jahid @ Javed Kutubuddin Sheikh had stated that he had sent an email from this cyber-cafe. It is further claimed that certain hard-disks were seized from the said cyber-cafe. However, the opinion of the FSL forwarded vide Exh.-5640 states that no data relating to the query sent by the investigating agency was found from any of the seven Hard-disks. Further, the implication of the present Appellant with the present offence is on the basis of production cum seizure of a Register from this cyber-cafe vide Exh.-3207 and the entries therein are based on surmises and conjectures.

12.21. It is pleaded that pointing out panchanama dated 27/08/2008 vide Exh.-6480 at the instance of the present appellant containing inadmissible confessional statement is not followed by discovery of any material fact or incriminating circumstances against the present appellant. It is pleaded that area near the ‘vav’ and around the old mosque has places where annual festivities of ‘Urs’ takes place and therefore, the articles seized from the place allegedly so pointed-out cannot be held to be an incriminating circumstance, as it is not a secluded place, which is otherwise, not accessible to people.

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12.22. It is pleaded that discovery-cum-recovery panchanama dated 19.09.2008 vide Exh.6656 allegedly at the instance of original accused No.1-Jahid Kutubuddin Sheikh of house No.10 of Al-Mohammadi Society in the presence of FSL cannot constitute legal and admissible circumstance against the present applicant. It is pleaded that the prosecution version as to this house suffers from insurmountable discrepancies. It is emerging from the evidence of PW No.943-Kukhrajbanu Mohammad Yakub Sheikh that the electricity meter number of her house (Customer No.-2437127), which was claimed to be rented and the electricity-meter number of the house (Customer No.-2033406), which was claimed to be pointed out at the instance of the present Appellant, are different. Further, the claims made in this memorandum of panchanama-proceedings are contradicted by the contemporaneous scene-visit report made by the mobile-FSL. It is pleaded that it is not the case of the prosecution that this house was situated at a secluded spot or without any thriving neighbourhood and yet, no person from the neighbourhood was joined in the panchanama or independently examined during the trial. It is further pleaded that all the alleged recoveries fail to connect the present appellant with the present offence.

12.23. It is pleaded that the prosecution has attempted to connect the present appellant with other co-accused person through the identification of utensils claimed to have been sold by PW No.938 to accused No.8, which is claimed to have been seized from house No.10, Al-Mohammadi Society at the instance of the present Appellant vide Exh.-6656. However, not only were all the utensils in pristine and new condition but, they were also not sealed at the time of alleged seizure proceedings vide Exh.-6656. Hence, in view of the material discrepancies, the present

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appellant cannot be linked with another co-accused on the basis of the alleged panchanama of identification of unsealed and brand new utensils vide Exh.-5538.

12.24. It is pleaded that the production-cum-seizure panchnama dated 9.10.2008 of the black-coloured Bajaj Company motor-cycle vide Exh.3193 allegedly at the instance of the father of the Appellant fails to link the present Appellant with any of the allegations in absence of identification of this motor-cycle by any independent witness in Halol, Pavagarh.

12.25. It is pleaded that the pointing out panchanama dated 1/09/2008 of I-Net Cyber Cafe, Paldi, Ahmedabad vide Exh.-5516 allegedly at the instance of the appellant has not been proved by the prosecution. It is claimed by the prosecution that this cyber-cafe has been used by the appellant to send e-mails before the bomb-blast but, no e-mails attributable to the appellant have been recovered. Further, no e-mails, much less any incriminating e-mail, has emerged during the investigation, even though the respective Hard-drives were seized during the investigation.

12.26. It is pleaded that the seizure panchanama dated 13/09/2008 vide Exh.7224 wherein a register of Infinity cyber-cafe, Bhuj came to be seized has not been proved by the prosecution. It is pleaded that there is no evidence to link the present appellant with the said cyber-cafe except the oral claim of the police-witnesses. Further, there is no seizure of any Hard-disks from the computer-terminal, which was allegedly used by the present appellant.

12.27. It is pleaded that the production-cum-seizure panchanama dated 30/08/2008 vide Exh.3188 of three mobile-phones allegedly by the father of the present Appellant, even if taken at its highest, does

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incriminate the present Appellant in any manner.

12.28. It is pleaded that the report of the DFS, Gandhinagar with respect to 'Suspect Detection System' vide Exh.5901 and the entire exercise carried out thereto in respect of the present Appellant, inter alia, does not have any evidentiary value simply because the same is a computerised one and such report will not elevate it to the category of a 'report of an expert' as provided under Section 45 of Evidence Act. It is pleaded that the prosecution has failed to lead any evidence or bring any material on record, which would remotely suggest that the said 'Suspect Detection System' is an established scientific evidence to be admissible under Section 293 of the Cr.P.C.

12.29. It is pleaded that the ocular evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya, PW No.981-Naimeshbhai Labhubhai Chauhan, PW No.1067-Babubhai Ganeshbhai Mali and PW No.1105-Idris Gulabsha Fakir Divan in respect of the presence of the present Appellant is not established as the present Appellant has not been identified by anyone in the dock in Court during the trial, which is the only substantive evidence. Even otherwise, the said test identification parade suffers from several basic flaws and cannot be relied upon for any purpose. It is pleaded that the present Appellant has not been put to TIP through the only natural witness, i.e., PW No.1105-Idris Gulabsha Fakir Divan.

12.30. It is pleaded that the finding of the trial Court in placing reliance on the retracted-confessional statement of co-accused person (i.e. accused No.2-Imran Ibrahim Sheikh) under Section 164 Cr.P.C. as well as on the confessional statement of other co-accused persons (i.e. accused No.21-Mehndi Hasan Abdul Hamid Ansari and accused No.35-Rafiuddin Surfuddin Kapadia) under Section 164 Cr.P.C. in order to

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return a finding that the allegation of criminal conspiracy stands proved against the present appellant is contrary to the principles laid down in this regard in numerous judgments of the Apex Court and this Court.

The following pleadings have been made against specific incriminating circumstances found against appellant (accused No.2-Imran Ibrahim Sheikh)

12.31. By referring to specific incriminating circumstances found against the appellant (accused No.2-Imran Ibrahim Sheikh) in the impugned judgment, it is pleaded that the confessional statement alleged to have been made on 14/11/2008 has not only been retracted on 25/11/2008 (Exh.9216) but, the same has been recorded in flagrant violation and disregard to the criminal manual. It is pleaded that the finding of the trial Court in even considering Section 164 Cr.P.C. confessional statement of co-accused person (original accused No.35) in order to return a finding that the allegation of criminal conspiracy stands proved against the present appellant on the strength of the confessional statement of the co-accused is erroneous.

12.32. It is pleaded that reliance placed on the aspect of alleged identification of the present appellant in the TIP proceedings (Exh.-3061) before the Executive Magistrate - PW No.571, Solanki Ramanbhai Sendabhai, through prosecution witnesses, being PW No.972-Ramkabhai Devkaranbhai Kesariya, PW No.981-Naimeshbhai Labhubhai Chauhan and PW No.1067-Babubhai Ganeshbhai Mali, is in clear disregard of the settled proposition of law that dock-identification is the only substantive evidence, i.e. identification on oath before the trial Court during the recording of evidence. Hence, the trial Court ought to have considered that none of the aforesaid prosecution witnesses, i.e.,

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PW No.972-Ramkabhai Devkaranbhai Kesariya, PW No.981-Naimeshbhai Labhubhai Chauhan and PW No.1067-Babubhai Ganeshbhai Mali, have identified the present appellant in Court and therefore, the claimed identification during the TIP cannot constitute an incriminating circumstance against the present appellant. It is pleaded that even otherwise, the said TIP suffers from several basic flaws and cannot be relied on for any purpose.

12.33. It is pleaded that the confessional statement alleged to have been made during the drawing of Exh.6278 is inadmissible in the eyes of law as the same cannot be within the scope and ambit of Section 27 of the Evidence Act. Further, the confessional portion in Exh.6278 is also hit by Section 25 of the Evidence Act. Even otherwise, the articles thus seized are common household object and there is no investigation whatsoever about its relevance or relation to the alleged criminal conspiracy. Therefore, it cannot be said that the articles so seized constitute any incriminating circumstance against the present Appellant.

12.34. It is pleaded that the circumstance of the alleged pointing out vide Exh.6443 and the accompanying confessional statements recorded therein allegedly at the instance of another co-accused is an inadmissible evidence against the present appellant. It is pleaded that even otherwise, Exh.6443 is nothing but, re-discovery of facts, which were already within the knowledge of the investigating agency and for that reason as well, Exh.6443 is inadmissible in evidence and cannot be read in evidence.

12.35. It is pleaded that the seizure of a TATA Sumo vehicle by PW No.940-Nasior Aminsaheb Kureshi, allegedly given to the appellant and seized by way of seizure-panchanama vide Exh.3256, does not constitute any incriminating circumstance, as against the present

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appellant, there is no evidence that this vehicle was ever claimed to have been seen in the manner as alleged. It is relevant to note that PW No.940-Nasior Aminsaheb Kureshi has not even identified the present appellant in dock. Further, the investigation agency has neither bothered to carry out TIP of the present appellant through PW No.940-Nasior Aminsaheb Kureshi nor any claim has been made that the present Appellant was known to PW No.940-Nasior Aminsaheb Kureshi. It is pleaded that PW No.941-Asifbhai Iqbalbhai Bodiwala has been examined as the person accompanying the present appellant to PW No.940-Nasior Aminsaheb Kureshi and nothing more. Further, even otherwise, the articles thus seized have not been identified during the trial to be present at the relevant period of time at Pavagarh. Therefore, even if everything is assumed against the present appellant, it cannot be said that the vehicle so seized constitutes into an incriminating circumstance.

12.36. It is pleaded that the trial Court has incorrectly recorded a finding that the present appellant used to come for internet-surfing at I-Net Cyber Cafe, near NID, Municipal Market, Paldi. In fact, PW No.1062-Abdulajim Abdulhamid Saudagar has categorically stated that the present appellant used to come to the house when PW No.1062-Abdulajim Abdulhamid Saudagar was residing at Vadodara at the relevant time.

<u>The following pleadings have been made against specific incriminating circumstances found against appellant-accused No.3-Iqbal @ Ikrar Kasam Sheikh</u>

12.37. With respect to the specific incriminating circumstances that have been found against the appellant-accused No.3-Iqbal @ Ikrar

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Kasam Sheikh, it is pleaded that in the oral evidence of PW No.1115-Mohammadumar Usmanbhai Mansuri nothing incriminating is emerging against the present appellant and hence, the same cannot be regarded as an incriminating circumstance against the present appellant as the appellant has neither been identified in the TIP nor in the Court during the deposition of the witness.

12.38. It is pleaded that the trial Court has erroneously relied upon the inherently weak evidence in the nature of extra-judicial confessional statements claimed to have been made before PW No.1117-Asif Usmanbhai Sheikh and PW No.1132-Jasubhai Karshanbhai Patel, whose versions appear after substantial delay, i.e. on 7/12/2008, and that too, after the present appellant was subjected to multiple custodial interrogations during the investigation. It suffers from incurable lacunae and cannot be made basis to record a finding of conviction, particularly, when the prosecution is based on circumstantial evidence. Even otherwise, the TIP suffers from several basic flaws and cannot be relied on for any purpose. It is further pleaded that the trial Court has erred in even appreciating the manner in which the present investigation has been carried out in general, and in particular, against the present Appellant by not appreciating the contents of letter Exh.9198, which was addressed by the present Appellant to the learned Metropolitan Magistrate, Court No.-11 on 20/11/2008.

12.39. It is pleaded that the finding of the trial Court in placing reliance on the Section 164 Cr.P.C. retracted-confessional statement of the co-accused person (accused No.2-Imran Ibrahim Sheikh) as well as the Section 164 Cr.P.C. confessional statement of other co-accused persons (accused No.21-Mehdi Hasan Abdul Hamid Ansari and accused No.35-Rafiuddin Surfuddin Kapadia) in order to return a finding that the

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allegation of criminal conspiracy stands proved against the present appellant is contrary to the principles laid down in this regard in numerous judgments of the Apex Court and this Court.

12.40. It is pleaded that the circumstance of alleged pointing-out panchanama at the instance of the present Appellant vide Exh.6311 and Exh.6312 and the accompanying confessional statements recorded therein is clearly hit by Section 25 of the Evidence Act and is inadmissible in evidence, as the same is neither admissible under Section 27 of the Evidence Act nor under Section 8 of the Evidence Act. It is further pleaded that even otherwise, both Exh.6311 and Exh.6312 are nothing but, rediscovery of fact, which were already within the knowledge of the investigating agency and it is a settled proposition of law that there cannot be re-discovery of a fact.

<u>The following pleadings have been made against specific incriminating circumstances found against appellant (accused No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala)</u>

12.41. With respect to the very specific incriminating circumstance that has been found against the appellant (accused No.7-Mohammad Usman @ Usman Mohammad Anis Agarbattiwala), it is pleaded that nothing incriminating is emerging against the present Appellant from the oral evidence of PW No.1115-Mohammadumar Usmanbhai Mansuri.

12.42. It is pleaded that the ocular evidence of PW No.972-Motiji Ramji Prajapati and PW No.1067-Babubhai Ganeshbhai Mali with respect to the presence of the present appellant at Pavagarh is not established, as the present appellant has not been identified by either of the two witnesses in the dock during the trial, which is the only substantive evidence. It is pleaded that even during the investigation,

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the present appellant was not put to TIP through the only witness, i.e., PW No.1105-Idris Gulabsha Fakir Divan, who can be said to be ordinarily and naturally present at the alleged camp-site.

12.43. It is further pleaded that the finding of the trial Court in placing reliance on the Section 164 Cr.P.C. retracted-confessional statement of co-accused person (accused No.2-Imran Ibrahim Sheikh) as well as the Section 164 Cr.P.C. confessional statement of another co-accused persons (accused No.21-Mehdi Hasan Abdul Hamid Ansari and accused No.35-Rafiuddin Surfuddin Kapadia) is erroneous. It is pleaded that the confessional statement accompanying Exh.6370 is inadmissible in the eyes of law, as the same is not within the scope and ambit of Section 27 of the Evidence Act and is hit by Section 25 of the Evidence Act. Further, even otherwise, there is no independent material and no further investigation as to the ownership of the place from where the articles have been allegedly recovered and its connection with the present appellant. It is pleaded that there is no proof about the mandatory seizure-memo having been prepared and of handing it over during the course of drawing of Exh.6370. Conspicuously, no criminal proceedings were even instituted against the owner of the place from where the alleged incriminating articles were recovered. It is pleaded that there is no investigation as to the alleged relation of the articles so alleged to have been seized with the present appellant or their relation to the present alleged criminal conspiracy.

12.44. It is pleaded that seizure of a motor-cycle, claimed to have been given by one Anis to the present appellant, which was seized by way of seizure-panchanama vide Exh.3256, does not constitute any incriminating circumstance as against the present appellant. It is pleaded that the prosecution has not examined said Anis as a witness and

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therefore, the claim made in Exh.3256 is nothing more than hear-say and thus, inadmissible and the same cannot be used as incriminating circumstance against the present appellant. Further, even otherwise, the said motor-cycle has not been identified either during investigation or during the trial by any of the relevant witnesses in order to create one link against the present appellant. Therefore, even if everything is assumed against the presen appellant, it cannot be said that the motor-cycle so claimed to have been seized constitutes an incriminating circumstance.

The following pleadings have been made against specific incriminating circumstances found against Appellant (accused No.32-Asif @ Hasan Bashiruddin Shaikh).

12.45. It is pleaded that the trial Court has wrongly relied upon the evidence of PW No.965-Akhtar Mohmmad Hanif Memon, PW No.966-Asfaq Ahmad Saiyad and PW No.967-Reza Ahmad Nabatiyan to convict the present appellant, whereas the trial Court acquitted co-accused No.51-Dr.Anwar Abdulgani Bagvan, who had allegedly accompanied the present appellant and had taken a flat on rent in Pune. It is pleaded that none of the above three witnesses have been able to identify the present appellant during the trial. Even otherwise, the TIP suffers from several basic flaws and cannot be relied for any purpose. It is further pleaded that there is nothing substantive or incriminating or relevant, which was even claimed to have been recovered from the flat situated at Pune during the investigation.

12.46. It is pleaded that the confessional statement accompanying Exh.6508 and Exh.6546 is inadmissible in the eyes of law as the same cannot be within the scope and ambit of Section 27 of the Evidence Act

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nor is it a conduct relevant under Section 8 of the Evidence Act, without there being no other incriminating material which can even remotely link the present Appellant to the present offence. It is pleaded that the aforesaid is a post-arrest confessional statement, which has been made while the appellant was in police-custody and in the immediate presence of the investigation officer and is, thus, hit by Section 25 of the Evidence Act. Further, the present appellant is native of Maharashtra and there is no endorsement in Exh.6508 and Exh.6546, written in Gujarati language, to the effect that the contents of the same have been read over in the language known to the present appellant or that it has been translated in Gujarati from the language known to the appellant and thus, there is serious doubt about the veracity and authenticity of the contents that can be attributed to the Appellant. Even otherwise, there is no investigation to even suggest any link with any other co-accused person or the alleged conspiracy in any manner whatsoever. Therefore, it cannot be said that Exh.6508 and Exh.6546 constitutes any incriminating circumstance against the present Appellant.

<u>The following pleadings have been made against specific incriminating circumstances found against Appellant-accused No.70-Mohammad Mubin @ Mubin @ Irfan Abdul Sakurkhan.</u>

12.47. It is pleaded that the trial Court has erred in relying upon the evidence of PW No.985-Hasanali Ahmadbhai Sunavara without appreciating the fact that there is no substantive evidence of identification of the appellant in the dock by this. Even otherwise, the TIP, that too after over 3 years, suffers from several basic flaws and cannot be relied for any purpose. It is pleaded that out of the many such flaws, the reason for the identification has not been stated in the TIP

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panchanama.

12.48. It is pleaded that there is report of the FSL in respect of similarity of hand-writing samples claimed to be the basis, which cannot be said to be the evidence of a scientific expert.

12.49. It is further pleaded that the alleged joint pointing out panchanama (Exh.6537) and (Exh.6819) at the instance of the appellant and another accused person has been frowned upon by the Apex court in catena of judgments by the Apex Court. Even otherwise, the confessional statement attributed to the appellant are inadmissible in law and cannot be used for any purpose. Further, it is a settled proposition of law that re-discovery of a fact which is already known to the investigation agency is impermissible in the eyes of law.

12.50. It is pleaded that the trial Court has erred in law in placing reliance on the evidence of PW No.977-Kamal Jashvantlal Thapar without there being any identification of the alleged muddamal number-plate or there being any other evidence linking the present appellant with the alleged number-plate.

CRIMINAL APPEAL No.1917 of 2022:

12.51. The present appeal is filed by the appellants-original accused No.20-Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman (Khilji Muslim), No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni), No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan, No.30-Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh, No.35-Rafiyuddin S/O Sarfuddin Kapadiya, No.43-Anik @ Khalid S/O Shafik Saiyed, No.46-Mohammad Naushad @ Mohammad Irshad Saiyed, No.59-Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim, No.66-Mohammad Safiq @ Dadabhai @

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Thakur @ Rafiq @ Ali S/O Abdulbari Ansari and No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar, being aggrieved by judgment and order of conviction dated 08.02.2022 and order of sentence dated 18.02.2022 passed by the Special Designated Judge for Speedy Trial of Serial Bomb Blast Cases Court, City Sessions Court, Ahmedabad in Sessions Case No.38 of 2009. By the impugned judgment and order, the trial Court awarded life imprisonment to all the appellants-accused.

Submissions of learned Advocate for the appellants**:**

12.52. Learned Senior Advocate Mr. Mihir Desai appeared with learned Advocate Ms. Sanskruti Yagnik and learned Advocate Mr. Khalid G. Shaikh for appellant-accused Nos.20, 30 and 74, learned Advocate Mr. Hriday Buch with learned Advocate Mr. Khalid G.Shaikh appeared for appellant-accused Nos. 21, 43, 59 and 66, learned Advocate Ms. Deeksha Dwivedi with learned Advocate Vishvesh Acharya and learned Advocate Mr. Piyush Vala appeared for appellant-accused No.22, learned Advocate Dr. Yug Chaudhry with learned Advocate Ms. Payoshi Roy and learned Advocate Mr. Mohammad Hasan Nizami appeared for appellant-accused No.35 and learned Senior Advocate Mr. Asim Pandya with learned Advocate Mr. Khalid G. Shaikh appeared for appellant-accused No.46.

12.53. It is pleaded that the trial Court has wrongly awarded the punishment of life imprisonment till natural death to the appellants for the reasons that; (i) the prosecution's case was based on circumstantial evidence, (ii) it is very important to submit that out of 1163 witnesses, hardly, 10 to 12 witnesses have not supported the prosecution's case, but most of the panch witnesses and other relevant witnesses, who appeared

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as tutored witnesses, selected witnesses, and stock witnesses and some of the witnesses, being illiterate, are tutored witnesses and technical experts relating to the deposition of their respective concern panchnamas / statements.

Accused wise Discussion of evidence

12.54. It is pleaded that accused-wise evidence recorded during trial is quite insufficient and improper to hold the guilt of accused as under:

Evidence and alleged role of Accused No.20-Atikurehman Abdul Hakim Khilji (Appellant No.1)

12.55. Official Date of arrest of accused No. 20 by transfer warrant from Rajasthan: Dt. 09.10.2008, Period of remand: Dt. 09.10.2008 to 07.11.2008 and from 25.11.2008 to 05.12.2008 and Arrested in Katargam II-CR No. 203.08 on Dt. 19.01.2009

12.56. It is pleaded that from the evidence led during trial against the accused No. 20, the role of the accused is that he attended the alleged camp at Halol between 13th to 15th January, 2008. However, prosecuting agency had not examined any witness stating that at any point of time the accused was present at Halol camp or no panchnama u/s.27 is drawn while this accused was in police custody for a long period as stated herein above pointing the place of Halol. However, the Ld. Judge relied upon the confessional statement of Accused No.21-Mahendi Hasan and Accused No.35-Rafiuddin Kapadiya referring the presence of this accused No. 20 at Halol. It is pleaded that the confessional statement of these two accused cannot be relied on for convicting the accused No. 20. It is also pertinent to note that except above mentioned so-called exculpatory confessional statement of co-

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accused not a single evidence against this accused to put finger on him.

Evidence and alleged role of the Accused No.21-Mehandi Hasan Abdul Habib Ansari (Appellant No.2)

12.57. Official Date of arrest of accused No. 21 by transfer warrant from Rajasthan: Dt. 09.10.2008, Period of remand: Dt. 09.10.2008 to 07.11.2008 and from 25.11.2008 to 05.12.2008 and Arrested in Katargam II-CR No. 203.08 on Dt. 19.01.2009.

12.58. It is pleaded that from the evidence led during trial against the accused No.21, the role of the accused is that he attended the alleged camp at Halol between 13th to 15th January, 2008. However, prosecuting agency had not examined any witness stating that, at any point of time the accused was present at Halol camp or no panchnama u/s 27 is drawn while this accused was in police custody for a long period as stated herein above, pointing the place of Halol. However, the trial Court relied upon the confessional Statement of this Accused No.21 Mahendi Hasan and Accused No.35-Rafiuddin Kapadiya referring the presence of the accused at Halol. It is pleaded that the confessional statement of him and accused No. 35 cannot be relied for convicting the accused No. 21 for the reasons and ground stated herein above in this appeal memo at para No. 36. It is also pertinent to note that except above mentioned so-called exculpatory confessional statements, not a single evidence against this accused to put finger on him. It is pertinent to state that he has retracted his so-called statement vide letter dated 25.11.2008 and 27.11.2008 Exh.No. 9226.

Evidence and alleged role of Accused No. 22-Imranahmed Sirajahmed Pathan (Appellant No.3)

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12.59. Official Date of arrest of accused No. 22 by transfer warrant from Rajasthan:- Dt. 11.10.2008, period of remand Dt. 11.10.2008 to 07.11.2008 and from 25.11.2008 to 05.12.2008 and arrested in Katargam II CR No. 203.08 on Dt. 19.01.2009.

12.60. It appears from the evidence led during trial against the accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan, the role of the accused is that he attended the alleged camp at Halol between 13th to 15th January, 2008. However, prosecuting agency had not examined any witness stating that, at any point of time the accused was present at Halol camp or no panchnama u/s 27 is drawn while this accused was in police custody for a long period as stated herein above, pointing the place of Halol. However, the trial Court relied upon the confessional Statement of Accused No. 21-Mahendi Hasan and Accused No.35-Rafiuddin Kapadiya referring the presence of this accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan at Halol. It is pleaded that the confessional statement of these two accused cannot be relied for convicting the accused No.22 for the reasons and ground stated herein above in this appeal memo. It is also pertinent to note that except above mentioned so-called exculpatory confessional statement of co-accused not a single evidence against this accused to put finger on him.

<u>Evidence and alleged role against accused No.30-Mohd. Sadik Israr Ahmed Shaikh (Appellant No. 4)</u>

12.61. Official Date of arrest of accused No.30:- 05.11.2008, period of remand :- Dt. 05.11.2008 to 02.02.2009 and arrested in Kalol P.S. case on Dt. 21.08.2009.

12.62. It appears from the evidence led during trial that the Accused

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No.30-Sadik Shaikh while in police custody had pointed one watch shop situated at Bombay from where some watches were purchased. Except this pointing panchnama, no other evidence appeared against this accused during trial.

12.63. It is pleaded that the cross-examination of pointing panchnama's panch PW No. 1128 Sunil R. Shah appears quite unnatural, unbelievable and concocted panch considering his cross-examination. considering his cross-examination, it shows that no prudent person can believe his testimony.

12.64. It appears from the cross-examination of PW No. 1128 that he had pointed one watch shop situated at Abdurrehman Street, Mumbai from outside of the shop, he had not checked that whether it was a watch shop or they did not enter the so called watch shop. Even, no person from so-called watch shop states that on a particular date or time the accused came to their shop and purchase the watches and they had identified him as a watch purchaser. No any kind of documentary evidence supports the evidence of PW No.1128-Sunil Rasiklal Shah. It is pleaded that the panchnama drawn vide Exh.8093 at the instance of accused No.30- Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh as stated herein above was prepared by Mr. Narayansinh Bhavansinh Parmar-PW No.1155, an investigating officer of the Surat bomb plantation cases, but the bomb allegedly planted at different places of Surat did not contain the watch as a timer. Bombs allegedly planted at the Surat city were contain Electric circuits as per FSL report of Surat cases.

<u>Evidence and alleged role against accused No.35-Rafiuddin Sarfuddin Kapadiya (Appellant No.5)</u>

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12.65. Official Date of arrest of accused No. 35:- 13.11.2008, period of remand: Dt. 13.11.2008 to 18.01.2009 and in Kalol, P.S. case arrested on Dt. 09.02.2009.

12.66. It appears from the evidence led during trial that Accused No.35 Rafiuddin when he was in police custody - (1) he pointed out the place of Halol camp under a panchnama Exh.No. 6443 on Dt. 17.11.2008, PW No. 900 Himeshkumar Pravinchandra Mehta was examined vide Exh.No. 6442. (2) his alleged confessional statement u/s 164 of Cr.P.C. vide Exh.No. 8631 (3) Evidence of PW No. 1105 Idris Gulabshah Fakir.

12.67. It is pleaded that the trial Court erred in appreciating the evidence of PW No.900-Himeshkumar Mehta for the reasons that the details of panchnama and the details of deposition of this witness No.900 indicate that it is in the form of confessional statement of accused No.35-Rafiuddin narrating the prosecution case as alleged regarding the activities of Halol Camp which is not admissible in evidence.

12.68. It is pleaded that cross-examination of PW No.900-Himeshkumar Mehta indicate that he is selected and tutored witness for the reasons that, in para No. 8 he admits that, "it is true that I have not remember any conversation during panchnama" in para No. 10 he admits that "when we reach to Dargah No administrator / manager was present or I do not remember whether any Mujavar was residing there at." In para No. 12 he admits that police had not interrogate/inquired about any person at Dargah."

12.69. It is pleaded that as per prosecution evidence led in the trial Court on Dt. 27.08.2008 1.0. Shree Toliya, on Dt. 28.09.2008 1.0. Mr.M.J. Chavda had visited the places of Halol camp as shown in

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panchnama vide Exh.6443 were one and same. It is admitted by all the above stated IOs that they were simultaneously investigating the offence and exchanging the evidence collected by them to each other, meaning thereby, I.O. Mr. P.G.Waghela had the knowledge of this place and he was attached with the investigation from day one to the submission of the last charge sheet and even a person 1.0. remain present every day in trial Court from framing the charge to final judgment and order. It is pleaded that this witness did not identify the accused in the Court during his deposition as to who pointed out the place.

12.70. It appears from the finding of the Ld. trial Judge in its impugned Judgment and order at page No. 6577 that PW No.1105-Idris Gulabsha Fakir had identified the accused No.35 in his deposition before the trial Court and therefore, there is no reason to disbelieve him.

12.71. It is pleaded that the trial Court erred in appreciating the evidence of PW No.1105- Idris Gulabsha Fakir regarding the presence of accused No.35-Rafiyuddin S/O. Sarfuddin Kapadiya at the Halol camp for the reasons that this witness has clearly admitted in his cross-examination at para No.14 that "it is true that when any investigating officer come with any accused and at that time I came to know the name of accused through police. It is true that according to me no any register was maintain regarding the persons name and address who stayed at Dargah. It is true that I have not stated in any of my police statement the name of Kayamuddin Kapadiya or Rafiuddin Kapadiya. It is true that during January 13 to 15 January, I have no any kind of relation with Kayamuddin Kapdiya and the same way Rafiuddin Kapadiya." Therefore, the witness at the instance of prosecuting agency, wrongly identified the accused Rafiuddin Kapadiya and Kayamuddin Kapadiya. It is pleaded that PW No.1105-Idris Gulabsha Fakir Divan did not

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identify accused Rafiuddin Kapadiya before any Executive Magistrate in any Test Identification Parade. The cross-examination clearly indicate that PW No.1105-Idris Gulabsha Fakir Divan had no any occasion to interact the accused Rafiuddin Kapadiya or to know his name or he did not disclose the name or description of accused No.35-Rafiuddin Kapadiya but the prosecuting agency tried to rope the accused No.35-Rafiuddin Kapadiya in the crime exceeding the deposition of PW No.1105- Idris Gulabsha Fakir Divan beyond his police statements.

12.72. It is pleaded from the finding of the trial Court that the alleged confessional statement of accused No.35-Rafiuddin Kapadiya is illegal and is not acceptable. However, the trial Court while disbelieving the so-called confessional statement of accused No.35-Rafiuddin Kapadiya has erred in relying upon the confessional statement of co-accused No. 2 Imran Shaikh.

12.73. It is pleaded that the alleged confession of accused No.35 at Exh.8631 is quite contrary to the details of his pointing out panchnama at Exh.6443. It is stated in Exh.8631 by the accused No.35 that at the instance of his brother Kayamuddin Kapadiya he visited Halol just to accompany his brother for about two hours, while it is stated in panchnama Exh.6443 that, he visited the Halol camp for three days. Even in the confessional statement of accused No.2-Imran Shaikh Exh.8619 it is not stated that accused No. 35- Rafiuddin Kapadiya stayed at Halol camp for three days.

Evidence and role against accused No.43-Anik Safik Saiyed (Appellant No. 6)

12.74. Official Date of Arrest of accused No.43: 12.11.2008 in Surat Bomb plantation case II-CR No. 176/08 Kapodara Police Station, Period

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of remand: Dt. 12.11.2008 to 30.11.2008 at Surat and arrested in Khadia Police Station case on Dt. 01.12.2008 and under police custody up to Dt. 24.12.2008 in different cases of Ahmedabad and arrested in Kalol P.S. case on 06.08.2009.

12.75. It is pleaded that from the evidence led during trial Accused No.43-Anik along with Accused No.44-Akbar and accused No.45-Fazlerehman stayed at a house situated at Sherpura, Bharuch in the month of July, 2008. Accused No.43-Anik along with accused No.44-Akbar pointed out the house situated at River View Society while he was in police custody and Accused No.43-Anik had purchased second hand Kinetic Scooter at Surat. The accused No.43-Anik pointed out the petrol pump from where he allegedly purchased 10 litres of petrol and also pointed out the place from where 06 containers were allegedly purchased.

12.76. It is pleaded that the trial Court has erred in appreciating and relying upon the evidence of PW No.1138-Gulam Husen Abdurashid Pathan for the reasons that PW No.1138- Gulam Husen Abdurashid Pathan had admitted in his cross examination that he had not given any documentary evidence regarding the ownership of the premises and he had not stated before the police that he had not disclosed that three persons were staying in his house and he did not given any receipt of rent.

12.77. It appears from the cross-examination of PW No.1138-Gulam Husen Abdurashid Pathan that he was working as an electrician when the police had searched his house, his books relating to electronics were lying and he has clearly admitted that the alleged house searched by the police was not in exclusive possession of accused No.44-Mohammad Akbar @ Said @ Yakub @ Vinod S/O. Ismail Chaudhari

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but goods lying in the house belonged to the landlord i.e. PW No.1138-Gulam Husen Abdurashid Pathan.

12.78. It is pleaded that the trial Court erred in relying on the evidence of PW No.1110-Jignesh Himmatlal Shah to the extent that accused No.43-Anik while he was when in police custody, on 28.11.2008, had pointed out along with Accused No.44-Akbar, the premises situated at River-view Society, Surat. However, the cross-examination indicates that it was a joint panchnama, the accused have not disclosed before panchas that they were ready to show a place and accordingly the accused led the police and panchas to River-view Society, Surat. However, the cross-examination indicates that they did not enter the house and had pointed out the premises from outside the society from a distance and that the panchnama did not contain the number of premise.

12.79. It is pleaded that the trial Court erred in relying on the panch witness, PW No.1108-Abhishek Shukla, who is the pointing panchnama's panch of petrol pump and plastic container shop alleged to have been shown by accused No.43-Anik. It is pleaded that this has no relevancy with the bomb plantation at Surat and the bomb blast at Ahmedabad. Even otherwise, as per the cross-examination, no documentary evidence was collected from these two places and panch was a tutored stock panch. The panch witness has not identified the accused in the Court and no TIP was held by the I.O. for the persons of petrol-pump or plastic container shop so as to strengthen the prosecution's case.

12.80. It is pleaded that the trial Court erred in relying on the purchase of kinetic scooter as there is no relevancy of purchase of two-wheeler in the bomb plantation at Surat and Ahmedabad. Therefore, PW

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No.1109-Vikash Babubhai Bhoi, PW No.1113-Maheshkumar Manubhai Vadgama and PW No.1129-Bhavesh Bhupatbhai Thakkar had no relevancy with the present offence for which accused had been charged.

Evidence and role against accused No.46-Mohammad Naushad Mohammad Irshad Saiyed (Appellant No. 7)

12.81. Official Date of arrest of accused No. 46: Dt. 05.01.2009 in Surat Bomb plantation case II-CR No. 176/08 Kapodara Police Station, Period of remand: Dt. 05.01.2009 to 05.02.2009 at Surat and arrested in Shahibaug Police Station case on Dt. 06.02.2009 and under police custody up to Dt. 05.03.2009 in different cases of Ahmedabad and arrested in Kalol P.S. on 15.06.2009

12.82. It is pleaded that from the evidence led during trial the Accused No.46-Mohd. Naushad Saiyed, while he was in police custody, had pointed out a house situated at River View Society, Surat along with co-accused No.47-Ahmed Bawa vide Panchnama Exh.No.8529. Moreover, the evidence laid by the prosecuting agency states that from the page of Guest Register of Hotel Abhilasa Tourist Home situated at Konnoor, Kerala, it appears that the accused stayed at the said hotel by giving fake name and signed it with fake name and therefore, the hand-writing expert confirmed the handwriting of the accused No.46 with the specimen and disputed signature. The trial Court erred in appreciating the aforesaid evidence while convicting accused No.46 for the following reasons that the alleged panchnama Exh.No. 8529 is drawn in the nature of joint panchnama as accused Nos. 46 and 47 allegedly pointed the place of River View Society and the cross-examination of panch Witness No. 458 Deepak Ramchandra Mali indicates that first time he was called on 29.08.2008 and a panchnama was drawn to the effect that one

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Jayesbhai Patel the owner of a shop 'Kamala Hardware' produced one bolt and nut which was recovered. It was a recovery panchnama at Exh.No. 2814 not implicating any accused or admitting that either accused Nos.46 or 47 had purchased the muddamal nut and bolt from his shop.

12.83. It is pleaded that this witness did not state anything about pointing out of the joint panchnama by accused Nos.46 and 47 during his first deposition on Dt. 28.04.2015. However, he was recalled on Dt. 20.09.2019 and stated something about joint panchnama. The cross-examination indicates that at the time of preliminary panchnama, he had no talk with accused Nos.46 and 47 regarding their voluntariness to show the incriminating place, which was the essential requirement u/s. 27 of the Evidence Act. It is very surprising and unbelievable that this panch witness admitted that both the accused Nos. 46 and 47 belonged to Karnataka State and without any kind of confusion and without stopping or asking anyone about the address of the place, he straightaway led the police and panch witness to the alleged place situated at River View Society in Surat City. Moreover, except panchanama Exh.No. 8529, no evidence was brought on record to show that accused No. 46, at any point of time, had stayed at the house shown under this panchnama. Neither the landlord nor any independent witness has identified accused No.46 as the person who stayed at the place in River View Society, Surat. It is further pleaded that the panchanama Exh.No.8529 was drawn on Dt. 07.01.2009 and prior to this, as per prosecution case. one panchnama Exh.No. 2757 was drawn at the instance of Accused No.63 on Dt. 28.08.2008, which means that the I.O. - Mr. N.B. Parmar already had the knowledge of place allegedly shown by accused No.46 under panchnama Exh.No. 8529.

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12.84. It is pleaded that the trial Court erred in relying upon the evidence of PW No. 1155-Mr. N.B.Parmar with respect to his collecting the page of Hotel Abhilasha at Kunnoor, Kerala and his evidence regarding collecting the specimen signature of Accused No. 46 for the purpose of sending it to FSL for getting the handwriting expert's opinion for the reason that the prosecuting agency had not examined the panch witnesses in whose presence the page of Hotel Abhilasha was allegedly recovered vide Panchnama Exh.No. 8531. It is pleaded that even the panchas of panchnama Exh.No.8532 were not examined during the trial to the effect that the specimen hand-writings were collected. Even the I.O. - PW No.1155 admitted in his cross-examination that during his investigation he did not find any natural hand-writing of accused No.46. Therefore, at the same time, the Ld. Judge erred in accepting the opinion of FSL Expert vide Exh.No.7984. In light of the above evidence of I.O. and as held by the Hon'ble Supreme Court, it is pleaded that the opinion of Hand-writing Expert is a weak evidence in nature in the absence of other corroborative evidence. It is pleaded that no person or employee of Hotel Abhilasha was examined during the trial to show that accused No.46 had stayed at the said hotel or had identified accused No. 46 as the guest who had allegedly stayed at this hotel.

<u>Evidence and role against accused No.59-Mohamamd Ansar Abdurazak Muslim (Appellant No. 8)</u>

12.85. Official Date of Arrest of accused No. 59: Dt. 27.07.2009, Period of remand: Dt. 27.07.2009 to 17.08.2009 and in Surat cases from 07.09.2009 to 10.09.2009.

12.86. It is pleaded that from the evidence led during trial by the prosecuting agency, no witness has stated anything in their respective

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deposition before the Court including the investigation officers regarding the involvement of accused No. 59 or about his role or evidence. However, the trial Court relied upon the alleged confessional statement of Accused No.2-Imran Ibrahim Shaikh, Accused No.21-Mehandi Hasan and Accused No.35-Rafiuddin Kapadiya u/s.164 of Cr.P.C. The confessional statements of the above said co-accused could not be believed for the reasons stated herein above in the appeal, more particularly, there is no any direct or corroborative oral evidence brought on record against Accused No. 59.

Evidence and role against accused No.66-Mohammad Safik Abdulbari Ansari (Appellant No. 9)

12.87. Official Date of Arrest of accused No.66: Dt. 05.11.2008, Period of remand: from Dt. 05.11.2008 to 08.01.2010.

12.88. It is pleaded that from the evidence led during the trial, Accused No.66-Mohd. Safik had pointed out the place of Halol camp under panchnama Exh.No.7252 on 24.11.2009 and the evidence of PW No. 1105-Idrish Gulabsha Fakir and the confessional statement of Accused No. 35-Rafiuddin Kapadiya.

12.89. It is pleaded that the trial Court has erred in appreciating the evidence of PW No.1068-Pragneshbhai Govindbhai Rajput for the reason that the cross-examination of the aforesaid witness indicates that he is a tutored and selected panch, who was specially called by the police for signing the panchnama; that the cross-examination of this witness indicates that he did not keep any record regarding the conversation that allegedly took at the time and during the panchnama between the police, accused and other persons. The police did not supply him the detail of arrest of accused and details of his involvement in the

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offence for which he was booked and since when he was under police remand; that the cross-examination of this witness further indicates that the places mentioned in panchnama and in his disposition like, Khundpir Dargah, Ek Minar Masjid, Helical Vav, Kabutarkhana and Mahadev Temple, etc. were not properly and correctly described by him and the aforesaid places, according to panch witness, they had hardly stayed there for two minutes time. It indicates that deposition was given after he was tutored by the police. It is at the same time the panch witness, who is doing garage work on footpath, was dictating details of panchnama to ACP -Mayur Chavda seems absolutely unbelievable and that it is pertinent to note that prior to Date 24.11.2009 it has come on record that several I.O.s like Usha Rada, V.R.Toliya and R.V.Asari had visited the same places with the same details narrated in panchnama and have drawn the panchnamas, meaning thereby, the above places were within the knowledge of A.C.P. - Mayur Chavda who was exchanging the materials of investigation with above said Investigation Officers.

12.90. Moreover, the panchnama Exh.7252 is a panchnama, but in the form of confessional statement of the accused while in police remand, which is barred u/s 24 and 25 of the Indian Evidence Act.

12.91. It is pleaded that the trial Court erred in relying upon the evidence of PW No. 1105-Idrish Gulabsha Fakir for the reason that the said witness had clearly deposed in his evidence at page No.10 Para Nos.10, 13 and 14 that whenever the police visited the Dargah, he did not give the name of any accused person but he was informed by the police that the particular person / alleged accused brought with them had stayed at the Dargah and therefore, he came to know about it. Moreover, this witness admitted in his cross-examination that he did not have any occasion to talk with any person / accused who had allegedly stayed at

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the Dargah during the period - January 2008 and therefore, obviously, he had not declared the presence of any accused by name and therefore, he could not identify any person saying that he stayed at the Dargah. Even no independent witness or three alleged chance witnesses, i.e. PW Nos. 972, 981 and 1067 had not deposed about the presence of accused No. 66 at the Halol camp or had identified the accused in any TIP.

12.92. It is pleaded that in the absence of any independent evidence the Ld. trial Judge ought to have considered the submissions made on behalf of accused that the evidence u/s.27 of the Indian Evidence Act is quite weak evidence in the absence of other independent cogent and conclusive evidence.

12.93. It is pleaded that the trial Court erred in relying upon the alleged confessional statements of Accused No.35 to the effect that the Ld. Judge himself had disbelieved and discarded the confessional statement of accused No. 35 vide Exh.No. 8631 in his impugned judgment and order at page No. 6579.

<u>Evidence and role against accused No.74-Mohammad Abrar Babukhan Maniar (Appellant No.10)</u>

12.94. Official Date of Arrest of accused No. 74: Dt. 30.05.2012, Period of Remand :- from Dt. 30.05.2012 to 04.07.2012.

12.95. It is pleaded that from the evidence led during the trial against Accused No.74-Abrar Maniar - (1) he had pointed the place of Halol camp under the panchnama Exh.No.6528 on 11.06.2012, (2) the evidence of two chance witnesses, PW Nos.972 and 981 identified in TIP, (3) the evidence of PW No.1105-Idrish Gulabsha Fakir and (4) the confessional statement of accused No.35-Rafiuddin Kapadiya.

12.96. It is pleaded that the trial Court erred in appreciating the

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evidence of PW No.914 Mukund Jivanlal Jadav for the reasons that the cross-examination of the aforesaid witness indicates that he is a tutored and selected panch, who was specially called by the police for signing the panchnama; that the cross-examination of this witness indicates that, he did not keep any record regarding the conversation allegedly took at the time and during the panchnama between the police, accused and other persons. Police did not supply him the detail of arrest of accused and details of his involvement in the offence for which he was booked and since when he was under police remand and that it is pertinent to note that prior to Date 11.06.2012 it has come on record that he himself visited the and drawn panchanama of the same facts, meaning thereby the above places were within the knowledge of Shree Mayur Chavda A.C.P.

12.97. Moreover, the panchnama Exh.6528 is a panchnama, nothing but in the form of confessional statement of the accused while in police remand, which is barred u/s 24 and 25 of the Indian Evidence Act.

12.98. It is pleaded that the trial Court erred in relying upon the evidence of PW No.1105-Idrish Gulabsha Fakir for the reasons that the said witness had clearly deposed in his evidence at page No. 10 Para No.10, 13 and 14 to the extent that whenever police had visited the Dargah, he did not give the name of any accused person but he was informed by the police that, the particular person/ alleged accused brought with them was stayed at Dargah and therefore he came to know.

12.99. Moreover, this witness admitted in his cross-examination that, he did not have any occasion to talk with any person /accused allegedly stayed at Dargah during period January 2008, therefore obviously he had not declare the presence of any accused, by name and therefore he could not identify any person saying that he stayed at Dargah.

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12.100. Even two alleged chance witnesses, i.e. PW Nos.972 & 981 had not deposed the correct and full name of accused No. 74 while identifying the accused No. 74 in there respective Test Identification Parade.

12.101. It is pleaded that the so-called camp was held in January 2008, the aforesaid witnesses have allegedly identified the accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar in the year 2012, i.e. after about 04 years and the nature of their evidence, particularly the cross-examination, indicates that when they have seen some persons near tent, some persons stood in a circular form and they had no any occasion to interact with them. Therefore, the reasons discussed here in above regarding the evidence of chance witnesses does not inspires confidence or truthfulness of their respective evidence.

12.102. That in the absence of any independent evidence, the Ld. Judge ought to have considered the submission made on behalf of accused that the evidence u/s.27 of the Indian Evidence Act is quite weak evidence in the absence of other independent cogent and corroborative evidence.

12.103. It is pleaded that the trial Court erred in relying upon the alleged confessional statements of Accused No.35 to the effect that the Ld. Judge himself had disbelieved and discarded the confessional statement of accused No. 35 vide Exh.No. 8631 in his impugned judgment and order at page No. 6579.

12.104. It is pleaded that Exh.9248 given by Accused No. 68 during his further statement u/s.313 is not admissible in evidence for the reasons; (1) These documents are not a part of charge sheet or not collected under any panchnama etc. (2) No one was examined to prove

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these documents and it is a settled law that mere exhibiting a document does not amount to considering the same as genuine, and even otherwise, from where these documents were collected is also not clear as no date, no signature or any source is mentioned on the documents. (3) These documents are Xerox copies, so it is not a admissible evidence. (4) Immediately an application to de-exhibit the above documents was given by Accused No. 68. Stating that by mistakenly those documents were produced by him, therefor even no reliance could be placed. It is therefore pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of any of the accused persons in commission of the offence beyond all reasonable doubts.

CRIMINAL APPEAL No.1710 of 2023

12.105. The present appeal is filed by the appellant-original accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari being aggrieved by judgment and order of conviction dated 08.02.2022 and order of sentence dated 18.02.2022 passed by the Special Designated Judge for Speedy Trial of Serial Bomb Blast Cases Court, City Sessions Court, Ahmedabad in Sessions Case No.38 of 2009. By the impugned judgment and order, the appellant-accused was awarded life imprisonment.

Submissions of learned Advocate for the appellant:

12.106. Learned Advocate Mr.S.M.Vatsa with learned Advocate Mr.Arjun Joshi appeared for the appellant-accused.

12.107. It is pleaded that the trial Court has failed to consider that prosecution against the Appellant is not maintainable. Statutorily,

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sanction under the Unlawful Activities Prevention Act, 1967 ("UAPA") is void, untenable and bad in law in the absence of an independent review by a High-Powered Committee as contemplated therein, which is the case here.

12.108. It is pleaded that the statement of a co-accused can be pressed into service only in circumstances where other evidence is available and such statement lends assurance. It is also settled that grave suspicion does not take the place of proof.

12.109. It is pleaded that there is no direct evidence linking the Appellant with the incident. Admittedly, a charge of conspiracy is to be supported by direct or circumstantial evidence. In the present case, the Ld. trial Court has relied on the retracted Section 164 of Cr.P.C. statement of a co-accused, which is inadmissible under Section 10 of the Evidence Act 1872, as held by the Supreme Court in ***Mohd. Khalid v. State of West Bengal reported in (2002) 7 SCC 334*** that a co-accused / co-conspirator's post-arrest statement cannot be regarded as one made in reference to their common intention and cannot be understood as a proven circumstance.

12.110. It is pleaded that appellant's mere alleged presence at the alleged terrorist camps and that too, solely on the basis of a co-accused confessional statement, cannot be the ground to prosecute the appellant.

12.111. It is pleaded that the impugned judgment does not even refer or rely upon any legal evidence to show involvement in either the Ahmedabad case or the Surat case.

12.112. It is pleaded that the impugned judgment errs in convicting the Appellant, when, admittedly, the prosecution has failed to put the present Appellant to any dock-identification during trial or even a Test Identification Parade as an aid to investigation of trying to confirm

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whether the Appellant was even present at the alleged terrorist camp.

12.113. It is pleaded that the impugned judgment errs in law and fact as the sanction accorded against the Appellant under Section 196 of the Code of Criminal Procedure; Section 45 of UAPA and Section 7 of the Explosives Substances Act is without due application of mind.

CRIMINAL APPEAL NO. 1710 of 2022

12.114. The present appeal is filed by the appellants-accused No.4-Samsuddin S/O Shahabuddin Shaikh, No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari, No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, No.8-Yunus S/O Mohammad Mansuri, No.9-Kamruddin S/O Chandmohammad Nagori, No.10-Aamil Parvaz S/O Kaji Saifuddin Shaikh, No.11-Sibli @ Sabit S/O Abdul Karim Muslim, No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori, No.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla, No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri, No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh, No.16-Abbas S/O Umar Sameja, No.18-Javed Ahmed S/O Sagir Ahmed Shaikh, No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri, No.31- Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh, No.36- Mohammad Arif Nasim Ahmed Mirza, No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, No.39- Zishan Ahmed @ Zishan Isan Ahmed Shaikh, No.40- Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli, No.42-Mohammad Shakil Yaminkhan Luhar, No.44- Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari, No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, No.47- Ahmed Bava @ Abu

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S/O Abubakr Barelvi, No.49- Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim, No.50- Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan, No.60- Saduli @ Hariz S/O Abdul Karim Muslim, No.69-Amin @ Raja S/O Ayub Nazir Shaikh, No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed and No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan against judgment and order passed by the The Special Designated Judge for Speedy Trial of Serial Bomb Blast Cases Court, City Sessions Court, Bhadra, Ahmedabad City in Sessions Case No. 38 of 2009 and connected cases on dated 08.02.2022 and 18.02.2022.

12.115. Learned Advocate Mr.Senior Advocate Mr.Mihir Desai with learned Advocate Ms.Sanskruti Yagnik appeard for accused Nos.4, 5, 6, 8, 15, 18 and 78, learned Advocate Mr.Hriday Buch with learned Advocate Mr.Khalid G.Shaikh appeard for accused No.9, 10, 11, 12, 42, 44, 60 and 69, learned Advocate Mr.S.M.Vatsa with learned Advocate Mr.Arjun Joshi appeard for accused No.13 and 45, learned Advocate Dr.Yug Chaudhry with learned Advocate Ms.Payoshi Roy appeard for accused No.14, 16, 37 , 47 and 75, learned Senior Advocate Mr.S.Nagamuthu with learned Advocate Ms.Payoshi Roy appeard for accused No.27, learned Senior Advocate Mr.Abhay Thipsay with learned Advocate Mr.Ashutosh A.Thipsay appeard for accused No.31, 36, 38, 39, 40 and 50 and learned Senior Advocate Mr.Tejas Barot with learned Advocate Mr.Khalid G.Shaikh appeard for accused No.49

Accused-wise Discussion of evidence

12.116. It is pleaded that accused-wise evidence recorded is quite insufficient and improper to hold the guilt of accused as under:-

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Evidence against accused No. 4 Samsuddin Shahbuddin Shaikh (Appellant No.1)

12.117. Official Date of Arrest of accused No. 4: Dt. 16.08.2008, Unofficial arrest and confinement of Accused No.4: from Dt. 08.08.2008, Period of Remand :- From Dt. 16.08.2008 to 18.01.2009 and on 09.02.2009 arrested in Kalol P.S.

Alleged role of the Accused No. 4

12.118. It is pleaded that from the evidence led during the trial against accused No.4, the role of this accused is that the accused / appellant - Samsuddin Sahbuddin Shaikh had allegedly attended some meetings at Ahmedabad and had also given speeches in the meetings.

12.119. It is pleaded that during trial, prosecuting agency examined PW No. 957, 1041, 1097, 1141 as witnesses and PW No. 596, 809 as panch witnesses and also wrongly relied up on the alleged confessional statements of accused No. 2, 24 and 35. It is pleaded that the trial Court ought to have not believe the evidence of aforesaid prosecution witnesses for the reasons that PW No. 957 Zakirhusen Abdul Jabbar Qureshi, an accomplice and PW No. 1141 Ayaz Razaqmiya Saiyed an Approver should not believe for the reasons pleaded earlier in this appeal memo. PW No. 809 Nasruddin Ismail Shaikh and PW No. 596 Mahesh Kantilal Sumara, being panch witnesses in the light of their respective cross-examination as they emerged as the tutored and unnatural, unbelievable. Even otherwise so-called Electricity bill recovered during Panchnama Exhibit-5452 is also not suggest that this house was belong to any Yakub Memon.

12.120. It is pleaded that as per prosecution case, a ‘Nana’ (Father of mother), namely, Husenbhai Shaikh, was examined as DW No.1, who

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had categorically deposed that no meeting at any point of time was held at his residence, as claimed by the investigating agency. Even considering the area of his house and the number of his family members, there was no possibility to have any meeting at his house, that too, for constant three days, involving more than 18 persons. The most important aspect is that this defence witness was cited as a prosecution witness in the charge-sheet but, he was dropped apprehending the contrary effect to the prosecution. (Reference PW No. 17 Sr. No. 535)

12.121. It is pleaded that the trial Court erred in concluding that as per the Confessional Statement of accused No.2-Imran Shaikh vide Exhibit No. 8619, the accused No.4 was present at Halol and Vagamon camps. However, upon reading Exhibit No. 8619, no where any mention is made about accused No.4 or about the presence of accused No.4 at the above-stated camps.

12.122. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1097-Mehtab Ibrahim Shaikh for the reasons that PW No.1097 had clearly deposed in his examination in chief that he had seen Accused No.4-Samsuddin and other persons in one meeting, which was a religious program and no illegal conversation was discussed and after the meeting, he was not in contact of any person. As per his cross-examination, in such religious meeting, he did not ask to do any illegal activity or did not find any participant of such meeting doing any illegal act. It appears from his examination-in-chief and cross-examination that in the so-called meeting of SIMI persons, except religious discussions regarding Quran and Hadis, no unwarranted discussion took place.

12.123. It is pleaded that the incidents of serial bomb blasts took place on 26.07.2008, the statement of PW No.1097 was recorded on

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27.02.2009, i.e. after about 09 months of incident. The cross-examination indicates that as he did not find anything wrong in the religious meetings, he did not inform the police or any person up to 27.02.2009. Even he did not identify accused No.37-Kayamuddin who allegedly came to him to hire the house. However, he identifies accused No.4-Samsuddin to whom he met once in a so-called meeting, as per his deposition. The Ld. Judge, even otherwise, erred in appreciating the evidence of other witnesses as discussed herein above to connect the accused No.4 showing that he attended the meetings at Ahmedabad and other places. It is pleaded that accused No.4-Samsuddin had offered his false implication in the case vide his F.S. Exhibit-126 u/s.313 of Cr.P.C. The Ld. Judge has not assigned any reasons in his judgment as to why this explanation and evidence of DW No.1-Husenbhai should not be believed. It is pleaded that no role is attributed to this accused stating that he actively participated in any manner, like hiring the premises, preparing the bombs, shifting the bombs, placing the bomb at any place, etc. It is, therefore, pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of Accused No.4 in the commission of the offence beyond all reasonable doubt.

Evidence against accused No. 5 Gyasuddin Abdul Alim Ansari (Appellant No.2)

12.124. Official Date of Arrest of accused No.5: Dt. 16.08.2008, Unofficial arrest and confinement of the Accuse No.5: from Dt. 09.08.2008, Period of Remand: Dt. 16.08.2008 to 04.12.2008 and 19.01.2009 and 28.01.2009

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Alleged role of Accused No. 5**:**

12.125. It appears from the evidence led during the trial against accused No.5 that the role of the accused is that he attended one meeting at Ahmedabad and Vagamon (Kerala) respectively. The prosecuting agency relied upon the PW No.957-Zakir, an accomplice and the confessional statement of Accused No.2-Imran.

12.126. It is pleaded that except the oral evidence of PW No.957-Zakir, no other independent evidence has been led by the prosecuting agency against accused No.5. PW No.957 has deposed that accused No.5- Gyasuddin had allegedly attended meetings held at different places in Ahmedabad. However, it is pleaded that PW No.957, being an accomplice, this witness should not be believed.

12.127. It is pleaded that the confessional statement of accused No.2 should not be believed for the reasons stated while discussing the submission regarding his statement u/s.164 of Cr.P.C. That, except this two evidence, i.e. oral evidence of accomplice and confessional statement of co-accused, nothing is brought on record in the form of conclusive evidence to connect accused No.5 with the crime. It is pleaded that due to his false implication at Vagamon, the Ld. trial Judge of the Sessions Court, Ernakulam, Kerala, acquitted accused No.5.

12.128. It is pleaded that no role is attributed to this accused stating that he actively participated in any manner, like hiring the premises, preparing the bombs, shifting the bombs, placing the bomb at any place etc. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of accused No.5-Gyasuddin in the commission of the offences beyond all reasonable doubt.

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Evidence against accused No.6 Mohd. Arif Mohd. Iqbal Kagzi (Appellant No.3)

12.129. Official Date of Arrest of accused No. 6 :-Dt. 16.08.2008, Unofficial arrest and confinement of Accused No.6: from Dt. 06.08.2008, Period of remand: Dt. 16.08.2008 to 20.12.2008 and 19.01.2009 and 09.02.2009.

Alleged role of the Accused No. 6:

12.130. It appears from the evidence led during the trial against accused No. 6 that the role of the accused is that he attended meetings at Ahmedabad, Halol and Vagamon (Kerala). To substantiate the alleged role played by Accused No.6-Mohd Arif, the following evidence emerged during trial.

i) PW No.972-Ramka Devkarnbhai Kesariya, PW No.981-Pravinbhai Hamirbhai Kathiriya and PW No.1067-Ambalal Vechatbhai Bariya, being the so-called chance witnesses. Evidence of PW No.957-Zakir Qureshi and PW No.1141-Ayaz, Approver. Evidence of PW No.571- Executive Magistrate, before whom PW Nos.972, 981 and 1067 allegedly identified the accused as the accused who were present at Halol.

ii) PW No.972-Ramka Devkarnbhai Kesariya, PW No.981-Pravinbhai Hamirbhai Kathiriya and PW No.1067-Ambalal Vechatbhai Bariya.

12.131. It is pleaded that the aforesaid three witnesses appeared as chance witnesses, who had allegedly seen 15 to 20 persons once at Halol during the period 13.01.2008 to 15.01.2008 in a mob who stood in a circle. It appears that on 27.08.2008 the investigating officer found them

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near Helecal Step-well (vav) and on his inquiry, they told that they have seen 15 to 20 persons as stated herein-above near the adjoining forest. Therefore, their statements were recorded on 30.08.2008 stating that they have identified these accused as well as 09 other persons. Ten accused persons in one single Test Identification Parade.

12.132. It is pleaded that the cross-examinations of these three witnesses states that these witnesses are got-up and created witnesses by the investigating agency. These witnesses have no idea about the date, time, direction, distance, kilometer, etc. but even then, they tried to give date, time, year and distance. The reasons assigned by these witnesses to be chance witnesses appear absolutely unbelievable. These witnesses could not give the description of the police officer who had recorded their police statement, could not give the description of any peon or Executive Magistrate whom they had met. The distance given by these witnesses while watching 15 to 20 persons near Helical Vav seems to be about 100 to 150 meters in a mob that stood in a circle. While comparing the distance of police officer, the Executive Magistrate and peon are face to face, while the person to whom they show are at a distance of about 100 to 150 meters. The cross-examination indicates that these witnesses have no any reason to remember any of the persons in the mob or have no conversation with them. Therefore, witness PW No. 972 and 981 could not identify the accused persons in the court. Even PW No. 1067 Ambalal had identified some other accused persons who were not present at the alleged Halol camp, stood with other accused in the courtroom.

12.133. It is pleaded that the oral evidence of these chance witnesses was not corroborated with other evidence like FSL reports, which does not shows any recovery of explosive substance.

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12.134. It is pleaded that the evidence of chance witnesses and evidence of accomplice and approver could not be believed for the reasons and grounds so stated. It is pleaded that except the so-called attendance at Halol, Vagamon and Ahmedabad meetings, there is no any evidence or accusation against Accused No.6 to the effect that he actively participated to commit the offences like hiring any premises, preparing bomb, planting the bomb or purchase any material for making the bombs etc. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of Accused No.6-Arif Kagzi in the commission of the offences beyond all reasonable doubt.

Evidence against accused No.8-Yunus Mohammadbhai Mansuri (Appellant No.4)

12.135. Official Date of Arrest of accused No.8: Dt.16.08.2008, Unofficial Arrest and confinement of Accused No.8: from Dt. 09.08.2008, Period of Remand: Dt. 16.08.2008 to 18.01.2009 and 09.02.2009 in Kalol P.S. case.

Alleged role of the Accused No. 8:

12.136. It appears from the evidence led during the trial against the accused No. 8 that the role of this accused is that he attended the meeting at Halol and during the remand period, he had pointed out the so-called house situated at Rakhiyal area of Ahmedabad from where the FSL officers have scratched the lime (paint) from wall and had sent it for FSL analysis. This accused had purchased some utensils from one shop, which was allegedly found from the house in Al-mohammadi society at Danilimbda, Ahmedabad.

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12.137. To prove the role of accused No.8-Yunus, the prosecuting agency have examined PW No.972-Ramkabhai, PW No.981-Pravinbhai and PW No.1067-Ambalal Vechat, PW No.938-Mohammad Faruk, an utensil seller and Panch witnesses - PW Nos.817 & 823 and I.O., PW No. 1154-Ms.Usha Rada. The trial Court has erred in relying upon the evidence recorded during the trial so as to convict accused No.8-Yunus Mansuri for the reason that PW Nos.1067, 972 and 981 are posed as the so-called chance witnesses while examining them before the Court. These witnesses are not believable for the reasons and grounds stated herein-below.

12.138. It is pleaded that the evidence of PW No.938-Mohd. Faruk Memon, a utensil vendor, cannot be believed considering his cross-examination inasmuch as the utensils which he had sold and was selling were quite common utensils and there were no specific signs or marks of his shop on the utensils and no bills for selling the so-called articles were produced or shown to him.

12.139. It is pleaded that PW No.817-Chirag is examined by the prosecuting agency to show that when accused No.8 was in police custody. He had pointed out the place, i.e. his house, from where in the presence of FSL officials, some muddamal and lime scratches were taken from the wall of his house. However, the FSL report Exhibit-5957 does not support the prosecution case, as it is negative in nature. No presence of any explosive substance was found from the house of accused No.8 as alleged.

12.140. It is pleaded that the trial Court has erred to appreciate the evidence pleaded by the accused during his further statement vide Exhibit-130 u/s.313 of Cr.P.C. to the effect that the place which was allegedly searched and some muddamal was recovered under

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panchnama Exh.5488, situated at Rakhiyal, Ajit Mill area, Ahmedabad does not belong to accused No.8. The documents produced by accused No.8 vide Exh.9221 like his Election Card, Birth Certificates of his children and other documents prove his residence at Masjid Gali, Near Kalupur Tower, Ahmedabad, which is almost a different area and at a distance of about four to five kilometers from Rakhiyal area.

12.141. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of Accused No.8-Yunus Mansuri in the commission of the offences beyond reasonable doubt.

Evidence against accused Nos.9 and 10 Kamruddin Chand Mohammad Nagori and Amil Parvaz Kazi Saifuddin (Appellant No. 5 & 6)

12.142. Official Date of Arrest of accused Nos.9 and 10: Dt. 23.08.2008. Both the accused were brought by transfer warrant from Indore Court on Dt. 23.08.2008, Period of Remand: Dt. 23.08.2008 to 18.01.2009 and 02.08.2009 in Kalol P.S. case.

Alleged role of the Accused No. 9 and 10:

12.143. It appears from the evidence led during trial against both the accused that both have attended the meetings of Halol camp and Vagamon camp (Kerala) and are members of SIMI. To prove the above role, the prosecution has examined PW Nos.972, 981 and 1067, the witnesses who have been posed as so-called chance witnesses. The prosecution has examined PW No.848-Vasantbhai, Scientific Officer, FSL, Gandhinagar for SDS test (Suspect Detect System).

12.144. It is pleaded that the trial Court erred in relying upon the oral evidence of PW No. 972, 982 and 1067 posed as chance witnesses for

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the reasons and the ground stated here in above in this appeal memo. It is pleaded that the trial Court has erred in relying upon the oral evidence of PW No. 848-Vasantbhai, Scientific Officer, FSL Gandhinagar. Considering his cross-examination, it appears that SDS is the name of a company based in the country - Israel and the said company was producing machines for testing, named SDS. The said Company is close down. The witness has admitted that before undertaking test of the accused through this machine, no written consent was obtained. Further, this witness had also not made any inquiry from the accused to the extent that, "since when they were in police remand and whether any mental and physical tortures were subjected to them". It is also admitted fact that prior to the so-called SDS test, he had not obtained the medical fitness certificate of the accused persons. The witness has admitted that the so-called SDS test is not 100% perfect and the Government of India does not approve this test. The witness has admitted that before conducting the test, he had made discussion with the investigating officers, meaning thereby, that the test was not transparent and no notes were prepared about the discussion. Considering the cross-examination, no reliance could be placed upon the evidence of this witness.

12.145. It is pleaded that the trial Court has failed to appreciate the Judgment cited by the defence during the arguments, reported as 2020 Cr L J 3085 (Gujarat High Court) Nasimben Vs State of Gujarat, wherein, it is held that, "No person accused of any offence shall be compelled to be a witness against himself". Thus, the test itself is violative of Article 20(3) of the Constitution of India.

12.146. It is pleaded that no role is attributed to accused Nos.9 and 10 to the effect that they had either prepared the bomb or had planted the bomb or were present at the time of blast. It is further pleaded that since

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March 2008 they were in judicial custody at Indore Jail and the serial bomb blast took place on 26.07.2008. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of Accused No.9-Kamruddin Nagori and No. 10-Aamil Parvez beyond reasonable doubt.

Evidence against Accused No. 11-Shibli Abdul Karim Muslim (Appellant No. 7)

12.147. Official Date of arrest of accused No.11: 23.08.2008, Was brought by transfer warrant from Indore Court on Dt. 23.08.2008, Period of remand: from Dt. 23.08.2008 to 18.01.2009 and 02.08.2009 in Kalol Police Station Case.

Alleged role of the Accused No. 11:

12.148. It appears from the evidence led during the trial against the accused that he attended the meetings at Ahmedabad and Vagamon camps. To prove the above role, the prosecuting agency relies upon the evidence of PW No.1141, an approver and PW No.848-Vasant Patel, Scientific Officer, FSL Gandhinagar.

12.149. It is pleaded that the trial Court erred in relaying upon the evidence of PW No.1141 - Approver for the reasons and grounds stated hereunder. As per the evidence of Approver, he was present in one meeting at Ahmedabad at the House of DW-8. However, this meeting is highly doubtful and he also erred in identifying him before the Court during his deposition. The Ld. trial Judge erred by holding that he was present in the meeting, even though it is well settled that benefit of doubt is always given to accused, especially when it was a case of circumstantial evidence.

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12.150. It is pleaded that the trial Court erred in relying upon the evidence of PW No.848-Vasan Patel. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of Accused No.11-Shibli in commission of the offences beyond reasonable doubt.

Evidence against Accused No.12-Safdarhusen Jahirulhusen Nagori (Appellant No.8)

12.151. Official Date of Arrest of accused No.12: 23.08.2008, Accused was brought by transfer warrant from Indore Court on Dt. 23.08.2008, Period of Remand: Dt. 23.08.2008 to 18.01.2009 and 14.06.2009 in Kalol Police Station case.

Alleged role of the Accused No. 12:

12.152. It appears from the evidence led during trial against the accused that he had attended meetings of Vagamon Camp, Halol Camp and various meetings of Ahmedabad City. It is also alleged that in the meetings, he had delivered the speeches and had thereby, provoked other attendees and had asked them to fight and be ready for 'Jehad'.

12.153. To substantiate the aforesaid allegations, the prosecution has examined PW Nos. 972, 981 & 1067 (Three Chance Witnesses), PW No. 1141-Ayaz Saiyed (an Approver), PW No.1063, Panch witness of Infinity Cyber Café, Bhuj, PW No.1074, Panch witness of recovery of Hard disc from the computer of Infinity Cyber Cafe in the presence of owner Mohd. Yunus Sumara, PW No.571, Executive Magistrate, before whom three chance witness had allegedly identified accused No.12 and PW No.1073- Mohd Yunus who had allegedly identified Accused No. 12, PW No.1097- Mehtab Ibrahim Shaikh who had identified accused No.12

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as a person who had remained present at the Surat meeting.

12.154. That the Ld. Judge has erred in appreciating the evidence against accused No.12 for the reason that PW Nos. 972, 981 and 1067 are chance witnesses of Halol camp and they cannot be relied upon. It is pertinent to state that accused No.12 is having white-beard and his appearance is totally different from others, especially different from the 10 accused who are at Bhopal Central Jail. So, it very easy for the prosecuting agency to teach / tutor the witness in advance about his figure and therefore, he was able to be identified by the so-called chance witnesses.

12.155. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1073-Mohd. Yunus, owner of Infinity Cyber Cafe, Bhuj because PW No.1073 and two panch witnesses, PW Nos.1063 and 1074 had no connection with the present serial blast case as the so called recovery of Register and Hard-disc of Computer does not state any incriminality with the crime as alleged. Even otherwise, their respective cross-examination does not inspire the confidence so as to believe them.

12.156. It is pleaded that the trial Court erred in relying upon the evidence of PW No.848-Vasant Patel. It is pleaded that the trial Court ought not to have believed the confessional statements of Accused Nos.2, 21, 35 and 76. It is pleaded that the alleged delivery of lectures does not show that the lectures were delivered for any purpose to hatch the conspiracy or to get ready attendees for the serial bomb blasts at Ahmedabad or bomb plantations at Surat.

12.157. It is pleaded that PW No.1097-Mehtab Ibrahim Shaikh could not be believed. It is further pleaded that the trial Court erred in appreciating the evidence of PW No.900-Himesh Pravinchandra Mehta,

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the panch witness of pointing out Panchnama Exh.6443 at the instance of accused No.35, stating that the accused Nos.2, 9, 10, 12, 14 and 37 were present at Halol camp. However, it is a confession of accused No.35 before the panch witness while he was in police custody and the important fact, which emerges from the impugned judgment and order is that the Ld. Judge has not accepted the confessional statement of accused No.35 as legal and voluntarily. Moreover, PW No.900 did not refer to the name of accused No.12 in his deposition. Even otherwise, as pleaded earlier, the confession of accused u/s.27 of the Evidence Act is not admissible in evidence.

12.158. It is pleaded that no role is attributed to accused No.12 to the effect that he had either prepared the bomb or had planted the bomb or was present at the time of blast. It is pleaded that since March 2008 he was in Judicial Custody at Indore Jail and the serial bomb blast took place on 26.07.2008.

12.159. It is pleaded that there no evidence or accusation against Accused No.12 to the effect that he actively participated to commit the offences, like hiring any premises, preparing bomb, planting the bomb or purchase any material for making the bombs etc.

12.160. It is pleaded that Exh.9248 given by Accused No.68 during his further statement u/s.313 is not admissible in evidence for the reasons; (1) This document is not part of charge-sheet nor is collected under any panchnama, etc. (2) No one was examined to prove this document and it is a settled law that mere Exhibiting a document does not amount to admitting its genuineness and even otherwise, from where these documents are collected is also not clear. There is no date, no signature nor any source is mentioned in the documents. (3) These documents are Xerox copies so it is not admissible evidence. (4)

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Immediately, an application to de-exhibit the above documents was given by Accused No.68 stating that by mistake those documents were produced by him. Therefore, no reliance could be placed on them. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of Accused No.12-Safdarhusen in the commission of offences beyond reasonable doubts.

Evidence against Accused No.13-Hafizhusen Tajjudding Mulla (Appellant No.9)

12.161. Official Date of Arrest of accused No.13: 23.08.2008. This accused was brought by transfer warrant from Indore Court on Dt. 23.08.2008, Period of Remand: from Dt. 23/08/2008 to 18.01.2009 and 29.07.2009 in Kalol Police Station case.

Alleged role of the Accused No. 13:

12.162. It appears from the evidence led during the trial against the accused that he had attended meetings at Vagamon camp and he had undergone Spectrography test. It is pleaded that the trial Court erred in relying upon the evidence of only panch witness examined against this accused, PW No.1148-Josef Joyson vide panchnama Exh.8254. However, the cross-examination of this panch witness states that he was informed for panchnama by the Kerala Police. He does not know Gujarati or Kannad language; he did not have any conversation with Gujarat police or the person, named Hafizhusen, i.e. Accused No.13. It appears that he has simply signed the panchnama without any activity or procedure as stated therein.

12.163. It is pleaded that PW No.1163-M.J. Chavda, I.O., who

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allegedly took Accused No.13 to Vagamon, Kerala does not give any account to the effect as to where Vagamon is situated in Kerala state?, from which place of Ahmedabad he went to Kerala? and to what place?, even he could not state as to how he went to Kerala, whether by air, railway or road?, he had no idea about Vagamon as to whether it is a tourist place or not? Coupled with this evidence, it can be said that the panchnama Exh.8254 is got-up and concocted in nature.

12.164. It is pleaded that the trial Court has erred in relying upon the evidence of PW No.848-Vasant Patel. It is pleaded that the trial Court erred in holding in para No. 89 at Page No.6488 that PW No. 981-Pravin Hamir Kathiriya had identified accused No.13-Hafiz Mulla in the Test Identifiacation Pared hold by PW No.571-R. S. Solanki, Executive Magistrate. However, the evidence of PW No.571, Para No. 13 at Page No.19, 20 indicates that PW No.981-Pravin Kathiriya had not identified the accused No.13-Hafiz. It is pertinent to state that even it was not the prosecution case that accused No.13 was sent for TIP before the Executive Magistrate and it is also not the case of prosecution that he attended the alleged Halol camp.

12.165. The Ld. Judge erred in appreciating the evidence of PW No. 900-Himesh Pravinchandra Mehta, the panch witness of pointing out panchnama Exh.6443 at the instance of accused No.35, stating that accused Nos.2, 9, 10, 12, 14 and 37 were present at Halol camp. However, it is a confession of accused No.35 before the panch witness while he was in police custody and the important fact that emerges from the impugned judgment and order is that the Ld. Judge has not accepted the confessional statement of accused No.35 as legal and voluntary. Moreover, the PW No.900 did not refer the name of accused No.13 in his deposition. Even otherwise, as pleaded earlier, the confession of the

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accused u/s. 27 of the Evidence Act is not admissible in evidence. It is important to submit that no role is attributed to this accused No.13 to the effect that he had either prepared the bomb or had planted the bomb or was present at the time of blast. It is pleaded that since March 2008 he was in Judicial Custody at Indore Jail and the serial bomb blast took place on 26.07.2008.

12.166. That there is no evidence or accusation against Accused No.13 to the effect that he actively participated to commit offences. like hiring any premises, preparing bomb, planting the bomb or purchase any material for making the bombs etc. It is therefore pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.13-Hafiz husen in commission of the offences beyond reasonable doubts.

Evidence against accused No.14-Mohd Sajid Gulamkhwaja Mansuri (Appellant No.10)

12.167. Official Date of arrest of accused No. 14: 16.08.2008, Unofficial arrest and confinement of Accused No.14: Dt. 09.08.2008, Period of remand: Dt.16/08/2008 to 01.01.2009 and 09.02.2009 in Kalol P.S. case.

Alleged role of the Accused No. 14:

12.168. It appears from the evidence led during trial against the accused No. 4 that the role of the accused is that he attended the meetings at Halol, Vagamon (Kerala) and Surat and during the remand period, he had pointed out the so-called house at Vadodara and also the two houses at Bharuch. To substantiate the aforesaid allegations, the prosecution has examined PW Nos.981 & 1067 (two chance witnesses).

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PW No.571, Executive Magistrate before whom the chance witness had allegedly identified Accused No. 14, PW No.878-Yodgesbhai Kaysth, PW No. 894-Hitesh Patel and PW No.917-Pinkeshbhai Desai, PW No.989-Raju Gopinathan Nayar and some other witnesses. The Ld. Judge erred in appreciating and convicting the accused relying upon the evidence recorded against him for the reason that the Ld. Judge ought not to rely upon the evidence of two chance witnesses.

12.169. It is pleaded that cross-examination of panch witnesses - PW No.878-Yodgesbhai Kayasth, PW No.894-Hitesh Patel and PW No.917-Pinkeshbhai Desai does not inspire any confidence. The evidence of these three witnesses, more particularly, the evidence of PW Nos.894 and 917 does not corroborate any documentary evidence regarding ownership / occupation / possession of the premises allegedly pointed out by him while in police custody. No owner had identified accused No.14-Sajid in the trial Court as the person to whom the premise was let or permitted to be used. No independent witness surrounding the premises was examined to show that at any point of time accused No.14-Sajid was staying at the place which he allegedly pointed out.

12.170. It is pleaded that PW No.917-Pinkesh, panch and landlord of the house and PW No.1138-Gulambhai clearly admitted that the alleged house searched at Sherpura was not in exclusive possession of accused No.14 but the goods lying in the house belonged to the landlord i.e. PW No.1138-Gulambhai. Even the evidence of panch witness, PW No.878, is not supported by any independent witness or documentary evidence regarding occupation / possession of the premises allegedly used by the accused No.14. In the same way, the scientific evidence, i.e. FSL Report, does not support the prosecution case with regard to presence of any explosive substance in the house where allegedly the bombs were

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prepared to commit the offences.

12.171. It is pleaded that the trial Court ought not to have believed the evidence of PW No.989-Raju Gopinathan Nayar for the reason that he being the Manager of Hari Tourist Home, Manapattipuram had produced two pages of his Hotel Guest Register bearing page Nos.156 and 157, which does not tally with his oral testimony. This witness admitted that two pages were taken out from the Register, which was bounded with thread in the middle and was handed over to Investigating Officer - Mayur Chavda, PW No.1163, in the absence of accused. However, the pages produced by him were intact and were not torn while taking them out from the so-called Guest Register. The original Guest Register was not produced during the trial and accused No.14 did not lead I.O. to the so-called Guest House. Therefore, it appears that some blank pages of the Guest Register were given to the police which were later on misused by the investigating agency to connect the accused to show that he visited the hotel somewhere in the month of December 2007, i.e. on 13.12.2007. Even otherwise, no independent witness has deposed at any point of time that accused No.14-Sajid was seen at Vagamon camp and that during the trial, no evidence was brought on record to show that any of the witness had identified this accused as a participant of Vagamon camp.

12.172. It is pleaded that PW No.989-Raju Gopinathan does not depose that when the police from Crime Branch, Ahmedabad came in the year 2008 at Shree Hari Tourist Home, the accused No.14 was in police custody and he pointed out the hotel showing that he stayed at this hotel. Moreover, after recording the statement of PW No.989, he was not called to identify accused No.14 in the TIP. It is further pleaded that as per the deposition of PW No.1163-Mayur Chavda, at no point of

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time, accused No.14 while was he was in his custody had shown willingness to point out Shree Hari Tourist Home situated in Kerala and he even does not say that when he brought the Guest Register from Kerala, accused No.14 was in police custody. It is very surprising that I.O., PW No.1163-Mayur Chavda, at whose instance the visit was undertaken to Shree Hari Tourist Home and the pages of Guest Register were collected, indicates the name of Guest as 'Salim Shaikh' when the accused was not in his custody at Kerala.

12.173. It is pleaded that in light of the above discussion, it is clear that what is stated in the deposition of PW No.905-Kalpesh Ratilal Gajjar is a futile exercise at the Crime Branch office, Ahmedabad. The Ld. Judge erred in relying on the deposition of PW No.905 in the light of his cross-examination. Even the pages of the so-called Guest Register are not in sealed condition and looking to the cross-examination, the entire panchnama is unbelievable and there is no natural hand-writing of this accused, which was collected during the entire investigation. Therefore also, the Ld. Judge erred in relying on this evidence.

12.174. It is pleaded that the trial Court erred in appreciating and relying on the evidence of PW No.975-Rizwan Yasinbhai Shaikh for the reason that the details of panchnama u/s.27 and the deposition of PW No. 975 indicates that it is nothing but a confession of the accused while in police custody regarding his so-called involvement, except he pointed our two places i.e. 1) a premise situated at Sherpura, Bharuch containing a board "General Electric Works" and another premise at Lukman Park, Bharuch. However, the owners of both the premises could not provide any document with regard to their ownerships of the said properties as well as any document to show letting-out of the premises to the accused.

12.175. It is pleaded that the trial Court ought to have considered the

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explanation offered by accused No.14 during his further statement (Exh.136) to the extent that his hand-writings were obtained on a blank paper of the Hotel Guest Register and these papers were filled-up and sent to FSL for the opinion of Hand-writing expert. Therefore, obviously, the hand writing report of expert was found to be positive. It is pleaded that the trial Court ought not to have relied upon the evidence of PW No. 900 for the reasons discussed herein above.

12.176. It is pleaded that the trial Court has erred in appreciating and relying upon the evidence of panch witness, PW No. 461-Ankit Bhatt and witnesses - PW No.1021-Yash Kansara, PW No.1023-Jitendra Soni, PW No.1024-Sabbir Ismaili Saiyed and PW No.1025-Yusuf Patel, owners of coin-box telephone shops, for the reasons that; - 1) as per the cross-examination of PW No. 461-Ankit, at most of the places, no coin box telephones were found during the panchnama; 2) the entire panchnama is in the form of confession of accused, which is hit by Sec. 24 and 25 of the Evidence Act; 3) all the above witnesses have not identified the accused before the Court and even no TIP was held before the Executive Magistrate; 4) the alleged panchnama is Dated: 10.11.2008, which is after about five months of the incident and after four month of the arrest of accused; and 5) No phone numbers from any of the above witness were produced on record and even no Bills or CDR of calls were collected during the investigation.

12.177. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1084-Saeed Mohd. Hayat to the extent that he had given house No. 33 of Lukman Park on rent to accused No. 14. The Ld. Judge erred in appreciating that the said witness has not taken the name of accused No.14 in his deposition and has not identified him in the Court during the trial nor in any TIP.

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12.178. It is pleaded that the trial Court ought not to have believed the confessional statements of Accused Nos.2, 21 and 35.

12.179. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of Accused No.14-Sajid Mansuri in the commission of the offences beyond all reasonable doubts.

Evidence against accused No.15-Mufti Abubasar Abubakar Shaikh (Appellant No.11)

12.180. Unofficial arrest of Accused No.15 from Azamgadh on Dt. 14.08.2008, Official Date of Arrest of Accused No. 15: Dt. 16.08.2008, Period of Remand: Dt. 16/08/2008 to 23.12.2008 and 09.02.2009 in Kalol P.S. case.

Alleged role of Accused No.15:

12.181. It appears from the evidence led during the trial against accused No.15 that the role of the accused is that he attended the meetings at Ahmedabad and allegedly stayed at a house in Vatva area of Ahmedabad and that, during the remand period, he had pointed out the so-called house at Vatva, Ahmedabad.

12.182. It is pleaded that during the trial, the prosecuting agency examined PW Nos.571, 898, 929, 957, 1106 and 1141 and also relied upon the alleged confessional statements of accused Nos.2 & 76.

12.183. It is pleaded that the trial Court ought not to have believed the evidence of prosecution witnesses examined to prove the above allegations for the reasons that the trial Court erred in appreciating the evidence of PW No.1106-Firoz Dilavar Shaikh to the extent that after letting-out his premises through one Saeedurehman to the other co-

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accused Kayamuddin, one A.Subhan had introduced him as the person from U.P., whom he remembered as one person of small height and having little beard and who later was known 'mufti'. He objected his presence and Saeedurehman told him that he was a guest. It was also deposed by PW No.1106 that on 18.08.2008, at about 9.00 pm, the police came with one person of small height, who was in a 'nakab', i.e. his face was covered with cloth, and the police asked him as to whether he knows the said person? He replied saying, "Yes, He is mufti". However, it is pleaded that the person Saeedurehman, who introduced accused Kayamuddin and A.Subhan, was not examined by the prosecuting agency. Even the cross-examination of PW No.1106-Firoz reveals that on 18.08.2008 at 9.00 pm when the police came with the accused with his face covered with cloth, he was not brought inside the house and was made to stand outside the house. He did not have any conversation with that person nor did the police introduce to him the person whose face was covered with the cloth, meaning thereby, the person brought by police during night time, stood outside his house and this witness did not have any kind of conversation with that person in the presence of police.

12.184. It is pleaded that this witness has not identified the accused as the person whom he had once seen in his premises, which he had allegedly let to other co-accused.

12.185. It is pleaded that the trial Court has erred in appreciating the evidence of PW No.898-Bipin Patel, panch witness, in whose presence accused No.15-Abu Basar is alleged to have been pointed out the Vatva premises and recovered some muddamal for the reason that this witness, in his cross-examination, has stated that he is a labourer and has not seen any Firoz Sheikh nor could he give his physical description though he

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had stated in his examination in chief about the presence of a landlord. Even this witness could not identify accused No.15-Abu Basar in the trial Court.

12.186. It is pleaded that during the investigation neither Firoz Shaikh offered any document nor the investigating agency had collected any document with regard to the ownership / occupancy of said Vatva premises.

12.187. It is pleaded that the alleged muddamal recovered in the presence of this panch witness and sent to FSL does not state about the presence of any explosive substance or any material. Even the manner in which the muddamal plastic bag was recovered under this panchnama creates doubts. Therefore, the presence of accused No.15 at Vatva house is not proved beyond reasonable doubt.

12.188. It is pleaded that the trial Court erred in appreciating the evidence of PW No.929-Rafikbhai Husenbhai Abdal who deposed that he was running a hotel in the name of "Garib Nawaz" and that on 24.08.2008, the police came to his hotel and told him that there was a blast in Maninagar area and one accused told that he was eating at Vatva hotel. He was further asked, "could you identify him?" and he replied, 'Yes'. Thereafter, on 27.08.2008, he went to the Court of Executive Magistrate and identified one Abu Basar Shaikh. However, this witness could not identify accused No.15 in the Court. It is pleaded that in his cross-examination, this witness admitted that when the police came to him, he did not give description of any person / accused. He could not identify his customers as several customers used to come to his hotel. It is pleaded that accused-Abu Basar was in police custody and in police remand since 16.08.2008 and he did not point out any hotel where allegedly he was eating.

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12.189. It is pleaded that the trial Court erred in appreciating the evidence of PW No.957-Zakir Qureshi and PW No.1141-Ayaz Saiyed, being accomplice and approver referring to the presence of accused No. 15 at Ahmedabad meetings and pleaded to discard their evidence.

12.190. It is pleaded that the trial Court erred in relying upon the evidence of PW No.848-Vasant Patel for the reasons and grounds herein.

12.191. It is pleaded that the trial Court erred in relying upon the evidence of Panch witness, PW No.892-Karnav Patel and wrongly relied upon the panchnama Exh.6083. This panchnama is a so-called panchnama u/s. 7 of the Evidence Act of accused No.37, which is in the nature of confession of accused and no where in the deposition, the panch witness has taken name of accused No.15.

12.192. It is pleaded that the trial Court ought not to have believed the confessional statements of Accused Nos.2 and 76 for the reasons discussed herein. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.15-Mufti Abu Basar in commission of the offences beyond all reasonable doubts.

<u>Evidence against accused No. 16-Abbas Umar Sameja (Appellant No.12)</u>

12.193. Unofficial arrest of Accused No.16 at Bhuj, Gujarat on Dt. 08.08.2008, Official Date of Arrest of Accused No. 16: 04.09.2008, Period of Remand: Dt. 05.09.2008 to 07.11.2008 in Ahmedabad cases, Dt. 01.12.2008 to 05.12.2008 in Surat Cases, Again in Ahmedabad Cases from Dt. 06.12.2008 to 20.12.2008 and in Suart Katargam P.S. case from Dt. 19.01.2009 and in Kalol P.S. case from Dt. 10.02.2009 to 11.02.2009.

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Alleged role of Accused No. 16:

12.194. It appears from the evidence led during the trial against accused No.16 that the role of the accused is that he attended the alleged camp at Halol and his presence was found at one Cyber Cafe, namely Infinity Technology Cyber Cafe, Bhuj and some muddamal was recovered in his absence from the house allegedly belonging to him.

12.195. That, during the trial, the prosecuting agency examined PW Nos.588, 934, 981, 1039, 1067, 1073 and 1105 and also relied on the alleged confessional statements of accused Nos. 2 & 35.

12.196. That, the trial Court ought not to have believed the evidence of prosecution witnesses examined to prove the above allegations for the reason that the trial Court erred in appreciating the evidence of PW No. 1039-Laxmanbhai Bharvad, panch witness, for the reason that this panch witness admitted in his cross-examination Para No. 9 that, "No preliminary panchnama was signed at the police station" and the accused had disclosed in detail the places, meaning thereby, that it was already within the knowledge of the I.O. as to where they had to go. From the cross-examination of this witness, he appears to be a selected, stock and tutored witness. Even this panch witness could not identify accused No.16 in the trial Court. It is also pleaded that prior to this panchnama allegedly made on 28.09.2008, the investigating officer conducting the investigation with three other investigating officer, had already visited the place to prepare the same kind of panchnama. By narrating the details of this panchnama, it is pleaded that almost all the investigating officers admitted in their respective cross-examinations that they were doing investigation at one place, they were discussing the progress of investigation everyday and that they were exchanging evidence to each other collected during the investigation.

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12.197. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of two chance witnesses i.e. PW No.981 and 1067 for the reasons stated herein.

12.198. It is pleaded that before the trial Court, PW No.1067-Ambalal Vechat Bariya has deposed before the Executive Magistrate, PW No.588-R.S.Solanki, that reason to identify Accused No.16 in the TIP was that he was found in a mob of about 18 to 20 persons sitting at a 'Dargah' at Halol, while as per the prosecution case, three chance witnesses had seen some persons near the forest at Helical Vav, which was quite away from the 'Dargah'. Therefore, the reason assigned by the chance witness, PW No.1067, itself is against the prosecution case. Even otherwise, as pleaded above, the manner of holding TIP is quite unfair and illegal in the nature.

12.199. It is pleaded that the trial Court erred in considering the submissions made on behalf of accused No.16 to the extent that the evidence of PW No.1073-Mohd. Latif Sumara of allegedly running a Cyber Cafe in the name of Infinity Technology and Cyber Cafe at Bhuj does not have any relevance with the case or the presence of accused. The alleged Register of Cyber Cafe does not disclose any offence or connect the accused with the charge Exh.122 and no incriminating material is collected or found from the aforesaid Cyber Cafe.

12.200. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 934-Kuldipsinh Dasrathsinh Parmar to the effect that on 04.09.2008, the Ahmedabad police had searched the so-called house of accused No.16 and had recovered one adapter, election card, light bill, invitation card, one chit containing mobile number. However, this search and recovery of muddamal does not find any kind of connectivity of the accused with the crime for which he is charged.

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12.201. It is pleaded that the trial Court erred in appreciating the case of defence led during the explanation under section 313 of Cr.P.C. and the defence witnesses examined on behalf of this accused namely 1) DW No. 2 Mohd. Faruk Umar Sameja, 2) DW No. 3 Mahendtra Kumar Parmar, Supervisor, M. T. department, 3) DW No. 4 Narendra Dahyalal Bhatti, a senior clerk of DSP office Kutch, Bhuj, 4) DW No. 5 Dasrathsinh Bhagatsinh Zala, a police officer working at A Division Police Station, Bhuj to show that since 07.08.2008 the accused No.16 along with his brother who was prosecution witness were illegally arrested from Bhuj and brought to Ahmedabad in a police vehicle. Therefore, the wife of his elder brother gave an application to DSP office on 1.09.2008 regarding her husband and his brother's illegal arrest and thereupon, her statement was recorded on 12.11.2008 at A Division Police Station, Bhuj.

12.202. It is pleaded that the trial Court erred in appreciating and relying upon the evidence to the effect that accused No.16 was present at Halol camp during the period January 13th to 15th 2008 for the reason that PW No.1105-Idrish Gulabshah Fakir is a person, who was allegedly working as 'Mujavar' at Khundpir Dargah. The only witness regarding presence and identification of accused did not depose that at any point of time he had seen accused No.16 at Khundpir Dargah, Halol. Even this accused has not been identified by any of the investigating officer in the TIP through this witness.

12.203. It is pleaded that confessional statements of Accused Nos.2-Imran, No.21-Mahendihasan and No.35-Rafiuddin Kapadiya are not believable and reliable. Therefore also, the presence of Accused No.16 at the Camp at Halol is not proved beyond reasonable doubt. At the same time, the Ld. Judge erred in appreciating the judgments cited on behalf

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of accused No.16 regarding the appreciation of explanation u/s.313 and the standard of appreciation of defence witnesses. It is, therefore, pleaded that the oral as well as documentary evidence led by the prosecuting agency during the trial does not prove the alleged role of Accused No.16-Abbas Sameja in the commission of the offences beyond all reasonable doubts.

Evidence against accused No.18 Javed Sagir Ahmed Shaikh (Appellant No.13)

12.204. It is pleaded that although the accused was unofficially taken into custody on 08.08.2008, his arrest was formally shown only on 04.09.2008. It is further pleaded that the accused thereafter remained in custody/ remand from 04.09.2008 to 07.11.2008, from 05.01.2009 to 18.01.2009, and from 28.01.2009 to 29.01.2009.

Alleged role of the Accused No. 18

12.205. It appears from the evidence led during trial against accused No.18, the role of the accused is that he attended the alleged Darsh E Quran program meeting in Ahmedabad and also present at Vagamon camp.

12.206. It is pleaded that the Trial Court erred in appreciating the evidence of PW No. 957- Zakir Quresi an accomplice to the extent that for the first time his statement was recorded on 17.10.2008 by Investigation Officer Mr. M. J. Chavda under all suspicious and unexplained reasons for inordinate delay to record the statement.

12.207. It is pleaded that the Trial Court erred in concluding that as per confessional statement of accused No.2- Imran Shaikh vide Exhibit No.8619, accused No.4 was present at Halol and Vagamon camp.

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However, upon reading Exhibit No.8619, no where it is stated in the statement regarding the presence of accused No.18. Moreover, mere attending a religious meeting without any kind of intentions and any discussion regarding the bomb blast, no one can connect with such a serious offence at the instance of accomplice who himself had attended several religious meetings like once accused No.18. Except above evidence, there is no other clinching evidence against accused No.18.

12.208. It is also pleaded that confessional statements of Accused No.2- Imran S/O Ibrahim Shaikh and Accused No.24- Umar @ Ashok Kalabhai Kabira are not believable and reliable for the reasons stated herein above in this appeal memo.

12.209. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.18- Javed Ahmed S/O Sagir Ahmed Shaikh in commission of the offences beyond all reasonable doubts.

<u>Evidence against accused No. 27 Mohd. Ismail (A.Razik) Mohd. Ishak Mansuri (Appellant No.14)</u>

12.210. It is pleaded that although the accused was unofficially taken into custody on 10.10.2008, his arrest was formally shown only on 23.10.2008. It is further pleaded that the accused thereafter remained in custody/remand from 10.10.2008 to 23.10.2008, from 23.10.2008 to 18.01.2009, and 09.02.2009.

<u>Alleged role of the Accused No. 27</u>

12.211. It appears from the evidence led during trial that Accused No.27 had purchased several bicycles for bomb plantation, purchase the gas cylinders allegedly used for bomb blast, planted the car containing

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bomb at L. G. Hospital, handed over the beg containing bombs to the approver/accused No. 23.

12.212. It is pleaded that during the trial prosecuting agency examined PW No. 826, 828, 829, 926, 952, 955, 957, 1035, 1036, 1141 and panch witnesses PW No. 822, 824, 827, 833, 865, 867, 868 and also relied up on the alleged confessional statements of accused No. 2, 24 & 76.

12.213. It is pleaded that the Ld. Judge ought to have not believe the evidence of prosecution witnesses examined to prove the above allegations for the reasons that as per evidence, it appears that in the city of Ahmadabad at about 18 places the bombs were blasted on bicycles, and about 18 bicycles were recovered from the scene of offence. It is also pleaded that out of 18 bicycles there is no evidence about 9 bicycles showing that which accused had purchased from where, and whom, and on which date.

12.214. It is urged that it has come on record that Accused No.27- Mohammad Ismail, while in remand had alleged to have been pointed out two shops from where he had purchased about 8 bicycles. The panchnamas are exhibited as Exhibit No.6268, 6064 and 5545.

12.215. It is also urged that investigating officer did not collect any documents from any bicycles seller to show that on which date, at which cost, or to whom bicycles were sold. None of the bicycles seller was called to identify any bicycle stating that he had sold those bicycles.

12.216. It is pleaded that investigating officer Mr. Mayur Chavda, PW No.1163 had deposed at page No.282, Para No.48 and admitted that the Panchnama at Exh.6064 & Exh.6068 do not reveal that accused No.27- Mohammad Ismail had purchased the bicycle on which date of which colour, which company and at what cost. The said witness

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admitted that he had not collected any bill or document of sale of bicycles, even the bicycle shopkeeper did not state that the accused who allegedly pointed the shop, was the person, who purchased the bicycle from his shop. The said witness had admitted in his cross examination at page No.341, Para No.129 that he has not seized any bicycles and does not know who had seized the bicycle, and after seizer in which condition the bicycles were kept. He also admitted that at page No.107, Para No.79 that two blasts were taken place on bicycle in Odhav and Ramol areas, but he had not made any investigation about the owners of bicycles. Likewise, PW No. 1000 - Muliyana (ACP) had admitted the same kind of evidence in his cross-examination regarding the sale and document of the muddamal bicycles.

12.217. It is urged that as per Panchnama at Exh.6064, 6068 and 5545, accused No.27- Mohammad Ismail had pointed out ten bicycle shops during his remand period. The prosecution has examined following 5 persons as the sellers of bicycles:

i) PW No. 826 Rafiqbhai Ataurrahman Ansari
ii) PW No. 829 Aiyubbhai Husen bhai sheikh
iii) PW No. 955 Allarakha Sattarbhai Sanghi
iv) PW No. 1035 A.Rahim Gulambhai Mansuri
v) PW No. 1036 Khurshid bhai ahemad bhai Qureshi.

12.218. It is also pleaded that none of the aforesaid witnesses has produced any documents regarding sale of bicycles, none had identified any of the bicycles. None of the witness had identified any of the accused either in pointing out Panchnama or in any Test Identification Parade or in the Hon'ble court during trial. It appears that they were used to call after one month of the blast at crime branch office, and they were threatened and under pressure, their statements were recorded.

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12.219. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 926- Mukhtiyarbhai Primaswala stating that he had sold the 5kg Gas bottles to a person to whom, he identified in a TIP for the reason that in his first statement, he had dined that he had not sold any gas cylinder to any person during the time of blast.

12.220. It is pleaded that the cross-examination of this witness indicates that it did not keep any record of sale and purchase of gas cylinders, he did not have given any bill to any person during the time of blast, he admitted that there were not any specific marks of his shop upon the gas cylinder as to identify the cylinder, even he admitted that the cylinders which he was selling were available in other shops and the same kind of cylinders were selling by others. Therefore, considering the cross-examination this witness No.926, it is not proved that this witness had sold the gas cylinder to accused No. 27.

12.221. It is pleaded that the trial Court erred in relying upon evidence of PW No. 827-Babubhai Makwana to the extent that when the accused was under police custody on 04.12.2008, he had pointed out L. G. Hospital, where at he parked Maruti Car containing the bomb. It is also pleaded that prior to 04.12.2008, the investigating officers have already visited the L. G. Hospital and had made panchnama of scene of offence. It was not a new information or knowledge to the investigating officer that the blast was taken place at L.G. Hospital.

12.222. It is pleaded that the prosecuting agency did not bring any evidence on record that on 26.07.2008 the accused had driven the Maruti car and placed it at L. G. Hospital. No witness to this aspect connect the accused with the crime. Even the cross-examination of this panch witness states that he is a selected, stock and tutored witness.

12.223. It is pleaded that the trial Court erred in appreciating the

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evidence and PW No. 957- Zakir Qureshi and PW No. 1141 Ayaz Saiyed, being accomplice and approver referring the presence of accused No.15- Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh at Ahmedabad meetings for the reasons as stated hereinabove in this appeal memo as to discard their respective evidence.

12.224. It is pleaded that the trial Court erred in appreciating the evidence of PW No.833- Urmit Kayasth to the extent that on 25.10.2008 he was called by crime branch police and he agreed to witness to a panchnama and accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri pointed out the places from where he had got a bag of bomb, a premises of Al-Mohammadi society, a premises near Sarangpur bridge from where he boarded in Autoriksha and went to Nilkanth Hotel. Accused No. 27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri thereafter pointed out one wall, a shop from where he purchased the bag, a place near Dhanvantri Hospital where he allegedly placed a bicycle containing bomb, a place near Panchkuva, from where he purchase bicycle etc. For the reason that from the deposition of this panch witness appears that he is selected and tutored witness. He had no any reason to pass in front of crime branch office, where at he was asked to stand as Panch, while he was going to reverse direction, where the crime branch office was not to come on the way. Even the crime branch office was about two kilometers away.

12.225. It is pleaded that the panch witness has not kept any record or notes of the details of panchnama, while he deposed from first to last page of the panchnama, which contains about six pages, whereas he was not able to give the details that on the day of panchnama he was going to purchase the goods, but he could not able to give the name of the traders,

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though he was regularly purchasing the goods from his shop. The Panch witness agreed that no physical appearance of accused was mentioned in panchnama, yet he said that due to changes in physical appearance, he could not identify the accused in the trial court.

12.226. It is also pleaded that most important aspect of the evidence of panchnama Exhibit-5622 states that there is about 80 percent averments and contentions are in the nature of the confession of the accused, if these confessions are taken away then it is very difficult to understand and believe the panchnama. Moreover, the places allegedly shown by accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri were already within the knowledge of Investigating Officer as earlier all the places pointed out by the accused were visited by the investigating officer.

12.227. It is further pleaded that from the contents of panchnama, it appears that no independent witness had identified the accused at the places, which he had shown or the persons, who sold the bicycles to him identified him or any person had seen him parking the bicycles at any scene of offence.

12.228. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of below mentioned Panch witnesses as their entire depositions are in the nature of confession of accused and are not admissible in evidence as discussed:

a) PW No. 822 Jignesh Panchal
b) PW No. 824 SanjayKumar Dhamecha
c) PW No. 865 Kanubhai Thakor
d) PW No. 867 Rajubhai Bharvad
e) PW No. 868 Rakeshbhai Panchal

12.229. It is pleaded that all the panchnamas u/s 27 prepared by the

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Investigating Officer are in the nature of confession/ admission of the accused, which are not permissible under the Evidence Act. That most of Panchnamas are drawn after long police custody of the accused, which are not supported by other independent evidence. Moreover, the detailed cross-examination of the Panch witnesses indicates that these Panchas are stock-panchs, selected and concocted witnesses in the nature and their respective evidence does not inspire any confidence with regard to their truthfulness.

12.230. It is pleaded that the evidence of TIP as stated hereinabove and the explanation offered by the accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri in his further statement states that the TIP were arranged after long period of incident, which were not fair and legal and just a formality to connect the accused with the crime.

12.231. It is pleaded that the trial Court ought not to believe confessional statements of Accused No.2- Imran S/O Ibrahim Shaikh, 24- Umar @ Ashok Kalabhai Kabira and 76- Manjarimam @ Alam @ Jamil S/O Aliimam for the reasons discussed herein above.

12.232. It is also pleaded that the trial Court erred by holding at page No.6547 that the accused No. 27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri was participated in alleged camp at Halol-Pawagadh. It is not the case of prosecution and neither Accused No.2-Imran S/O Ibrahim Shaikh, who has stated in his alleged confession that accused No. 27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri was ever present at Halol camp.

12.233. It is further pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the

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alleged role of the Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri in commission of the offences beyond all reasonable doubts.

Evidence against accused No.31 Mohd. Arif BadruddinShaikh (Appellant No.15)

12.234. It is pleaded that the accused was formally arrested on 05.11.2008 and thereafter remained in custody/remand from 05.11.2008 to 24.12.2008 and again on 13.06.2009 in connection with Kalol Police Station.

Alleged role of the Accused No. 31

12.235. It appears from the evidence led during trial, that the Accused No.31 Mohd. Arif Shaikh while, in police custody, had allegedly purchase the watches from Mumbai and thereafter the watches were use for bomb explosion and bomb plantation. The evidence led by the prosecution also suggests that in the presence of panch witnesses he made demonstration how to set the device timer in the watch.

12.236. It is pleaded that to substantiate the above role of the accused, prosecution had examined PW No.979 Dasrath Vishnu Patil a servant of PW No. 978 Mohd. Hanif A. Kaiyum Roshan an owner of M/s Vali Mohammad Roshan & Co. Watch shop situated at Abdurehaman Street Mumbai. Prosecution has also examined PW No. 988-Nimesh Bhanuprasad Bharmbhatt and PW No. 919 Kalpesh Rajaram Thakur, Panch witness before whom accused No.31- Mohd. Arif shown a demonstration to insert a device timer in the watch.

12.237. It is pleaded that the Trial Court erred in appreciating the evidence of PW No.978 and 979 while relying and convicting accused

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No.31- Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh for the reason that the prosecution had examined Mohd. Hanif Roshan- PW No.978 and Shri Dashrath Patil- PW No.979 of one "Vali mohammad Roshan & Co". His shop is situated at Bombay. To show that, they have sold about 16 pieces of watches of Prince company, it was the case of prosecution that accused No.31 Mohd. Arif Badruddin had purchased 50 pieces of watches. However, the said accused did not point the said shop during his long lasting remand period to show that he had purchased the watches from the said shop. It is pleaded that the evidence of aforesaid two witnesses does not inspire the confidence that the so-called Muddamal watches were sold by them. They have clearly admitted that while recording their respective statement, they were not shown any muddamal watches by police, even the watches which were sold by them, were not contained any mark or sign of their shop. The said types of watches are available in the market by different shops. Even the evidence of PW No.589- Executive Magistrate did not inspire any confidence to show that the accused No.31- Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh was only identified by the aforesaid two witnesses as they claimed. Even the alleged bills at Exhibits-6824, 6826 and 6827 regarding sale of watches, do not contain the name and address of the purchaser of the watches in questions.

12.238. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of two panch witnesses i.e. PW No. 988- Nimesh and PW No.919- Kalpesh Thakur to the extent that the Accused No.31- Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh had shown the demonstration how he used the circuit and inserted it in the watch as a timer, for the reasons that the so-called demonstration Panchnama prepared are not admissible in the evidence

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for the reasons that such Panchnamas are one kind of admission/confession of the accused, while he was in police custody, which is not before the judicial officer.

12.239. It is pleaded that the investigating officer has called the report of FSL with regard to the functioning of circuit as a timer in the watch and that report was available to him and therefore, it was not necessary to make any demonstration Panchnama as allegedly before the pachas.

12.240. It is pleaded that the cross-examination of these two witnesses indicates that they are tutored witnesses having no knowledge of understanding the activities of alleged panchnama and manner in which the panchnama prepared seems absolutely unbelievable.

12.241. It is also pleaded that the trial Court erred in relying deposition of PW No.929 and discussing evidence of Accused No.29 at page No.6566 of the judgement. The conclusion of Ld. Judge is based only on presumption.

12.242. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial do not prove the alleged role of the Accused No. 31- Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 36 Mohd. Arif Nasim Ahmed Mirza (Appellant No.16)

12.243. It is pleaded that the accused was formally arrested on 22.11.2008 and thereafter remained in custody/remand from 22.11.2008 to 12.01.2009 and again on 15.06.2009 in connection with Kalol Police Station.

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Alleged role of the Accused No. 36

12.244. It is pleaded that from the evidence led during trial it transpires that Accused No.36- Mohammad Arif Nasim Ahmed Mirza was when in police custody pointed out two places, where bomb blasts had taken place and pointed out one place, from where he placed the bicycle carrying the bomb under panchnama u/s 27 of Evidence Act. The prosecution had examined one Witness-PW No.936. This accused was found placing a bicycle at Raipur Chakla near Gokhle Pan House and thereafter, in evening he came to know that blast had taken place and after about four months reading the news of blasts, he went to Giakwad Haveli, where he met one Investigating Officer PW No.-1154 Smt. Usha Rada and she recorded his statement on 07.12.2008 and thereafter, he identified Accused No. 36- Mohammad Arif Nasim Ahmed Mirza in TIP parade, but could not identify in the trial court during his deposition.

12.245. It is pleaded that the learned Judge erred in relying upon and convicting the Accused No. 36- Mohammad Arif Nasim Ahmed Mirza for the reason that the evidence of PW No.866- Rameshbhai Shah and PW No.860- Jagatsinh Rajput appears that almost the accused had made a confession before these witnesses regarding planting bicycles at the places mentioned in the Panchnama and the place pointed regarding Al-mohammadi society. It is already discussed in this appeal memo that why the Panchnama u/s 27 containing the culpability/confession of the accused should not be believed. Moreover, the detailed cross-examination of the Panch- witnesses indicates that these Panchas are stock-panchs, selected and concocted witnesses in the nature and their respective evidence does not inspire any confidence with regard to their truthful evidence.

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12.246. It is pleaded that the alleged place of occurrence i.e. blasting places were already within the knowledge of concern investigating officer, therefore it was not new fact, which was not within the knowledge of concerned Investigating Officer. Even nothing was recovered or discovered at the instance of this accused during his respective pointing out Panchnama.

12.247. It is pleaded that the trial Court erred in appreciating the evidence of PW No.936 Sunil Kantilal Patel to the extent that on the day of incident i.e. 26.07.2008 in the morning, he had seen two boys at about 11.00 to 12.00 Hrs at Gokhle Pan House, as they appeared outsiders to him and in evening he had seen these them again, where one boy had parked his bicycle near M. Narayandas Medical Store and near Gokhle Pan House, and this witness identified them in TIP later on. For that reason the cross-examination of this witness indicates that after about four months of the incident and reading the news of bomb blasts, he voluntarily went to the police and declared that on the day of incident he had seen two boys near scene of offence with bicycle. This discloser of planting bicycle near scene of offence after about four months in light of the cross-examination states that this witness is quiet un-natural and unbelievable, who had no any reason to see these boys coming and parking bicycle near the scene of offence in a very crowded area, where number of persons, collegians and boys coming there on bicycle and parking the bicycles that too in absence of any specific reason to remember the boys. Even after inordinate delay of four months after the incident in recording the statement, cannot be considered as laid down in several judgements of Hon'ble Supreme Court and Hon'ble High Courts.

12.248. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role

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of the Accused No. 36- Mohammad Arif Nasim Ahmed Mirza in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 37 Kayamuddin Sarfuddin Kapadiya (Appellant No.17)

12.249. It is pleaded that although the accused was unofficially taken into custody on 31.03.2008, his arrest was formally shown only on 04.12.2008. It is further pleaded that the accused thereafter remained in custody/remand from 05.12.2008 to 06.03.2009, from 06.05.2009 to 19.05.2009 in connection with Odhav Police Station, from 15.06.2009 to 25.06.2009 in connection with Kalol Police Station and on 02.07.2009 in connection with Mahidharpura Police Station

Alleged role of the Accused No. 37

12.250. It appears from the evidence led during trial, the accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had hired a premises situated at Danilimbda, Ahmedabad being House No.10 Al-Mohammadi Society. He had hired a premises situated at Umravnagar, Vatva, Ahmedabad. He had purchased two gas bottles from Royal Gas Stove Centre. He had applied to get the SIM cards of different mobile phone service providers under the guise of wrong identity, producing fake documents. He had booked a room at Hotel Vapi Intercontinental at Vapi by giving a false name. He stayed at Hotel Kamleshwar at Pune by giving false name in hotel register. He hired a premises namely ‘Master House’ at Surat. He attended Halol camp at pavagadh. He had purchased miscellaneous articles i.e. scissor, strip connector, wire, battery, bulb, canvas, Maruti car cover, mobiles, barrels, etc., allegedly to use for preparing bombs. He had purchased fifty 50

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shirts from Lal Darwaja, Ahmedabad. He had meetings with PW No.1098 - Asif Vora, PW No.1115- Mohd. Umar and PW No.1117-Asif Shaikh and thereby, they were discussing about SIMI activities.

12.251. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No. 943- Fukhrajbanu Mohd. Yakub Shaikh alleged owner of house No.10, Al-Mohammadi Society, PW No. 928-Ibrahimbhai a property broker and PW No.952- Mohd. Arif Bismillah Saiyed, PW No.834- Mahendrabhai Raval a Panch witness of a pointing out panchnama stating that the accused No.37- when was in police custody allegedy shown this house on 16.09.2009 and PW No.1154 Smt. Usha Rada (Investigating Officer) for the reasons that it has come on record during the cross-examination of PW No.943-Fukhrajbanu that the documents she had produced did not confirm undoubtedly that she was the owner of house in question. She had not produced any document showing that she rented the premises to accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya. She could not identified accused No. 37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya in the court and she confirmed that when police came first time she had not given name of any person as a tenant. Moreover, the evidence of PW No.928- Ibrahimbhai and PW No.952-Mohd. Arif is quite contradictory to the evidence of PW No.943 and these two witnesses confirmed in their respective cross-examinations that they had not given name accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya to whom they allegedly introduced to owner PW No.943. Even it appears that they have not identified that person in TIP as Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya. Moreover, these two witnesses did not identify the accused No. 37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin

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Kapadiya in the trial court. It is important to submit that PW No. 1154-Investigating Officer had confirmed that the electricity bill, which she allegedly recovered from landlady was describing consumer No.2013406 (Exh.6630), while in the alleged panchnama drawn, she has stated consumer No.2437127 of the alleged premises for House No.10, Al-Mohammadi Society. Even, she had stated that she could not say whether she had recovered a electricity bill of July, 2008 of the premises in question.

12.252. It is pleaded that none of the independent witness i.e. a resident of Al-Mohammadi Society or surrounding area did not come forward to depose that at any point of time accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was found, present or stayed at the premises in question.

12.253. It is further pleaded that the prosecuting agency tried to led a evidence of PW No.834- Mahendrabhai Raval to show that when accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was in police custody, on 16.01.2009 he pointed out premises of House No.10 Al-Mohammadi Society. It also pleaded that as per prosecution case PW No.1154- Smt. Usha Rada herself had visited and searched the said premises at the instant of Accused No.1-Jahid S/O Kutubuddin Shaikh on 19.09.2008 vide Panchnama Exh.6656. It is pleaded that even no incriminating materials for making bombs were found or recovered under the said panchnama as per the FSL report.

12.254. It is pleaded that the trial Court erred in relying upon the evidence led by the prosecuting agency with regard to a house situated at Umravnagar, Vatva, Ahmedabad, for the reason that the cross-examination of PW No.1106- Firoz Shaikh does not indicates that he rented the premises in question to accused No.37-Kayamuddin @

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Rizwan @ Ashfak S/O Sarfuddin Kapadiya, in the absence of any document with regard to his ownership as well as documents regarding tenancy like rent note, rent receipt, rent agreement etc. The detailed submission is made earlier in this appeal memo which may kindly be considered.

12.255. It is pleaded that the trial Court erred in appreciating and relying upon the evidence led by prosecuting agency that accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had purchased gas bottles for making the bomb for the reason that Mr.V. R. Toliya, Assistant Commissioner of Police had drawn one Panchnama on 08.12.2008 between Night 00:00 hrs to 5:30 am, whereby accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, while in police remand had pointed out some shops and from one shop viz. Royal Gas Stove, some gas cylinders were purchased by him. The Panch witness- Karnav Hemantbhai Patel, PW No.872 and PW No.927- Mohammad Ayaz Rizwan Dudhwala, owners of M/s. Royal Gas Stove were examined. It appears that Investigating Officers Mr.Mulyana PW No.1000 and PW No.1163- Mayur Chavda had visited the aforesaid shops and recorded the statement of the said shop owner before this so-called panchnama.

12.256. It is pleaded that PW No.927 Shri Mohd. Rizwan Dudhwala had specifically admitted in his cross-examination that during one week period of the date of bomb explosion he did not sale any gas cylinder to anyone and he had no knowledge about sale of gas cylinders to anyone.

12.257. It is pleaded that none of the witness had identified the accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya to show that he was the person, who visited the shop and purchased the gas cylinders at any point of time. It is also pleaded that

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no documentary evidence had been collected by any of the investigating officer during long lasting remand period regarding the sale and purchase of cylinders alleged to have been used.

12.258. It is pleaded that PW No.927-Mohammad Rizwan Dudhwala had confirmed in his cross-examination at para No.13 that his three statements were recorded on 05.08.2008, 06.08.2008 and 15.12.2008 and he clearly deposed that he did not sale gas cylinders within one week of incident to any suspicious person and he did not know who had purchased gas bottles from where, allegedly used for commission of offence.

12.259. It is pleaded that the trial Court erred in appreciating and relying upon the evidence led during trial that the several SIM cards of several service providers, where allegedly used by accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya.

12.260. It is pleaded that the following SIM card numbers of different companies were allegedly used:

No.	Name of service provider co.	Mobile No
1	Idea	97145 52899
2	Airtel	97247 64195
3	Airtel	97847 64196
4	Vodafone	97123 81157
5	Vodafone	97123 98204

12.261. It is pleaded that it has come on record that during the detailed investigation they have not investigated the use of above 5 SIM cards or collected CDR records or recovered or discovered the mobile phones of any mobile company, in which these 5 SIM cards were installed or did not find any communication record between any of the accused before or at the time of bomb explosion or after such incident.

12.262. It is pleaded that the prosecution had examined the persons

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who had allegedly sold the SIM cards to accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya are as under;

1) PW No.799 Desharam Vardhaji Prajapati.
2) PW No. 807 Bhawarlal Nenaji Prajapati
3) PW No. 803 Dineshbhai C. Chaudhri
4) PW No. 801 Azad Ahmed Sardar Ahemad Shaikh

12.263. It is pleaded that from the depositions and cross-examinations of the aforesaid witnesses, it has come on record that none of the witness had identified accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, as he had purchased the mobile phone from the respective shop. None of the witness had stated that they have identified accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, as the person to whom they have sold either mobile phone or SIM cards.

12.264. It is pleaded that as per prosecution case PW No. 1163-Mr.Mayur Chavda, Investigating Officer had discovered one diary, driving license and a bill of mobile phone of Reliance company having SIM card No.9377201545, as to show that accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had purchased that SIM card by submitting a false driving licence, which was in the name of Gujarati Ashok Navinbhai. A Panchnama was drawn at Exh.6355 and a bill was produced at Exh.No.6356, the driving licence was submitted at Exh.6355. However, in the evidence of PW No.801 Mr. Azad Ahmed Shaikh, he has stated that he had not seen any person on 17/07/02008, who had purchased SIM card or did not identify by police. He admitted that he had not identified any person either under police custody or before Executive Magistrate. Even this witness had not identified Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin

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Kapadiya in the court as a person to whom he sold the SIM card under a false licence.

12.265. It is pleaded that the F.S.L evidence regarding the evidence of handwriting at Exh.6913 does not disclose that Exh.8999 an application form contains the signature of handwriting of accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya.

12.266. It is also pleaded that the trial Court erred in relying upon the evidence led by the prosecuting agency to the effect that accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had booked a room of Hotel Vapi Intercontinental at Vapi, as to facilitate co-accused Abdul Subhan Qureshi under false name and signature in the guest register for the reasons that PW No.1122-Ismailbhai Bagga a receptionist deposed that in the year 2009 police came at Hotel Vapi Intercontinental with one person whose face was covered with cloth and police introduced him as Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya. The witness allegedly deposed that police had verified the guest register and took out page Nos.174 and 175 containing entry No.1739. However, the cross examination of this witness indicates that this witness had no any conversation with the person covered with cloth and his cover was not removed and he did not see him. Police had recovered page Nos. 174 and 175 along with six blank pages of register. He admitted that the register does not contain the seal of the Mamlatdar and the blank pages Exh.6739 and the pages Exh.6498 are different being page Nos.174 and 175. It indicates that the police had misused the blank pages as the explanation offered by accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya in his further statement u/s 313 of Cr.P.C at Exh.159.

12.267. It is pleaded that the trial Court erred in relying upon the

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evidence led by the prosecuting agency with regard to PW No.959-Balvantbhai to the extent that police had recovered one register informing him that it was brought from Vapi and entry No.1739 of page No.175 was marked with red circle and the specimen signature of accused by Mark S/1 to S/16. However, cross-examination does not inspire the confidence regarding recovery of register in question. The page No.174 contains entry Nos.1746 to 1755, while page No.175 contains entry Nos.1736 to 1745 which is not in serial or sequence in natural course. It is pleaded that in fact page No.174 should have contained entry Nos.1736 to 1745 in ordinary course. This indicates that the blank pages where misused.

12.268. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.969-Sunil Agarwal an owner of Hotel Kamleshwar, PW No. 970- a manager of Hotel Kamleshwar and PW No.997- Ravi Shah in whose presence the alleged specimen signature of Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was taken for the reason that PW No.969 Sunil Agarwal had deposed that on 21.12.2008 police had come at his hotel and verified the entry of guest register dated 19.10.2008 and police told him that one Samir I. Kirani was stayed in his hotel on 19.10.2008. The cross-examination of this witness indicates that one accused in the police custody and police have shown that person as Samir Kirani. However, on 21.12.2008, Investigating Officer Smt. Usha Rada-PW No.1154 went to Pune and in her custody one Accused No.44- Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari and Accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani were there. It is pertinent to state that as per police record/investigation papers Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was

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in the police custody of one Investigating Officer Mr. Mayur Chavda on 21.12.2008 at Ahmedabad. Therefore, this evidence indicates that police had created false evidence of PW Nos.969, 970 and 997. Even PW No. 1154 does not state in her evidence that on 21.12.2008 she went to the Hotel Kamleshwar with the Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and she had checked the guest register and recovered the relevant pages of guest register. Therefore, the explanation offered by Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya may kindly be considered regarding creating the evidence of Hotel Kamleshar at Pune.

12.269. It is pleaded that the trial Court erred in appreciating and relying the evidence of PW No. 864-Abdul Farid Shaikh and PW No. 1016 Mohd. Sakir stating that Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had hired the premises known as 'Master House' at Surat for the reason that as per the evidence adduced by the prosecuting agency on 09/07/2008, Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had hired a house of one witness Abdul Farid Shaikh situated at Sopariwala compound known as Master House. The prosecuting agency had examined PW No.864 Abdul Farid Shaikh and PW No.1016 Mohd Sakir being a son of PW No.864, however from the respective cross-examination of these two witnesses, it appears that Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was not identified by them during trial as the person, who had hired the respective premises of Master House. Even Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya while in police custody from 04/12/2008 to 06/03/2009 did not point out the premises of Master House under any panchnama. It is also pleaded that as per evidence of said witnesses the person who hired the premises

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had said his name as 'Rafik' however, no evidence indicates that at any point of time Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya's name was found as alias Rafik.

12.270. It is pleaded that on 04/09/2008 accused No. 63-Mohammad Tanvir @ Talha S/O Mohammad Akhtar Pathan while in custody had pointed out the premises of Master House under a Panchnama Exh.2806 during the evidence of PW No.456 Mehulkumar Jadiya. However, after the breaking open the door and searching the premises in presence of FSL experts, nothing incriminating materials like explosives etc., were found. Therefore, evidence regarding premises of Master House allegedly used for making the bombs by Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and others was not proved beyond reasonable doubt.

12.271. It is pleaded that the trial Court erred in appreciating and relying upon the evidence to the effect that Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was present at Halol camp during period January 13th to 15th 2008, for the reason that PW No.1105-Idrish Gulabshah Fakir is a person, who was allegedly working as a Mujavar at Khundpir Dargah, the only witness regarding the presence and identification of accused did not refer and depose that at any point of time that he had seen Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya at Khundpir Dargah, Halol. Even this accused did not get identified by any of the investigating officer in TIP through this witness.

12.272. It is pleaded that the chance witnesses i.e. PW No. 1067-Amabalal, PW No.981-Pravinbhai are not believable and reliable for the reasons stated herein above.

12.273. It is pleaded that the confessional statements of Accused

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No.2-Imran S/O Ibrahim Shaikh, Accused No.21- Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) and Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya are not believable and reliable for the reason stated hereinabove. Therefore also presence of Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) at alleged camp of Halol is not proved beyond reasonable doubt.

12.274. It is also pleaded that the trial Court erred in appreciating the evidence of PW Nos.1037, 1017, 1018, 1033, 1032 and 1022 to the extent that they sold the miscellaneous articles like scissor, battery, bulb, wire, canvas, car cover, plastic bags, etc. to the Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya considering his pointing out Panchnama at Exh.6076, while examining its panch witness PW No.870- Vishank Patel for the reason that none of the witness had produced any bill or document showing that on particular date and time they have sold the material to a person named Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya. It is submitted that all the vendors witnesses have not identified Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya in the court during their respective depositions. All the miscellaneous so-called articles sold by aforesaid vendors are available in the market and it does not contain any special sign or mark to identified by the vendor. It is pleaded that while recording the statement of aforesaid vendors, police have not shown any muddamal to any vendor as to confirm that the muddamal was sold by him and was the same which was allegedly use in the offence.

12.275. It is pleaded that the trial Court erred in appreciating the evidence regarding purchase of shirts by the Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya from one

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Hafizurrahman Vohra from the Lal Darwaja area for the reason that the said Hafizurrahman was not examined by the prosecution. However, as per prosecution case during investigation Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had not pointed out that he had purchased 50 shirts from witness Hafizurhaman Vohra. It has come during the deposition of PW No.589-Executive Magistrate Mr.I.V.Zala that one Hafizurrahman Vohra had identified Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya during Test Identification Parade but the said witness is not examined and the evidence of Test Identification Parade is not substantive evidence.

12.276. It is pleaded that the trial Court erred in appreciating the evidence about use or purchase of barrels for the reason that under pointing out Panchnama at Exh.6083, Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya while in police remand on 8/12/2008 had pointed out one godown near Goodluck Barrel Market, Bharat Process House as to disclose that from the said godown the barrels were purchased by him as well as two co-accused. It is pleaded that Mr. V. R. Toliya, Investigating Officer had recorded the statement of one Shri Sarfaraj Abdul Rahim Ajmerwala on 11/12/2008. The said witness is examined as PW No. 924(Exh.6569), who allegedly identified the accused in TI Parade Vide Exh.3168. However, the said witness had admitted in his cross examination at Page No.4 at Para No.7 that "I do not remember, how many persons came to purchase drums. I have not given description of the persons, who had come to the police. (Page No.4, Para No.6). As per my memory, I had sold either on 23rd or 24th July, 2008, but I could remember the exact time whether morning, noon or evening. I do not remember how many drums were sold on 23rd or

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24th. The said witness could not identify the accused in the Court.

12.277. It is pleaded that the evidence of PW No.589- Mr. I.V.Zala, Executive Magistrate does not inspire the confidence regarding the fair and legal TI Parade, which appears from his cross-examination at Para Nos.36, 37, 39, 40, 41, 42, and 45.

12.278. It is pleaded that the trial Court erred in appreciating the evidence of PW No.1098- Asif Vora, PW No.1115- Mohd. Umar and PW No.1117 Asif Shaikh for the reason that on 07.12.2008 their respective statements were recorded by Investigating Officer Mr.R.V.Asari at Vadodara i.e. after about four months of the incident dated 26.08.2008.

12.279. It is pleaded that the cross-examination of these witnesses indicates that from 26.08.2008 to 07.12.2008 they were at Vadodara and they have not disclosed anything about their knowledge regarding incident or Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya to any person or even after the incident of serial bomb blast, they did not feel or like to inform to the police or did not feel that Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had done something wrong or he was involved in serial blast cases.

12.280. It is pleaded that the cross-examination of PW No.1153 Investigation Officer Mr.R.V.Asari indicates that he might have not recorded the statements of these witnesses on 07.12.2008. It is pertinent to state that how the Investigation Officer approached the above witnesses without any information or a notice u/s 160 of Cr.P.C. is quit suspicious. Even above three witnesses admitted in their respective cross-examinations that for recording their statements at Vadodara city, they had not received any summon or notice from concerned

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Investigating Officer.

12.281. It is pleaded that the trial Court has wrongly concluded in its Judgement at page No.6588 that Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was discussing about SIMI activities with the aforesaid three witnesses. However, the respective depositions of these three witnesses does not say at any point that they had discussion with Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya regarding SIMI activities.

12.282. It is pleaded that from cross-examination of above three witnesses indicates that after recording of their respective statements, the Investigation Officer had not collected the details of their conversation on mobile phone or collected the CDR of their conversation with Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya or Investigation Officer himself admitted that he had not recovered the mobile phones of aforesaid witnesses or collected CDR of their conversation with Kayamuddin. Moreover, the important aspect regarding the places where at the witnesses met to Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya as appeared, in their respective depositions, were not visited or shown by any of the witness, or no any witness brought on record to show that at any point of time Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was found in the company of aforesaid three accused at any place of meeting.

12.283. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.930- Kishorbhai Ravat for the reason that as per his deposition, in the year 2008 he was working as a booking clerk at Neeta Travels, Ahmedabad and once he had delivered a parcel, which was received to its travelling office from Pune and

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delivered to a boy, which he later identified on 17.12.2008 in TIP. However, the cross-examination of this witness indicates that he was the rickshaw driver, though he had passed BA, he could not understand the date and time and he was not keeping any record of his activities. According to his cross-examination, at Neeta Travel Agency he was maintaining a register of parcels containing the details of sender's name and address, receiver's name and address, signature of receiver, date of booking a parcel etc. However, he did not give it to the police when his statement was recorded on 13.12.2008 or did not show it to the police. This witness has not identified the accused person to whom he identified in TIP while, while giving his deposition. It is thus pleaded that considering the deposition of this witness, it seems that he is tutored and concocted witness.

12.284. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.603 Pintu Piraji regarding recovery of alleged application form pertaining to Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya vide Panchnama Exh.No.3232 for the reason that the cross-examination of this witness indicates that he was called by police at about 10.30 am, while according to him the police was present in the office of one Rasikbhai Laliwala, an employee of Municipal Swimming Pool. He had also deposed that when he entered in the office, one bunch was lying on the table and he also admitted that in his presence an application form was not taken out from the said bunch. It is pertinent to state that according to this witness the photograph of Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was affixed by the stapler pin and not affixed with any item like gum. He also admitted in his cross-examination that this form was not containing the signature of Laliwala or Panch himself.

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12.285. It is further pleaded that the prosecution had sent this application form with alleged specimen signature of the Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya to the FSL for obtaining the handwriting expert's opinion. However, the alleged signature of Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya does not tally with the signature of disputed document i.e. application form at Exh.3233. Even Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had offered his explanation in his further statement u/s 313 with regard to the alleged application form at Exh.3233.

12.286. It is pleaded that the trial Court erred in disbelieving the evidence of Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, who himself offered after giving an application u/s 315 of Cr.P.C. at Exh.9169 and after Hon'ble Court's permission examined as DW No.8- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya to disprove the charges and evidence led by the prosecuting agency against him for the reason that on 31.03.2008, DW No.8- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya was taken away by Vadodra Crime Branch Police, who in turn handed over him to Madhya Pradesh Police and at that time his mobile phone was taken away by Vadodara Police. DW No.8 had in detail given the accounts of his illegal custody from 31.03.2008 to 03.12.2008 with all necessary documents. It is pleaded that DW No.8-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had narrated the details of physical and mental torturing by all the Investigating Officers from 04.12.2008 to till his last police custody 06.02.2009. DW No.8-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had narrated at Para No.21 of his examination-in-chief that how the investigating

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officer had created evidence against him and how his mobile phone No.98987 31479 was misused by the police. It is also pleaded that DW No.8-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had described in Para Nos.30 to 37 of his examination-in-chief stating that during trial what tactics had been applied by the investigating agency in collusion with jail officials as to get identified the accused by witnesses, installing a camera at the entry door of particular place. It is submitted that DW No. 8 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had described that under what circumstances accused No.23-Ayaz Razakmiyan Saiyed was lured and influenced by the investigating agency with the help of jail officers to turn as approver. (Para Nos.41 and 42). It is pleaded that as to strengthen the oral evidence, DW No.8-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had submitted several documents with list, which were required to be considered by the learned Judge positively, however the learned Judge did not give the proper weightage and importance to the oral testimony of the DW No.8- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and the document submitted by him. It is pleaded that the learned Judge at the same time erred in appreciating the judgements cited by the defence that the evidence of the defence witness should be given same weightage as it is given to prosecution witnesses. On the contrary the learned Judge should not expect strong evidence in comparison of prosecution evidence.

12.287. It is further pleaded that the trial Court had given more reliance while appreciating the evidence of PW No.1141-Ayaz Saiyed being approver, who turned from accused to approver under an inducement of set to acquittal, while DW No. 8 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya came forward to give the full

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account of illegal confinements of himself and under his police remand, how the police created the evidence against him and how the police made accused No.23-Ayaz Razakmiyan Saiyed as an approver under inducement. Therefore, it is pleaded that it was quite necessary to believe the evidence of DW No.8-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya as true and correct as defence witness. It is pleaded that prosecution has failed to prove guilt of accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya beyond reasonable doubt.

Evidence against accused No. 38 Mohd. Saif Shadab Ahmed Shaikh (Appellant No.18)

12.288. It is pleaded that the accused was formally arrested on 27.10.2008 and thereafter remained in custody/remand from 27.10.2009 to 20.03.2009 and again on 15.04.2009 and 15.06.2009.

Alleged role of the Accused No. 38

12.289. It appears from the evidence led during trial, that the Accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh had shown the house situated at Al-Mohammadi Society by way of pointing out panchnama, when he was under police custody and this accused had also pointed out the place where he allegedly parked the bicycle at Hatkeshwar Circle whereas the blast has taken place.

12.290. It is pleaded that the prosecution had led the evidence of PW No.933- Mohd. Rashid Ahmed having his pan shop near Al-Mohammadi Society, who allegedly identified this accused before Executive Magistrate PW No.588 in an TIP.

12.291. It is pleaded that the trial Court erred in relying upon the

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evidence of panch witness PW Nos. 842 and 873 pointing out the places, where he allegedly parked the bicycle containing the bomb for the reason that the Panchnama drawn before the aforesaid two witnesses are u/s 27 of the Evidence Act in the nature, that the said accused No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh almost admitted/confessed his alleged role as per prosecution case in details, which is not admissible as per settled law. It is pleaded that the cross-examination of the aforesaid two witnesses shows that they are tutored witnesses and created witnesses, as no other evidence was found against accused No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh during a long period of police remand.

12.292. It is pleaded that the places allegedly shown by the aforesaid accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh were already within the knowledge of concern Investigating Officer, where as several visits were performed by them during earlier Panchnama allegedly drawn.

12.293. It is pleaded that the trial Court erred in appreciating the evidence of PW No.933- Mohd. Rashid to the extent that he had a pan shop outside of Al-Mohammadi Society and some five to six times- Accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh visited his shop for purchasing ice-cream etc. However, the cross-examination of this witness does not inspire any confidence regarding his memory and causes to remember accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh. Therefore, after long time of investigation and under the police custody he identifies the accused during TIP before Executive Magistrate. This witness is even did not able to identify accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh in the court.

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12.294. It is pleaded that the trial Court erred in relying upon the evidence of witnesses PW Nos. 953, 482 and 880 against accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh because they are not connecting the accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh with the present offence in any manner. It is therefore pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of accused No. 38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 39 Zishan Ahmed Ehsan Ahmed Shaikh (Appellant No.19)

12.295. It is pleaded that the accused was formally arrested on 27.11.2008 and thereafter remained in custody/remand from 27.11.2008 to 24.12.2009 and again on 13.06.2009.

Alleged role of the Accused No. 39

12.296. It appears from the evidence led during trial, that the Accused No. 39- Zishan Ahmed @ Zishan Isan Ahmed Shaikh and two other co-accused Sakil and Ziya had jointly identified three bicycles at FSL office Gandhinagar stating that these bicycle were allegedly parked by them at different three places where blasts have taken place.

12.297. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.871 Mohambhai Nayker for the reason that all the three accused persons, as stated here in above had jointly identified the bicycles allegedly they have planted at different three places.

12.298. It is pleaded that the cross-examination of this witness

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indicates that three different bicycles shown at FSL office were in open condition and these bicycles were not in sealed condition or not covered with any cloth etc. under seal. This witness had no any conversation with any of the three accused and they have not put any mark or sign on the bicycles as to identify at any occasion thereafter. This witness seems to be a tutored and concocted in the nature.

12.299. It is pleaded that these cycles were within the knowledge of Investigating Officer prior to this panchnama and therefore, also not admissible u/s 27 or section 8 of the Evidence Act. It is pertinent to state that no attempt was made through panch-witness to identify the accused before court.

12.300. It is pleaded that except the evidence of above panch witness, no other connective evidence with the crime is brought on record by the prosecuting agency. This witness is even did not able to identify Accused No.39- Zishan Ahmed @ Zishan Isan Ahmed Shaikh in the court. It is therefore pleaded that the oral as well as documentary evidence led by prosecuting agency during trial does not prove the alleged role of Accused No.39- Zishan Ahmed @ Zishan Isan Ahmed Shaikh in commission of the offences beyond all reasonable doubts.

<u>Evidence against accused No. 40 Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli (Appellant No.20)</u>

12.301. It is pleaded that the accused was formally arrested on 27.10.2008 and thereafter remained in custody/remand from 27.10.2008 to 24.12.2009 and again on 13.06.2009.

<u>Alleged role of the Accused No. 40</u>

12.302. It appears from the evidence led during trial that Accused

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No.40-Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli had pointed out one place, where he allegedly parked cycle when he was under police custody and at another occasion, when he was under police custody with co-accused Zishan and Sakil. All the three accused have identified jointly three bicycle at FSL Gandhinagar.

12.303. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 885-Narendrabhai Becharbhai Kahar for the reason that the panchnama drawn before the aforesaid witness is u/s 27 of the Evidence Act in nature that said accused No.40- Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli almost admitted/ confessed his alleged role as per prosecution case in details, which is not admissible as per settled law.

12.304. It is pleaded that the cross-examination of the aforesaid witness shows that he is tutored witness and created witness, as no other evidence was found against them during a long period of police remand.

12.305. It is pleaded that the places allegedly shown by the aforesaid accused No. 40- Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli was already within the knowledge of concerned Investigating Officer, whereas several visits were performed by them during earlier Panchnama allegedly drawn.

12.306. It is pleaded that the trial Court erred in relying the evidence of PW No. 871 to the extent that all the three accused persons stated as herein above jointly identified the bicycles, allegedly they have planted at different three place.

12.307. It is pleaded that the cross-examination of this witness indicates that three different bicycles shown at FSL office were in open condition and these bicycles were not in sealed condition or not covered with any cloth etc. under seal. This witness had no any conversation

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with the any of the three accused and they have not put any mark or sign on the bicycles as to identify at any occasion thereafter. This witness seems to be a tutored and concocted in the nature.

12.308. It is pleaded that except the evidence of above two Panchnama, no other connective evidence with the crime is brought on record by the prosecuting agency against accused No. 40-Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli. This witness is even did not able to identify Accused No.40- Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli in the court during depositions. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.40- Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli in commission of the offences beyond all reasonable doubts.

Evidence against accused No.42- Mohammad Shakil Yaminkhan Luhar (Appellant No.21)

12.309. It is pleaded that the accused was formally arrested on 27.10.2008 and thereafter remained in custody/remand from 27.10.2008 to 24.12.2009 and again on 13.06.2009.

Alleged role of the Accused No. 42

12.310. It appears from the evidence led during trial, that the Accused No.42-Mohammad Shakil Yaminkhan Luhar had pointed out one place where he allegedly parked cycle, when he was under police custody and at another occasion, when he was under police custody with co-accused Ziyaurehman and Shakil, all the three accused have identified jointly three bicycles at FSL Gandhinagar.

12.311. It is pleaded that the trial Court erred in appreciating the

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evidence of PW No.896-Duregesh Kanubhai Patel for the reason that the panchnama drawn before the aforesaid witness is u/s 27 of the Evidence Act in the nature that the said accused No.42- Mohammad Shakil Yaminkhan Luhar had almost admitted/ confessed his alleged role as per prosecution case in detail, which is not admissible as per settled law.

12.312. It is pleaded that the cross-examination of the aforesaid witness shows that he is tutored witness and created witness, as no other evidence was found against them during a long period of police remand.

12.313. It is pleaded that the places allegedly shown by the aforesaid accused No.42-Mohammad Shakil Yaminkhan Luhar were already within the knowledge of concerned Investigation Officer, where as several visits were performed by them during earlier Panchnama allegedly drawn.

12.314. It is pleaded that the trial Court erred in relying the evidence of PW No. 871 to the extent that all the three accused persons stated as herein above jointly identified the bicycles allegedly they have planted at different three place.

12.315. It is pleaded that the cross-examination of this witness indicates that three different bicycles shown at FSL office were in open condition and these bicycles were not in sealed condition or not covered with any cloth etc. under seal. This witness had no any conversation with the any of the three accused and they have not put any mark or sign on the bicycles as to identify at any occasion thereafter. This witness seems to be a tutored and concocted in the nature.

12.316. It is pleaded that except the evidence above two panchnamas, no other connective evidence with the crime is brought on record by the prosecuting agency against the Accused No.42-Mohammad Shakil Yaminkhan Luhar. This witness is even did not able to identify Accused

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No.42-Mohammad Shakil Yaminkhan Luhar in the court during depositions.

12.317. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.42-Mohammad Shakil Yaminkhan Luhar in commission of the offences beyond all reasonable doubts.

Evidence against accused No.44- Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari (Appellant No.22)

12.318. It is pleaded that his arrest was formally shown only on 12.11.2008 in connection with Kapodara Police Station. It is further pleaded that the accused thereafter remained in custody/remand from 12.11.2008 to 30.11.2008 in connection with Surat Police Station, on 01.12.2008 in connection with Khadia Police Station, on 24.12.2008 and on 08.08.2009 in connection with Kalol Police Station.

Alleged role of the Accused No. 44

12.319. It appears from the evidence led during trial, that the Accused No.44- Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari along with Accused No.43- Anik @ Khalid S/O Shafik Saiyed and accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani stayed at a house situated at Sherpura, Bharuch in the month of July, 2008. The accused No. 44- Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari along with accused No.43-Anik @ Khalid S/O Shafik Saiyed pointed the house situated at River View Society while he was in police custody and Accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari had pointed out House at Pune and also pointed out from where accused No.34-

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Mohammad Mansur S/O Asgar Pirbhoi and accused no.32- Mohammad Arif Nasim Ahmed Mirza allegedly sent E-mail in the car.

12.320. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1138 Gulam Husen Abdurashid Pathan for the reason that PW No.1138 had admitted in his cross examination that he had not given any documentary evidence regarding the ownership of the premises and he had not stated before the police that he did not disclose that three persons were staying in his house and he did not had give any receipt of rent.

12.321. It is pleaded that from the cross-examination of PW No.1138, it appears that he was working as an electrician, when police had searched his house, his books relating to electrical was lying and also he had clearly admitted that when the alleged house searched by police, it was not in exclusive possession of accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari but goods lying in the house was belongs to him i.e. landlord PW No. 1138- Gulambhai.

12.322. It is pleaded that the trial Court erred in relying the evidence of PW No.1110 Jignesh Shah to the extent that accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari was when in police custody on 28.11.2008 had pointed out along with accused No.43-Anik @ Khalid S/O Shafik Saiyed, the premises situated at Riverview Society, Surat. However, the cross-examination indicates that it was a joint panchnama, the accused have not disclose before panchas that they were ready to show a place and accordingly, the accused led to the police and panchas at Riverview Society at Surat.

12.323. It is also pleaded that cross-examination indicates that they did not enter in the house or they pointed out the premises outside of the society at a distance and the panchnama did not state the number of

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premise.

12.324. It is pleaded that the trial Court erred in appreciating and relying the evidence of PW No.1123 a landlord of a house situated at Riverview Society to the extent that he rented the premises to one Yakub and thereby connected Accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari. However, the examination in chief of this witness does not refer the name of this accused or identifies in the court during his deposition that the accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari was the person came as Yakub before him and he rented the premises to him. Even no any independent or oral evidence produced by the investigating agency that the accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari at any point of time stayed in the house situated at Riverview Society.

12.325. It is pleaded that evidence of PW No.1123 states that before executive Magistrate during TIP he simply pointed the finger but he does not say about the name of the person towards whom his finger pointed. Even in his deposition he could not identify the accused No. 44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari person as whom he rented his premises.

12.326. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No. 44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari in commission of the offences beyond all reasonable doubts.

<u>Evidence against accused No. 45 Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani (Appellant No.23)</u>

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12.327. It is pleaded that his arrest was formally shown only on 12.11.2008 in connection with Kapodara Police Station. It is further pleaded that the accused thereafter remained in custody/remand from 12.11.2008 to 30.11.2008 in connection with Surat Police Station, on 01.12.2008 in connection with Khadia Police Station, on 24.12.2008 and on 08.08.2009 in connection with Kalol Police Station.

Alleged role of the Accused No. 45

12.328. It is pleaded that from the evidence led during trial, it appears that Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani stayed at Hotel Harimangala, Hotel Narmada and Hotel Revan situated at Bharuch in the first week of July, 2008. The said accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani stayed at the house of Sherpura situated at Bharuch in the month of July, 2008 and the said accused travelled from Pune to Ahmedabad in the first and second week of July, 2008 by the buses of different travels. The prosecuting agency tried to lead the evidence that the Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani purchased some bolts/kills from Bharuch and he purchased some clothes from Surat city. It is also tried to lead the evidence that accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani once got repaired WeganR car near Bharuch.

12.329. It is pleaded that the trial Court erred in relying up on the deposition of PW No. 944 Bhavinkumar Vijaykumar Bariya, a receptionist of Hotel Harimangala, PW No. 946 Gulam Adambhai Patel an owner of Hotel Revan, Bharuch and PW No. 945 a receptionist of Hotel Narmada, Bharuch to the extent that the Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani stayed in the

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first/second week of July, 2008, for the reason that the cross-examination of the above three witnesses indicates that they have simply handed over two pages of hotel guest register of their respective hotels. It is pleaded that while these two pages were not tallied when the muddamal produced before the Hon'ble Court as they were found intact and not in torn condition, not indicating that these two pages were taken out from the guest register and were not joined with the cello tape, as they have stated in there respective cross-examination. It is pleaded that the cross-examination further indicates that all the aforesaid three witnesses of hotels have handed over simply blank pages of the respective hotel register, and later on these papers were misused by the investigating agency filling up the necessary details as per their desire and wish. It is pertinent to state that at any point of time the original entire guest registers were not collected nor verified with the muddamal two pages of guest register.

12.330. It is pleaded that even PW No. 944 BhavinKumar Bariya's cross-examination indicates that his statement was not recorded by police (Page No.3 Para No. 4). It is pleaded that when alleged pages of three hotels guest registers were shown to the Panch-witness for the purpose of taking specimen handwriting of accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, all the pages of guest register were not in sealed condition or not taken out from any sealed box. It appears that when Panch had seen Exh.6516, 6517 and 6518, they were in open condition without any seal.

12.331. It is pleaded that the Investigation Officer had allegedly recovered the two pages of above stated three hotels on 12.12.2008 in the presence of panch witnesses. However, the investigation reveals that on 17.10.2008 one Investigation Officer Mr. A. F. Sindhi visited above

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three hotels and recorded statements of : 1) Harun Asrar Mukhi, 2) Suhel Adam Patel 3) Jayaben Dhananjay Joshi, and on 18.11.2008 another Investigating Officer, Mr. S. J. Tirmiji - PW No.1120 went at above three Hotels with the Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani and he did not collect any guest register of these hotels. It is pleaded that he did not found any incriminating material/evidence related to accused No. 45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani. It is pertinent to state that accused No. 45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani was arrested by Surat Crime Branch on 12.11.2008 and by Ahmedabad Crime Branch on 01.12.2008.

12.332. It is pleaded that even evidence of PW No.912- Yogesh Kanniyalal Pandya, a panch witness, in whose presence the alleged pages of guest register were recovered does not inspire any confidence to the extent that the pages taken out from register of above three Hotels from the respective manager/ receptionist on 12.12.2008. The oral testimony of the Panch-witness does not tally with the muddamal guest register pages, in which condition they were allegedly recovered. Even the presence of this witness at the time of so-called panchnama Exh.6520 does not inspired the confidence.

12.333. It is pleaded that the cross-examination of above three witnesses even not inspires the confidence to the extent that any of the managers/ receptionist of the hotel had seen the accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani staying at their respective hotel, considering their cross-examination as well as their evidence allegedly identifying the accused No. 45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani in TIP.

12.334. It is pleaded that the trial Court erred in appreciating the

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further statement of accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, Exh.67 to the extent that he has said that the entire entries were got up, therefore in light of this fact, the positive FSL report regarding the handwriting of Accused No. 45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani cannot be considered.

12.335. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1138-Gulam Hussain Abdurashid Pathan for the following reason that PW No.1138 had admitted in his cross-examination that he had not given any documentary evidence regarding the ownership of the premises and he had not stated before the police that he did not disclose that three persons were staying in his house and he did not had given any receipt of rent. It is also pleaded that in his deposition before the trial court, he deposed that, 'he had rented his premise to one Rafik Shaikh' and at the time of renting his house one Rafik Sahikh came to him and even his deposition indicates that when once or twice he visited his house, he did not see any of the accused including Rafik Shaikh as the premise was found close. It is very surprise to state that as per evidence of PW No.589-Executive Magistrate this witness had allegedly identified three persons to whom he allegedly rented his premises. This indicates that the investigating agency had tried to rope the accused persons pertaining to the Sherpura premises at Bharuch.

12.336. It is pleaded that from the cross-examination of PW No.1138 it appears that he was working as an electrician when police had searched his house, his books relating to electrical articles was lying and also he had clearly admitted that the alleged house searched by police was not in exclusive possession of accused No.45- Fazle Rehmaan @

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Rafik @ Salauddin S/O Musaddik Durrani but goods lying in the house was belonged to him.

12.337. It is pleaded that even during investigation period and police remand of the accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani and two other co-accused namely Akbar and Anik, it was alleged that they were stayed in this premises, but no key of the aforesaid house is recovered or discovered as to link there possession with the said premises.

12.338. It is pleaded that the trial Court erred in appreciating and relying the evidence of PW No.975 Rizwan Yasinbhai Shaikh for the reasons that, the details of panchnama u/s 27 and the deposition of PW No.975 indicates that its nothing but a confession of the accused while in police custody, regarding his so-called involvement, except he pointed two places i.e. 1) a premises situated at Sherpura Bharuch, containing a Board General Electric Works and another premises at Lookman park, Bharuch. However, the owners of both the premises could not provide any document with regard to their respective ownership of the property as well as any document letting to the premise either any accused who might allegedly acquired the premises.

12.339. It is pleaded that the trial Court erred in appreciating and relying the evidence of PW No.986 Akbar Sadruddin Sorathiya a pointing panch witness, while accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani in police custody, on 21.12.2008 pointed office of one travel agency from where the investigating officer PW No.1154- Smt Usha Rada had recovered carbon copies of traveling tickets from Pune to Ahmedabad, from three different ticket books. However, the cross-examination indicates that the carbon copies of tickets do not tally with the ticket books and appears concocted tickets.

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12.340. It is pleaded that an important aspect of the evidence of PW No.1154-Smt Usha Rada is that she claims that Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani was in her custody from 20.12.2008 to 24.12.2008 that too at Mumbai and Pune but records of the Hon'ble Metropolitan Magistrate court shows that on 23.12.2008 the accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani and other co-accused No.44-Mohmmad Akbar @ Said @ Yakub @ Vinod S/o Ismail Chaudhari was produced before the said court. Even she confirmed in her cross-examination that during 20.12.2008 to 24.12.2008 she did not return to Ahmedabad with any of the above accused, but stayed at Mumbai and Pune. Therefore, also any evidence of any travel agent as emerged as evidence showing that Investigating Officer- Smt. Usha Rada recorded there statement or recovered any travels document/tickets during 20.12.2008 to 24.12.2008 seems concocted evidence against concern accused. It is pleaded that there is no investigation done about how accused No.45 return thrice from Ahemedabad or Bharuch to Pune or else.

12.341. It is pleaded that the trial Court erred in considering the evidence of PW No. 983 Naresh Mehta an owner of hardware shop stating that one boy named as Rafik had purchased the kills and teen-patra from his shop. However, the cross-examination of this witness state that he had not produced any documents regarding the sale or he could not say on which date a boy name Rafik came to his shop, he had not given any physical appearance of a boy who bought the kills etc. to the police on 18.11.2008 when police first time came. Even in Test Identification Parade, he did not come to know that the person to whom he identified was Rafik by name or neither Magistrate had informed him. Therefore, his TIP does not give any confidence showing that he

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identified accused No. 45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani.

12.342. It is pleaded that the trial Court erred in appreciating the evidence of PW No.984 Radheshyam Madanlal Thakkar regarding his sell of cloths to accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani in the light of his cross-examination, which indicates that the material, which he was selling was common and several traders were selling in the Surat city, and the muddamal was not containing any specific sign as to identified it showing that the same muddamal was sold by him. Even there is no evidence to show that muddamal sold by him was used to connect the accused with the crime by any other evidence like FSL report etc.

12.343. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 948 Irfan Shaikh a car mechanic to the extent that this witness does not give the name of accused to the police, but police gives accused name to this witness and he said that he might have repaired his WagonR car. There is no pointing out panchnama of accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, who took the shop of this witness and this witness might have confirmed accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, even he could not identify the accused during his deposition in the court.

12.344. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 947 Hamid Memon to the extent that he filled the ten liters petrol in a car, which brought by the accused and he was in police custody. However, in cross-examination he says that he has no personal knowledge about filling the petrol and therefore, he could not identify the accused during his deposition in trial court.

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12.345. It is further pleaded that the trial Court erred in appreciating the evidence of PW No.909 Brijesh Dudhwala to the extent that accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani had pointed out one petrol pump viz. Vanaz petrol pump and one bill book was recovered. The cross-examination of this witness does not inspire the confidence regarding alleged recovery of bill book. The witness seems a tutored and selected witness.

12.346. It is pleaded that the trial Court erred in appreciating the evidence of PW No. 855 Jayes Manubhai Patel to the extent that he runs a shop in the name of Kamal Hardware Mart and he had sold some nut bolts to one boy in 2008. However, in his cross-examination he admits that he did not submit the bill book or account book or sell register to police, when he was interrogated. He did not have given the description of the boy, who had allegedly purchased the nut and bolts from his shop. He admitted that the so-called nut and bolt sold by him were available in the market. It is pleaded that he did not declare to any person from the date of sale of nut and bolt to the period when he went to police and from D.C.B. police station no notice or summon was issued to him. It is pleaded that this witness is created by the police to support their false claim of purchase of nut and bolt from his shop. Moreover, from the examination-in-chief of this witness, in his deposition he has stated that in the year 2008 one boy was came to purchase the nut and bolt, while the evidence of PW No.575 the Executive Magistrate indicates that this witness has identified two persons allegedly purchased nut and bolt from his shop. It indicates that again police had try to create evidence to implicate accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani in the case.

12.347. It is pleaded that the trial Court erred in appreciating the

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evidence of PW No.918 Amar Rajput stating that the accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani had pointed a premises known as 'Master House" under panchnama Exhibit-6544 for the reason that this witness admits that he does not know Gujarati or English and can only understand Hindi language and he did not have read the Panchnama. He admits that the room pointed by the accused was not got open and no inquiry was made that who was the landlord. Further, he admitted in cross-examination that no efforts were made to search the landlord or to break open the lock of the room even the accused had not shown the key of the room. The witness could not identify the accused during deposition in the trial Court.

12.348. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 47 Ahmed Bava @ Abu S/O Abubakr Barelvi (Appellant No.24)

12.349. It is pleaded that his arrest was formally shown only on 05.01.2009 in connection with Kapodara Police Station. It is further pleaded that the accused thereafter remained in custody/remand from 05.01.2009 to 05.02.2009 and 06.02.2009 in connection with Sahibaug Police Station, on 05.03.2009 in connection with Ahmedabad Police Station, on 15.06.2009 in connection with Kalol Police Station

Alleged role of the Accused No. 47

12.350. It appears from the evidence led during trial, that the

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Accused No. No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi, while he was in police custody pointed a house situated at Riverview society, Surat along with co-accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed vide Panchnama Exh.8529 and also it appears from the evidence led during trial that the Accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi had pointed out a house under a panchnama u/s 27 of Evidence Act situated at Al-Mohammadi Society, Danilimbda, Ahmedabad, whereat as per prosecution's case some accused have prepared the bomb.

12.351. It is pleaded that the trial Court erred in appreciating the aforesaid evidence while convicting the accused No.47-Ahmed Bava @ Abu s/o Abubakr Barelvi for the reason that the alleged panchnama Exh.No.8529 is drawn in the nature of joint panchnama as accused Nos.46 and 47 allegedly pointed out the place of Riverview society.

12.352. It is pleaded that the cross-examination of panch-witness No.458 Deepak Ramchandra Mali indicates that first time he was called on 29.08.2008 and a panchnama was drawn to the effect that one Jayesbhai Patel the owner of a shop 'Kamala Hardware' produce one bolt and nut, which was recovered. It was a recovery panchnama at Exh.2814 not implicating any accused or admitting that either accused No.46 or 47 had purchased the muddamal nut and bolt his shop.

12.353. It is pleaded that this witness did not state anything about pointing out the joint panchnama by accused Nos.46 and 47 during his first deposition on 28.04.2015, however he was recalled on 20.09.2019 and stated something about joint panchnama. The cross-examination indicates that at the time of preliminary panchnama he had no any talk with accused Nos.46 and 47 regarding their voluntariness to show the place which was the essential requirement u/s 27 of the Evidence Act. It

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is very surprising and unbelievable aspect admitting by this panch witness, both the accused Nos. 46 and 47 were belonged to Karnataka State and without any kind of confusion straightaway stopping or asking to anyone about the address of place led the police and panch-witness to the alleged place situated at Riverview society at Surat City. Moreover, except panchnama Exh.8529 no evidence was brought on record to show that accused No.47 at any point of time stayed at the house shown under this panchnama. Neither the landlord nor any independent witness had identified accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi, person as who stayed at the place at Riverview society, Surat. It is further pleaded that the panchnama Exh.8529 was drawn on 07.01.2009 and prior to this, as per prosecution case, one Panchnama at Exh.2757 was drawn at the instance of Accused No.63 on 28.08.2008. It means that the Investigation Officer Mr.N. B. Parmar had already the knowledge of place allegedly shown by accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi under panchnama Exh.8529.

12.354. It is pleaded that the trial Court erred in appreciating and convicting the accused only relying the evidence of PW No.1111- Satish Vamanrav for the reason that the cross-examination of this witness indicates that during panchnama, he simply pointed out one premises at a distant place and the police did not go to this premises and the house was closed and door of the house was not got opened. Moreover, the premises pointed out by accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi as alleged, did not show that it was situated at Al-Mohammadi Society, Danilimbda and no house number was mentioned. Therefore, it could not be said that the accused No. 47 pointed the premises was a house No.10 situated at Al-Mohammadi Society. Moreover, the evidence recorded during trial indicates that prior to this

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panchnama Exh.7950 the house of Al-Mohammadi Society was visited by Investigation Officer and search and seizer was made.

12.355. It is pleaded that it cannot be said that the place as shown by accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi was not within the exclusive knowledge of Accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi. Even otherwise, no any independent evidence or witness connects accused No. 47-Ahmed Bava @ Abu S/O Abubakr Barelvi stating that at any point of time he was found present at house No. 10 Al-Mohammadi Society.

12.356. It is further pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 49 Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim (Appellant No.25)

12.357. It is pleaded that his arrest was formally shown on 15.04.2009. It is further pleaded that the accused thereafter remained in custody/remand from 15.04.2009 to 25.06.2009.

Alleged role of the Accused No. 49

12.358. It appears from the evidence led during trial that the Accused No.49-Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim had shown one demonstration before PW No.1162 Jay Panchal, a panch witness about how to prepare a electrical chip and drawn a diagram for preparing a chip.

12.359. It is pleaded that the trial Court erred in relying upon the sole

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evidence of PW No.1162-Jay Panchal and thereby erred in convicting for the reason that the alleged demonstration panchnama Exhibit-8594 is in the nature of confession of the accused, which is inadmissible in evidence.

12.360. It is pleaded that cross-examination of the panch witness indicates that the accused belongs to Kerala state and he did not know Gujarati language or Hindi language and the panchnama drawn in Gujarati language and it does not contain any endorsement that the accused was speaking English and it was translated into Gujarati language while preparing panchnama.

12.361. It is pleaded that as per further statement of accused recorded u/s 313 of Cr.P.C. (Exhibit-171) the statement was recorded with the help of one employee of the court who belongs to Kerala and knowing Malyalam language and he translated the replies from Malyalam to Gujarati. Even accused No.49-Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim had stated that except Malyalam he does not know other language like English etc.

12.362. It is pleaded that panchnama and the alleged diagram for preparing a timer chip does not contain signature of accused, panch witnesses and FSL officer, who were allegedly present during panchnama. Moreover, the panchnama or panch-witness does not say that the diagram at Exh.8594 was sealed in a cover or in any other article, meaning thereby, the diagram was kept open without any precautions or preservation to save from any tempering.

12.363. It is pleaded that the alleged diagram drawn by accused No.49-Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim, was in the same manner the diagram was in the possession of PW No.1136-Sujata Majmudar an Investigating Officer of

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the case. The details of diagram and manner in which, chip was working was already within the knowledge of said Investigating Officer with the report of the Bharat Electrical Limited vide Exh.8099 dated 14.08.2008. It is also pleaded that demonstration panchnama (dated 04.05.2009) was prepared after the receipt of diagram and report of BEL, Bangalore dated 14.08.2008. As per cross-examination of Investigating Officer, it is very much clear that Investigation officers of Ahmedabad and Surat are exchanging each and every details of investigation.

12.364. It is pleaded that in cross-examination, the panch had admitted that the alleged chip prepared by accused No.49-Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim was not tested by putting an electric bulb as to verify that the chip was weather properly prepared or working as per diagram.

12.365. It is pleaded that most important aspect of the panchnama is that during panchnama it is alleged that the accused told the police to bring the certain electrical articles like, 1) Micro controller, 2) Diod, 3) Disc Cap 4) Different types of registers, 5) Capesiter, 6) Transester, 7) Comon PCB, 8) Chip on Board 9) Connector, 10) Socket, 11) Soldering rod, 12) Soldering led 13) Different coloured wires, and accordingly one police constable went to market and he purchased the articles as stated above and returned with the materials and handed over to the accused. It is also pleaded that in a panchnama nowhere it is stated that the accused had stated to bring any type of “PIC”, and also not given any particular number of PIC. It is also pleaded that the FSL report at Exh.5644 refers similarity of timer circuit with the PIC number of bomb found at Surat and PIC number of alleged diagram at Exh.8594 i.e. PIC No.16F628A. Moreover, the drawing of Diagram and the articles allegedly brought form the market for preparation of so-called timer circuit in presence of

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FSL officer, indicates that the investigating officer would have taken the help of FSL officer for obtaining the Electrical articles and preparing the map of circuit diagram as they already having report of BEL dated 14.08.2008 at Exh.8099. So, it is very much clear that so-called diagram and alleged timer chip prepared is not a result of exclusive knowledge of Accused No.49-Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim.

12.366. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No. 49- Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 50- Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan (Appellant No.26)

12.367. It is pleaded that his arrest was formally shown on 04.07.2009. It is further pleaded that the accused thereafter remained in custody/remand from 04.07.2009 to 31.07.2009.

Alleged role of the Accused No. 50

12.368. It appears from the evidence led during trial, the Accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan had shown the house situated at Al-Mohammadi Society by way of pointing Panchnama u/s 27 of the Evidence Act, when he was under police custody and this accused had also pointed the place u/s 27 of the Evidence Act, where he allegedly parked the bicycle at Narol Circle whereat blast has taken place.

12.369. It is pleaded that the trial Court erred in relying upon the

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evidence of panch-witness PW Nos.825 and 869 pointing the house of al-mohammadi society and the places, where he allegedly parked the bicycles containing the bomb for the reason that the panchnamas drawn before the aforesaid two witnesses are u/s 27 of Evidence Act in the nature that the said accused No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh almost admitted / confessed his alleged role as per prosecution case in details, which is not admissible as per settled law.

12.370. It is pleaded that the cross-examination of the aforesaid two witnesses show that they are tutored witnesses and created witnesses, as no other evidence was found against them during a long period of police remand.

12.371. It is pleaded that the places allegedly shown by the aforesaid accused Accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan were already within the knowledge of concerned Investigating Officer, whereas several visits were done by them during earlier Panchnamas allegedly drawn. These two witnesses are even did not able to identify Accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan before the Hon'ble Court during their respective depositions.

12.372. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan in commission of the offences beyond all reasonable doubts.

<u>Evidence against accused No. 60 Saduli @ Hariz S/O Abdul Karim Muslim (Appellant No.27)</u>

12.373. It is pleaded that his arrest was formally shown on 27.07.2009. It is further pleaded that the accused thereafter remained in custody/remand from 27.07.2009 to 10.09.2009.

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Alleged role of the Accused No. 60

12.374. It appears from the evidence led during trial against accused No.60 was that during the examination in chief of PW No.1141-Ayaz Saiyed referred the presence of his brother Sibli @ Sabit S/O Abdul Karim Muslim (Accused No.11) at Ahmedabad in one meeting, but during his examination in chief he wrongly identified present accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim as accused No.11-Sibli @ Sabit S/O Abdul Karim Muslim. Relying this evidence though he had not attended any meeting in Ahmedabad but by misconception of evidence the learned Judge convicted both accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim with accused No.11-Sibli @ Sabit S/O Abdul Karim Muslim. It is also pleaded that benefit of doubt always helps the accused but here the learned Judge given benefit to the prosecution without any reason assigned. Moreover, the learned Judge erred in appreciating the confessional statement of Accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam, which he allegedly made in another case at Ernakulam, Kerala, wherein it refers the presence of some accused persons at Vagamon alleged camp including accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim. However, u/s 300 of Cr.P.C., accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim cannot be retried for the same offence and facts in another trial. Even otherwise confessions of co-accused require corroboration from independent evidence, which is not available in present case.

12.375. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim in commission of the offences beyond all reasonable doubts.

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Evidence against accused No. 69-Amin @ Raja S/O Ayub Nazir Shaikh (Appellant No.28)

12.376. It is pleaded that his arrest was formally shown on 26.08.2011. It is further pleaded that the accused thereafter remained in custody/remand from 26.08.2011 to 06.10.2011.

Alleged role of the Accused No. 69

12.377. It appears from the evidence led during trial, by the prosecuting agency that:- i) Both the accused have stolen cars from Panvel, Vasi Mumbai, ii) Both the accused brought the car from Mumbai to Surat iii) The stolen cars were used for blast purpose.

12.378. 12.378. It is pleaded that the trial Court erred in appreciating and relying the evidence of PW No.-1045 Nitaben Pradipbhai, PW No.1046- Pradipbhai Santaram and PW No.980-Vishvanath Waghmore, that the complaints registered by them were for their stolen cars by the accused. However, it had not come in oral evidence of these three witnesses that the accused No. 69 and 70 have stolen their respective cars and at the trial took place at respective courts, they have identified the accused. Even these three witnesses while deposing before the Hon'ble trial court and were not shown their respective cars to them, which were lying at the Crime branch Ahmedabad as muddamal articles.

12.379. It is pleaded that accused Nos.69 and 70 were tried by Judicial Magistrate First Class Court concerned for offence of theft. However, all the three courts have acquitted accused Nos. 69 and 70 from the charges of theft, vide their respective Judgements produced during trial and at the time of further statement u/s 313 of Cr.P.C., vide

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Exhibit Nos.7072, 9315 and 9316. Therefore, it is pleaded that even u/s 300 of Cr.P.C., it is quite unfair, illegal and unconstitutional to try these accused Nos. 69 and 70 for the same facts and evidence.

12.380. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.920-Vijay Vadikar a receptionist of Prince Hotel, PW No.-985 Hasanali Sunasara, a manager of Hotel Shreenath, Valsad and PW No.1057-Mangilal, an owner of Hotel Ashirvad, Valsad to the extent that in the month of first and second week of July 2008 the accused were stayed in their respective Hotels, for the reason that PW No.985-Hasanali Ahmedbhai Sunsara a manager of Hotel Shreenath, had admitted in his cross-examination that he had not made any entry in guest register and there were no any handwriting found written by him, in Exh.2858. He admitted that on 09.07.2008, the car which, he referred was parked in the parking plot at night and its number was not verified by anyone. He admitted that during 21.12.2007 to 09.07.2008, many customers stayed at the Hotel with their respective vehicles and entry No.424 of the register at page No.43, which starts from entry Nos.421 to 430. He also admitted that no entry of any vehicle of any guest from page Nos.1 to 42, shows the registration number of any vehicle. It means at the instance of Investigation Officer, the entry No.424 at page No. 43 contains the details of vehicle number which is manipulated. The witness had also admitted that he could not give the description of customers pertaining to entry No.424, as they were quite normal guests as other guests. This witness is also admitted in his cross-examination (at para 18) that he was also called by Crime Branch, Bombay for TIP and he could not identify any of the accused. It is also pleaded that this witness could not identify any of the accused in the trial court during his deposition.

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12.381. It is further pleaded that therefore in view of his cross-examination his deposition regarding TIP identifying the accused cannot be considered and other reasons discussed herein and the accused have offered their explanation in their respective further statements u/s 313 of Cr.P.C.

12.382. It is pleaded that the trial Court erred in relying upon the evidence of PW No.920 Vijaybhai Vadikar a receptionist of Hotel Prince, Ahmedabad to the extent that this witness had admitted in his cross-examination that he could not say that which customer came on which date and about what time he stayed and he could not give any description of any customer. He admitted that he could not give physical appearance of the customer, who stayed vide entry No.1326 (guest register) as no notes were made regarding physical appearance. He further admitted that he had not stated before police that the handwriting of entries were written by Amin Shaikh in his statement. He further admitted that police had not called him for TIP for the person, which he referred in his examination in chief.

12.383. It is pleaded that the trial Court erred in appreciating the evidence of PW No.-1057 Mangilal Udayram Khatri to the extent that in the year 2008 one Mr. Sabbirbhai Alajibhai Mukhrejiya was working as manager and police had not made any interrogation / inquiry of the said manger Sabbirbhai. He further admitted that in his Hotel the manager was not writing the entry of the customer in the guest register but the customer himself was making entry in his own handwriting. It is also pleaded that this witness had produced a copy of page of entry No.2233 dated 16.07.2008 without guest register, therefore, no Exhibit was given to it but, it was marked as “A”. This witness had not identified any of the accused in the trial court.

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12.384. It is pleaded that the trial Court erred in appreciating the evidence of PW No.-968 Arjun Sinh Parihar, a panch witness in whose presence under panchnama Exh.6782 a page of Hotel guest register recovered for the reason that panch-witness Arjunsinh and co-panch Pappukumar had admitted that at the time of incident both were working in the Hotel and police could call other independent witnesses. He further admitted that manager Prabhatsinh was staying in room No.101 and as per examination-in-chief, he had given the page of the Hotel register to the police. It is pleaded that this manager Prabhatsinh was not examined as to prove that who had made the entries in the relevant page of guest register. The witness had admitted that he had no any knowledge that who had made the entry and who had signed in the register. It is also pleaded that it is not proved that the accused brought by the police to this Hotel who stayed there. There is no TIP of any witness regarding stay at Balaji Hotel. Even the panch-witness PW No.968 could not identified the accused before the Hon'ble court during deposition.

12.385. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.977-Kamal Jaswantlal Thapar to the extent that on 20.08.2011 a Crime Branch Police from Ahmedabad, came with accused Mubeen and Raja and he deposed that they were came in the year 2008 and he had prepared two number plates of Gujarat.

12.386. It is pleaded that in his cross-examination he admitted that he had not disclosed to the police that the number plates allegedly he prepared were on which date, which month and which year. Even on the day of deposition, he could not say about this. He was not keeping any record regarding the preparation of number plates of customers and the vehicle numbers. He deposed that earlier he had prepared the 8 to 10

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number plates for accused.

12.387. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.976-Soeb Rafik Shaikh to the extent that, on 30.08.2011 at about 1.30 pm near I.O.C. colony the police called him and asked that two persons were in the police custody, and they wanted to point out the place, where they parked the stolen cars and the accused confessed before the Panchas including him as a Panch. The examination-in-chief and cross-examination indicate that near I.O.C. colony, there is a public road and it was simply a confession of the accused of being a place of parking. No independent witness was examined to state that at any point of time the accused were found near I.O.C. colony parking the vehicles in question. Even this witness could not identify any of the accused during his deposition.

12.388. It is pleaded that the trial Court erred in appreciating and relying upon evidence of PW No.916-Sureshkumar Ramcharn Sharma a Panch witness stating that on 31.08.2011 he was called by police and two accused were in police custody and they have shown the parking plot at Surat Railway Station, where they have parked a car.

12.389. It is pleaded that from cross-examination it appears that this panch was working at the said parking plot of Surat Railway Station and when he called at parking plot, he was taking his lunch at parking plot and he did not know Gujarati language. He admitted that the accused have simply stated the name of their village and he had signed the Panchnama at Tirupati Hotel. One signature put at parking plot and another signature put at Tirupati Hotel. Therefore, evidence of this panch witness does not indicate that which car of which registration number and on which date it was parked. Even no evidence of any person of parking plot at Surat Railway Station is examined that on which date,

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and by whom any car allegedly shown by two accused was parked there at.

12.390. It is pleaded that the trial Court erred in relying PW No.802 Kamlesh Vasant as he had produced details of vehicle passed by Express Way and wrongly without any evidence presumed that stolen vehicle of MH-05-H-5764, GJ-6-CD-9718 and GJ-6-CD-2908 used in alleged offence of bomb blast.

12.391. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh and 70-Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan in commission of the offences beyond all reasonable doubts.

Evidence against accused No. 75 Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed (Appellant No.29)

12.392. It is pleaded that his arrest was formally shown on 21.04.2016. It is further pleaded that the accused thereafter remained in custody/remand from 21.04.2016 to 15.05.2016.

Alleged role of the Accused No. 75

12.393. It appears from the evidence led during trial, the prosecuting agency tried to show that when accused was in police custody, a panchnama u/s 27 was drawn, whereby accused had pointed place from where he obtain the bicycle and parked at Hanumanji Mandir. The accused had pointed out a house situated at Chandola Lake, Al-Mohammadi Society from where he obtained the bicycles and the accused had pointed out one shop from where the gas cylinders were allegedly purchased under a panchnama u/s 27 of evidence act. The

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prosecuting agency tried to rely on PW No. 957 Zakir Qureshi an accomplice stating that he had seen the accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed after bomb explosion at the house of his relative whereat he was in feared condition.

12.394. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.-1082 Nalinbhai Jadawala to the extent that accused No.75 had pointed out the place at Unique Apartment, Juhapura and Hanuman Temple at Narol Circle for the reason that none of the independent witness deposed before the Hon'ble court that the accused was found near Unique Apartment or Hanuman Temple at Narol Circle. Even no evidence has come on record on which date the accused obtained the bicycle or what was the description of the bicycle viz. colour, name of company etc.

12.395. It is pleaded that the trial Court erred in appreciating the evidence of PW No.1114- Rajeshbhai Chauhan to the extent that accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, when in police custody, had pointed a house situated at Al-Mohammadi Society. However, the cross-examination indicates that the house pointed by the accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed did not have any house number and they have not seen any board outside the society showing that Al-Mohammadi Society, even they did not visit the house. It is also pleaded that the important aspect is that none of the witness examined by the prosecuting agency to state that at any point of time accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed was present or found at Al-Mohammadi Society. Even otherwise, it is pleaded that the alleged place/house situated at Al-Mohamamdi society was earlier, alleged to have been pointed by other co-accused persons

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from time to time during investigation and therefore, the said place was within the knowledge of investigating officer prior to the panchnama drawn on 26.04.2016, when this panchnama was drawn at about 1113 witnesses have been examined by the trial Court.

12.396. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1102 Santoshsing Rajput to the extent that accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, when he was in police custody, pointed the place of Halol camp, where alleged conspiracy was hatched under a panchnama of section 27 of the Evidence Act, for the reason that prior to the alleged panchnama of Halol camp drawn at the instance of accused No.75, several instigating officers had earlier visited the said place and drawn the Pachnamas of the same/identical nature. Therefore, the said place was within the knowledge of investigating officers prior to 01.05.2016. It is pleaded that none of the independent witness was examined by the prosecuting agency to show that accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed was found and present at Halol camp at any point of time. Even no Test Identification Parade was arranged to show that any of the witness had seen the accused at this place at any point of time. The cross-examination of PW No.1102 indicates that he had simply signed the panchnama and he appears to be a selected and tutored Panch.

12.397. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No.1107 Nitesh Rajput, to the extent that accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, when was in police custody had pointed one shop under a panchnama, from where gas cylinders were purchased. It is pleaded that the cross-examination of this witness states that during Panchnama

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accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed had pointed out the shop named Delux Stove from outside of the shop and they did not enter in the shop to confirm that weather it was the shop selling gas cylinders or not. It is pleaded that none of the witness had identified, including the gas cylinder shopkeeper to accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, as a person who purchased the gas cylinders. It is also pleaded that even otherwise, it has come on record that other investigating officer have visited the place Delux Stove and recorded the statements of shopkeeper and this place was within the knowledge of investigating officer prior to this panchnama dated 27.04.2016.

12.398. It is pleaded that the trial Court erred in appreciating and relying upon the evidence of PW No. 957 Zakir Qureshi stating that, on 27th i.e. after the day of explosion he went to one house situated at Rakhiyal and he had seen accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed there at in fearing condition. It is pleaded that PW No.957 Zakir Qureshi is an accomplice and why this witness could not be believed. The reasons and discussions are made earlier.

12.399. It is also pleaded that the trial Court relied upon the alleged confessional statement of accused No.2- Imran Ibrahim Shaikh u/s 164 of Cr.P.C. The confessional statement of above said co-accused could not be believed for the reason stated herein above.

12.400. It is pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of Accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed in commission of the offences beyond all reasonable doubts.

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Evidence against accused No. 78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan (Appellant No.30)

12.401. It is pleaded that his arrest was formally shown on 27.11.2017. It is further pleaded that the accused thereafter remained in custody/remand from 27.11.2017 to 02.01.2018.

Alleged role of the Accused No. 78

12.402. It appears from the evidence led during trial, the accused No. 78 had pointed out a place of Halol-Pavagadh, when he was in police custody on 01.12.2017 and also the prosecuting agency led evidence of one panch witness to the extent that when accused was in police custody had pointed out one house situated at Dariyapur.

12.403. It is pleaded that the trial Court erred in appreciating and relying upon PW No. 1083 Mahendrabhai Vishnubhai Patil for the reasons that the alleged place of Halol Pavagadh pointed by the Accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan was already within the knowledge of investigating officer as earlier accused Nos.1, 16, 35, 66, 74, 75 etc., have pointed the said place and the panchnama drawn vide Exh.7392 is an identical. This panchnama is almost same kind of panchnama of earlier Panchnamas drawn at the instance of aforesaid accused persons. It is simply a repetition of details of earlier Panchnamas.

12.404. It is pleaded that cross-examination of PW No.1083 states that he is a tutored witness and he had signed panchnama without going to the places as discussed in the panchnama.

12.405. It is pleaded that except panchnama at Exh.7392 no any independent witness or evidence brought on record to show that at any point of time accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan

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Pathan was found or present at Halol camp as alleged by the prosecuting agency. It is also pleaded that even otherwise, the detailed discussions made herein above does not inspires any confidence as alleged by the prosecuting agency regarding any kind of conspiracy.

12.406. It is pleaded that the trial Court erred in relying upon the evidence of PW No.1081-Anand Shrivastav, to the extent that accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan, when he was in police custody pointed out one house situated at Tambu Chawki, Dariyapur. However, his examination-in-chief and cross-examination indicate that when they stopped at Tambu Chawki, he did not go to the house pointed out by accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan and even in cross-examination he had admitted that the police also did not enter in the house pointed out by accused. He further admitted that when police called he did not have any conversation with regard to the arrest of accused or reason for his arrest or he had no any note that on the day when he signed, regarding the conversation with any person.

12.407. It is pleaded that the trial Court relied upon the alleged confessional statement of accused No.2- Imran Ibrahim Shaikh u/s 164 of Cr.P.C. The confessional statement of above said co-accused could not be believed for the reasons stated herein above.

12.408. It is pleaded that the trial Court erred in relying upon the evidence of PW No.1105- Idrish Gulabsha Fakir for the reason that the said witness had clearly deposed in his evidence at page No.10, Para Nos.10, 13 and 14 to the extent that whenever police had visited the Dargah, he did not give name of any accused person, but he was informed by the police that the particular person/ alleged accused brought with them was stayed at Dargah and therefore, he came to know

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about the same. Moreover, this witness admitted in his cross-examination that he did not have any occasion to talk with any person /accused allegedly stayed at Dargah during period of January 2008. Therefore, obviously he had not declared the presence of any accused, by name and hence, he could not identify any person saying that he stayed at Dargah. It is pleaded that even no independent witness or three alleged chance witness i.e. PW Nos. 972, 981 and 1067 had not deposed about the presence of accused No.78 at the Halol camp or had identified the accused in any TIP.

12.409. It is pleaded that therefore in view of the aforesaid set of evidence showing that there is no other clenching evidence led by the prosecution to connect the accused with a case of serial bomb blast.

12.410. It is also pleaded that the oral as well as documentary evidence led by the prosecuting agency during trial does not prove the alleged role of the Accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan in commission of the offences beyond all reasonable doubts.

12.411. It is also pleaded that Exh.9248 given by Accused No.68-Mohammad Habib @ Habib Falahi @ Mohammad Taiyab S/O Abuljais Shaikh during his further statement u/s 313 is not admissible in evidence for the reasons that this document is not a part of charge-sheet or not collected under any panchnama etc. and No one was examined to prove this documents and it is a settled law that mere exhibiting a document does not amounts to consider its genuineness and even otherwise, from where these documents are collected, is also not clear, no date, no signature or any source is not mentioned in this documents. That these documents are Xerox copies, so it is not a admissible evidence. That immediately an application to de-exhibit the above documents was given

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by accused No.68-Mohammad Habib @ Habib Falahi @ Mohammad Taiyab S/O Abuljais Shaikh stating that by mistake those documents were produced by him, therefore, even no reliance could be placed.

12.412. It is pleaded that the trial Court erred in not accepting and considering the arguments advanced by the defence lawyers with regard to all so-called premises hired either at Ahmedabad, Surat, Bharuch and Pune during investigation. It is pleaded that no any key of such premises was recovered from the possession of any of the accused or discover panchnama to point such key. That in absence of any key in the possession of any accused, it cannot be said that such premises allegedly hired by the accused, were in possession of any accused. It is pleaded that from the impugned Judgement and Order, it appears that the trial Court had believed one evidence at one stage and the same evidence is disbelieved at other stage in its Judgement. It is pleaded that moreover, upon evaluation of impugned Judgement and Order, it appears that the learned Trial Judge believed the prosecution case relying upon the oral evidence of concern witness and not asked them to submit the relevant documents pursuant to their claim. It is also pleaded that the learned Judge assigned the reason that it can be believed without documentary evidence as argued by the prosecuting agency. For example, all the premises allegedly hired by the accused persons, the concern owners of the premises were challenged to produce the documents regarding their ownership, which was considered by the learned Judge, as it was not necessary. It is also pleaded that at the same time the learned Judge expected the documentary evidence from the defence side and from the accused persons, who offered their explanation u/s 313 of Cr.P.C. For example, that DW No.1 Husenbhai Shaikh deposed about his house, though his ownership was not challenged during his cross-examination

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by the special prosecutors, yet the learned Judge expected the document regarding the ownership of his premises.

12.413. It is pleaded that the trial Court erred to apply the rule in case of *Bipan Shantilal Panchal* v. *State of Maharashtra* 2001 ALL M.R. (Cri.) 452 uniformly. A number of objections raised by the accused persons during the examination-in-chief of prosecution witnesses were left pending to be decided at the time of final hearing. As a consequence, the evidence sought to be led by the prosecution was brought on the record. However, objections raised by the prosecution during the course of the cross-examination of prosecution witnesses and the examination-in-chief of defence witnesses were immediately disposed of. It is pleaded that this prevented the accused from having an equal opportunity to bring the evidence on record.

12.414. It is pleaded that the trial Court ought to have appreciated that so many accused were repeatedly tortured by the police under the pretext of calling him for interrogation from the day after the blasts, i.e., 31.07.2008. From 31.07.2008 to 16.08.2008, they were kept in illegal custody. The details of torture and illegal custody come on record in evidence of PW Nos.881 and 1151. The retraction application and other applications sent from jail just after remand was over and also described in further statement under section 313 of Cr.P.C.

12.415. It is pleaded that the trial Court erred in rejecting the evidence regarding the illegal detention of the accused persons by the Crime Branch, Ahmedabad, on the ground that it does not affect their guilt. The learned trial Judge ought to have appreciated that the illegal detention of the accused facilitated their torture, which resulted in the false confessions. It is pleaded that the defence has come with a specific case that the accused Nos.1 to 8 were detained almost 8 to 10 days

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before their official arrest, which is shown arrested on 16.08.2008. Therefore, their arrest is not supported by any documents like arrest panchnama, supply of grounds of their arrest. It is averred that the arrest of accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh from Azamgadh on 16.08.2008 and shown at Ahmedabad on the same day i.e. 16.08.2008 speaks in volumes, at the same time arrest of Accused No.16-Abbas S/O Umar Sameja, itself suggests that actually he was arrested on 08.08.2008 but official arrest was on 04.09.2008. It is also pleaded that several prosecution witnesses have deposed in their respective evidence that they were illegally arrested and when they assured after a long torturing were released by the investigating agency after recording their confessional statements as per their choice.

12.416. It is pleaded that the accused persons consistently deposed in their written complaints, their statements u/s 313 of the Cr.P.C., as well as on oath as Defence Witnesses that they were kept in illegal custody prior to their formal arrest.

12.417. It is pleaded that the trial Court ought to have appreciated that the torture is not only the violation of a substantive right, but it also vitiates the evidence of confessions and recoveries led by the Prosecution. In the light of the torturing suffered by the accused, the confessions and disclosures Panchnamas cannot be said to be voluntary and thus, must be discarded.

12.418. It is pleaded that the trial Court ought to have appreciated that the evidence of torturing, is corroborated by the remand applications filed by the Crime Branch itself. Successive remand applications relating to a number of the accused make references to the kind of interrogation they were being subjected to.

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12.419. It is pleaded that the trial Court failed to consider that the prosecution had malafidely withheld some of the material evidence, in the form of photographs, videography, mobile call details etc. Some of the investigating officers and witnesses accepted that photographs were taken, mobile numbers are on record but such material were never produced on record. The prosecution also failed to give any explanation for such illegal withholding of material evidence. (see Sec. 114 (g) and (2015 (1) Crimes 105 (SC)

12.420. It is pleaded that the trial Court erred in law by reading and relying upon certain documents without they having been proved as per law of evidence. That the handwriting of none of the Panchnamas nor that of alleged confessions were proved, as required u/s 67 of the Evidence Act and they were wrongly exhibited, read, relied and acted upon by the learned Judge, as if they were properly proved documents.

12.421. It is pleaded that the trial Court erred in appreciating and evaluating the statements of all the witnesses which have been recorded u/s 164 of Criminal Procedure Code and further erred in reading them as substantive evidence with the help of Sections 80 and 114 (e) of the Evidence Act. The learned Judge ought to have considered that there was no independent corroboration to the evidence of all the above witnesses. It is pleaded that while considering the evidence of said witnesses, the learned Judge lost sight of the fact that one tainted evidence cannot corroborate another tainted evidence.

12.422. It is pleaded that the trial Court has completely lost sight of the provisions of Sections 8 and 27 of the Indian Evidence Act and has misinterpreted and misapplied them to the alleged discovery Panchnamas in the present case, which is quit contrary to the law established by the Hon'ble Apex Court and High Courts.

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12.423. It is pleaded that the Panchnamas are corroborative evidence to the respective panch-witness and in absence of substantive oral evidence of the panch-witness, it cannot be said that there is substantive evidence merely because the panch-witness has confirmed the contents of the panchnama as true.

12.424. It is pleaded that coupled with whatsoever stated about confessional statement, the learned Judge also erred in considering the retractions of the appellants sent to the Hon'ble Court from jail. That the said retractions were from the earlier alleged confessions, which were taken without their free will and consent.

12.425. It is also pleaded that the conduct of the Trial Court holding appellants the members of the ban terrorist organization in absence of any evidence on the record, suggestive of the fact that the entire issue is decided on conjectures and surmises.

12.426. It is further pleaded that the trial Court has also ignored the well established principle of law that benefit of proving any facts in issue goes to accused but in the present case, the Trial Court with the reasons best known, though each and every events of the facts and issue not proved by the prosecution beyond reasonable doubt, has read all the evidence by twisting the same in favour of prosecution and therefore, the entire conclusion of the trial court is not only erroneous and contrary to the law, but unjust and arbitrary.

12.427. It is pleaded that the trial Court erred in awarding the capital punishment and heavy fine to the appellants for the reason that the prosecution case was based on circumstantial evidence. It is well settled principle laid down by the Hon'ble Supreme Court that ordinarily no capital punishment should be awarded to the convict when prosecution case was based on circumstantial evidence, meaning thereby, if any error

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is committed to appreciate the evidence at later stage, it cannot be corrected. As per the prosecution case, in 2002, Godhra Train burning incident and thereafter, communal riots broken out in the State of Gujarat, and number of persons of minority community were killed and number of properties of minority community were destroyed and damaged, as a result thereof, the accused persons hatched the conspiracy in the year 2007-2008, these serial bomb blast incidents took place in the city of Ahmedabad and several bomb plantation incidents took place at Surat city. It indicates that it was not any conspiracy to wage the war against the nation or to commit the offence of sedition, but the incidents of serial bomb blast took place after communal disharmony resulted in 2002 Gujarat communal riots and, as it happened in past several serious bomb blast incidents took place because of communal disharmony like i) Samjota Train Blast, ii) Malegaon Bomb Blast, iii) Mecca Masjid Blast, iv) Ajmer Dargah Blast, which suggests that the incident of present case is not one or alone or unique or rarest of rare in nature.

12.428. It is lastly pleaded that the trial Court ought to have considered that all the accused persons are Indian Nationals, mislead by communal atmosphere and being young persons having a family and root in the society shall not be subjected to death penalty.

12.429. It is pleaded that the trial Court erred in appreciating the mitigating circumstances as argued by the defence on the question of sentence in its proper prospective and in light of reported judgement of the Hon'ble Supreme Court of India.

13. Court's observation on topics related to the case

(1) **Investigation**:

13.1. Investigation proceeds by keeping in mind all the possible

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circumstances pertaining to an offence and then keeping all the options open. Meaning, an open-end investigation and therefore, as and when evidences start appearing in investigation, a theory starts getting confirmation and other theories start getting insignificant. The Investigating Officer at that stage is adopting a discounting theory and he will discount those circumstances and those facts which are not leading to any conclusion near to the fact or circumstances being investigated. For example, to establish conspiracy, the mobile connectivity and mobile location may play an important role to detect the crime. But smart accused with a plan to commit offense will refrain from using mobile contact. When no such evidence is available, the Investigating Officer may not proceed in that line. Even if he investigates the mobile angle still the accused may be using different mobile phone which cannot be linked to the accused and there is no method for the Investigating Officer to force the accused to mention the correct mobile number which he has used during offence, but is not running in his name. It is at this point the Investigating Officer has to try another angle to establish conspiracy.

13.2. Once the Investigating Officer collects the evidence, the ball is in the court of prosecution which would examine the evidence and only produce that evidence which would be in the line of the crime.

13.3. The incidents of successive bomb blast is th single most convincing evidence that the incident is a terror attack with a sole objective to cause damage to life and property to terrorize common citizens. This under no circumstance be trivialized by comparing this investigation with the investigation of an offence of ordinary crimes. There cannot be a comparison of nature of evidence collected in investigation of a terror plot with nature of evidence in a Cyber crime. If one nature of evidence

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is a clinching evidence in Cyber crime need not necessarily be treated as a benchmark for a clinching evidence or an offense related to human body or an offence of terror activity.

13.4. The defence has broadly argued that there is always a lurking doubt about bonafide of investigation, where it is popularly argued by the advocate representing accused that the police in pursuit of fame or promotion, act in over enthusiasm to nail any person as an accused and then use the ingredients of Section 24 of Indian Evidence Act, threat, inducement and promise to create evidence to support their story. Therefore, the investigation will always be taken with pinch of salt.

13.5. The Court is of the opinion that there are types of offences where, for offences of murders, it can be a targeted killing, at a spur of the moment or can also be an act of private defence, but mass murders fall in a complete different category and therefore, the investigation tactics do vary in such offences. Therefore, the Court cannot accept the stock argument of the defence that the accused are victimized and wrongly implicated in the offence.

13.6. The investigation in this case has been rather exhaustive and certainly has not proceeded as an undercover operation completely insulated from judicial and public glare. The arguments advanced by defence seems to suggest that the police was having a complete free hand and there was no judicial watch.

13.7. On the contrary, the Court finds that all the procedures and guidelines led from time to time to safeguard the rights of an accused have been complied. The Court is particularly aware the investigation was not only being conducted in due course here but also, all the steps required to be followed and reported to Magisterial Court, committal Court and trial Court are followed and the same was also under public glare.

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13.8. Over and above, the record and the proceedings do indicate that from day one, not one or two but, battery of lawyers were present on behalf of the accused at each and every stage. Not only that, the Courts have also inquired for the legal representatives for each accused and have also offered legal aid and more often than not, the accused have refused legal aid and have been represented by private advocates. Even before this Court, it is a fact that each and every accused is represented and there is a battery of senior advocates, experienced advocates representing their cases. After all this to argue that, the procedure is not followed and that the confessions are an outcome of threat, promise and inducement is only an attempt to set up what is popularly called as “Narrative” and to support such a narrative, a hostile witness is cross-examined by defence, to elicit the story which will run in the line of defense which of course, is to be strategically utilized by the defence at an appropriate stage.

13.9. What is deposed by the hostile witness now could have been easily brought on the record at the relevant time when the accused were being actively represented by lawyers but, at that time, there does not appear to be any complaint of threats, third degree, etc. and even if such complaints are made, the same have been legally attended to and brought to a conclusion. From the record also, it does not get established that the investigation was shoddy or shrouded with instances which would lead this Court to believe that the evidence on record is an outcome of illegal investigation.

13.10. Investigation necessarily follows a crime. It also depends upon the nature of crime. Obviously, the Basic Principles of Investigations have been guided by the procedure code and various Manuals or Acts, which are enacted. However, the steps required to be taken in investigation will vary with the nature of offence. Steps taken in an investigation by

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Investigator for offences related to Body will always be different from the steps required to be taken by Investigating Officer in offences related to property. Hence, the steps required to be taken by the Investigating Officer and the evidence that appears on records in a case of a conspiracy of a Terrorist Act cannot be similar to the offence of murder arising out of a family feud or land dispute.

13.11. The Investigation in a Terror attack case will be a broad base with the element of conspiracy cutting across various sections of Society and also across Cities, Districts, States and even Countries. Therefore, investigation of an offence of the present magnitude can never be made in compartmentalized manner or in silos.

13.12. Particularly when Serial Blasts occur in different Cities in quick succession and outward appearance of the incidents are similar in these different Cities even for a layman, it is easy to understand the pattern that is left behind due to such incidents. The commonality of the Modus, the target group being Hindu Community and common motivation driving behind such incident will therefore be natural factors which will decide the length and breadth of the Investigation.

13.13. In the opinion of the Court, with these undeniable incidents of Serial Blasts across the Country in important Cities is nothing but an outcome of a larger conspiracy driven by a Common intention. In this situation, the Investigation is obliged to interact across their jurisdiction with the best effort to zero down of these Terrorists.

13.14. The Court may therefore, briefly refer to the prevailing situation of 2007-2008 globally when there was a meltdown in Terrorist Activities across the World post 09/11, Twin Tower Attack where “Islamic Terror attacks” had gained its foothold and more so, in India. This information is already in public domain.

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13.15. In the context of the present Serial Blast which the Court believes to be a part of conspiracy which is manifest by Serial Blasts in Delhi, Mumbai, Pune, Jaipur, Ahmedabad, Bengaluru and that too in a sequence is a conclusive circumstance of the Common design.

13.16. In this connection, only for the purpose of observing the nature of investigation of the Delhi blasts, the Division Bench of Delhi High Court in Criminal Appeal No.343 of 2022, Cr.M.A. No.20364 of 2022 and 722 of 2023, though in a bail application of an accused, has made observation which will pertain to this case as well. While dealing with factual matrix, in para 3 and 4, Delhi High Court observed as under:

"3. The factual matrix of the present case, as has been narrated in the present appeal, is that on 13.09.2008, at about 06:27 pm, a terrorist group "Indian Mujahideen" sent an e-mail from email ID al_arbi_delhi@yahoo.com to various electronic/print media of Pakistan, India and other countries including Darul Uloom Deoband, Central Waqf Council, Al Jamia Tussalafiah (Markazi Darul-Uloom Varanasi) with the heading „MESSAGE OF DEATH" and claiming intense, accurate and successive bomb attacks exactly 5 minutes from the said mail. 4. The said email also had slide containing pictures of their previous blasts in India and a PDF file claiming responsibility of present and previous serial blasts in Rajasthan and Gujarat and challenged the Indian Government that there is no shortage of explosives or lack of manpower with them and they are extremely capable to shed blood anywhere anytime in India and threatened to do whatever Indian Government could do to stop the blasts."

13.17. Upon investigation on this point, the Delhi High Court in Para 30 has observed about the contents of the chargesheet in that case which reads as under:

"30. In the present case, charge sheet was filed before the learned Trial Court on 20.10.2010 and charge was framed on 05.02.2011 against all the accused persons involved in serial blast cases. The learned Trial Court while passing order on framing of Charge dated 05.02.201 (sic) has noted that during investigation of serial blasts in Gujarat, Delhi, Mumbai and Ahmadabad, on the basis of specific leads, appellant-Mubin Kadar Shaikh was arrested from Pune, Maharashtra on

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28.09.2008. The text of the alleged threatening email was handed over to the appellant herein and his co-accused Mansoor Agha Khan Peerboy, in a pen drive at Pune and they both made grammatical corrections in the said e-mail draft. Thereafter, on the same day, appellant with co-accused Mansoor Agha Khan Peerboy and Riaz Batkal went to Mumbai in Maruti Esteem Car driven by Mohd. Akbar Ismile Choudhary and at about 06:00 PM they found unsecured wifi connection. Mansoor Agha Khan Peerboy connected the wireless laptop and created the e-mail ID ID al_arbi_delhi@yahoo.com and attached the PDF file and slide the initial and gave the subject "Message of Death". At about 06:25 PM the unsecured wifi connection was hacked and the e-mail was sent to various electronic and print media through unsecured wifi connection of M/S Kamran Power Control Private Limited, Mumbai."

13.18. The aforesaid mention is made only to indicate the commonality and the complexities involved in the investigation of this nature. Of course, Court is conscious that the trial of the Delhi blasts is still pending.

13.19. From the investigation also it is coming out that, SIMI (the Safdar Nagori faction) had started radicalizing its cadre and organized training camps in various parts of the country. SIMI was looking for outside support for violent action. In March 2008, the central government took strong action against SIMI and many members of the Safdar Nagori faction, including Nagori were arrested. SIMI had organized many training camps, imparting training in the handling of explosive devices.

13.20. The logistical support in Gujarat was provided by SIMI. Prior to the Gujarat attack, the modus operandi of the IM group was to extensively recce the targeted places during daytime and return to base by night. They prepared bombs at the base and then travelled to the targeted place on the scheduled day to plant the bombs.

13.21. It has also appeared in the investigation that Pune and Azamgarh modules worked in coordination and stayed in accommodations provided by local SIMI activists. The Police got information on these accommodations because of involvement of the SIMI activists. However,

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two important SIMI leaders (Kayamuddin and Subhan), who had actually liaised with IM, could not be caught immediately.

13.22. The Pune *module* involved, Afzal Usmani, Afzal was asked to arrange four vehicles for Gujarat. Afzal stole those vehicles from Navi Mumbai and delivered them at the accommodations in Gujarat. After the 2008 Gujarat blasts, the Mumbai Police started picking up car thieves and interrogating them. In the process, Afzal appears to be detained at Mumbai. Four cars were arranged, two each for Ahmedabad and Surat. The cars used in Ahmedabad were destroyed as a result of the explosion of bombs planted in them, but the cars used in Surat were found intact. The investigation of the intact cars found in Surat led to the discovery that these vehicles were stolen from Navi Mumbai. The Police, on the other hand, was able to apprehend the SIMI group, which had provided local support to IM.

(2) **CDR and Electronic Evidence**:-

13.23. Learned advocate Dr.Yug Mohit Chaudhary has offered lot of criticism to investigation by comparing it with investigation of 26.11.2008 terror attack, where according to him, the entire conversation between the terrorist and their handlers were put on record. This is the nature of clinching evidence or the CCTV footage of the accused in action. The investigation here has not been able to offer such evidence and therefore, the entire evidence is not reliable in such serious matter.

13.24. Firstly, it will not be proper to compare the two terror attacks, due to the very nature of attacks which is established as a prime circumstance. One is, cross border terror attack which was upfront where the terrorist were “Fidayen”, who would take pride for their acts of terror and would hog publicity to claim whatever benefits they were promised and the

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attack was in a place, where CCTV existed, being a hotel or a Railway Station. Whereas, the present planting was in an area which is open to public and was not within CCTV coverage in the year 2008. Therefore, considering the nature of evidence in one terror attack and to set it as a benchmark, is like playing in the hands of future terrorists who would always find a way to circumvent such benchmark. In any case, each terror attack has its own planning and methodology, and certainly, the nature of evidence does and should, vary as it evolves.

13.25. Moreover, with regard to mobile conversation in 26.11.2008 terror attack case, the conversation which finds place in the Apex Court judgment is between the terrorist and his handler which was recorded in an ongoing attack.

13.26. Whereas, the plan of present attack was of a nature which was to attract minimum attention and carried out camouflaging it as a routine day to day activity like parking a cycle with a tiffin like cloth bag tied around the handle. By the very nature of the incident, the planning behind it is very clear i.e., to mix in the crowd as a part of it, to plant a bomb just by parking a cycle or car laden with explosives, to get sufficient time to walk away from the periphery, to make it appear as a routine day to day activity of the very area where the bombs were planted.

13.27. It is the submission of the defence that no meaningful investigation has been conducted with respect to the CDR and that no electronic evidence appears on record, so as to connect the accused with the offence. However, in the opinion of the Court, upon perusing the record, it appears that the investigating agency has actually undertaken an effort to conduct systematic investigation into the mobile numbers which has been used by the accused persons during the period of

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conspiracy by obtaining subscriber details, customer application forms, identity proof, call detail record from the service providers, examining the shopkeepers and the concerned persons and also subjecting the disputed documents to forensic examination. It appears that the accused persons had obtained several mobile connections in fake names by using forged documents to conceal their identity and to make their tracing more difficult. Upon analyzing the aforesaid evidence, it appears that there was an organized and anonymous communication network which had been used by the accused persons during the period before the said blasts occurred in Ahmedabad and also the recovery of unexploded bombs from Surat. The following evidence described hereinbelow would show the investigation that has been undertaken by the agency in respect to the CDR and electronic evidence.

13.28. It appears that during the course of investigation, A-37 had pointed out the places from where he purchased five sim cards namely (1) Dharti Belt House, (2) Evergreen Belt House and (3) OK Selection Shop.

13.29. It appears from the evidence on record that on 02.09.2008, A-14 had pointed out house of Sherpura, as per panchnama Exh.6540 mobile number 9426870271 was found written on the compound wall of the house. As per panchnama and the evidence of panch witness at Exh.6539, the Investigating Officer called on the said number and inquired about the house, whereupon it was known that the person was Gulambhai. Thereafter, Gulambhai came to the house. Gulambhai (PW-1138/Exh.8165) has deposed that his house had been rented by Rafik Shaikh. During cross-examination, Gulambhai in para 8 admitted that he had spoken on different dates with the persons to whom he had rented his house. His mobile number i.e. 9426870271, has also came on record during the cross-examination. This witness has further deposed that on

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12.09.2008 Mr. Chavda had interrogated him and that he gave him all his mobile numbers. It has also come on record that he had gone to the police to get back his mobile phone and that although the police had called for the call details of his mobile, the same was not given to him. Therefore, during the course of investigation, the mobile number of Gulambhai, as also the mobile number of Rafik Shaikh, who rented Gulambhai's house came to the knowledge of investigating agency.

13.30. During investigation, the Investigating Officer asked for the call details and ID proof of mobile phone numbers 9712381157 and 9712398204 by letter dated 14.10.2008 addressed to Vodafone Essar Gujarat Limited. In response, Vodafone Essar Limited sent the detail vide letter Exh.7194 which was received on 22.10.2008. On the same day, under panchnama Exh.3200, documents such as prepaid application form of the aforesaid mobile numbers alongwith xerox copy of the ID proof which were with application form were seized. The said panchnama was proved through PW-593/Exh.3196.

13.31. The prepaid application form of mobile number 9712398204, alongwith the copy of the driving license attached with it, is at Exh.3198. It stands in the name of Desai Navinchandra with the address mentioned as 12, Sai suvas, Jivan Vihar Society, Shrinagar, Ahmedabad. The form contains the particulars and signature of applicant. Likewise, the prepaid application form of mobile number 9712381157 alongwith the copy of the driving license attached with it is at Exh.3199. It stands in the name of Ashokbhai Navinchandra Gujarati, with the address mentioned as A,31 Ramdarshan Society, Hari Dham Naroda, Ahmedabad. The form contains particulars and signature of the applicant.

13.32. The copy of CDR of mobile number 9712381157 produced as B alongwith Exh.7194 (paper book pg.763073 to 763083), whereas the

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CDR of mobile number 9712398204 is produced as mark B alongwith Exh.7194 (paper book pg.763085 to 763087), which were received from Vodafone.

13.33. The copy of certificate under Indian Evidence Act in respect of the said CDR is produced as mark A alongwith Exh.7194 (paper book pg.763089). The prosecution examined PW-1056/Exh.7193-Dhiren Lariya, an employee of Vodafone company through whom Exh.7194, the CDRs of two different mobile numbers at mark A and B and the application forms at Exh.3198 and Exh.3199 were duly proved.

13.34. Similarly, the Investigating Officer called for the details of mobile number 9714552899 by letter Exh.7206 dated 06.10.2008 addressed to Legal Manager, Idea Limited. During investigation, when details of the mobile number were received, such as customer application form and ID proof (driving licence), they were seized under panchnama Exh.6347. The said panchnama stands proved through PW-891/Exh.6346. The customer application form of mobile number 9714552899 alongwith copy of driving license (Exh.5433) stood in the name of Navin Mohanlal Patel and the address mentioned on it was 11, Hirawadi, Vimal Jyoti Society, Saijpur Bogha road, Ahmedabad. This form also contained the particulars and signature of applicant. The CDR of the said mobile number is at Exh.7207. PW-1060/Exh.7205 Shyam Sundar Prajapati, an employee of the Mobile Company has given evidence with regard to mobile number: 9714552899.

13.35. Likewise, the Investigating Officer called for details of mobile numbers 9724764195 and 9724764196 by letter Exh.7208 dated 04.10.2008 addressed Legal Manager, Airtel Ltd. Upon receipt of the subscriber details under Exh.8646, the prepaid enrollment form and ID proof (driving licence) were seized under panchnama Exh.3215, proved

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through PW-597/Exh. 3214. The enrollment form of mobile number 9724764195 alongwith copy of driving license (Exh.3216) is in the name of Bansal Ashokbhai Hasmukhrai. The said form contains particulars and signature of the applicant. Similarly, the enrollment form of mobile number 9724764196 alongwith copy of driving license at Exh.3217 is in the name of Dave Pravinbhai Ashokbhai. The said form contains particulars and signature of the applicant. Exh.8646 is the letter of Airtel alongwith CDR of mobile number 9724764195 (paper book pages 773685 to 773687). Exh.8646 is letter of Airtel with call data record of mobile number 9724764196 (paper book pg.773669 to 773683). Also, Exh.8646 has been produced in the deposition of PW 1163/Exh.8638 Mayur Chavda (Investigating Officer) at para-3(19) page 25. PW-1060/Exh. 7205 Shyam Sundar Prajapati gave evidence with regard to the aforesaid two mobile numbers.

13.36. The Court has also perused the evidence of PW-803/Exh.5324 Dinesh Chandubhai Chaudhary, who was carrying on a business in the name of 'OK Selection' and has deposed that he was selling mobile, mobile accessories and sim cards of different companies. This witness has given evidence regarding application form of mobile number 9712381157, which is in the name of Ashok Navinbhai Gujarati and has also identified the stamp of his shop, his signature and the signature of the customer made in his presence on the application form and the copy of driving licence which is at Exh.3199. Likewise, PW-799/Exh.5312 Desaram Vardhaji, shopkeeper of Dharti Belt House situated at Isanpur cross road in Gurukrupa Shopping Centre, who used to sell sim cards of various mobile companies such as Idea, Vodafone, Airtel etc has deposed that when any customer came for procuring sim card, he took copy of ID proof such as election card and driving licence. This witness has given

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evidence with regard to prepaid card of Vodafone company bearing sim number 9712398204. The witness has identified his handwriting on the form and also the photo and signature of the customer-Navinchandra on the said form which is at Exh.3198.

13.37. The Court has also perused the evidence of PW-798/Exh.5310 Navin Chandra Hirabhai Desai, who was serving in the Health Department of Ahmedabad Municipal Corporation and has deposed that during the investigation the police showed him one Vodafone Company sim card application form. This witness has also produced a copy of his driving licence during deposition and has denied that Exh.3198 belonged to him. He deposed that although the name in the form is his own, his father's name, address, photograph and signature were all incorrect and that he had never filled up or signed the application form. This witness has also deposed that at that time corporation has allotted him a phone and that he had no need to take the sim card. The driving licence copy of this witness is exhibited at Exh.5311 which mentioned his house number. Upon perusing Exh.5311 and the deposition of witness, it appears that this witness had not filled up or signed the application form nor purchased the sim card through prepaid application form (Exh.3198). At this stage, it is pertinent to note that Exh.9314 is the Habeas Corpus Petition, which was dismissed containing details of A-24 and upon perusing the same, it appears that A-24 was working at the relevant time in the Ahmedabad Municipal Corporation.

13.38. The Court has examined the deposition of PW-874/Exh.6093 Keyuri Choksi, who has deposed that in the year 2007, her purse fell down near Panjara pole, which contained her driving licence, ATM card and money and that she had informed Ellisbridge Police Station regarding the same, upon which Janva Jog Entry was entered in the register of Police station.

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The statement of witness was recorded during investigation by Crime Branch and at that time witness was shown one driving licence in which her licence number was written. This witness produced copy of her duplicate driving licence as well as Janva Jog Entry during investigation. The copy of her driving licence which was produced by her in Crime Branch is at Exh.6092/1/2. Moreover, witness has produced her driving licence copy by showing original, which is produced at Exh.6094 and also a new driving licence copy at Exh.6095. Witness was shown copy of her Janva Jog Entry report and copy of her mobile bill during her deposition. Upon looking at the evidence of this witness alongwith the documents, it appears that the driving licence number appearing in Exh.3198 had been misused for preparing false documents.

13.39. The Court has perused the evidence of PW-797/Exh.5308 Hitesh Chandravadan Bhatt, who has deposed that the address mentioned in Exh.3198 was false and did not correspond with his own residence or the residence of Navinchandra Desai. This witness has also deposed that the name and address written in document are false. Upon looking at the evidence of aforesaid three witnesses, it clearly appears that forged documents had been prepared which were used for purchase of sim cards in fake names during conspiracy.

13.40. Moreover, disputed documents such as customer application form and the copy of driving licence which was attached with it, namely Exhs.3198, 3199, 5433, 3216 and 3217 alongwith specimen writings and signatures of accused No.37-Kayamuddin Kapadiya obtained under panchnma Exh.8651 were forwarded to the Hand Writing Expert under Exh.6912. PW-990/Exh.8686, handwriting expert Shri K P. Vyas has given his opinion vide Exh.6913 that the disputed writings and signatures marked D1, D3/1 to D3/3, D4, D5/1 to D5/3, D6 to D10 had

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been written by the said person who wrote the specimen writings and signatures of A-37 (marked S1 to S30 and N1). Though no opinion was expressed regarding signature marked D2, the expert opinion establishes that A-37 had made the forged documents which were used for obtaining the aforesaid sim cards.

13.41. The evidence further establishes that these fraudulently obtaining sim cards were used for communication amongst co-conspirators as well Gulam Hussein, the owner of Sherpura house where A-45 had stayed in the fake name of Rafik and which was also occupied by A-43 and A-44. The CDRs revealed the communication amongst these mobile numbers during July 2008 which is proximate to the date of incident and their locations also correspond with the places having nexus to the conspiracy such as Gita Mandir, Dr. House at Surat, Narol-Sarkhej, Relief Road and different places of Ahmedabad, Vadodara and Bharuch. The details of the fraudulently purchased sim cards which were used for the purpose of conversing are described herein under:

1) 9712381157 which for the purpose of understanding is given mark A.
2) 9712398204 which for the purpose of understanding is given mark B.
3) 9714552899 which for the purpose of understanding is given mark C.
4) 9724764195 which for the purpose of understanding is given mark D.
5) 9724764196 which for the purpose of understanding is given mark E.

13.42. From the evidence as referred hereinabove and also from the evidence of witness Gulambhai, the connectivity of these numbers is explained herein under:

1) Mark A mobile contacted Gulambhai's mobile number 9426870271.
2) Mark A phone to mark D phone.
3) Mark B phone to Mark C phone.
4) Mark B phone to Mark E phone.

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5) Mark C phone to Mark B phone.

6) Mark C phone to Mark E phone.

13.43. Thus, the electronic evidence discussed hereinabove, clearly shows the existence not merely of telephonic communication, but also shows the connection between the conspirators through mobile connections which were procured by using forged documents. Further, based on evidence of witness Gulambhai, he had talked with mobile (mark A) and all the users of five mobiles (mark A, B, C, D, E) had also contacted each other.

13.44. The investigation pertaining to electronic evidence appears to have been carried out by different agencies who were also investigating into the serial blasts in their respective jurisdiction. The Investigating Officer of the Delhi Blasts has also carried out the investigation which were conducted post the Gujarat Blast, wherein the mobile numbers which were used by the accused members of the Indian Mujahideen were identified, and their Call Data Records came to be analyzed. The said mobile numbers had been obtained through prepaid connection in fake names which came to be investigated in order to connect the various links of the conspiracy.

(3) **On corroboration**:-

13.45. Evidence is the foundation of any trial, civil or criminal. The evidences are categorized in many ways i.e., direct evidence, circumstantial evidence, documentary and oral evidence, electronic and digital evidence. One such category is corroborative evidence. What does “corroboration” mean, and in the context of an evidence in trial, how it is required to be applied? The dictionary meaning of the word “corroborate” is to strengthen, to make more certain, to add weight to

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credibility, and "corroboration" is an act of corroborating, strengthening or confirming. Therefore, corroborative evidence is the evidence which concurs with other evidence. In short, a form of evidence which renders other evidence more probable. (P.Ramanatha Aiyar, Concise Law Dictionary, 1997).

13.46. The method of proof for a corroborative evidence is same as any other evidence. Such evidence has to be established and exhibited in the same manner like an oral evidence of a particular witness or a document exhibited. However, it is not necessary that each of the fact mentioned in this type of evidence also has to undergo a mini trial to be established as a "fact beyond reasonable doubt". Time and again, arguments for defence are advanced to mean that the trial Court has treated evidence corroborative in nature, itself as a substantive evidence of the crime and therefore, the corroborative circumstance contained in such evidence is also required to be established by yet other corroborative piece of evidence. Meaning thereby that each "circumstance" of a corroborative evidence has to withstand a "mini trial" before the corroborative circumstance can be used as a "corroborative evidence". This cannot be the purpose of a trial to seek corroboration within corroboration.

13.47. Corroboration of material particular and to what extent corroboration is required is succinctly explained by the Apex Court in the case of ***State (NCT of Delhi) v/s. Navjot Sandhu alias Afsan Guru (supra)*** [Parliament Attack Case], wherein by referring to two important judgments in the case of ***Parmanand Pegu v/s. State of Assam*** and ***Subramanya Gounden***, has held in Para-37 and 38 vis-à-vis confession, retracted confession and Section 30 of the Indian Evidence Act and therefore, the Court may reproduce the aforesaid paras which would lay a guideline on the issue and would read as under:

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“37. In Parmanand Pegu V/s. State of Assam this Court while adverting to the expression "corroboration of material particulars" used in Pyare Lal Bhargava's case clarified the position thus:

"By the use of the expression 'corroboration of material particulars', the Court has not laid down any proposition contrary to what has been clarified in Subramania Goundan case as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan case."

The analysis of the legal position in paragraphs 18 & 19 is also worth noting:

"18. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

19. In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true."

38. The use of retracted confession against the co-accused however stands on a different footing from the use of such confession against the maker. To come to the grips of the law on the subject, we do no more than quoting the apt observations of Vivian Bose, J, speaking for a three-Judge Bench, in Kashmira Singh V/s. State of Madhya Pradesh. Before clarifying the law, the learned Judge noted with approval the observations of Sir Lawrence Jenkins that a confession can only be used

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to "lend assurance to other evidence against a co-accused." The legal position was then stated thus:

"Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not 'prepared set on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

39. The crucial expression used in Sec. 30 is "the Court may take into consideration such confession". These words' imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. The import of this expression was succinctly explained by the Privy Council in Bhuboni Sahu V/s. King in the following words:

"The Court may take the confession into consideration and thereby, no doubt, makes its evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence". (emphasis supplied)

40. After referring to these decisions, a Constitution Bench of this Court in Haricharan Kurmi V/s. State of Bihar further clarified the legal position thus:

".....In dealing with a case against an accused person, the Court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the

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confession of guilt which the judicial mind is about to reach on the said other evidence." (emphasis supplied)

(4) **Connection of SIMI and Indian Mujahideen and the accused:**

13.48. The prominent anti-national activities of SIMI were also noticed by the Second Administrative Reforms Commission in its Eighth Report titled “Combatting Terrorism: Protecting by Righteousness”, and a special reference thereto is made under the heading of “Terrorism based on Religious Fundamentalism”. The Court may usefully quote the relevant portion of the Commission report as under:

“3.5 Terrorism Based on Religious Fundamentalism

3.5.1 There have been several terrorist incidents in India which were motivated by religious fundamentalism. Some of these activities overlap with political ambitions - like separatist elements in Jammu & Kashmir. Some of these incidents have been aided and abetted by external forces inimical to India. The ISI launched an initiative in 1991, even before the Babri Masjid demolition to forge an alliance between Khalistani terrorism that prevailed in Punjab and the terrorist groups in Jammu & Kashmir. However, the initiative did not yield results because the key figures were arrested soon after their arrival in India. Thereafter, in January, 1994, Mohammed Masood Azhar Alvi arrived in India with the task of working out the reconciliation of the cadre of Harkat Mujahiddin and Harkat-ul Jehad Islami whose parent organizations had merged to form the Harkat-ul-Ansar. His organisation's main objective was to liberate Kashmir from Indian rule and to establish Islamic rule in Kashmir. He also interacted extensively with the leading figures of the Deoband Ulema.

3.5.2 The next initiative in Islamist terrorism by the Pakistani Intelligence was the setting up of the Jammu & Kashmir Islamic Front. Its task was to work together with the mafia figures who had executed the Mumbai serial bombing of 1993. JKIF was responsible for the Lajpat Nagar blasts in New Delhi in 1996. However, the case was

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quickly detected and the accused arrested.

3.5.3 In 2001, several Islamic terrorist attacks took place in New Delhi, the most important being the attack on the Parliament House in December 2001. The attack on Akshardham temple and the killing of Haren Pandya, the former Home Minister of Gujarat State, were the major operations of Islamist terrorists in 2002 and 2003. In July 2005, there was an attack at Ayodhya which the Security Forces succeeded in repulsing. This was followed by the Sarojini Nagar market blast in November, at New Delhi. The heinous serial bomb blasts in Mumbai took place in July 2006. A suicide attack (in which only the Bangladeshi suicide killer died) near the Office of the Commissioner of Police, Hyderabad; an attack on the Indian Institute of Science in Bangalore in which an eminent scientist was killed and the Aurangabad arms seizure case were the other major terrorist incidents of 2006. The latest in the spate of such terrorist attacks has been the serial bomb blasts in Jaipur on 13th May, 2008 in which a number of innocent lives were lost.

3.5.4 It is important to take a look at the role played by the Students' Islamic Movement of India (SIMI) in the promotion of Islamist extremism in India. Funded generously by various Islamist charities, but particularly the World Assembly of Muslim Youth with its headquarters in Riyadh, SIMI spread its activities to various States in India. SIMI cadres were linked to the abduction of five foreign nationals who were rescued from Saharanpur in 1994. (One of the accused in this case was the British national Syed Mohammed Omar Sheikh, who was later released in exchange for the IC-814 hostages. He is currently in prison in Pakistan for his role in the killing of the American journalist, Daniel Pearl). SIMI's then President CAM Basheer, hailing from Kerala, was the first Indian Muslim known to have gone to Pakistan for arms training. SIMI was banned by the Government of India under the Unlawful Activities (Prevention) Act, 1967, in September, 2001."

13.49. It is a matter of public knowledge that after the first ban on 27th September, 2001 on SIMI, under the provisions of TADA, MCOCA and UAPA, which was for a period of two years, was extended firstly till 27th

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September, 2005 and thereafter on 8th February, 2006. For the third time it was banned for a further period of two years whereas, the special tribunal of the Delhi High Court lifted the ban but, the ban was reinstated by the Supreme Court of India on 6th August, 2008.

13.50. For being a member of SIMI, a banned organization, there obviously cannot be any documentary evidence. Though not so seriously, it was argued that the prosecution has not placed any evidence that the accused were members of banned Organization like SIMI and Indian Mujahideen. 'Terrorist Act' is defined under Section 2(k) of the Unlawful Activities (Prevention) Act, 1967 and 'Terrorist Organization' is defined under Section 2(m) of the Unlawful Activities (Prevention) Act, 1967. The First Schedule specifies the organization. The proof of being a member of such organization cannot be searched in some kind of application form or maintenance of Register, as if it is some legally recognized organization.

13.51. Therefore, the requirement is the perception of the individual himself and other witnesses considering him to be part of the activities being undertaken by a group of persons sharing common object. In the present case, there is material in the form of deposition of witnesses, confessional statements recorded under Section 164 of Cr.P.C., documentary evidence, SIMI literature, SDS reports and other evidence which shows the association of various accused with SIMI and its activities.

13.52. PW No.957-Zakirhussain Abduljabbar Qureshi in his statement under Sectuion 164 of Cr.P.C. at Exh.6688 has stated with specific reference to I.M. that Rajik informed him that the idea to cause blasts in Ahmedabad was of Kayamuddin and Taukir, and they had made contact with Indian Mujahideen and both were in contact and Rajik was in their contact.

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Rajik mentioned that to avenge 2002, bomb blats were planned and all necessary things will be provided by Indian Mujahideen. Rajik also narrated that Taukir and Kayamuddin came to stay in Ahmedabad and all were in their touch. He also mentioned to prosecution witness about the recce of certain areas to plant bomb was performed. For this Afridi, Mujib and Aiyaz were already in his touch and Taukir was in touch of Indian Mujahideen and all the materials for making bomb will be provided by Indian Mujahideen and for deficit "things' can be procured locally.

13.53. Accused No.2 Imran Ibrahim Shaikh, in his confessional statement recorded under Section 164 of the Code of Criminal Procedure (Exh.8619), stated that he attended the Vagamon and Halol training camps organized by SIMI members and further stated that he was a member/associate of SIMI. The confessional statement of accused No.76 Manzar Imam (Exh.9021) refers to the ban imposed upon SIMI, his meeting with accused No.12 Safdar Nagori, instructions given by Safdar Nagori to participants and the Vagamon camp being organized by Safdar Nagori and other SIMI functionaries.

13.54. PW No.1115 Mohd. Umar Mansuri (Exh.8002) stated that accused No.3 Iqbal was involved in SIMI activities along with accused No.37 Kayamuddin Kapadia. PW No.1097 Mehtab Shaikh (Exh.7767) stated that a SIMI meeting was held at Limbayat, Surat, and named accused No.4 Shamsuddin, accused No.8 Yunus Mansuri, accused No.6 Mohammad Arif Kagzi and accused No.12 Safdar Nagori as being present in the said meeting.

13.55. The previous statement of Talib Abdul Gafar, put to him during cross-examination, indicates that he was a SIMI worker, that accused No.4 Shamsuddin attended SIMI meetings, that accused No.12 Safdar Nagori

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was the General Secretary of SIMI and that accused No.4 Shamsuddin was arrested in a SIMI gathering at Bharuch in the year 2001.

13.56. The SIMI literature and documentary material at Exh.9248 shows accused No.4 Shamsuddin Shaikh and accused No.6 Mohammad Arif Kagzi as SIMI activists. The said material further shows accused No.6 Mohammad Arif Kagzi as President of SIMI Gujarat Zone, contains the names of several other accused associated with SIMI, contains material relied upon in relation to the ban imposed on SIMI and has been relied upon by the Court as material connecting various accused with SIMI activities.

13.57. Approver Ayaz Shaikh deposed that he visited the SIMI office at Shahpur, which was occupied by accused No.6 Mohammad Arif Kagzi, and through Kagzi learnt about SIMI, its activities and objectives. According to him, SIMI members used to gather and discuss jihad and establishment of an Islamic regime. He further stated that prior to the ban, SIMI activities were conducted openly and that after the ban such activities continued secretly through meetings held at houses, shops and factories. He referred to a meeting held in the year 2008 at the house of accused No.4 Shamsuddin which was attended by SIMI activists from Gujarat and outside Gujarat, where accused No.6 Mohammad Arif Kagzi addressed the gathering and videos relating to Taliban, Al-Qaeda, Hamas, suicide bombing, bomb-making and similar activities were shown. He further stated that after the arrests of SIMI activists in Indore, it was decided that members should avoid openly meeting each other.

13.58. Also, accused No.35 Rafiuddin, in his confessional statement (Exh.8631), referred to the attendance of certain accused at the Halol Training Camp, which the prosecution treats as a SIMI linked camp. Though the trial Court has discarded the confessional statement as the

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same being on oath, this Court has only referred to it as an additional factor, it being exhibited and the content being in the line of the other independent evidence.

13.59. The Court has also referred to SDS reports indicating association with SIMI in respect of accused No.9, accused No.11 Sibli and accused No.12 Safdar Nagori. The perusal of Exh.5901 which is the opinion of an expert who performed the SDS test by putting suggestive questions and recording their reactions. In this document, six accused Hafiz @Adnan Tajuddin Qureshi, Safdar Nagori, Kamruddin Nagori, Aamil Parwez Saifuddin Kagzi, Sibli Abdul Kareem and Jahid Sheikh, their SDS report confirms their strong association with SIMI. Though, the SDS report is an opinion of an expert but still, this evidence goes on to corroborate the evidence of witnesses about the involvement of SIMI and IM in this incident.

13.60. In the opinion of the Court, the present crime appears to be an outcome of coordinated efforts of the accused who were driven by the projected objectives of SIMI and I.M.

14. Issues

14.1. Conspiracy

14.1.1. On 30-03-2026, learned Advocate Mr. Yug Chaudhry commenced his arguments on conspiracy. All the defence counsel have also made similar submissions and have also adopted the arguments inter-se. All the convicts have also been convicted for Section 120B and other offences with the aid of 120B. He submits that Section 120B is an offence in itself and even if the offence is actually not committed, but when the accused together have agreed to commit offence, at the point

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of agreement, offence is said to be committed. So, in case the accused have agreed to cause serial blast and blast does not take place, still they can invite a sentence.

14.1.2. It is submitted that as the consequence of convicting with aid of Section 120B is very serious and the requirement to prove the same is not so stringent individually no overt act is required. Therefore, the responsibility of this Court increases manifold.

14.1.3. It is submitted that there is a tendency to use Section 120B as a 'drag net' i.e. to throw the net as wide as possible and drag in as many accused as possible into the offence by using Section 120B.

14.1.4. Learned Advocate, while referring to Section 120A, submitted that ingredients to attract conspiracy is (1) agreement and (2) an illegal act. For illegal act, the object has to be very clear known to all and shared by all.

14.1.5. Even if it is not necessary for each conspirator to know all the co-conspirators or each step of preparation, still the object must be clear. It cannot be vague, broad, omnibus and remote by timing. It is further submitted that in present case, the motive may not be important, but object is and it is necessary for prosecution to establish common object. According to learned Advocate, the object required to be established is causing of serial bomb blast. It is submitted that according to learned Advocate, knowledge, object and participation in the meeting have to be proved independently and cannot be informed and it cannot be inferred just by proving membership as a Terror group.

14.1.6. It is also submission of defence that to establish conspiracy against the accused, mere presence or attending the meeting is not sufficient. Mere listening to the proposal without actually consenting to proposal to commit the crime also does not constitute conspiracy.

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14.1.7. The defence also submits that no direct evidence is needed for conspiracy, but surrounding circumstances are sufficient to infer. However, such inference must be irresistible.

14.1.8. It is submitted that even before inference is drawn and adverse inference is required to be drawn against the prosecution that though there was a direct evidence available, it was withheld from the Court. The reference is made to the Secret witnesses, who were dropped by the prosecution.

14.1.9. Referring to charge Exh.122, learned advocate submitted that the charge is as vague as possible. Reading Exh.122, it is submitted with regard to charge of an individual the first part of 'removing' the Government of Gujarat is a vague charge impossible to be proved as even an opposition party fights for removal of the Government does not amount to offence and the reference is given to India-wide causing terror.

14.1.10. The court finds that the word 'removing' is not the correct translation. The charge is to topple the Government of the day and the implication of the crime planned in any corner of India does not have implication across the Country.

14.1.11. Learned Advocate then submitted that one of the reasons for this crime according to prosecution is revenge of riots arising out of the Sabarmati Train Burning crime and loss suffered by Muslim community.

14.1.12. It is submitted that same cause was also part of the charge in Akshardham Terror attack case, but the Apex Court in case of ***Adambhai Sulemanbhai Ajmeri and others v/s. State Of Gujarat, reported in 2014 (7) SCC 716*** has discounted such revenge angle to be motive behind that attack. Similarly, the same is required to be rejected here also.

14.1.13. Defence therefore, in great detail referred to the decision of

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the Apex Court of Rajiv Gandhi murder case in case of ***State Through Superintendent of Police, CBI/SIT v/s. Nalini and others, reported in (1999) 5 SCC 253*** to substantiate their arguments. By relying on Para-174 to submit that merely because a person is member of a organization does not automatically dragged the member in conspiracy. In ***Nalini (supra)***, the Court has found on facts regarding accused Shankar, who was with other co-accused in the Boat travelling to India. So merely because Shankar was member of LTTE, he could not be made conspirator to murder of Rajiv Gandhi as conspiracy for that purpose would be strictly confined to limited number of person to prevent leakage.

14.1.14. This aspect cannot be brought into facts of our case as there is a difference in the nature of conspiracy in a targeted killing (here Rajiv Gandhi) and a conspiracy to cause mayhem. LTTE, which was working on an ideology also had a political outfit and the Military outfit. Their targeted killing of an individual of a stature of Rajiv Gandhi would need different kind of planning and maintaining of secrecy about the operation. Here, it is not a targeted killing. It is to strike terror in general public by resorting to Bomb blast and that too where the planning and execution was not be planned based on a movement of an individual like Rajiv Gandhi.

14.1.15. Again, case of accused No.7-S. Kanagasabapathy and accused No.8-Athirai was drawn attention to Para-184 to 188 of ***Nalini (supra)***, where also on facts the finding was given that though these accused were given a role to play in the entire episode, but no material in any form or from the confessional statement, the involvement of the young girl in conspiracy of murder of Rajiv Gandhi surfaced. The Apex Court therefore concluded that it had doubt though accused No.7 and 8

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were involved with LTTE movement, but in murder of Rajiv Gandhi is doubtful. Case of accused No.17 who himself had made confessional statement under Section 15 of TADA was read out in Para-253 to 255 of ***Nalini (supra)***. There also, the point for acquittal was that out of their relationship with Sivrasan and Subha (main conspirators) they did provide for shelter post the crime and accused No.17 was aware of their role in crime, but that he was aware of the crime prior to crime having taken place, is doubtful.

14.1.16. Similarly, attention is drawn to the case of accused No.19-Rajiuddin Nasir @ Riyajuddin Nasir @ Alaur Rehmaan @ Abujaj @ Mohammad Daud @ Abdul Razak @ Rashidkhan Mohammad Nasiruddin @ Maulana Nasiruddin in ***Nalini (supra)***, where though he knew about Rajiv Gandhi incident earlier, however, benefit of doubt was given to him regarding his involvement in the conspiracy of assassination of Rajiv Gandhi. For granting the benefit of doubt, the Apex Court has taken into consideration a crucial question, whether he was party to the conspiracy of assassination of Rajiv Gandhi. For which the statement of co-accused was evidence, relied upon by the prosecution and that evidence in the form of confessional statement of accused No.2, wherein it is mentioned that upon the instruction of leader of LTTE, the amount was collected from accused No.2 (maker of confession to be delivered to one Suresh Master). At that stage, he was informed about by accused No.2 that LTTE was making arrangement to kill an important leader quickly. The Apex Court was of the opinion that knowledge of the aforesaid fact did not grant any certainty of participation by accused No.19 about the conspiracy to assassinate Rajiv Gandhi.

14.1.17. In case of ***Nalini (supra)***, the Court went on to refer to

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several Apex Court's decisions on the issue of conspiracy and ultimately laid down a broad principle on the subject.

"*583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principle*s.

"1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain A enrolling B,

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B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. *These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.*

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced

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them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

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9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

14.1.18. In the very judgment, Hon'ble Justice S.S.M. Quadri has penned a separate judgment to discuss conspiracy as provided under Section 120B of the IPC and thereafter, discussing some more

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judgments, on the subject has in para-662 recorded the position as it emerges.

"662. From a survey of cases, referred to above, the following position emerges:

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.(emphasis supplied)

663. The agreement, sine qua non of conspiracy, may be proved either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their

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support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator.

664. Section 10 of the Evidence Act recognises the principle of agency and it reads as follows:

"10. Things said or done by conspirator in reference to common design. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

665. To apply this provision, it has to be shown that (1) there is reasonable ground to believe that two or more persons have conspired together; and (2) the conspiracy is to commit an offence or an actionable wrong. If these two requirements are satisfied then anything said, done or written by any one of such persons after the time when such intention was entertained by any one of them in furtherance of their common intention, is a relevant fact against each of the persons believed to be so conspiring as well as for the purpose of proving the existence of conspiracy and also for the purpose of showing that any such person is a party to it."

14.1.19. Another judgment referred is in case of ***Yash Pal Mittal v/s. State of Punjab, reported in 1977 (4) SCC 540***, where on the offence of conspiracy under Section 120B of IPC, the Court recorded in para-9 as

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under:-

"9. The offence of criminal conspiracy under section 120A is a distinct offence introduced for the first time in 1913 in Chapter VA of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co- participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences, may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two- of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy."

14.1.20. Here the Court was considering an offence under Sections 454, 471/466, 476/466, 417, 419 of IPC read with Section 120B of IPC and charge was cheating by personation, unlike the nature of offence in our cases.

14.1.21. Learned advocate has then referred to case of ***Baliya Alias Bal Kishan v/s. State of Madhya Pradesh, reported in, (2012) 9 SCC***

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696. In this case, under Section 302 of IPC based on circumstantial evidence against three accused where deceased Pradeep according to main accused Baliya has mentioned that co-accused Manish and Gopal were responsible for circulating the pamphlet casting doubt on the character of one Dr. Sandhya and later Pradeep was found dead. Therefore, the only circumstance against co-accused Manish and Gopal was only what Baliya conveyed to them about role of Pradeep and that he should not be spared.

14.1.22. This, in the opinion of the Court, is an observation on the specific fact of the case where the co-accused were only conveyed the thoughts of the main accused and by this much they cannot be made conspirators, unlike this case.

14.1.23. Learned advocate has also relied upon the decision in case of ***State (Government of NCT of DELHI) v/s. Nitin Gunwant Shah, reported in, (2016) 1 SCC 472*** by drawing specific attention to Para-17 to argue that for conspiracy meeting of mind is essential. Mere knowledge or discussion would not be sufficient. In the opinion of the Court, the observation cannot be held as a ratio laid down. In the very paragraph, it is held that circumstance of conspiracy was a used motorbike and car in the incident and presence of all accused in Delhi, and such contention of prosecution was already discarded by the High Court. Hence, this Court does not find any discussion on facts related to circumstances for conspiracy. Moreover, the facts of present case are absolutely incomparable to fact cited as the terror camp at Halol shows several activities than merely getting together.

14.1.24. The Court may now deal with the arguments on facts vis-a-vis conspiracy advanced by the defence. It is argued that the meeting on November, 2007 refers to holding of preprogram of Dars-e-Quran but

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did not make any reference to the Criminal Act or violence. In this regard, the Court may refer to evidence of PW No.957-Zakirhussain Abduljabbar Qureshi, who was examined vide Exh.6687, wherein in Para-2 the prosecution witness refers to he being invited for Dars-e-Quran program by Abdul Razik and there, he deposes to presence of, going to house of Ibrahim Ansari where Gyasuddin Ansari of Gomtipur, Javed Shaikh, Aslam and thereafter, Javed Shaikh read out Quran and also talked about 'Quyamat' and 'Jihad'. He was also invited for similar program to be held every Monday. Here the word 'Jihad' will have to be understood in the context in which the accused have referred to and which thereafter, has led to the actual carrying out of 'Jihad'. This will also have to be seen where in continuity, the discourses which develops in later meetings, connects 'Jihad' with damage to Muslims and to take revenge.

14.1.25. The bomb explosion caused in sequence is the single most clinching circumstance for conspiracy. The bomb laden cycles were not placed randomly anywhere. Both in Ahmedabad and Surat, the places where the bombs were planted, were at strategic locations. The criteria for selecting the location is evident from the very place, where bomb blast took place. It is a crowded public place predominantly frequented by Hindu or Non-Muslim population and definitely not a Muslim dominated area. The Court is consciously aware of this fact. Both in Ahmedabad and Surat, there is a concept of religion based dominated areas. The Court observes that one blast in AMTS Bus was in the area of Juhapura, which is a Muslim dominated area but when the bomb was planted, the bus was in the area, which is a non-Muslim area and in its journey, when the AMTS Bus reached Juhapura when the Bomb exploded, an indication of mis-timing the placing of this Bomb.

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14.1.26. Therefore, the act of planting the bomb laden bicycles at the location is itself an evidence of planning after undertaking Recce, which witnesses have deposed to and even the confessional statement referred to. The time at which the Bomb exploded is the busy hour in the areas where bombs are planted. The selection of time to cause bomb-blast is a circumstance for conspiracy, when selection time is part of planning and time setting of the explosive device is a circumstance of the accused in the conspiracy having knowledge of how to prepare the Bomb using innocuous articles such as projectiles and easily available, and purchase of which will not draw attention like purchase of Nuts and Bolts from hardware shop, purchase of gas cylinders or battery cells or time pieces.

14.1.27. It is also a circumstance, wherein technical knowledge of assembling all the innocuous material to make a fatal explosive device. Therefore, the demonstration panchnama where the accused displays the knowledge of such assembling of explosion device becomes relevant.

14.1.28. As a part of conspiracy, this technical knowledge is used by only limited accused whose role in the conspiracy is to arrive in Ahmedabad from outside and assemble the bombs and then disassociate. This being the modus, typical of a Terror Attack.

14.1.29. Another circumstance for conspiracy and SIMI meetings argued is that of the camp in Vagamon. By submitting that, these circumstances cannot be treated as such to support the conspiracy theory as the evidence for Vagamon camp is the confessional statement of accused No.76-Manjarimam @ Alam @ Jamil, who is acquitted and a confessional statement of accused No.2-Imran Ibrahim Shaikh, who is acquitted in the Vagamon trial case. Moreover, neither of the evidence discussed about planting of serial bombs, but mere and general

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discussion on damage to Muslims and avenging their deaths.

14.1.30. The Court having perused Exh.8619-Confessional statement of accused No.2-Imran Ibrahim Shaikh, it is giving out material particulars about the preparation and travelling and assembling of various accused from different parts of India at one place at one time. The actual training activities undertaken and the distribution of fake names to hide true identity as a matter of practice and also the nature of discourse and including training in making Bombs (petrol).

14.1.31. Exh.9021 is the confessional statement of accused No.76-Manjarimam @ Alam @ Jamil recorded in the trial at Ernakulam Sessions Court and duly exhibited here. This confessional statement refers to how accused No.76-Manjarimam @ Alam @ Jamil was associated with other members of SIMI and upon persuasion of accused No.10- Aamil Parvaz and accused No.63-Mohammad Tanvir @ Talha himself went on to join SIMI. His confessional statement refers to activities and objective of their such meeting and this accused No.76-Manjarimam @ Alam @ Jamil later on realized that the plan to meet in Vagamon was to cause Jihad all over India. He also states that later on he has refused to assist the co-accused persons.

14.1.32. This statement under Section 164 exhibited being an evidence on record, and that too of co-accused tried along with these accused can be taken into consideration, as it corroborates the other evidence on record.

14.1.33. The Vagamon camp being the first step towards building up a conspiracy, it was not essential that there ought to be threadbare discussion on how to make and plant bomb, but there was an agreement to the proposal of avenging the atrocities on Muslim by resorting to mass killings. Therefore, the nature of participation of accused there and

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activities undertaken is a strong circumstance towards committing the crime.

14.1.34. It is argued with regard to the January, 2008 meetings at the house of Ibrahim Ansari and Shamsuddin Nana's place, those meetings cannot be treated as circumstance to establish meeting of mind and sharing of common object as those meetings at best indicated general speeches about 'Jihad' and avenging death of Muslims by giving speeches encouraging violent method to establish Islamic Rule.

14.1.35. These two meetings are mentioned by PW No.957-Zakirhussain Abduljabbar Qureshi at Exh.6687 and PW No.1141-Aiyaz Razakmiyan Saiyed at Exh.8191. It is argued that these witnesses have played the same role as the accused persons meaning, they were simply present in the meeting still they have not been treated as accused persons and therefore, their evidence also cannot be treated as evidence unless they fulfil the test requirement for considering an evidence of accomplice.

14.1.36. The Court may examine Exh.8191, the evidence of PW No.1141-Aiyaz Razakmiyan Saiyed, who has been granted pardon being approver. The evidence of this witness in detail indicates from beginning how he was introduced to the activity of SIMI and came in association of co-accused. This witness refers to two meetings in the beginning of the year 2008 at the residence of Ibrahim and the activity done there and therefore, another meeting at the residence of Samsuddin of Dariyapur at his Nana's residence and the activity done there.

14.1.37. Similarly, PW No.957-Zakirhussain Abduljabbar Qureshi, who was examined vide Exh.6687, specifically mentions about a meeting at Ibrahim Ansari's residence and the activity undertaken therein and accused who participated. This deposition also refers how he

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disassociated himself from the meeting. The evidence of this witness is in line with the evidence of approver Aiyaz Exh.8191.

14.1.38. The Court may also consider the evidence of PW No.1151 at Exh.8265. Though he is declared as a hostile witness, this witness confirms having put his signature on Exh.8266 which is a confessional statement under Section 164 of Cr.P.C. before the Judicial Magistrate.

14.1.39. Though this witness has turned hostile, yet the statement under Section 164 of Cr.P.C. before the Magistrate can be utilized to corroborate or to fill up the gap that may appear in the chain of circumstances. Ex.8266 was recorded based on the order of summons issued by the Chief Metropolitan Magistrate and this document records all the precautionary measures adopted by the Magistrate before actually recording of the statement under Section 164 of Cr.P.C including reflection period and possibility of the same being used against him. In Exh. 8266 he refers to series of programs in 2006-2007 which continued for 8 to 9 months at various places which included Samsuddin Nana's place. This document also narrates how many accused participated and what were the nature of activities in such meetings.

14.1.40. This exhibited document supports the prosecution. <u>These evidences also establish on record the taking place of the meeting in January 2008, the place of meeting, the participants of the meeting and also the activities during the meeting</u>.

14.1.41. The argument that these witnesses themselves having participated in such meeting be treated as accomplice. It is pertinent to find that all the witnesses had disassociated themselves at a particular stage, except for the approver. Therefore, as is held by the Apex Court in case of Nalini (supra), has held in para 662 as under:-

"662. From a survey of cases, referred to above, the following

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position emerges:

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

14.1.42. Over and above, the version of the witnesses, there are several panchnamas shown at behest of the accused persons and which are established by evidence of independent panch witnesses, wherein the places where such meetings have taken place have been pointed out and the panchnamas which are drawn at different time period for different accused persons, there is commonality of the place identified by them as

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a place of their meeting. Therefore, in the opinion of the Court, the prosecution has established holding of the meeting, participation and nature of activities during the meeting as a strong circumstance for the meeting of minds and sharing of common object.

14.1.43. Learned advocate has then argued that incident of Halol training camp cannot be considered as a circumstance to conspiracy as State has failed to establish the same by cogent evidence. It is submitted that only evidence relied upon by prosecution is statement of accused No.21-Mehandihasan @ Vikki. The nature of confessional statement by accused No.21- Mehandihasan @ Vikki is exculpatory and therefore, required to be excluded from being considered. Similarly, evidence of confessional statement of accused No.35-Rafiyuddin, which the Sessions Court has itself excluded from evidence and that leaves only with evidence of confessional statement of accused No.2-Imran Ibrahim Shaikh and his version on bomb making or explosion device or planting of bomb training is completely uncorroborated and therefore, cannot be treated as evidence at all.

14.1.44. The Halol terror training camp has taken place between 12th-14th January, 2008, which is a proximate period to the incident considering the level of preparation needed. During this training camp, physical training, firearm training were being given over and above religious discourse and inciting fanaticism and resort to Jihad with a strong object was propagated.

14.1.45. The evidence of Accused No.21-Mehandihasan @ Vikki cannot be discarded as being exculpatory as till the last stage of the Halol camp, he has shown his active participation and therefore, only at the end he has disassociated himself. Even after such disassociation he has not acted in a manner expected and has not even reported the

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happenings to any authority to prevent any subsequent event and this omission is on the part of this accused is a deliberate that is how he is liable as a conspirator.

14.1.46. Over and above, there is also independent evidence of the eyewitness being PW No.972-Ramkabhai Devkaranbhai Kesariya, who was examined vide Exh.6802, PW No.981-Pravinbhai Hamirbhai Katariya, who was examined vide Exh.6835 and PW No.1067-Ambalal Vechatbhai Bariya, who was examined vide Eh.7231, all of whom have witnessed the Halol Camp site and the activities carried out therein.

14.1.47. Learned advocate then submitted that the circumstance of a meeting on March 2008 at Samsuddin Nana's place also cannot be treated as a circumstance to conspiracy, as it is argued that accused-Abdul Subhan @ Taukir and Mufti delivered some speeches as per PW No.957- Zakirhussain Abduljabbar Qureshi vide Exh.6687 as the evidence only refers to general speeches for Jihad and to avenge Muslim atrocities. It is also argued that the deposition of PW No.957-Zakirhussain Abduljabbar Qureshi is to be believed, then he himself has remained present and therefore, his role is also similar to those other accused who were merely present. Therefore, he himself being an accused his deposition as a witness could be accepted. Learned advocate also refers to Exh.6695 being an application of the defence under Section 319 of the Cr.P.C. to arraign PW No.957-Zakirhussain Abduljabbar Qureshi as an accused and the stand taken by prosecution in this regard.

14.1.48. In para-4 of Exh.6687, the PW No.957-Zakirhussain Abduljabbar Qureshi has deposed about a meeting organized in March 2008 which was called at Dariyapur Limbdi telling this witness that since many days he has not attended the 'programme' upon reaching the

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place accused No.27-Abdul Rajik came to pick him and took him to Samsuddin Nana's place, where co-accused accused No.4-Samsuddin Shaikh, accused No.27-Abdul Rajik, accused No.8-Yunus Mansuri, accused No.15-Mufti from Azamgadh, accused No.6-Arif Kagzi, Abdul Subhan @ Taukir, Mujib Shaikh, and others. Accused- Abdul Subhan @ Taukir had delivered instigating speech that in 2002 Muslims lost their lives due to Anti Muslim Government and therefore, to topple the Government, it is necessary to spread terror in general public and Jihad be resorted to for bringing Islamic Rule. The Mufti also delivered speech in support of Jihad stating that SIMI has become strong in cities of India and all of them together can perform Jihad against anti-Muslim Government.

14.1.49. The witness PW No.957-Zakirhussain Abduljabbar Qureshi further deposes that it is at that stage he came to know about those present were SIMI operatives and were planning anti-national and anti-Government activities.

14.1.50. Reference is made to application at Exh.6695 by the defence under Section 319 to contend that PW No.957--Zakirhussain Abduljabbar Qureshi be treated as an accused on the ground of his presence and emphasis was laid on the stand of the prosecution itself.

14.1.51. The Court may refer to Exh.6695 and the order dated 15.12.2017 below it. Application Exh. 6695 is submitted after the commencement of deposition of PW No.957-Zakirhussain Abduljabbar Qureshi. By a reasoned order, the application at Exh.6695 below Section 319 to treat PW No.957-Zakirhussain Abduljabbar Qureshi as accused was rejected. The same was subject matter of challenge in Criminal Revision Application No.1225 of 2017 before this Court, which was also rejected by a detailed oral judgment and order dated

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14.09.2018 and that order attained finality. Therefore, the status of PW No.957-Zakirhussain Abduljabbar Qureshi continued as a witness. Therefore, in the opinion of the Court, it is not open for the defence to re-agitate the same only on the strength of the stand of the public prosecutor reflected in oral judgment dated 14.09.2018 (Defence has provided a copy of oral judgment dated 14.09.2018 in Cr.R.A. for perusal, reference to para-18 and 19 therein.).

14.1.52. The Court has also perused the deposition of PW No.957-Zakirhussain Abduljabbar Qureshi from this angle and has found that it was in the meeting of March, 2008 that this witness; PW No.957-Zakirhussain Abduljabbar Qureshi came to know about the co-accused being SIMI Operatives and planning for Anti National activities. Thereafter, his association with that group has discontinued, but he is meeting only accused No.27-Abdul Rajik, who was already his friend and out of friendship, was visiting his place or Abdul Rajik visiting PW No.957-Zakirhussain Abduljabbar Qureshi and during these meetings individually with Abdul Rajik, he was conveyed about ongoing activities, but has nowhere appeared to have actively participated.

14.1.53. Then, the Defence has argued about April 2008 meeting under Sarangpur Bridge not to be circumstance for conspiracy in Para-5 of the deposition of PW No.957-Zakirhussain Abduljabbar Qureshi. It is coming out clearly that accidentally he came across his friend Abdul Rajik near Sarangpur Bridge, who was present with Jahid Shaikh, Mujib, Gyasuddin and Javed Shaikh, who were present there and overheard their conversation as his friend; Abdul Rajik and Jahid Shaikh were crying and conveying to others that their brothers have been arrested as SIMI Operatives and time has come that the Police should realize ‘our’ real strength and for that purpose, others are not doing anything, but now

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against the Government, we must cause blast in public. While Abdul Rajik was angry, others were trying to console him and Javed informed PW No.957-Zakirhussain Abduljabbar Qureshi to take Abdul Rajik at home. While taking Abdul Rajik at his home, when PW No.957-Zakirhussain Abduljabbar Qureshi inquired as to what happened, Abdul Rajik informed that in Indore, SIMI Operatives have been arrested and time has come to take revenge. This meeting was an accidental meeting, where participation of PW No.957-Zakirhussain Abduljabbar Qureshi was also accidental and not planned. Similarly, in Para-6, 7 of his deposition also would indicate that he came across other accused persons only accidentally when he used to go to meet Abdul Rajik without there being any previous plan to participate in such meetings. Entire sequence therefore would indicate that after March, 2008, PW No.957-Zakirhussain Abduljabbar Qureshi coincidentally came to know about ongoing plans on account of his association only with Abdul Rajik on friendly terms. Even on 25th July as deposed in Para-11, PW No.957-Zakirhussain Abduljabbar Qureshi has visited the house of Abdul Rajik for the purpose of repairing of his door and from his house, Abdul Rajik had taken him to Dariyapur Limbdi, where he came across other co-accused.

14.1.54. On 27th July, he received phone call from Abdul Rajik from PCO and being nearby, he came over to meet along with Yunus Mansuri on his motorcycle and from there, he was taken to house of Yunus Mansuri and Abdul Rajik inquired about old Chal of Bapunagar. There also, the participation of PW No.957-Zakirhussain Abduljabbar Qureshi in the conspiracy does not appear. Therefore, this Court is also of the view that the moment the witness came to know about SIMI Operatives, he has thereafter not attended any meetings for conspiracy and therefore,

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rightly treated to be witness unlike other accused persons. Entire deposition would indicate that PW No.957-Zakirhussain Abduljabbar Qureshi enjoyed confidence of Abdul Rajik with whom, Abdul Rajik used to share many of his secrets.

14.1.55. It is submitted by the defence that the meeting of May, 2008 in the rented house of Vatva cannot be treated as circumstance to conspiracy, as there was only general speech advocating 'Jihad' and need to avenge atrocities against the Muslims in India. This circumstance in the opinion of the Court, is borne out from deposition of approver; accused No.23-Ayaz Razakmiyan Saiyed. With regard to May, 2008 meeting, this witness has deposed that in the year May-2008, Mohammad Ismail alias Abdul Rajik called him and after calling him, he called prosecution witness outside the society of the house. Then, when he went outside, he was told that there are two people with him and these people are two SIMI friends who used to meet him in SIMI meetings. Then he stated that these two people belong to SIMI, they currently do not have a house to stay in and because of that, they are facing a lot of trouble. Therefore, if a rented house is available anywhere in his area, a house is to be taken on rent. Having a talk in this manner, they went to a tea stall. From there, Abdul Rajik raised his hand and called two persons, and when they came back, he identified them. Among them, one was Kayamuddin Kapadiya and the other was Tauqeer alias Abdul Subhan, and he had seen both these men in the SIMI meeting held at Shamsuddin's maternal grandfather's (Nana's) house, so he knew them. Then Mohammad Ismail stated that he tried to find a rented house around his residence but a house is not available, so he has brought them to him. Thereafter, he asked Kayamuddin and Tauqeer alias Abdul Subhan what work do those people do? So, the one who was

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Tauqeer stated that he does computer work, and Kayamuddin stated that he does printing work. Then he asked them about their family, so they stated that they will come to stay along with their family, with wife and children. Then he asked them what kind of rented house does he need? So, they stated that a house with one or two rooms and a kitchen will do. Then he had told them that if there is a rented house around him, he will try to find it. Then they parted from there.

14.1.56. After this meeting took place, in the mosque where he used to offer prayers (namaz), another man named Saiyadu Rehman also used to come there; so he told him that if he has any rented house in mind to be given, and if it is of one-two rooms and a kitchen, keep it in mind; so he stated fine, he will search. Then, after one or two days, while meeting again in the mosque at the time of offering prayers, Saiyadu Rehman told him that there is a house in his neighbourhood. It is a one room and one veranda (osari) and it is on the first floor; so he told them to go and see the house as he has talked to them. Therefore, he told him that he will first inform his friends who are to come. After that, those people themselves would come and they would fix the deposit and rent with the person who is the house owner. Then the next day, he called Mohammad Ismail alias Abdul Rajik and he informed him that about the rented house they were talking about, there is one rented house, so they should come and see it. After that, Mohammad Ismail and along with him, Kayamuddin Kapadiya and Tauqeer Abdul Subhan, the three of them came to him, and then from there, Abdul Rajik went back. Thereafter, he, Kayamuddin, and Tauqeer Subhan, the three of them went to Saiyadu Rehman and while meeting Saiyadu Rehman he asked where is the house he was talking about? So he took us to the house which was in his neighbourhood. And there was one person inside, he called him out and

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introduced that this is Firoz Sheikh and it is his house. Then Firoz went with them upstairs to see the house and the talk about rent and deposit took place. The house owner Firoz Sheikh stated that he will take Rs. 5000/- as deposit and Rs. 900/- as rent. And when the house is ready, he could come to stay. He had not built a bathroom and he had told that he would build a bathroom.

14.1.57. Then between the tenth and fifteenth date of the month of May, those people, that is, Kayamuddin and Abdul Tauqeer, came to stay in the house. Saiyadu Rehman informed him in this regard when he came to the mosque to offer prayers. Thereafter, he went to that house to meet those people and after going there, he asked that you were to bring your family members, wife and children, so what happened? Hence, Tauqeer and Kayamuddin told him that they two will stay first for a few days and if there is no trouble or inconvenience in staying there, then they will bring their wives and children; then he returned from there. After that, whenever he got time, he used to go to meet Tauqeer Abdul Subhan and Kayamuddin at this rented house, and sometimes both of them also met him. Sometimes only one of these two would be there, and sometimes there would be a lock, so he would see the closed house and return. When the three of them gathered there, discussions about taking revenge for the Gujarat riots used to take place. And at the place where he used to go to meet these people, one day when he went there, a third person was also present at the rented house and he knew this person as well. This person was seen at the program / meeting held at Shamsuddin's maternal grandfather's (Nana's) house and he was also introduced to him. His name was Mufti Abu Bashar and everyone also used to call him Mufti Saheb. Now when this third person also came, when he went to them, the same discussion was happening between

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these three people that revenge for the riots that occurred in Gujarat is to be taken. After that, he does not know how many days Mufti Abu Bashar stayed there; but one day he met Kayamuddin and he told me that the house owner Firoz Sheikh has raised an objection regarding this third person staying in the house; hence Kayamuddin told the house owner that he is their guest and he would leave from here after some time. This house was located in the Vatva area. And when Mohammad Ismail came to meet him at Vatva, he was residing at Vatva.

14.1.58. During the time those people, Kayamuddin and Tauqeer, stayed here, Tauqeer gave him a magazine named *"Combat"* and inside it, illustrated information about the riots that occurred in the year 2002 in Gujarat was given and he told him to read it. Besides this, Kayamuddin had asked for two swimming pool forms from him, so he brought and gave two swimming pool forms from near Lal Darwaja and then when the form was to be filled, he went to Kayamuddin at that rented house. Therefore, he stated that a false name and address is to be put in the form and he had the name written as Sheikh Ashfak and wrote a false address of Danilimda. After this, during the same time, Kayamuddin and he went to Abdul Rajik in Gomtipur and from there, the three of them together went to Naroda Patiya, Naroda village, and Gulbarg Society. There, Kayamuddin and Abdul Rajik showed him that these are the chawls of Naroda Patiya, houses, and also showed a well and stated that communal riots of 2002 occurred and that at these places, the Muslims were murdered. And in the same way, they went to see Gulbarg Society as well. Then a discussion also took place between them there that a revenge for these murders of Muslims is to be taken. A few days after they had gone, he again went to the rented house and when he went to that house, only Tauqeer alias Abdul Subhan was

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present and he asked him where is Kayamuddin? So he stated that he has gone out for some work. Then a discussion of riots took place between them. So during the conversation, Abdul Subhan asked him does he remember what is the date today? So he remembered and stated that today is 11th July. So Tauqeer alias Abdul Subhan started laughing. Then while laughing he told him that on this very day, bomb blasts had occurred in trains in Mumbai and now after some time, bomb blasts are going to happen here in Gujarat also; so he asked Tauqeer who is going to do it here? So Tauqeer told him that when the time comes, everything will be known. Some time after that, Tauqeer and Kayamuddin met him in the mosque at the time of prayers and those people told him that now they will vacate the house and leave in two-three days. He asked them the reason as to why the house is to be vacated? So those people stated that when it rains here, water gets logged a lot around the house and on the road. Therefore, they are not going to stay there and are not going to bring their wives and children. One day after that, Saiyadu Rehman met him in the mosque, so he informed him that his friends Tauqeer and Kayamuddin, who had come to stay, have vacated the house and left with their belongings. After these people vacated the house and left, he did not have a meeting with either of them. They had left by the fifteenth date after vacating the house and then on 22nd July, a call from Kayamuddin came on his mobile and told him to come outside Vatva bus station. So he went outside to meet him. At that time, Mohammad Ismail alias Abdul Rajik was also with Kayamuddin. Then the three of them walked from there towards Narol. On the way, a discussion again took place between them that revenge for the Gujarat riots should be taken. During this discussion, Kayamuddin asked him if he got a chance to take revenge for the Gujarat riots, would he support? So he said yes,

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he is ready. Then Kayamuddin stated that they have a plan to carry out a bomb blast, in which he will have to get involved. He then asked him for more details as to how the bomb blasts that are to be carried out are to be effected? So Kayamuddin told him that such details are not to be asked. He has to do as much as he is instructed and he has to come to the place and at the time where he is called. Thereafter, they parted.

14.1.59. The aforesaid circumstance in the opinion of the Court is a strong circumstance in building up of conspiracy and falling within the periodic timeline, during which such meetings were taking place is an important circumstance indicating the presence of all the accused together at a proximate period.

14.1.60. Over and above as discussed in separate issue, the point out panchnama at the behest of the accused persons also point out the very premise, which is associated with as a meeting place for building up of conspiracy.

14.1.61. There was also a meeting in the house of Ibrahim Ansari in June, 2008, where according to prosecution there was discussion and discourse and instigation to avenge atrocities on Muslims. Relying on PW No.957-Zakirhussain Abduljabbar Qureshi, the argument of the defence is that there was only general speech on 'Jihad' but no specific mention to Bomb blast and that too in Ahmedabad. The deposition of PW No.957-Zakirhussain Abduljabbar Qureshi at Exh.6687 about June 2008 deposes that Abdul Rajik called him by phone to the house of one Ibrahim Ansari when he went there he would find presence of accused Ibrahim Ansari, Abdul Rajik, Gyasuddin, Javed Shaikh and Mufti who said that SIMI operatives are caught but no need to worry as they will establish Islamic Rule. Then this witness was asked to drop Mufti at Yunus Mansuri's residence near Ajit Mill. This witness states Mufti to

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mean Abu Bashar @ Mufti. PW No.957-Zakirhussain Abduljabbar Qureshi further deposes that 2-3 days later Abdul Rajik came to him and informed about his activity how he visited areas affected by roots at Naroda Patiya, Naroda Gam and Gulbarg Society also talked about death of Muslim in 2002 Riots and very soon 'those people' will realize.

14.1.62. This evidence would clearly indicate the periodic meetings of accused so that the plan keeps building up and all the accused are together and sharing the common objective. Therefore, it cannot be said that the meetings did not talk about Bomb Blast, therefore are not about conspiracy but it is evident that all these meetings were to reconfirm and reassure their resolve towards their ultimate object to strike terror.

14.1.63. Another circumstance for conspiracy of 20-07-2008 on the basis of accused No.24-Umar @ Ashok Kalabhai Kabira confessional statement under Section 164 according to defence is no circumstance as it only pertains to general speech but no reference to causing Bomb blast.

14.1.64. Perusal of Exh.8627 is the confessional statement under Section 164 of Cr.P.C. of accused No.24-Umar @ Ashok Kalabhai Kabira, which would indicate the reference to application dated 07-11-2008 to confess addressed to Magistrate from Judicial custody after verifying and complying the requirement for recording confession including legal aid and time to reflect, statement was recorded on 12-11-2008 when it is recorded that on 20/07/2008 at about 8:00 or 8:30 in the night, he received a call from Samsudinbhai on his mobile. He told him to come to the house of Yakubbhai in Juhapura as a recitation of the Quran–Hadith was to take place. He told to come quickly. Therefore, Iliyasbhai and he reached there. (1) Javedbhai, (2) Samsubhai, (3) Rajikbhai, (4) Yunusbhai and (5) Yakubbhai were present there and reciting the Quran. After five to seven minutes, the Quran recitation was

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completed. Yakubbhai went to the kitchen to make tea. Iliyasbhai came out and sat down. Meanwhile, Samsubhai, Yunusbhai, Javedbhai and Rajikbhai started instigating about Jehad, saying, how long will they keep sitting, they must do something. He did not know what Jihad meant. When they said, they should kill the people who have committed atrocities on Muslims and take revenge for the 2002 Godhra incident, he left for home after offering Namaz. This is followed by Memorandum about voluntariness of such statement.

14.1.65. This evidence is also important to support the ongoing conspiracy to avenge and to kill "those people". This version finds corroboration in the pointing out panchnama at Exh.5452 at the behest of accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, who points out the house of Yakub Memon where the meeting took place on 20-07-2008. The panchnama is proved by the panch witness Nasruddin PW No.809-Nasruddin Ismail Shaikh at Exh.5451. This witness has accurately deposed about the disclosure of the house of Yakub Memon. He has also recited the contents of the panchnama and identification of the house of Yakub Memon by his wife Noorjahan Memon and also recovery of mobile phone in non working condition.

14.1.66. The evidence of the panchnama and the panch witness corroborate the version in Exh.8627 confessional statement of accused No.24-Umar @ Ashok Kalabhai Kabira. Even if acquitted, the document exhibited on the record and corroborating can be an evidence to establish the meeting on 20-07-2008 to kill "those people".

14.1.67. The Meeting on 25-07-2008 is also a relevant circumstance of conspiracy. However, according to defence, the same is not proved simply by evidence of PW No.957-Zakirhussain Abduljabbar Qureshi as according to defence he is required to be treated as accomplice and

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not as a witness. However, from Para-11 of Exh.6687 (PW No.957-Zakirhussain Abduljabbar Qureshi), it is appearing that the panch witness was at the residence of Abdul Rajik by chance to repair the door of Abdul Rajik's house and from there he was taken to Dariyapur Limbdi where he overhead conversation of Imran Puthawala, Yunus Mansuri, Samsuddin Shaikh and Abdul Rajik ridiculing Muslims, who were welcoming Rath Yatra and thereafter, they were conversing by going away at some distance from this witness and hence was not able to know what they were talking about.

14.1.68. The Court in this connection may also refer to Exh.8215 a panchnama exhibited by PW No.1142-Mohammadislamuddin Khalilurehman Shaikh at Exh.8214 and it pertains to discovery of a written material apparently on 'Jihad' and anti-social, anti-national and Islamization conversion, which was hidden in the most unusual place i.e. a 'well' located in precinct of 'Sidi Saiyed Jali' and hidden in a water proof manner.

14.1.69. PW No.1142-Mohammadislamuddin Khalilurehman Shaikh deposed in Exh.8214 about the disclosure made by suspect on 02-09-2008 to hiding of such written material, during deposition has identified the muddamal article Nos. 170 to 192 under the list Exh.461 and his signature.

14.1.70. This Court has considered the submission on behalf of the defence that even if the Terror camps and meetings are established, still there is no evidence on the agreement to cause Terror activities by planting bombs in Vadodara and Surat.

14.1.71. In this regard, it is to be noted that, to be a conspirator, it is not necessary for each member of the conspiracy to be aware of all the aspects of conspiracy or the common design and ultimately the common

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object shared by all, which was to cause terror in the Public by mass killing at large, for the reasons mentioned. Therefore, causing bomb blast is a medium for achieving the common object.

14.1.72. In this regard, it is necessary to focus on the explanation to Section 120A of IPC.

"Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

14.1.73. Therefore, it is immaterial that the illegal act of causing serial bomb blasts and planting of bombs is the ultimate object, suffice it is that such an act is incidental to the ultimate object of "Terror" by mass murders.

14.1.74. The meaning of word "Conspiracy" has remained constant, but the offence of "Conspiracy" has been dynamic. With the changing time, the nature and method of "Conspiracies" have seen a sea change and so has the meaning given by Courts from time to time to various actions to bring them within the fold of "Conspiracy".

14.1.75. The most prominent form of "Conspiracy" found by the world at large are the conspiracies driven by "fanaticism", where the object is shared by the common understanding of their scriptures, culture or even upbringing and the prevailing circumstances commonly affecting a section of society united by their unique but common understanding. The word "Jihad" coming up frequently in each of the meetings has to be understood in the perspective of the persons using it and the place where it is being used. Therefore, use of word Jihad to take revenge in the meetings would have to be understood in context for causing Terror in a particular section (Hindus in present case) of the Society by causing en mass damage to life and property by targeted

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activity.

14.1.76. In the meetings, as has been referred to in this section of the judgment, the word "jihad" has to be understood as offence of criminal conspiracy as an exception to the general law where intent alone does constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment The conspiracy is held to be continued and renewed as to all its member wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. A criminal conspiracy must be put to action because so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.

14.1.77. Of all the circumstances which supports the theory of conspiracy to commit the crime of Serial Blasts, the single most circumstance which will out-weigh any other probable circumstance is

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the occurring of the Serial Blast itself and uncovering the unexploded explosive devises. This circumstance is sufficient to conclude that this crime is an outcome of a well guarded conspiracy with deep rooted motive. The occurring of the blasts only at particular location only is proof of strategic recce. The locations being crowded market areas with dominated Hindu populations is to cripple the system and burden the public authority, which actually happened as an aftermath. The planning of the explosive device parked with articles like LPG, nuts, bolts, etc. to act a projective and locating it near the trauma centre of the Government Hospital to target the victims of the blasts in other parts of the city is sufficient to establish the motive to terrorize people causing people to loose faith in existing system.

14.1.78. The incidents of successive bomb blast is a single most convincing evidence that the incident is a Terror attack with a sole objective to cause damage to life and property to terrorize common citizens. This under no circumstance be trivialized by comparing this investigation with the investigation of an offence of ordinary crimes. There cannot be a comparison of nature of evidence collected in investigation of a Terror plot with nature of evidence in a Cyber crime. If one nature of evidence is a clinching evidence in Cyber crime need not necessarily be treated as a bench mark for a clinching evidence for an offence related to human body or an offence of Terror activity.

14.1.79. As to the meaning in English law of Criminal conspiracy; Kenny lays down that in English law conspiracy first began as an agreement of persons who combined to carry on legal proceedings in vexatious or improper way. It is an offence at common law and was for a long time closely allied to attempts and was indeed often regarded as one form of attempt to commit a wrong. However, in modern times

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conspiracy has become a separate crime and is defined as the agreement of two or more persons to affect any unlawful purpose, whether as their aim or only as a means to it. This definition presents for points for notice: (a) actus reus, (b) the persons agreeing, (c) the purpose agreed upon, (4) the mens rea. Halsbury while discussing the meaning and import of criminal conspiracy as understood in English Law lays down that conspiracy consist in the agreement of two or more persons to do and unlawful act, or to do a lawful act by unlawful means. The law on conspiracy has been described as "the least systemic", the most irrational branch of English Penal Law.

14.1.80. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continuous to be committed so long as the combination persist, i.e. until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. In a criminal conspiracy meeting of minds of two or more persons for doing an illegal act is sine qua non but proving this by direct proof is not possible. Hence conspiracy and its objective can be inferred from the surrounding circumstances and conduct of the accused. *(Commentary from the Indian Penal Code by Ratanlal and Dhirajlal, Volume-1, 35th Edition, published by LexisNexis*).

14.1.81. In ***Yash Pal Mittal*** *(supra),* the Supreme Court holds that the offence of criminal conspiracy under Section 120A is a distinct offence. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the

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main object of the conspiracy. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another. The only relevant factor is that all means adopted, and illegal acts done must be and purported to be in furtherance of the object of the conspiracy. The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done illegal act, or an act which is not illegal by illegal means. The agreement in itself is enough to constitute the offence…….

(Commentary from the Indian Penal Code by Ratanlal and Dhirajlal, Volume-1, 35th Edition, published by LexisNexis)

14.1.82. One argument advanced by defence that the confessional statement of the accused may not be treated as evidence of conspiracy as these statements are exculpatory in nature and excludes the maker from participating in the discussing of making and planting bomb. Exculpatory means where the accused exculpates himself of the offence altogether. In that case, his version shifts the burden of crime on others. However, in the present case, the confessional statement of the accused cannot be considered as exculpatory. The offence in present case is not a one time incident, but a developing of conspiracy over the period of time where training, planning and execution were undertaken step by step. So where all accused are involved at any of the stage, but later on disassociated then to the extent of the offence they participated, it cannot be held that he has exculpated himself completely of the offence.

14.1.83. Where the crime is in the nature of a singular incident and a confessional statement of a charged accused absolves himself of any participation in that one time incident then on the principle of exculpatory statement not being confessional can be adopted, but in the facts of the present case not being a singular incident the analogy cannot

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be applied.

14.1.84. Again, the fallacy in the argument of defence that the meeting of mind and sharing of common object must be that which is directly related to the serial blasts. Therefore, the essential is discussion in conspiracy about making and planting of bombs and identifying of place to plant bomb.

14.1.85. It is a well known principle of conspiracy that all the conspirators may not be aware of the entire conspiracy, but only to the role assigned. It is also not necessary that each conspirator to play effective and actual role to making, identifying and planting of bomb.

14.1.86. The Court is of the opinion that the object was to cause terror amongst common public, to avenge damage to Muslim and establish Islamic Rule by committing 'Jihad'. This was the common object shared by accused, who travelled to a common place, not only from different part of the city but from different part of the state and the country and participated in those meetings, remained present consistently, undertook activities as directed during their stay in the meeting and thereafter, followed the role that may have been assigned.

14.1.87. Therefore, discussion on making and planting or explosion of bomb is not an essential requirement to the build up of conspiracy as the common object and meeting of mind for causing terror attack and it could have been through any method and serial bomb blast being only one such method.

14.1.88. Terror activities across the World have seen variety of methods be it car bombs, flying planes into twin towers, even running down the heavy vehicles into a crowded street or radicalizing an individual to become a human bomb. One such method evolved is radicalizing by using narrative of injustice to Muslims as a religion and

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attack on them by the instrumentalities of Government and using such narrative to instigate young persons into a drastic action with adding a glamour of adventure and heroic treatment in anticipation.

14.1.89. In view of the aforesaid discussion made in detail, there is no iota of doubt in the mind of the Court that present offence is an outcome of thick conspiracy spread and developed over the period of time. Therefore, the ingredients of Section 120(A) have been convincingly established by the prosecution and therefore, the accused have made themselves liable to the punishment for the offence charged with the aid of Section 120(B), which provides for the punishment for criminal conspiracy.

14.2. Confessional Statement and statement under Section 164 Cr.P.C

14.2.1. On 23-03-2026, learned Advocates have commenced arguments on the issue of Section 164 of Cr.P.C. Confessional statements. The lead subjects are by Dr.Yug Chaudhary. In the present case, it is argued that this set of evidence is a weak piece of evidence like as it is argued in connection with the pointing out panchnama and panchnama under Section 27 of the Indian Evidence Act. It is submitted that the confession by the accused is also a weak nature of evidence.

14.2.2. It is submitted that confessional statement is viewed with suspicion, both by the legislature as well as by the Court. The reason for viewing confessional statements with suspicion, is because the confessional statements by and large are an outcome of torture / 3rd degree treatment. It is submitted that since almost more than 100 years because of the reputation of custodial torture and use of it to extract confession, the over reliance of the police on the confessional statement as a tool of investigation is to get an easy way out rather than a thorough

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investigation. It is submitted that going by natural human behaviour, one would first attempt to save his skin and for that reason confess. He submits that there is a constitutional protection under Article-20 against self-incriminating evidence and a statutory presumption that confession in custody is product of torture, therefore, is hit by Sections 25, 26 of Indian Evidence Act and Section 162 of Cr.P.C.

14.2.3. He therefore submitted that a confessional statement has to fulfil six requirements; 1) it should be before a Magistrate, 2) the Confession is made after obtaining legal advice of a lawyer or with Legal Aid, 3) It is vital that the confessional statement is out of remorse and prompt, 4) it has to overcome the Bar of Section 24 of Indian Evidence Act, 5) the circumstances under which confession is made, must be credible and inspire confidence, 6) the Confession must be corroborated by some independent evidence.

14.2.4. It is argued that in facts of this case, all the aforesaid six requirements have remained unfulfilled and therefore, the evidence in respect of confessional statement cannot be treated as reliable evidence to convict the accused.

14.2.5. He cited one example from the facts that accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam has made a confession and his confession is admission of guilt, despite which accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam has been acquitted, whereas his confessional statement is used against co-accused to convict them.

14.2.6. Learned Advocate has thereafter referred to the Confessional Statement of accused No.2-Imran Shaikh. It is submitted that accused was arrested on 16-08-2008. He has tendered a set of Remand applications and pointed out certain paras of the application and orders

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passed therein to point out that in the application, the ground for seeking remand was the accused is not willing to give any relevant and important evidence regarding the offence. He submitted that investigating officer was seeking information on who were main persons in holding camp in Halol, who has given financial support etc. This application was made on 18-08-2008, which was allowed granting remand till 31-08-2008.

14.2.7. He referred to another application for remand of accused No.2-Imran Shaikh, where the Investigating Officer has stated in application dated 01-09-2008 that accused persons are highly literate, strong by determined and also religious fanatics and remand is necessary to interrogate him by adopting various methods.

14.2.8. Similar averments were made in another remand application dated 16-09-2008. In Remand Application dated 01-10-2008, it is mentioned that the accused are hardcore religious fanatics and information is required from them about financial aid received by them and also about nature of instigating Jehadi lectures and the Investigating Officer finds it difficult to gather such information from accused despite extended police remand period.

14.2.9. Learned Advocate then referred to Remand Application dated 09-10-2008 and pointed out Para-8, where it is mentioned that the accused persons are hardcore and fanatics Jehadis and are aware of consequences of confessing to crime and are deliberately hiding true facts from investigation. Therefore, it is difficult to believe that within a period of one month, the accused made application for making confession. Therefore, such confession is due to pressure or inducement and not out of remorse.

14.2.10. Learned Advocate thereafter submitted that in Remand Application, the remand was sought seeking information on specific

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facts like from whom and where the Bicycle and Material for Bomb was procured, who are involved in the conspiracy, who will plant the bomb laden cycle at which spot and who has funded the terror operations. However, in the confession, there is no such mention of any fact for which remand was sought.

14.2.11. Learned Advocate has thereafter taken up the similar contentions qua the confession of accused No.21-Mehandihasan @ Vikki Ansari, who was arrested on 09-10-2008 and application for remand was made on 10-10-2008. Learned Advocate tendered for perusal of the Court the Remand Application and submitted that in such application, the Investigating Officer has written that accused are hardcore, fanatics and religious bigots and therefore, not answering any questions. Therefore, it is difficult to get answers from them, hence, they prayed for long police remand. Considering such facts, remand was being granted.

14.2.12. It is argued that another Remand Application dated 24-10-2008, was ordered on same date and in that order, the Court referred to accused being member of terror outfit and that the accused are required to be interrogated. He also referred to stand of accused to the effect through the Legal Aid Counsel that he is nowhere connected with Ahmedabad offences. Therefore, on one hand, accused No.21-Mehandihasan @ Vikki Ansari says he is not involved and on the other hand, the Investigating Officer says he is not cooperating. Both these circumstances are not in consonance with the recording of the confession. He also pointed out that consistently the stand of Investigating Officer in successive Remand Applications has been that the accused are non-cooperative and hardcore and not yielding to investigation, then it becomes the duty of Investigating Officer to

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explain the circumstances under which the accused agreed to give confessional statement.

14.2.13. Learned advocate has then submitted that one more circumstance that creates doubt on making of confession is that three accused who were in custody of three different Investigating Officers and in three different C.Rs. on the same day i.e. 07.11.2008 made an application to Magistrate that they want to confess. Moreover, the applications are also verbatim. This aspect be coupled with the fact that in the statement under Section 313 of the Code of Civil Procedure, the very accused have stated these to be involuntary. According to learned advocate, the confessional statements therefore, cannot be relied upon.

14.2.14. It is further submitted that when the Chief Metropolitan Magistrate made an order of recording of evidence, the order mentions recording of statement of "witness'. Therefore, it was not clear to the prosecution whether the statement is to be recorded as a witness and therefore, the accused were either lured and convinced by the Investigating Officer that if they confess then they will not be treated as "accused" but as "witness".

14.2.15. The Court has perused the application of the three accused made on the same day i.e. 07.11.2008 vide Exh.8617 by accused No.2-Imran Shaikh, vide Exh.8625 by accused No.24-Umar @ Ashok Kalabhai Kabira and vide Exh.8621 by accused No.21- Mehandihasan @ Vikki Ansari.

14.2.16. We do not find the applications to be verbatim same. Exh.8617 is one page application clearly expressing remorse and reason how he was unknowingly emotionally mislead by members of SIMI and IM in the name of religion. When produced before Metro Magistrate Court No.11, an order was passed to the effect that as it is for recording

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of statement under Section 164 of Cr.P.C. "Accused". He then forwarded it to the Court of Chief Metropolitan Magistrate and Chief Metropolitan Magistrate passed an Order forwarding the said application to the Metro Magistrate Court No.5 for recording of the statement and in that Order, the word "Witness" has appeared. The case is similar for other two applications, where Metro Magistrate Court No.11 has mentioned in the Order word "Accused". One important fact is that Metro Magistrate Court No.11 records the presence of the accused there, but the presence of accused is not there before the Chief Metropolitan Magistrate Court. Therefore, the argument that the accused was lured in making confessional statement by treating him as witness cannot be accepted.

14.2.17. Insofar with respect to the argument of verbatim applications is concerned, the learned advocate has compared only Exh.8617 and 8621, whereas, this Court having perused other such applications, does not find the applications to be verbatim. Exh.8625 is only a four-line vernacular application. Exh.8625 does not implicate the accused and only states that he has been arrested in bomb-blast case and he wants to disclose something about other persons concerning the bomb-blast, whereas Exh. 8621 is a hand written application in Hindi language. Though attempt is made by learned advocate by submitting the English translation of both the applications Exh.8617 and 8621 as verbatim, the Court is unable to accept this argument. When both these applications are handwritten in two different languages, of course, the English translation may come out to be identical. As the purpose of the application itself is identical, usage of similar words will not create doubt about genuineness of the application or that the applications are completely non-existent or are creation of a common design to implicate the accused.

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14.2.18. The Court has also perused Exh.8629, which is an application for confession of accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya. This application is dated 19.01.2009. This application is a five to six line application in Gujarati language which is completely and differently worded. Therefore, the argument that the making of confessions are orchestrated by the group of Investigating Officers, working in tandem cannot be accepted.

14.2.19. The Court by the aforesaid observation also hereby rejects the argument that though the accused were 10th passed, the language of the application is a legal language. Moreover, the learned advocate has compared only two such applications and the words used in application, in Court's opinion, are the words used in common parlance and appropriate to express the version of the accused themselves. In fact, finding out words synonymous in language of the Section 24 of the Indian Evidence Act would have been an abnormal exercise.

14.2.20. On 24-03-2026, learned Advocate Mr. Yug Mohit Chaudhry continued with his submission on the point of confession by submitting that though the Court recording confession is required to send the confession to the trial Court, it took one year to be sent and there is no explanation to it therefore the confession is not required to be considered.

14.2.21. The Court finds that Section 164(6) makes a provision for forwarding the confession to the trial Court. However, it does not prescribe any time limit for doing so. It is for the trial Court to assess the confession at the stage that the trial Court deems appropriate for the period that such confession is in custody of the Magistrate Court. It cannot affect its evidentiary value unless a case of tampering is made out. In present facts, nobody has alleged any tampering of the confessional statement.

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14.2.22. Learned Advocate has thereafter argued that Section 24 of Indian Evidence Act provides for confession being made under threat, inducement or promise is irrelevant for criminal proceedings. He has emphasized on words ‘making’ and ‘appear’ in the section to submit that the ‘making’ signifies the entire process of making confession beginning from the desire expressed to actual recording and even thereafter and if in any of the stage, there is a element of threat, promise or inducement then, this confession is irrelevant and also whether there is element of inducement, threat or promise there is no need to have any absolute proof, only it should appear to the ‘Court as such’.

14.2.23. He has therefore, argued that as the retraction as well as the statement under Section 313 would indicate the presence of element of threat and inducement the confession is irrelevant for this trial.

14.2.24. Referring to Section 162(2), learned Advocate has submitted that voluntariness of the confession is very important step to be ascertained and in fact without this step the Magistrate does not even get jurisdiction to record a statement. Therefore, the Magistrate is first required to record in writing the voluntariness of the confession.

14.2.25. He has lastly argued that the confession is exculpatory confession and by pointing out Exh.8623 submitted that maker disassociates himself from the offence of causing Bomb blast and in fact confess that he preferred to stay away from the group. This cannot be treated as confession. It is submitted that in the entire confession, there is no mention of procuring of Bomb materials, preparing of Bomb and explosive and then planting it in Ahmedabad and Surat. In absence, it is no confession at all.

14.2.26. On 25-03-2026 before proceeding with the judgment on the issue of confession and retraction, he has summarized the requirement of

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confession to meet with the prescription of Section 164 (2) and Section 164(4) and also Rule 34 of Criminal Manual. It is submitted out of the total requirement in the present case even bare minimum of requirement like voluntariness, body check and asking the accused why he wants to confess are also not met with.

14.2.27. Learned Advocate has cited the decision of the Apex Court in case of ***Nathu v/s. the State of Uttar Pradesh reported in AIR 1956 SC 56*** to submit that a prolonged police custody before confession needs to be explained or such confession is presumed to be involuntary. In facts of ***Nathu (supra)***, the accused was arrested on 8th June and was transferred to the custody of CID from 7th August to 20th August and the confession was recorded on 21st August. The court found this step to be unacceptable and therefore, needed an explanation.

14.2.28. Learned Advocate has relied on the decision in case of ***Babubhai Udesinh Parmar v/s. State of Gujarat reported in 2006 (12) SCC 268*** to submit that safeguard under Section 164 of Cr.P.C. are required to be strictly complied with. Also the retracted confession is required to be looked at with greater caution. The offence involved was rape and murder of minor. The glaring defect in recording confession that the Supreme Court found in this case is that, the confession was recorded after administrating oath to the accused confessing and that no legal Aid was provided to the accused.

14.2.29. He has then relied on very old judgment of the Bombay High Court in case of ***Queen-Empress v/s. Narayan, reported in 1901 SCC Online Bom 7*** to submit that voluntariness to make confession has to be ascertained and also the police custody prior to confession and it is the duty of the Magistrate to satisfy himself about voluntariness.

14.2.30. The glaring fact that made the Court make such observation

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is that arrest was made on 11th June, but the police papers showed the arrest on 21st June and on 23rd June, confession was recorded. Based on this judgment, the argument advanced is that the jurisdiction to record the confession begins only after questioning the persons making it and having reason to believe that it is voluntary. Here practically for 10 days the accused was in police custody without arrest. In this circumstance, the Court puts a question "is it reasonable to suppose that during all that time no pressure was put upon the accused by Police to induce him to 'confess'?

14.2.31. Reliance is placed on the decision in case of ***Bhagwan Singh and others v/s. State of M.P. reported in 2003 (3) SCC 21*** to contend that the Magistrate has to ask the accused as to why he wants to make statement and which will go against him in the trial. He should be given time to reflect on and must be given assurance of protection from Police torture, if he does not confess.

14.2.32. Therefore, the Court held that 'Confession' is not voluntary and when retracted, it is not safe to rely on such confession. The facts of the case which invited such observations are that accused Pooran was arrested on 12-03-1984. For confession, he was produced before the Magistrate in handcuffed condition on 09-04-1984 and that too from the Police custody as was admitted by the Judicial Magistrate PW-1 therein, in his deposition.

14.2.33. In case of ***Sarwan Singh v/s. State of Punjab reported in 1957 SCC OnLine SC 1*** to argue that the act of recording confession is a solemn act and it is necessary to put question prescribed by High Court Circulars and the question under Section 164(3) should not be allowed to be put mechanically.

14.2.34. The Court made this observation due to the fact that Sarwan

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Singh was arrested on 25th November and was kept in Police custody till 30th November and on that day, he was sent to the Magistrate to record confession and then evidence of the Magistrate showed that the accused was produced at 2.30 pm and the accused was given half an hour to think about the statement he was to make and then soon thereafter, recorded the statement.

14.2.35. Learned Advocate has placed strong reliance of the judgment of Apex Court in case of ***Shivappa v/s. State of Karnataka reported in 1995 (2) SCC 76*** to be a leading judgment and particularly pointed out Para-6 and Para-7 a treatise on Section 164. However, on fact, it would be necessary to refer to Para-8 of the judgment, which records that the Magistrate; PW-17 had deposed that he had not stated to the accused that he is a Magistrate and not even ascertained whether the police had induced him. PW-17 also admitted that he was not sure whether the police official was in vicinity where the confession was recorded. The most relevant is that the Investigating Officer sent the report on 21-07-1986 to the Magistrate for making confession and the Magistrate adjourned recording to 22-07-1986 and ordered the accused to be remanded to the Sub-jail. However, it came on record that the Sub-jail and the office of the Circle Police Inspector (Investigating Officer) was in same premises. Therefore, the reflection period also was under the influence of the Police.

14.2.36. In case of ***Dagdu and others v/s. State of Maharashtra reported in 1977 (3) SCC 68*** to emphasis on the following of the safeguard for recording confession. Drawing attention to Para-50, learned advocate has submitted that mere production of the accused before the Magistrate is not guarantee of voluntariness, but the Magistrate has to ascertain factually certain aspects to rule out the

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parameters mentioned in Section 24 of the Indian Evidence Act.

14.2.37. This Court is of the opinion on facts of ***Dagdu and others (supra)*** the recording of confessional statement is made by a Sub Divisional Magistrate (SDM), who is not a trained Judicial Officer. The very purpose of providing Section 164 confessional statement be recorded by the Magistrate being a Judicial Officer is to ensure the exercise be undertaken by a Judicially trained mind, which by virtue of its training is able to meet with the requirement of Section 164 as well as Criminal Manual.

14.2.38. Therefore, in Para-51, the Apex Court has approved the submissions of State as under:

"*51. Learned counsel appearing for the State is right that the failure to comply wit Section 164(3), Criminal Procedure Code, or with the High Court Circulars will not render the confessions inadmissible in evidence. Relevancy and admis- sibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of that Act lays down that if a confession is otherwise. relevant it does not become irrelevant merely because, inter alia, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, there- fore, a confession does not violate any one of the conditions operative under Sections 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. (Emphasis supplied). If the facts and circumstances surrounding the making of a confession appear to. cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the*

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confess;on even if it is admissible in evidence. That shows how important it is for the Magistrate who. records the confession to satisfy him- self by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with Section 164 of the Code and with the instructions issued by the High Court affords in a Large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements."

14.2.39. Learned Advocate has then referred to old judgment in case of ***Ram Chandra and Ram Bharosey v/s. State of Uttar Pradesh reported in AIR 1957 SC 381*** to submit that it is important to record the confession in open Court and during the Court hours and also to inquire why the accused is making confession knowing that it can be used against him.

14.2.40. The Apex Court was compelled to make this observation in view of the fact noted in para-10 of the judgment that there was an impropriety in recording the confession as the confession was recorded in the Jail premises, where the Magistrate had gone to interview the accused.

14.2.41. The Court may refer to the judgment of the Apex Court in case of ***Rabindra Kumar Pal alias Dara Singh v/s. Republic of India reported in 2011 (2) SCC 490***, wherein upon analysis of various judgments on the point of confession laid down 11 principles as under:

"64. The following principles emerge with regard to Section 164 Cr.P.C.:-

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(i) The provisions of Section 164 Cr.P.C. must be complied with not only in form, but in essence.

(ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.

(iv) The maker should be granted sufficient time for reflection.

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance of Section 164 Cr.P.C. goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the Court requires some corroboration from the

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confessional statement before convicting the accused person on such a statement."

14.2.42. The reliance placed by learned Advocate on the judgment in case of ***Bahadul alias Ghanshyam Padhan v/s. State of Orissa reported in 1979 (4) SCC 346*** on the issue of confession. The Court is of the opinion that this judgment cannot be treated as a pronouncement on the point of confession as in para-3, the only discussion on the confession is that even the High Court has not acted on the confession and has merely reproduced the relevant para of the High Court judgment.

14.2.43. Learned advocate has then referred to an old Calcutta High Court judgment of a Single Judge in case of ***Emperor v/s. Panchkari Dutt and others, reported in AIR 1925 CAL 587***, both on the issue of 'confession' and 'retraction'. With reference to Section 24 of the Indian Evidence Act, learned advocate referred to para of the judgment, which dissected Section 24 of the Indian Evidence Act. Learned advocate submitted that, the word 'Appear' in the section is significant as a parameter which the Court has to apply to conclude whether there is any threat, inducement or promise and that too it is not necessary to establish the threat, inducement or promise by any set of evidence or probability, but should only appear to the Court that either of the three exists. However, in the opinion of the Court, the observation of the Court is different than submitted. For this, the Court may quote the relevant portion as under:-

"*....There occurs the word "appears"; the "inducement, threat or promise having reference to the charge against the accused person" must proceed from a person in authority, but nothing is said as to the*

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person to whom it is to be directed; it is enough if such inducement, threat or promise would in the opinion of the Court be sufficient to give the accused person grounds which would appear to the accused person (and not to the Court) reasonable for supposing that by making the confessions he would gain an advantage or avoid an evil of the nature contemplated in the section. It will be seen therefore that the mentality of the accused has to be judged rather than that of the person in authority……"

14.2.44. The Single Judge goes on to observe that there is still divergent opinion on the whether the word 'Appear' in the Section indicates a lesser degree of probability than would be necessary as in 'Proof' or whether the prosecution will have to prove affirmatively that it was voluntarily made or they should do so only in the event of doubt arising in the mind of trial Judge. The Court then went on to hold as under:-

"*....the true and generally recognised view is that a confession duly recorded by a Magistrate with the proper certificate appended to it will be admitted in evidence subject to the provisions and restrictions contained in Section 24*"

14.2.45. In the very judgment, the Court has also referred to the guidelines laid by the Court's general Rules and Circular orders, regarding confessional statement under Section 164, where on the facts the Magistrate had ignored the Rule No.2 (confessional statement be recorded in Court room and during Court hours) and Rule No.3 (immediate recording of statement coming from police custody, but giving reflection time). Still the Court observed that "Contravention of

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the Circular Orders deplorable though it is, it would not, however, render the record bad if otherwise, I am satisfied that the confession is voluntary."

14.2.46. For the same principle of Section 24 of Indian Evidence Act, learned advocate has relied upon the judgment in case of ***Pyare Lal Bhargava v/s. State of Rajasthan, reported in, AIR 1963 SC 1094***. It is argued that four judges of Hon'ble Supreme Court have given meaning to word 'Appear' in Section 24. The Court has indeed observed as under:-

"*...Under Section 24 of the Evidence Act such a stringent rule is waived but a lesser degree of assurance is laid down as the criterion. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed. Even so, the laxity of proof permitted does not warrant a court's opinion based on pure surmise. A prima facie opinion based on evidence and circumstances may be adopted as the standard laid down…..*"

14.2.47. However, the Apex Court in immediate para has also held as under:-

"*The threat, inducement or promise must proceed from a person in authority and it is a question of fact in each case whether the person concerned is a man of authority or not. What is more important is that the mere existence of the threat, inducement or promise is not enough, but in the opinion of the court the said threat, inducement or promise shall be sufficient to cause a reasonable belief in the mind of accused that by confessing he would get an advantage or avoid any evil of a temporal nature in reference to the proceedings against him: while the*

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opinion is that of the court, the criterion is the reasonable belief of the accused."

14.2.48. On the issue of retracted confession, the very judgment has observed as under:-

"….*..A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars., The High Court having regard to the said principles looked for corroboration and found it in the evidence of Bishan Swaroop, P.W-7, and the entry in the Dak Book, Ex. PA. 4, and accepted the confession in view of the said pieces of corroboration. The finding is one of fact and there is no permissible ground for disturbing it in this appeal*."

14.2.49. Learned advocate has thereafter, referred to judgment in case of ***Kehar Singh and others. v/s. State (Delhi Administration), reported in, 1988 (3) SCC 609***. (The Indira Gandhi Assassination Case) to submit that even in this judgment, after considering various decisions of the Supreme Court stated the requirement of provision 164(2) has to be

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fulfilled before recording confession and shall explain to the person making confession that (a) he is not bound to make it, (b) the evidence will be used against him, (c) sanctification of Magistrate that it is voluntary and (d) recording by Magistrate. It also observed that Section 533 of old Cr.P.C. (Section 463) provides for adducing such evidence to prove fulfilling of the requirement of Section 164 read with Section 281 of Cr.P.C.. These observations in the judgment were arising out of the fact as recorded that a statement of the accused was recorded before a retired District Judge and not before a Magistrate, that the statement was recorded at 9:00 PM and that the Judge did not introduce himself as a Magistrate and also did not satisfy himself by any question to the maker. In fact, the judgment very clearly lays down that failure of the Magistrate to question the accused as to his making the confession voluntarily is a radical and fatal defect which can not be cured by Section 533 of Cr.P.C. (Section 463). In the opinion of the Court, therefore, examining the Magistrate on oath to establish the compliance of requirement of Section 164 of Cr.P.C. was therefore, rightly not resorted to during the trial in the present case.

14.2.50. The Court may now refer to Full Bench decision of the Supreme Court in case of ***Shankaria v/s. State of Rajasthan, reported in 1978 (3) SCC 435*** on the very issue of confession, where the Hon'ble Court Supreme Court has talked about a double test (i) whether the confession is perfectly voluntary, (ii) whether it is trustworthy. If the first test is not met, there is no question of the second test. Like in one case various circumstances were pleaded to argue that confession is not voluntary. The circumstances pleaded were the police did not want to give the appellant an opportunity of having independent advice which could more easily be available in the District town of Ganganagar rather

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than at the Sub- Divisional town, Raisinghnagar. The appellant therefore, even on the 12th, 13th and 14th of June 1974, during the time when he was an inmate of the Judicial Lock- up, could not be said to be free from police surveillance and influence. The Magistrate hardly gave 20 minutes to the appellant for reflection before recording his confession. It is maintained that according to the ruling of this Court, the Magistrate should have given at least 24 hours to, the appellant, to think and decide. There is reason to suspect that after recording the confession, the appellant was handed back to the Police Superintendent, Shri Srivastava who then took him to Hanumangarh. If that be a fact, it would amount to a contravention of sub-section (3) of Section 164 of Cr.P.C. The appellant during his examination under Section 313 of Cr.P.C., stated: "During those days, Kanshi Prasad Ji was staying in the Police Station, Raisinghnagar which is adjacent to the Judicial Lock-up, and used to see and threaten me. The appellant replied I did not give this statement voluntarily. I have given this statement under compulsion due to the fear, threat and beating given by Shri Kashi Prasad. In cross-examination, no question was put to Shri Kashi Prasad Srivastava to show that the Judicial Lock-Up Raisingh Nagar is adjacent to the Police Station, nor was he asked whether at the material time, he was staying in the Police Station Raisingh Nagar. Shri Srivastava was however asked as to whether he had compelled and beaten the accused to make the confessional statement. This was sharply denied by him. It may be noted that despite a specific question put by the Magistrate to the accused during his preliminary examination on 14-6-1974, he (accused) did not complain about any threat, inducement, pressure or beating given to him by Shri Srivastava or anybody else. The argument is that the Magistrate should have given at least 24 hours to the appellant after his preliminary

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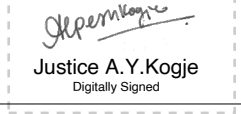
examination, to think over the matter, in Jail, free from fear of the Police. It is true that the interval between the preliminary examination of the appellant and the recording of his confessional statement was about 15 minutes. But there is no statutory provision in Section 164 of Cr. P.C or elsewhere, or even an executive direction issued by the High Court that there should be an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession. The condition precedent for recording a confession by the Magistrate in the course of Police investigation is provided in Section 164(2) of Cr.P.C. which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he his reason to believe that it is being made voluntarily. Although the interval between the preliminary questioning of the appellant and his confession was about 15 minutes, the appellant had no less than 38 hours at his disposal, whilst he was in judicial custody free from fear or influence of the Police, to think and decide whether or not to make a confession. The appellant was admitted to the Judicial Lock Raisingnagar under the orders of the Magistrate about or after 4 p.m. on that date. Thereafter, the appellant continuously remained in the Judicial Lock-Up or judicial custody till his confession was recorded on June 12, 1974 from 8.45 a.m. onwards. On the 14th June, notwithstanding the fact that the accused Shankaria was in judicial custody from the evening of the 12th June after the preliminary questioning, the Magistrate allowed 15 minutes more to him for reflection. Thus considered, Shankaria had, as a matter of fact, about 38 or 40 hours in judicial custody, immediately preceding the confession, and this was rightly considered sufficient to secure freedom from fear or influence of the Police to him (Shankaria).



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14.2.51. Thereafter, the Apex Court held as under: -

"45. The facts in Sarwan Singh v. State of Punjab were entirely different. Therein, the accused who had visible marks of injuries was straightaway brought by the Police from its prolonged custody, and produced before the Magistrate who immediately thereupon recorded his confessional statement, while the Police Sub-Inspector remained outside in the verandah of the Magistrate's office. The Magistrate did not ask the accused how he came to be injured. It was in these circumstances that this Court held that the failure of the Magistrate to give adequate time to the accused to consider the matter, stamped it is unvoluntary.

"46. The facts of the case in hand are, substantially in line with those of Abdul Razak v/s. State of Maharashtra. There, the accused was kept after his arrest in police custody for a fortnight. Then, after being kept in jail custody for three days, he was produced before the Executive Magistrate for recording confession. The Magistrate after a warning sent back the accused to jail and then recorded his confes- sion on the following day. Repelling the contention that the accused remained in prolonged police custody and his confession was not voluntary, this Court held that the accused had spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days."

14.2.52. Another judgment relied is in case of ***Preetam v/s. State of M.P., reported in, 1996 (10) SCC 432*** to submit that for disregarding provision of Section 164(2) of Cr.P.C. the confession cannot be sole basis of conviction. In the facts of this case, it is pertinent to observe that

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the Magistrate had given only two hours time to reflect before recording confession.

14.2.53. Learned advocate has thereafter, relied upon the decision of Privy Council in the case of ***Nazir Ahmed v/s. King Emperor, reported in, AIR 1936 PC 253(2)*** and submitted that it is this celebrated judgment which led the principle of "where power is given to do a certain thing in certain manner the thing must be done in that manner or not at all". Learned advocate submitted that this observation was made on the issue of 'confession' only. However, in the opinion of the Court, the circumstance under which the observation was required to be made is very relevant. In ***Nazir Ahmed (supra)***, the Magistrate at the time of drawing a point out panchnama has recorded the admission which the prosecution had projected as a confession under Section 164 of Cr.P.C. We may therefore, narrate the relevant facts from the judgment itself as under:-.

"*...The evidence of one Mr. L. D. Vasisht, a First Class Magistrate, and therefore a Magistrate entitled to proceed under Section 164, was the determining evidence. This witness deposed that on November 14, 1934, on the application of the police and under the orders of the District Magistrate, he proceeded by car to the scene of the dacoity and to the places material to the events connected with it. The accused in handcuffs accompanied him in another car. The object was said to be that the accused, including the appellant, might be given the opportunity of voluntarily and after a caution leading the way and showing to the Magistrates the places where incidents in the crime occurred. On arrival, the Magistrate said that he excluded the police, or sent them to stand*

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apart at a distance, and then, was led round by each man and the places were pointed out. As to the appellant the Magistrate deposed that the result was a full confession to participation in the robbery and to firing a revolver in the course of the pursuit. The deponent said he made rough notes of what he was told and,, after dictating to a typist a memorandum from the rough notes, then destroyed them. He produced, and there was put in evidence, a memorandum, called a note, signed by him, containing the substance but not all of the matter to which he spoke orally. The note was signed by him and at the end, above the signature, there was appended a certificate somewhat to the same effect as that prescribed in Section 164 and in particular stating that the Magistrate believed that " the pointing out and the statements were voluntarily made." But it was not suggested that the Magistrate though he was manifestly acting under Part V of the Code either purported to follow or in fact followed the procedure of ections 164 and 364. Indeed, as there was no record in existence at the material time, there was nothing to be shown or to be read to the accused, and nothing he could sign or refuse to sign. The Magistrate offered no explanation of why he acted as he did instead of following the procedure required by Section 164…."

14.2.54. The next judgment relied by learned advocate is in case of ***Kalavati v/s. State of Himachal Pradesh, reported in, 1953 (1) SCC 86*** on the issue of 'retracted confession'. Though the judgment is cited that the retracted statement is not reliable, actually the judgment speaks about how a retracted confession is to be used against the co-accused. Therefore, in para-10, the five Judge of the Supreme Court have observed as under:

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"*...It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against a co- accused tried jointly for the same offence, but can only be taken into 'consideration' against him. This deals with its probative value and has nothing to do with any repugnancy to the Constitution*."

14.2.55. When the word 'consideration' is used by the Apex Court, meaning thereby, even a retracted statement of an accused can be taken in 'consideration' for a co-accused. Therefore, the retracted statement has some evidentiary value and cannot be rendered as useless piece of evidence.

14.2.56. Reliance is placed in case of ***Puran v/s. State of Punjab, reported in, 1952 (2) SCC 454*** for the issue of retracted confession. In para-9 of the judgment, it is recorded that the confessional statement was recorded even while the accused was still in police custody on 24th February and was retracted on 7th March and then referred to the principle that unless a retracted confession is corroborated in material particulars, it is not prudent to base conviction. Again on facts, it is recorded that the attention of the Court was not drawn to any evidence which corroborates in material particulars the statement contained in the confession. Such is not the fact in the present case where there are panchnamas pointing out the houses used for conspiracy, planning and making of the bomb and the discoveries of various articles connected to making of bomb/explosive and ultimately the FSL report which established the presence of explosive material and other material connected to making of the bomb.

14.2.57. Next case relied upon is in case of ***Reena Hazarika v/s. State of Assam, reported in, (2019) 13 SCC 289*** on the issue of a statement of

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accused under Section 313 of Cr.P.C. to submit that it is a valuable right and not an empty formality. This judgment is cited while contending that the makers of the confession in their 313 statement clearly narrate that they made the confession due to the threats of harassment by the police and that they were under duress.

14.2.58. True it is that the process under Section 313 is not an empty formality. In this case, para-17 reproduces the version of the accused who is the wife of the deceased and was tried for his murder. In the statement under Section 313, she has given an entire account of what she saw on the day of incident and the circumstance which led to her implication in offence like last seen together with her husband or her unnatural behaviour of not crying on the death of husband led the neighbours to treat her as prime accused.

14.2.59. In our case, the answer given by the maker of the confession to the question put for regarding confessional statement and the explanation regarding commission of crime in the statement under Section 313 of Cr.P.C. is to be considered by the Court and non explanation to each of the circumstances becomes one of the many circumstances in the trial based on the circumstantial evidence. If the argument of defence in this regard is to be accepted, then each answer that may be given to the questions put on the circumstance gathered against accused under Section 313 may lead to a mini trial which cannot be the purport of Section 313.

14.2.60. Therefore, the Apex Court in case of ***Reena Hazarika (supra)*** the word 'Admission' and 'confession' can be interchangeably used in common parlance. In law, 'Admission' is defined under Section 17 to mean a statement which suggests any inference as to any fact in issue or relevant fact. Word 'confession' though not defined has found

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reference in Section 24 of the Indian Evidence Act and admission in a criminal case is commonly called admission (See P. Ramantha Aiyar's Advanced Law Lexicon, 3rd Edition, 2005, Volume-I, Page-960) and there 'confession' is defined as direct admission or acknowledgment of his guilt by a person who has committed a crime. However, the difference in 'admission' and 'confession' can also be that if a person admits all facts necessary to convict him, it is a confession. If such admission does not given all essentials of the crime, it is only 'admission'. Therefore, the term 'confession' is a species of 'admission'.

14.2.61. The Court may refer to an old decision of five Judges Bench of Bombay High Court in case of ***Emperor v. Narayen Raghunath Patki, reported in, 1907 (0) BLR 789;*** especially on the issue of treating a confession as evidence. Though, the judgment is written by all the five Judges, but insofar as the 'confession' as 'evidence' the view taken by them is common. For the purpose of brevity and clarity, the Court may reproduce para-23 of the judgment part written by Chandavarkar J, and para-45 of the judgment authored by Devar J, respectively as under:-

"23. The confessions, therefore, cannot be excluded from the evidence in the case. We must consider them and assess their value as evidence properly admitted to see whether they are true confessions. What the presiding Judge at the trial had to decide in the exercise of his judicial discretion was whether the confessions appeared to him to be voluntary and he has so decided. What we have to decide is, are they proved to be true- No doubt in assessing the value of a confession as sufficient evidence and finding out whether it is true or false, various considerations do and must enter, of which one may be and generally is

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whether it was voluntary or not. But the question as to its voluntariness comes in there only as a subordinate though material element in the main question of the credibility of the proof. And hence the rule of law stated by Mr. Taylor in his work on Evidence (para 791) that "deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law." So it has been ruled in the American Courts that after the Court has ruled that the confession is admissible, the accused may ask to have the jury disregard it if they think it not voluntary: Income v. Culver 126 Mass. 464."

"45. To sum up shortly my views of this question, I hold that the question of the admissibility or otherwise of the accused's confession (Ex. B) was a question which the learned Judge who presided at the trial had to decide. After hearing arguments of counsel he pronounced his judgment on the question and admitted it in evidence. The accused's counsel did not ask for a reservation of this point for the opinion of the High Court. The acting Advocate General refers only to one exhibit and leaves the confession untouched. Under the circumstances I am of opinion that it is not open to us at this stage to go into the recorded evidence for the purpose of finding whether the confession was properly admitted. It is on the record. It is before us as part of the evidence against the accused. I hold that we have no power to exclude it altogether from our consideration."

14.2.62. The Apex Court in case of ***Nazir Khan v/s. State of Delhi, reported in 2003 (8) SCC 461*** also dealing with an act of terror under TADA observed in para-24 that "free and voluntary confession is deserving of highest credit, because it is presumed to flow from the

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highest sense of guilt.".

14.2.63. The Apex Court in case of ***Aloke Nath Dutta and others v/s. State of West Bengal, reported in, 2007 (12) SCC 230*** in para-87 it is held that confession ordinarily is admissible in evidence. It is relevant fact and can be acted upon confession may under certain circumstances form the basis of conviction. However, it is trite that the Court has to satisfy itself on (1) voluntariness, (2) trustfulness and (3) corroboration.

14.2.64. Section 28 of the Indian Evidence Act makes a provision for the confession to be relevant. Section 24 provides that the process of making confession should appear to the Court that such process is free of any inducement, threat or promise and that too from a person in authority.

14.2.65. For the investigation and prosecution of an offence of this magnitude, the evidence of a particular fact in issue or particular accused, cannot be treated as a representation of all the facts in issue. Therefore, the argument of the defence that if the evidence, such as the confession of one accused is recorded in a manner which is doubtful, for example, by inducement, should not lead to an automatic conclusion that all the other confessions are the outcome of such an inducement.

14.2.66. Moreover, insofar as the circumstances under Section 24 of Indian Evidence Act are concerned, i.e., the confession becoming irrelevant upon being given under any inducement, threat or promise, if the defence seeks to rely upon such a plea, then the existence of such circumstance needs to be substantiated on record and mere pleading of the same is not sufficient.

14.2.67. In the cross-examination of the Investigating Officer, the Court does not find that any question was put with regard to the process of recording and making of the confession, the answer to which would

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in any manner establish the existence of any circumstance mentioned under Section 24 of Indian Evidence Act. In this regard, the Court has also perused the deposition of the Investigating Officers namely; PW No.1163-Mayur Jagmalbhai Chavda at Exh.8638 wherein he has deposed in his cross examination at Para 177 that, no torture was inflicted upon the accused persons so as to extract a false confession or that false evidence had been fabricated so as to file a false chargesheet against them. The Court has also perused the deposition of PW No.1154-Usha Bachubhai Rada at Exh.8340 wherein in the cross examination at Para 128, it has been deposed that the accused persons were not subjected to any third degree torture and has denied that the accused persons were not subject to medical examination during remand.

14.2.68. Further, to ensure that the confession is free of the three parameters of Section 24, a procedure has been prescribed under Section 164 of Cr.P.C. To appreciate the arguments made by defence, we need to focus on and break down Section 164(2) and 164(4) accordingly. The Magistrate is required before recording the confession to explain to the maker that he is not bound to do so and if done, it can be used against him and Magistrate should put appropriate questions to satisfy himself about the voluntariness of the confession. The Magistrate also has to ensure that the recording is in consonance with requirement of Section 281 of Cr.P.C. and has a memorandum at the foot of it.

14.2.69. Section 281 emphasis on the language of the Court for making recording of examination of accused and make memorandum of substance of examination with a signature. This recording is required to be shown and read over to the accused and made to understand in his language which will thereafter be signed by the accused and the Magistrate and be certified by recording Magistrate.

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14.2.70. Criminal Manual Rule 34 further provides for the guidelines to the process that may be adopted by the Magistrate. The Court has considered 14 sub-clauses of Rule 34, which all go on to ensure that the statutory requirement of Section 164 of Cr.P.C. are met with. Learned advocate while referring to these clauses has submitted that the confession of accused No.2-Imran Ibrahim Shaikh and accused No.21-Mehandihasan @ Vikki were recorded before the Court hours and not in open Court, the Magistrate has not written in question and answer form, the Magistrate has not inquired and recorded about the length of police custody, not recorded about police beating in custody or any ill treatment and has also not recorded the reason why he wants to make a confessional statement. Also, it is submitted that the Magistrate has not assessed that the maker will not be sent in police custody and also has not ensured proper legal aid to the accused.

14.2.71. The Court may now consider submission of learned advocate that the confessions are not voluntary as the remand application reflects resistance of accused to co-operate with the investigation. The Court has perused the remand reports which learned advocate has tendered during course of investigation and found that the remand reports filed at various stages, first being on 16.08.2008 which mentions various grounds for remand and which applied to all the accused arrested and produced and did not specifically to accused No.2-Imran Ibrahim Shaikh and accused No.21- Mehandihasan @ Vikki.

14.2.72. It is submitted that in the very first remand application, the Investigating Officer has referred to the incident to be a serial blast and therefore, pointing to conspiracy and that the accused belonging to terror groups and where headstrong and religious fanatics. If such is a description of accused then it is not believable that the accused would

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confess. Referring to the orders of the remand, learned advocate pointed that the stand of the defence from that stage that the accused were innocent and are falsely implicated. Therefore, also it is doubtful that they may have confessed. The Court is of the view that the reasons to confess are to be found from the document pertaining to process of making confession which the Court will refer to a little later. To answer the submission on remand application, the Court finds that in each and every remand order, the Court has recorded presence of advocate for the accused not only private advocate, but wherever needed advocate through legal aid have also been provided. In orders, both for accused No.2-Imran Ibrahim Shaikh and accused No.21-Mehandihasan @ Vikki for remand each and every accused is shown to be represented by individual advocates; the Court may particularly observe in the order dated 24.10.2008 where the accused is represented by the legal aid advocate. In all the applications for remand, the accused being represented by private advocate and wherever needed by legal aid advocate, the Court is of the view that accused No.2-Imran Ibrahim Shaikh and accused No.21- Mehandihasan @ Vikki as well as other accused No.24-Umar @ Ashok Kalabhai Kabira and accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam were all provided with all necessary legal assistance and therefore, arguments of defence that the confession is made without having any legal assistance is required to be rejected.

14.2.73. Exh.8617 is an application by accused No.2-Imran Ibrahim Shaikh for confession, similarly Exh,.8621 is for accused No.21-Mehandihasan @ Vikki, Exh.8625 is for accused No.24-Umar @ Ashok Kalabhai Kabira and Exh.8629 is for accused No.35-Rafiyuddin. The perusal of these applications where it is written by accused themselves

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that out of religious incitement and being emotionally charged they were mislead by the members of SIMI and IM in Ahmedabad and attended various meetings and terror camps for which they are repenting and out of remorse want to voluntarily disclose their involvement with other companions as per procedure of law and that they are not under any pressure (Daban) and greed (Lobh) or inducement (Lalach).

14.2.74. The Court may thereafter refer to Exh.8619 which is the confessional statement of accused No.2-Ibrahim Shaikh. Exh.8619 initial part records that accused No.2-Ibrahim Shaikh was produced before him under forwarding letter of jail bearing No.30/08 from the judicial custody on 07.11.2008 and the Judge introduced himself as a Judge and asked the escort police to sit outside the chamber and ascertain that he wants to say something about the incident to which it is recorded that the Judge informed that it is not necessary for him to give any confession and such confession may be used against him and ascertained that there is no duress of any police or crime branch. He was also asked if he needs any advocate or legal aid, to which he clearly refused and insisted that he volunteers to confess. For reflection time, he was ordered to be taken to jail and yadi to jail authority was issued to produce accused No.2- Ibrahim Shaikh again on 12.11.2008 at 15:00 hours. The document further reads that on 12.11.2008 at 15:45 hours, he was produced however, due to paucity of time confession was not recorded, but accused was ordered to be brought on 14.11.2008 at 15:00 hours. The process of recording confession commenced on 14.11.2008 at 16:50 hours when accused was produced through the jail authority. Once again, the Magistrate records that there is no pressure from police or other authority to record confession no police has met him in jail or that he has not been taken out for investigation purpose and that accused has

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after due thinking only decided to confess, again he is informed that confession can be used against him only after the recording as also the Magistrate has proceeded to record the confession. Similarly, accused No.21-Mehandihasan @ Vikki made application at Exh.8621 which is a handwritten application in Hindi language. This letter also expresses that members of SIMI and IM by religious manner and being emotionally charged the accused helped in bomb blast and attend terror camps and meetings. But he is repenting and therefore, in this offence of bomb-blast he wanted to confess to about activity of all those who have participated in this. The accused was ordered to be produced before the Court No.11 by the Chief Metropolitan Magistrate.

14.2.75. He was thereafter produced on 10.11.2008 and vide Exh.8623, the Magistrate has recorded that under forward No.30/08 by Chief Metropolitan Magistrate the accused was produced by jail authority under forward No.30/08 at 15:50 hours. The accused was brought to chamber to whom the Magistrate introduced himself as a Judge and asked police to leave the chamber and nobody else was present when accused expressed desire to say something about the incident. The Magistrate thereafter, informed the accused that it is not necessary to confess and such confession will be used against him and also recorded that there is no pressure of any police or crime branch and that whether he wants legal assistance to which he refused. Thereafter, the accused was sent back to jail authority for reflection with yadi to produce again on 12.11.2008 at 15:00 hours.

14.2.76. The accused was produced on 12.11.2008 when the time shown is 16:20 hours, again the process commenced at 17:15 hours and the police were asked to leave the chamber again. The accused was questioning about his willingness and whether he has been pressurized

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or lured in to confess to which he stated that after thinking only he is volunteering to confess. Thereafter, the Magistrate has proceeded to record the confession.

14.2.77. The Court also observes that both confessional statements below Exh.8619 and Exh.8623, the Magistrate has made a memorandum to the effect that the confession is recorded in the own words of the accused and was read out and explained and that the Magistrate having satisfied about voluntariness has put his own signature and also that of the accused.

14.2.78. Similarly, for accused No.24-Umar @ Ashok Kalabhai Kabira, Exh.8625 application is made expressing that regarding the blast he wants to disclose voluntarily about role of others in bomb-blast again. The Chief Metropolitan Magistrate forwarded the Court No.5 to record and forward to Metro Magistrate Court No.11. Exh. 8627 records that accused No.24-Umar @ Ashok Kalabhai Kabira was forwarded to Metro Magistrate Court No.5 under forward No.303 of 2008 and was brought from judicial custody at 16:50 hours. It also records that the Magistrate introduced himself to be the Judge and asking the escort police to leave ensuring only both of them in chamber. He was thereafter informed about that it is not compulsory to confess and that confession will be used against him and that there is no pressure or inducement by police or crime branch. He was also asked if he needed any legal assistance to which he was refused and thereafter for reflecting he was sent to judicial authority with yadi to produce on 12.11.2018 (sic.) at 15:00 hours.

14.2.79. On 12.11.2008 at 16:45 hours, the accused was produced in chamber where the Magistrate again records whether during reflection period, he met any police or whether crime branch has pressurized him

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and that no body of investigation met him and that after thinking only he is giving the statement and accordingly, the confession was recorded. A very short confession was recorded followed with the memorandum about the satisfaction of the Magistrate about voluntariness and the statement being in his own hand writing was read out and signed both by Magistrate and accused No.24-Umar @ Ashok Kalabhai Kabira.

14.2.80. The Court has compared the timing of recording of both successive confession on 12.11.2008, Exh.8627 between 4:45 PM to 5:08 PM and thereafter, Exh.8625 between 5:15 PM to 6:10 PM therefore, Exh.8619 could not be recorded and was thereafter done on 14.11.2008.

14.2.81. The Court may now refer to Exh.8629, which is a application by accused No.35-Rafiyuddin to Chief Metropolitan Magistrate for voluntary disclosure of some facts of the bomb-blast. Exh.8629 is dated 18.01.2009. The Metro Magistrate Court No.11 on 19.01.2009 records that accused was explained that he may not confess and that it can be used against him. That, there is no lure or promise or force which was ascertained and specified that he is not promised and ascertained of an acquittal/discharge from offence. The Magistrate also introduced himself. Thereafter, he was sent to Sabarmati Jail so he can rethink and be produced again on 31.01.2009. When this accused was produced on 31.01.2009, once again his voluntariness was ascertained and thereafter, the Court room was emptied and thereafter, proceeded to record the statement. At the beginning of recording words “Sogandh Apya” (Oath Administered) is stated. At the end of the statement, the accused has endorsed that facts have been written as per his instructions and have been read out to him. At the bottom is the memorandum of the Magistrate and recording the satisfaction of voluntariness of the

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confession.

14.2.82. The Court has closely perused the aforesaid document, which indicates the process of making confession. The Court finds that the Magistrate before recording have made the accused aware of their rights, no need to confess, confession being used against maker, need of the advocate, ascertaining voluntariness to confess, reading out and explaining to maker, putting the memorandum as per Section 164(4), introducing himself as a Judge, giving sufficient days for reflection, ensuring that the accused are sent to judicial custody out of the influence of the investigation and that recording the same during Court hours as be the hours which are prescribed by Criminal Manual. Of course, except for one confession, others have been recorded in the chamber, but such a decision of the Magistrate is left to the wisdom of the Magistrate who can assess the prevailing situation. Moreover, the provision of Rule 34(1) only provides for "ordinarily' to record in open Court. The nature of serial blasts itself and investigation surrounding it, is not an ordinary situation where the Magistrate would be at that stage and will have to decide on where to record with due regard to safety and security of those involved in making confession.

14.2.83. The process for statement and confession is similar on Section 164 of Cr.P.C., learned advocate submitted that Sub-clause (2) requires recording of the reason to believe. This submission is required to be rejected outright as it does not oblige/the language does not oblige to record any such reason to believe voluntariness. The fact that the Magistrate has proceeded to record presupposes all the parameters existing.

14.2.84. The arguments are advanced that the confessional statement could not be treated as admissible evidence because the prosecution has

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failed to examine the Magistrate as a witness. It is the burden of the prosecution to establish the fact of voluntariness of the confession and the fulfilment of the requirement of the criminal manual only by examining the Magistrate and that an opportunity be available to defence to cross examine the witness with regard to existence or absence of such steps mentioned in the criminal manual.

14.2.85. In this regard, the Court is of the view that in the preceding paras, the Court has discussed as to the fulfilment of the requirement under Section 164 of the Cr.P.C. as also requirement of Rule 34 of the Criminal Manual. Over and above this, the legal provision under Section 80 of the Indian Evidence Act and Section 114(e) of the Indian Evidence Act, both protect the confessional statement Exh.8619, 8623, 8627 to make it admissible in evidence. The court in the subsequent paras also discussed this issue by referring to the Decision of the Apex Court in case of Madi(ibid).

14.2.86. If the argument is to be accepted, then the provision of Sections 114 and 80 of the Indian Evidence Act will be rendered otiose and the Magistrate be reduced to yet another witness who will be questioned treating the statement under Section 164 of the Cr.P.C. to be a previous statement to contradict the Magistrate. The guideline laid down in the Manual are directory and cannot override a Statute. The requirement is under Section 164 of the Cr.P.C.. The Court having found that the content in the application itself is self-explanatory regarding reason to confess and voluntariness free from inducement or fear, the Court has to believe that the Magistrate has proceeded with the making being certain of the requirement being fulfilled.

14.2.87. Learned Advocate has argued based on judgment already discussed that the Magistrate has not inquired from the accused making

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confession about prolonged police custody before making the confession. The facts as emerging on record and as discussed, there is no question of the accused being in Police custody. All the accused were in judicial custody brought from the Jail and for reflection period again sent to Jail Authority. Moreover, special questions were put that during reflection period there was no contact with the Investigation thereby successfully removing the accused much outside the influence if any of investigation.

Retracted Confession:-

14.2.88. The Court may now examine the arguments of defence that the retracted statement may not be relied. For this purpose, learned advocate has referred to the letter of retraction written to the Magistrate and also to their statement under Section 313 of Cr.P.C. The Court may now examine both in case of all the accused who have confessed and retracted. Accused No.2-Imran Ibhrahim Shaikh has retracted vide Exh.9216, accused No.21-Mehandihasan @ Vikki vide Exh.9226 and accused No.24-Umar @ Ashok Kalabhai Kabira vide Exh.9227. Statement under Section 313 of accused No.2- Imran Ibhrahim Shaikh is Exh.124 and accused No.21-Mehandihasan @ Vikki is Exh.143. To the Court, it appears that the retraction is a concerted attempt by all the three accused who on same day i.e. on 25.11.2008 have sent their retraction to learned Metro Magistrate Court No.11.

14.2.89. Exh.9216 is a letter of retraction by accused No.2-Imran Ibrahim Shaikh, where he has alleged that during police remand period he was beaten and forced to sign confession. Periodically he was brought on remand and beaten up. It is also alleged that one Police Sub-Inspector Bharwad had issued threats to his mother and out of fear for his parents he had broken down and therefore, confessed. He also said

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that he was not allowed to meet advocates.

14.2.90. Now the Court may compare with the stand of this accused in his Section 313 statement with regard to the question posed on Exh.8619; confessional statement. The accused No.2-Imrah Ibrahim Shaikh has replied that in the Magistrate's Chamber, Investigating Officer, V.R. Tolia was present who warned him to write and sign to whatever the Magistrate tells him else he would be taken again on remand and tortured and thereafter, on many papers signatures were obtained (See Page No.49561).

14.2.91. Therefore, here two complete different versions are coming out on record of the accused for retraction. Therefore, the Court is of the view that this cannot be treated as a retraction at all, but an afterthought based on the subsequent circumstances. Similarly, for accused No.21--Mehandihasan @ Vikki, the retraction dated 25th November is Exh.9226 where he has alleged that he had lost his balance of mind and he still frightened and that he was made to confess out of compulsion by one 'Madam'. He was threatened that if he did not confess then he would be taken to crime branch. Now, if the same is compared with the stand of accused No.21-Mehandihasan @ Vikki in statement under Section 313 at Exh.143, where he states that his confession is not voluntary but out of fear of crime branch. He had learnt the confession by heart and wrote it before the Magistrate. Here also, inconsistent versions are coming for retraction. Therefore, this retraction, in the opinion of the Court, is an afterthought.

14.2.92. The Court may now deal with the aspect of Retraction of the confession. The Court has already discussed about the circumstances under which it is recorded the safe guards adopted and also the circumstances regarding its retraction. The Court may also therefore

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discuss the utility and value of a confession upon retraction.

14.2.93. The Apex Court in case of ***State of Tamil Nadu v/s. Kutty @ Lakshmi Narasimhan, reported in 2001 (6) SCC 550*** held as under:

"12. Learned Judges of the High Court declined to act on the said confession mainly for two reasons. First is that the confession was retracted by the maker thereof and second is that the recovery of articles was made prior to the confession. We may state at the outset itself that both reasons are too insufficient for overruling the confession.

13. It is not the law that once a confession was retracted the Court should presume that the confession is tainted. As a matter of practical knowledge we can say that non-retracted confession is a rarity in criminal cases. To retract from confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not the ground to throw the confession overboard.

14. We are unable to understand how a judicial confession would become bad by reason of the fact that articles belonging to the victims were recovered prior to the making of the confession. That aspect,

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instead of vitiating the confession, could be a factor in favour of the voluntaries of the confession. When the culprit finds that the articles concealed by him are all disinterred it is possible that he might feel that there is no use in concealing the facts any more. Then he may desire to make a clean brast of everything to any person or authorities."

14.2.94. Yet another judgment of the Apex Court on the issue is an old decision of 1958 in case of ***Subramania Goundan v/s. State Of Madras***, ***reported in, 1958 AIR(SC) 66*** in Para-14 of the judgment, the Apex Court, while considering case of ***Balbir Singh v/s. State of Punjab*** proceeded to hold that it is not necessary that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession is made.

"*14. The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being In re Kesava Pillai, that if the reasons given by an accused person*

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for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this Court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated one of the latest cases being "Balbir Singh V/s. State of Punjab, but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. In this connection it would be profitable to contrast a retracted confession with the evidence of an approver or an accomplice. Though u/s. 133 of the Evidence Act a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to sec. 114 lays down that a court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repentance and contrition, was voluntary and true or not and it is with that object that corroboration is sought for. Not

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infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and, therefore, it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the court must feel that the reasons given for the retraction in the case of a confession are untrue."

14.2.95. Similarly, in ***Henry Westmuller Roberts v/s. State of Assam, reported in, AIR 1985 (SC) 823*** the Supreme Court held that for lending assurance to the retracted confession, it is sufficient to have general corroboration of the important incidents mentioned in the confession, and it is not necessary that the Retracted confession should be corroborated in each material particular.

14.2.96. The Apex Court on the issue again in judgment in case of ***Parmananda Pegu v/s. State of Assam, reported in 2004 (7) SCC 779*** in Para-19 observed that the Apex Court in series of decisions has evolved rule of prudence that the Court should look for corroboration. However, there need not be corroboration in respect of each and every material particular and broadly there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidences and the Court should have assurance that the retracted confession was on facts voluntary.

14.2.97. The Court in this regard may also refer to and rely upon decision of the Apex Court in case of ***Madi Ganga v/s. State of Orissa, reported in, AIR 1981 SC 1165*** wherein the Apex Court held that general corroboration is sufficient to sustain conviction. In ***Madi***

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(supra), O. Chinnappa Reddy, J. in Para-5, spoke on Section 80 of the Indian Evidence Act that it makes examination of the Magistrate unnecessary. It authorizes the Court to presume that the document is genuine, that any statement as to the circumstances under which it was taken are true and that such statement was truly taken in accordance with law.

14.2.98. The Apex Court also proceeded to reject the argument advanced there, like in the present case that had the Magistrate been examined as a witness, the accused might have been in a position to show by cross examination that the confession recorded by the Magistrate was not voluntary and the Magistrate having appended the Certificate that he was satisfied that the confession was not voluntary.

14.2.99. The Apex Court in case of ***Bheru Singh S/o Kalyan Singh v/s. State of Rajasthan, reported in, 1994 (2) SCC 467*** went a step ahead to hold that retracted confession can form the legal basis of conviction, if the Court is satisfied that it is true and made voluntarily. (See Para-23).

14.2.100. Similarly, again in old judgment in case of ***Pyare Lal (supra)*** in Para-7, held on retracted 'confession' that retracted confession can be basis of conviction.

14.2.101. This Court may specifically deal with a particular infamous "Nithari Killing Case" as learned advocate has made a specific reference to the case, both to the decision of the Division Bench of Allahbad High Court and also a curative petition. 16 FIRs were registered with regard to the cases where different persons were suspected to have been killed for cannibalism. Trial of one FIR was concluded and accused were awarded death sentence. The sentence was forwarded for confirmation before the High Court and the High Court confirmed the death sentence.

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Appeal to the Supreme Court against confirmation of death sentence was rejected. It is thereafter, the trial of remaining 15 FIRs also resulted in death sentence. However, in the confirmation case, the High Court took a different view and completely acquitted the accused. On account of this development, the accused filed a curative petition which in the death sentence confirmed upto Supreme Court and the Supreme Court thought it fit to re-look at its own decision in a reported judgment in case of ***Surendra Koli v/s. State of Uttar Pradesh and another, reported in, 2025 SCC Online SC 2384***.

14.2.102. The Supreme Court observed two glaring facts and it is these facts which will distinguish our case (a) The Supreme Court observed 60 days of uninterrupted police custody without meaningful legal aid. This factor is completely absent in facts of our case, (b) The presence and influence of the Investigating Officer during Section 164 Cr.P.C. procedure. This factor is also completely absent in our case. Over and above, the Court may refer to the judgment of Allahabad High Court in acquitting the accused, where a finding of fact is given that there was no reflection period given and legal aid was provided for five minutes before recording of the confession (See para 276, 277) ***2023:AHC:199091-DB*** and para-410. Referring to a report of the High Powered Committee placed on record as additional paper book pointing strongly towards the suspected trade of body organs involved which had missed the eye of investigation. With these two fundamentals, variations on facts, the judgment cited of "Nithari Killing" may not be of assistance to the defence.

14.2.103. The arguments of defence regarding long police custody supported by various judgments, referred hereinabove, the Court deems it fit to reject this argument as in the facts of the cited case, typically the

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investigation is for single incident of crime and single FIR and investigation, whereas this was an investigation of 35 Nos. of FIR of Ahmedabad and Surat, where the necessary process/formality of investigation was required to be completed. Moreover, the cited judgment referred to the Police custody just before recording confession, whereas in the facts of this case as discussed the makers were invariably brought to Magistrate from Judicial custody, send back in Judicial custody for reflection period and precaution was taken to take them out of the influence of the Police before making their respective confession. The Court has minutely perused the confessional statement and for easy reference, has converted in Tabular form which is as under:

Confessional Statements

Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
1.	A-2 : Imran Ibrahim Shaikh	8619	14.11.2008	1) A-1: Jahid @Javed Kutubuddin Sheikh 2)A-2 : Imran Ibrahim Shaikh 3) A-5: Gyasuddin @ Gyasu Abdulsalim Ansari 4) A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi 5)A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala	States that he associated with SIMI in 2004 alongwith Usman Agarbattiwala(A-7) believing it to be a religious organisation and he used to accompany Usman to such activities and gradually attended larger programmes of SIMI. Usman was apprehended in 2001 as he took part in the activities of banned organisation of SIMI and through Usman(A-7) he was introduced to Sajid Mansuri(A-14), Safdar Nagori(A-12) and Aamil Parvez(A-10). I) <u>Kerala camp</u>: i) States that on 07.12.2007, he was informed that they had to go somewhere and was called to the railway station and that Usman

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Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				6) A-8: Yunus S/o Mohammad Mansuri 7) A-10: Aamil Parvez S/o Kaji Saifuddin Shaikh 8) A-11: Sibli @ Sabit S/o Abdul Karim Muslim 9) A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori 10) A-13: Hafiz Hussain @ Adnan S/o Tajuddin Mulla 11) A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri 12) A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh 13) A-27:	Agarbattiwala(A-7) came to drop them wherein Sajid Mansuri (A-14) Abubasar from U.P. was present. States that a total of 8 persons were present, namely: i) Himself (Imran Ibrahim Shaikh) ii) Sajid Mansuri (A-14) iii) Kayamuddin Kapadiya(A-37) iv) Arif Kagzi(A-6) v)Jahid Sheikh(A-1) vi)Abdul Razik(A-27) vii)Gyasuddin(A-5) and viii)Jahid (A-1) ii) Thereafter, they boarded the Marusagar Express on 09.12.2007 and they got down at Ernakulam railway station, where Mansur was present at the station and took them to a mosque in his four wheeler wherein Safdar Nagori(A-12), Aamil Parvez(A-10), Adnan(A-13), Alam Sheikh and four others whose identity was unknown were also present. iii) Adnan(A-13) handed over a visiting card bearing the name “Extreme Adventure” wherein a name Alam Sheikh or Alam Saiyed and a mobile number was mentioned (which he does not remember) and was instructed by Adnan(A-13) to not disclose about the camp and if questioned, they should claim it to be an adventure programme. Thereafter, they were taken to a secluded mosque near a canal wherein 30-35 people were present.

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Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri 14) A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya 15) A-57: Dr. Asadullah H.A. @ Aslam @ Asad S/O Abubakr H. 16) A-59: Mohammad Ansar @ Siddik @ Nadvi S/o Abdul Razak Muslim 17)A-72: Abdulsattar P @ Mansur S/O Abdulrazak Muslim 18)A-75: Mohammad Rafiq @ Javed @ Alamzeb Afridi S/o Maskur Ahmed 19) Absconder: Abdul	There were vehicles at the location, i.e., 2 Scorpios, 1 Maruti 800 and 1 Quallis. Adnan(A-13) and Asadullah (A-57) were organisers of the camp. iv) States that code names were assigned to all participants by Safdar Nagori (A-12) and that the code name assigned to him was "Hebal", the code name assigned to "Sajid Mansuri" (A-14) was "Usman", the code name of "Kayamuddin" (A-37) was "Musa", the code name of Gyasuddin (A-5) was "Abu Hanif", the code name of "Jahid Sheikh" (A-1) was "Bilal", the code name of Aarif Kagzi (A-6) was "Abdul Haziz", the code name of Sibli (A-11) was "Hidayat", the code name of Adnan (A-13) was "Tamim", the code name of Asadullah (A-57) was "Furkan", the code name of Amil Parwaz (A-10) was "Sikandar", the code name of Safdar Nagori (A-12) was "Iqbal", the code name of Taukir was "Rehmat", the code name of Ansar (A-59) was Nadvi", the code name of Mufti (A-15) was "Abdul Rasid" and the code name of Mohammad Ali (A-26) was "Abubasar". States that the reason for giving these names was that people from outside won't know of their real names. v) States that they were taken

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Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Subhan @ Taukir Qureshi	to a hill station named Vagamon and divided into 3 groups and were given training separately between 10th to 12th of December, wherein training in trekking [by Nadvi(A-59)], mountain biking, crawling, swimming, river crossing, shooting practice and preparation of petrol bomb was imparted, and speeches advocating jihad were delivered by Safdar Nagori(A-12), Aamil Parvez(A-10), Taukir (absconder), Sibli(A-11), Mufti(A-15), Adnan(A-13) and Nadvi Ansar(A-59); and that Safdar Nagori(A-12) spoke of practical implementation of jihad in his speech, and that two groups would be formed, one of which would carry out actual operations and that members of such groups would not be known to each other. vi) They also spoke about going to Afganistan and doing Hijrat, and also spoke in their speeches about targeting mass killings and did not object to conducting explosions and were happy about it. They also talked about the targeting of political leader; Narendra Modi. The camp went on until the whole night on 12.12.2007, and thereafter they parted ways and tickets were given to everyone. II) <u>Post Kerala camp:</u>

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					Discloses that after conclusion of the camp, Safdar Nagori(A-12), Sajid Mansuri(A-14) and he stayed together at a guest house arranged by Safdar Nagori(A-12); states that on 13th they stayed at a mosque opposite the bus depot at Ernakulam, where Safdar Nagori(A-12) separated and he met 3 persons at the mosque namely, Jahid(A-1), Taukir (absconder) and a person "U.P. ka Fly" met them and thereafter; on the morning of the 14th, Taukir (absconder) and the person from U.P. departed for U.P.; and thereafter he, Jahid(A-1) and Sajid Mansuri(A-14) travelled back to Gujarat at 8:30 p.m. at night where he went to Baroda and Jahid (A-1) went to Ahmedabad. III) Halol camp planning: i) In December, during Bakri Eid, Safdar Nagori(A-12) proposed organising a similar camp in Gujarat, for which discussion took place amongst Usman(A-7), Sajid Mansuri(A-14), Kayamuddin(A-37) and this accused and they were asked to find an appropriate place for the camp by Kayamuddin (A-37). Pavagadh-Halol was suggested by them, upon which Safdar Nagori(A-12) told that it is a good place and thereafter it was finalised after inspection by Jahid(A-

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Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
					1), Kayamuddin(A-37), Sajid(A-14), Safdar Nagori(A-12), and this accused. Safdar Nagori(A-12) inspected the Khundpir Dargah and he suggested keeping one group there and the other in the forest. ii) States that they returned to Baroda to the residence of Sajid Mansuri(A-14), wherein Sajid Mansuri(A-14) was appointed as organiser by Safdar Nagori(A-12), and this accused, Kayamuddin Kapadiya(A-37), Jahid(A-1) and Yunus Mansuri(A-8) were assigned for support, Kayamuddin(A-37) & Yunus(A-8) to arrange articles from outside, Safdar(A-12) and Sajid(A-14) jointly decided the people who would be called to the camp. Sajid(A-14) undertook booking of tickets and also went to Rajasthan in first week of January for distribution of tickets and Safdar Nagori(A-12) invited persons from Madhya Pradesh. The arrangements for vehicles at the camp were made by this accused through Asif Dudhwala who arranged Tata Sumo on rent from his friend Nasir, both of whom had no knowledge of camp or SIMI and took the vehicle on the pretext of travelling to Saputara. iii) Initially dates were fixed 12th to 14th December; but

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					were thereafter changed to 12th January. Kamruddin Nagori(A-9) and persons from Azamgarh and M.P. stayed at his house; and on 13th January, the vehicle was collected and kept at Sajid Mansuri's(A-14) house; Yunus Mansuri(A-8) arranged tents; Kayamuddin(A-37) arranged bedding and mats. IV) Halol camp: i) Around 12-13 people travelled in the Tata Sumo which was driven by Jahid (A-1) and the others travelled by motorcycles. At the camp, motorcycles belonging to Usman Agarbattiwala (A-7), Yunus Mansuri (A-8) and Jahid (A-1)were present. ii) About 25-26 persons attended the Halol camp and code names were assigned to participants and that the code name assigned to this accused was "Imtiyaz", the code name assigned to Sajid Mansuri(A-14) was "Shehzaad", the code name assigned to Jahid (A-1) was "Zulfikaar", the code name assigned to Kayamuddin (A-37) was "Abdul Kadir", the code name assigned to Yunus (A-8) was "Amin", the code name assigned to Arif Kagzi(A-6) was "Shabbir", the code name assigned to Taukir was "Mohsin", the code name assigned to

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					Kamruddin was “Dildar”, the code name assigned to Safdar Nagori(A-12) was “Iqbal”, the code name assigned to Aamil Parvaz(A-10) was “Sikandar”. Persons from Ahmedabad included, Mujib (A-80: deceased), Alamzeb Afridi (A-75), Tausif (A-78), and Abbas Bhujwala (A-16). From Baroda, Iqbal Rafiyuddin, Sadab, Iqbal Sheikh were present. And, from Rajasthan, three persons were present whose names he does not remember, however one person had the codename Abubakar. From Madhya Pradesh, four persons were present of whom three had codenames Ali, Saad and Azam, and he has stated that he does not know their real names. Ansar Nadvi(A-59) from Kerala camp also attended. iii) The initial assembly took place at Khundpir Dargah, with stay arranged through his friend Saadat Panwala, wherein they met the Mujavar Idrishbhai, who had no knowledge of the camp and believed they had come for religious visit. iv) Two groups were formed, one was kept at Khundpir Dargah and the other in the forest area near Helikal Vaav and they assembled to hear speeches and training similar to the Kerala camp was

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					imparted. He states that Kamruddin Nagori(A-9) and Safdar(A-12) explained that the camp was being conducted for the purpose of reviving and populating the abandoned mosques and that training should be undertaken with the intention of revenge for the bloodshed of Muslims in the 2002 riots. Ansar Nadvi(A-59) trained participants in forest survival, Tauqir(absconded) and Aamil Parvez (A-10) delivered jihad-related speeches stating that by doing so they would attend heaven and it was their duty to do so and that revenge must be taken for thee bloodshed of Muslims. Kayamuddin Kapadiya(A-37) imparted training in preparation of petrol bombs and pipe bombs in the context of riots. The participants were exhorted to seek revenge and it was further stated that some persons would be required to undertake practical work and would be divided into two separate groups, and Safdar Nagori(A-12) stated that the members would not know each other. V) Post Halol camp: i) When the camp concluded on the first day of the next month, the participants from M.P. departed, while those from Ahmedabad, Baroda, and Rajasthan were taken to Baroda Railway Station in a

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					Tata Sumo, and the remaining persons returned on motorcycles to Baroda after having stayed for two days at the house of Sajid Mansuri(A-14). ii) In February, Safdar Nagori (A-12) and Adnan (A-13) stayed at this accused's house, where Sibli also joined, and Adnan (A-13) disclosed that he had fled Karnataka after Asadullah and Raziyuddin Nasar were apprehended while attempting a blast using a stolen motorcycle and both of them [A-12 and A-13] expressed regret regarding these two persons. They stayed at the house of this accused for 2-3 days and thereafter travelled to Rajasthan. Safdar Nagori (A-12) and Adnan (A-13) travelled to M.P. and were later apprehended in March, prior to which they had travelled to Baroda and on that occassion, Usman Agarbattiwala (A-7), Sajid Mansuri(A-14), Safdar Nagori (A-12) and Adnan (A-13) had gone to Vapi. On 24th and 25th March, Mufti and Abu Basar (A-15) visited this accused's house. Stated that on 26th March, Taukir and Sajid Mansuri(A-14) went to Surat and Abu Basar (A-15) returned to U.P.; and on 27th March, Safdar

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					Nagori(A-12) and twelve others were apprehended and Kayamuddin Kapadiya(A-37) absconded from 31st March. iii) In June 2008, Mufti (A-15) and on another occasion, Taukir (absconder) had come to the house of this accused and later, on 12th July, Mufti and Abubasar (A-15) came to the house of this accused. On 13th June, Taukir also came and stayed at this accused's house, and on 14 July, this accused along with Usman Agarbattiwala (A-7), Taukir(absconder), and Abubasar (A-15), watched a CD titled "End of Time" relating to Qayamat and a film based on bomb blasts on Usman's (A-7) laptop, after which Mufti (A-15) left for U.P. On the night of 15th July, Taukir (absconder) for West Bengal. On the day of the blasts i.e., 26th July, at about 3:00 to 3:30 p.m., Sajid Mansuri(A-14) contacted this accused asking for the mobile number of Samsuddin (A-4), which was provided. Also states that earlier he had been asked for the number of Yunus Mansuri (A-8) which he did not have. In the evening of 26th July, this accused learnt of the blast through the media and states that he had no further contact with anyone except Usman

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					(A-7) before being apprehended by Baroda Police on 7th.
2.	A-21 : Mehndihasan @ Viki Abdul Habib Akbarkha Ansari	8623	12.11.2008	1) A-1: Jahid @Javed Kutubuddin Sheikh 2) A-6: Mohammad Aarif S/o Mohammad Iqbal Kagzi 3)A-7: Mohammad Usman S/o Mohammad Anis Agarbattiwala 4) A-10: Aamil Parvaz S/o Kaji Saifuddin Shaikh 5) A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori 6) A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri 7)A-20: Atikur Rehmaan @ Atik S/O	i) He states that in the last week of December 2007, near Nanta, Kota he met Munawar Qureshi, Taufiq Qureshi and Namprat Qureshi and alongwith them a person named Salimbhai @ Sajid Mansuri(A-14) was present who was a former paying guest of Taufiq Qureshi. He had a conversation with Sajid (A-14) who informed this accused that tickets had already been arranged for Atik (A-20), Rehman and Imran Ahmed @ Raja(A-22) for an outing and he invited this accused to join them. He thereafter contacted Atik(A-20) who showed him the ticket from Kota to Surat and thereafter, this accused obtained a similar ticket dated 12.01.2008 from Kota to Surat informing his family that he was going for sightseeing. ii) On the night of 12.01.2008, at around 9:30 p.m., he contacted Atik(A-20) and Rehman on his phone and he was asked to come to their house wherein Imran Ahmed (A-22) and Ramzan were present and thereafter they went to the station. As their tickets were in waiting list, they travelled in sleeper coach and after Ratlam Railway Station, the Ticket

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Sr. No.	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Abdul Hakim Musalman (Khilji Muslim) 8)A-22: Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan 9) A-59: Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim 10) Absconder: Abdul Subhan @ Taukir Qureshi	Examiner checked their tickets and found tickets of Atik, Imran and Ramzan to be irregular and imposed a fine of Rs.1000/-. On 13.01.2008 at about 8 a.m., they got down at Godhra railway station and they bought 3 return tickets from Godhra to Kota and he states that he did not feel comfortable about the situation and they boarded the train to Kota. Thereafter, Sajid Mansuri(A-14) contacted on Imran's phone stating that he was waiting for them. They informed that they were returning to Kota upon which he offered them money and instructed them to get down at the next station i.e., Piplod. Atik(A-20) made a call to Sajid Mansuri(A-14) from the P.C.O. at Piplod upon which, they were asked to come to Godhra and thereafter upon calling again, they were instructed to come to Halol. Upon reaching Halol and calling Sajid (A-14), they were informed that he had sent someone to receive them, namely, Usman Agarbattiwala(A-7). Usman (A-7) made them sit in a tempo and instructed the driver to take them to Khund Pir Dargah, where Nadvi (A-59) met them and after half an hour, an off-white Sumo arrived in which Salimbhai and Sajid Mansuri(A-14)

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					were present. Upon seeing Salimbhai, Atik, Imran and this accused went to him who told him that this was a picnic programme and that they would stay there for 1-2 days. He further states that about 8-10 people got down from the Sumo with the luggage which was kept at Khundpir Dargah. iii) Thereafter, they were taken to the garden of an old mosque and the number of people were counted and were assigned code names. They were divided into 2 groups and this accused was given the code name "Aurangzeb", Atik (A-20) was given the codename "Abub Bakr" and Imran Ahmed (A-22) was given the code name "Zulfikar". About 20 to 24 persons were present, including 7-8 persons from M.P., 8-9 persons from Gujarat and 3 from Rajasthan, with 4-5 persons arriving later. By evening, the group of this accused was brought back to the Dargah where they spent the night and that the other group had disappeared from amongst them, which he was unaware of. This accused's group was taken on the next morning for trekking at Pavagadh by Sajid (A-14), where he taught climbing and descending, and Ansar Nadvi(A-59) taught rec-keeping. Later, a Sumo arrived and took them to

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					Minar Mosque, where the other group was already present. Arif Kagji @ Shabbirbhai (A-6) delivered a speech advocating jihad, and that it is an essential duty in Islam and that because of abandoning such duty, they are facing oppression and also further stated that the attrocities committed against the Muslims during the 2002 Gujarat riots had caused them considerable loss and they were now prepared to avenge the 2002 riots, for which they would have to discharge the obligation of jihad. After the speech, the Sumo vehicle took them to Helikal Vaav where they stayed overnight. iv) On the next morning, 2 persons came there, one of them being Hussainbhai (A-12) who talked to the boys from M.P. for around 20 minutes and upon inquiring from the persons from M.P., they said is name was Safdar Hussain (A-12). Thereafter, tents were pitched and they were given training in crawling for 2-3 times and swimming. Thereafter, they were taken back to the Dargah and after sometime, they practiced motorcycle racing and then again assembled in the Dargah wherein Salimbhai explained their schedule for departure and speeches were given by people as described further.

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					v) The first speech was delivered by Nadvi (A-59) who was from South India and this accused states that he could not understand the same. The second speech was given by Taukir(absconded) which had reference to some Arabic terms, which he could not understand and the final speech was given by Safdar Nagori(A-12) wherein he spoke about the concept of an Islamic state with reference to countries such as Palestine and Afghanistan while explaining the concept of Islamic rule. He also talked about establishing an Islamic rule and bringing such a system to India and talked about mass killings targeting maximum number of people and that such activities would be carried out as a part of their mission, and stated that those unwilling could withdraw as the mission was dangerous and risky. vi) Aamil Parvez(A-10) demonstrated preparation of an explosive by filling gunpowder into a pipe and thereafter left. Upon this, he got scared and decided to leave to his home at the earliest. Thereafter, this accused along with participants from M.P., was taken to Baroda in a Sumo vehicle driven by Zahid Shokhiya alias August Mohammed, and Rs. 2,000

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					was paid by Salimbhai and returned to Kota after which he has never met any such person or kept any contact. Upon learning of the arrest of Sumo driver Zahid Shokhiya, he voluntarily disclosed all facts to the Jaipur Police, after which he was brought to Gujarat.
3.	A-35 : Rafiuddin Sarfuddin Kapadiya	8631	04.02.2009	1) A-1: Jahid @Javed Kutubuddin Sheikh 2)A-2 : Imran Ibrahim Shaikh 3) A-3: Iqbal S/o Kasam Shaikh 4) A-6: Mohammad Aarif S/O Mohammad Iqbal Kagzi	i) Kayamuddin Sarfuddin Kapadiya(A-37) is his real younger brother and that Kayamuddin (A-37) became worker of SIMI under the influence of Usman Agarbattiwala(A-7) and Samyuddin. In December 2007, Kayamuddin(A-37) left home and returned afetr five to six days upon which, he stated that he had attended a training camp in Kerala. States that Kayamuddin (A-37) continued his activities

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				5)A-7: Mohammad Usman S/O Mohammad Anis Agarbattiwala 6) A-8: Yunus S/o Mohammad Mansuri 7) A-9: Kamruddin S/o Chandmohammad Nagori 8) A-10: Aamil Parvez S/o Kaji Saifuddin Shaikh 9) A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori 10) A-14: Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri 11) A-16: Abbas S/o Umar Sameja 12) A-20: Atikur Rehmaan @ Atik S/O	inspite of persuasion by family members. In January 2008, he accompanied Kayamuddin(A-37) to Champaner Dargah, where he realised that a SIMI camp was being held. He asked Kayamuddin (A-37) as to why he had brought him there and persuaded Kayamuddin (A-37) to return with him to Baroda to which he did not agree. He stayed there for about two hours and thereafter left for Vadodara. ii) States that approximately 20–22 persons were present at the Champaner Dargah camp, including Kayamuddin Kapadiya(A-37), Usman Agarbattiwala(A-7), Sajid Mansuri(A-14), Iqbal Sheikh(A-3), Imran Sheikh(A-2), and from Ahmedabad, Aarif Kagzi(A-6), Yunus Mansuri(A-8), Alamzeb Afridi(A-75), Mujib (A-80: deceased), Tausif (A-78), Jahid Sheikh(A-1), Abbas (A-16), Imran (A-2), Mehndihasan (A-21), Atiq-ur-Rehman (A-20), three persons from Rajasthan, and others including Taukir, Safdar Nagori(A-12), Kamruddin (A-9), Aamil Parvez (A-10), Ansab @ Nadvi(A-59), Azam, Abrar, Afroz Sheikh, and Shafiq. iii) States that after returning home he did not inform his father, and that in March police from Madhya Pradesh

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				Abdul Hakim Musalman (Khilji Muslim) 13) A-21: Mehndihasan @ Viki Abdul Habib Akbarkha Ansari 14) A-22: Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan 15) A-35: Rafiyuddin S/O Sarfuddin Kapadiya 16) A-37: Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	and Vadodara came searching for Kayamuddin(A-37), after which Kayamuddin(A-37) absconded with the assistance of Usman Agarbattiwala(A-7) and Imran Sheikh(A-2). He got to know through phone calls that Kayamuddin(A-37) was in Ahmedabad, although he did not know his exact location and later learnt through news in the television about the Ahmedabad bomb blasts and when brought to the Ahmedabad Crime Branch, he came to know that Kayamuddin(A-37) had a role in the said blasts. He has also stated that Kayamuddin (A-37) has studied upto 12th Science and had extremist views with respect to SIMI.
4.	A-24 : Umarbhai @ Ashok Kalabhai	8627	12.11.2008	1) A-4: Samsuddin S/O Shahabuddin Shaikh 2) A-8: Yunus S/O Mohammad Mansuri 3) A-18: Javed Ahmed S/o Sagir Ahmed Shaikh 4) A-24: Umarbhai @ Ashok	i) On 20.07.2008 at about 8-8:30 p.m., he received a phone call from Samsuddin(A-4) asking him to come to Yakubbhai's house at Juhapura for Quranic discourse and he went there along with Iliyasbhai. ii) Javedbhai(A-18), Samsubhai(A-4), Rajikbhai(A-27), Yunusbhai(A-8) and Yakubbhai were present and engaged in Quranic discourse, which was completed within 5-7 minutes.

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				Kalabhai 5) A-27: Mohd. Ismail @ Abdul Rajik @ Musaf @ Furkan Mohammad Ishak Mansuri	iii) Samsubhai(A-4), Yunusbhai(A-8), Javedbhai(A-18) and Rajikbhai(A-27) instigated about jihad, stating that action should be taken, that persons who committed atrocities against Muslims should be killed, and that revenge should be taken for the 2002 Godhra incident by killing such persons. He has stated that he did not know the meaning of Jihad and that he left for home after offering Namaz.
5.	A-76 : Manzer Imam	9021	15.03.2013	1)A-10: Aamil Parvez S/o Kaji Saifuddin Shaikh 2) A-11: Sibli @ Sabit S/O Abdul Karim Muslim 3) A-12: Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori 4) A-15: Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh 5) A-27: Mohammad Ismail @	i) States that he had connection with MSF from the year 2003 to 2005 and that his close friend Danish Riyaz was a top leader in MSF and that he conducted two introductory programmes of MSF in Jharkhand. States that he stopped contact with MSF since April 2005 as the main leaders left MSF and that Danish Riyaz left to Mumbai to join Delhi newspaper “Urdu Times”. ii) In January 2006, Danish Riyaz asked to join him at Mumbai and therefore, he shifted to Mumbai in March 2006 and worked at Shadab Book House, Meera Road, where he worked from March 2006 to July 2006 and came into contact with several persons including Ehtasham Siddiqui (best friend of Danish Riyaz), Shahbaz Hindi, Sibli (A-11) of Kerala,

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				Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri 6) A-60: Saduli @ Hariz S/o Abdul Karim Muslim 7) A-76: Manjarimam @ Alam @ Jamil S/O Aliimam 8) A-80 (deceased): Mujib 9) Absconder: Abdul Subhan @ Taukir Qureshi	Tauqir (absconder), Sahid Ansari, Salim and others. iii) Following the July 2006 Mumbai train bomb blasts, police visited the book shop inquiring about Ehtasham Siddiqui. States that police arrested Ahtasham Siddiqui from the flat of Danish Riyaz, and that Danish Riyaz was also arrested. States that he stayed in the same flat and that he later came to know that all others except Danish Riyaz were members of SIMI. Upon going to the mosque, he was told by Shahbaz that he should leave or else he would be arrested. Thereafter, when he went to the hotel and met Taukir, he was told by him to not worry and to leave the place immediately. However, as he was looking after the shop, he decided not to leave and went to his room. Later that night at 11 p.m., Anti Terrorist Squad came to the flat where he was staying and seized the belongings of Danish Riyaz and him and also apprehended him and released him at 3 a.m. on the next day upon which, he returned t o the flat. On that day at around 2 p.m., when he went to the mosque, he met Shahbaz and Taukir who asked him to leave Mumbai and arranged a ticket for him to Ranchi.

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					iv) On 03rd August, he came to know through news that Danish Riyaz and Ehtasham Siddique were arrested by the police. After one month, Amil Parvez(A-10) came to meet him and told him that innocent persons were caught by the police and took his phone number. After which he joined SIMI to help the innocent people. v) Thereafter, he met Aamil Parvez(A-10) and Taukir (absconder) met him at Ranchi. States that he met Aamil Parvez(A-10) five times and Taukir twice and that he travelled twice with Aamil Parvez(A-10) to Calcutta and once with Taukir (absconder). States that they met Harun Rashid in Bengal and came to know later that he was a SIMI member previously jailed during the SIMI ban. vi) In 2007, Aamil Parvez(A-10) asked him to come to Madhya Pradesh with his friends. States that Danish went to join a camp in a jungle named "Choral". States that there was training imparted in swimming and air-gun shooting and that there was also a lecture programme which he could not listen as he went to sleep due to migraine. States that he returned after two days. vii) In December 2007, Aamil

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					Parvez(A-10) asked him to come to Ranchi with a friend and gave two railway tickets to Nagpur. After one week, he went to Nagpur and upon reaching there, he called Aamil (A-10) who sent Abu Faizal who took him to Ernakulam andhe states that some other persons were also there alongwith Abu Faizal. States that he met top leaders of SIMI namely, Safdar Nagori (A-12), Aamil Parvez (A-10) and Sibli (A-11) at the Ernakulam railway station. States that around 35-40 people were there at the railway station and they went to a hotel by four wheeler vehicles. viii) States that Safdar Nagori (A-12) instructed them to not reveal their real names to anyone and to not speak much and that if anyone asks them, they were asked to tell that they had come for an adventurous programme. They reached Vagamon at around 6 pm and they stayed there for three days. They prepared tents after which he went to sleep as he had migraine. States that on the next day, there was a lecture and that they were assigned code names and divided into three groups. At the Vagamon camp, one group was asked to go for swimming while the other two were asked to go for trekking and for two

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					wheeler race respectively. States that he was in the trekking group and that air gun shooting training was imparted. Later, in the night all groups assembled after training in swimming, trekking, rope climbing, jumping up and down from two-wheeler. ix) On the next day his health weakened however, he heard lectures which was in connection with atrocities against Muslims in Gujarat, Babari Masjid, sending innocent persons to jail and RSS activism against Islam. Lecture was delivered by Aamil Parvez(A-10) in Urdu, which was explained by Mufti Abu Basar (A-15), and it was like a Q&A programme. The programme "Jihad in India" was with respect to how to deal with RSS, Bajrang Dal, etc who invest money against the interest of Muslims. x) On the next day programme in the camp was "Maaleghanimat" i.e., how to accumulate money by methods such as Zakat, taking money from persons who are against Muslims by kidnapping, etc. and the said programme was led by Sibli (A-11). xi) The third programme was video demonstrations of militant activities abroad which was led by Tauqir.

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					States that on the second or third day, the brother of Sibli (A-11) taught two-wheeler and four-wheeler. Also states that the Vagamon camp was managed by Safdar Nagori (A-12), Aamil Parvez (A-10), Sibli (A-11) and the brother of Sibli (A-11). xii) States that he realized later that the object of the Vagamon camp was to plan jihad in India. After the camp, he was provided railway tickets to Chhatisgarh and from there to Ranchi. States that after one month, he was again taken to Calcutta by Aamil Parvez(A-10) to meet Harun Rashid, who discussed the significance of the camp after which he returned to M.P. and this witness returned to Ranchi. Subsequently, he got to know that several SIMI leaders were arrested. However, Taukir was not arrested and he came to this accused after four months (one month after the Gujarat blasts) who wanted to stay with this accused. After 10-12 days of staying with this accused, he found his photo in the media in connection with the Gujarat blasts. States that two others namely, Rajik(A-27) and Mujib(A-80 : Deceased) were also present and that after the news, he took Rajik(A-27) to the doctor and thereafter asked them to

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					leave. Upon which Taukir asked him to meet his friend in Bihar to arrange for accommodation to which he refused and asked them to leave upon which, they left. xiii) States that after three months, Mujib (A-80: Deceased) came to his place alongwith Abu Faizal and upon seeing this accused in a disturbed mood, they pacified him and told that they did nothing and that they can defend the case. They also asked him to arrange accommodation but he refused to go with them and declined their request. xiv) A few days later a bomb blast took place in Banaras, and this accused alongwith Danish were arraigned as suspects among others buy stating that they are Indian Mujahideen activists. States that he was supported by the local people and he was asked not to surrender by the local people. States that his name was published last in 2010 and that when he attempted to go for Haj in April 2011, the NIA team came to his place upon which news was published, that the team arrived in connection with the bomb blasts. States that on the first day, the local people did not let the NIA Team meet him and that on the second day the NIA team met him with the help of the local

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					police and Masjid people. Thereafter, he was questioned by the NIA for one hour after which they left the place and arrived later with a warrant however, the local people did not let NIA arrest him. Thereafter, he was informed by the Haj committee that he was denied the permission to Haj since he was involved in the Vagamon camp case. States that the NIA team later questioned Danish at Hyderabad. States that in June 2011, Abu Faizal and Mujeeb were arrested from Madhya Pradesh and Danish was arrested from his office at Hyderabad. Ultimately, he was arrested by the NIA at Ranchi on 03.03.2013.

Statements recorded under Section 164 CrPC

Sr. No	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
1.	**(Secret Witness) PW No.1151:** Riyazhussain Mohammadhusain Siddique	8266	01.09.2008	**1) A-1:** Jahid @ Javed Kutubuddin Sheikh **2) A-4:** Samsuddin S/O Shahabuddin Shaikh **3) A-8:**	i) States that while studying at Juhapura, he came into contact with Alamzeb Maskur Ahmed Afridi (A-75) and attended several Quranic programmes held at various places, including one during the month of Ramzan in 2005 held at the residence of

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				Yunus S/O Mohammad Mansuri **4) A-12:** Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori **5) A-15:** Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh **6) A-18:** Javed Ahmed S/o Sagir Ahmed Shaikh **7) A-27:** Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri **8) A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	Yakubbhai Memon wherein Arif, Samsuddin (A-4), Yunus (A-8), Javed (A-18), Razik (A-27), Mujib (A-80: deceased), Alamzeb (A-75) and their relatives were present and general teaching was imparted regarding Quran. Thereafter, for about 8-9 months, similar 4-5 programmes took place wherein they were asked to read translations of Quran and about the lives of Allah and prophet. States that he was informed by Alamzeb (A-75) in the year 2006 that these persons were workers of SIMI, a banned organisation. Another programme was held in 2007 at Dariyapur at the residence of Samsuddin (A-4) wherein Taukir @ Abdul Subhan (absconder), Mufti (A-15), Raja from M.P., and others a person wearing spectacles from M.P. were present. Another programme took place wherein these persons alongwith him, Mujib (A-80: deceased), Alamzeb (A-75), Aarif, Samsuddin (A-4), Yunus (A-8), Jahid (A-1) and Razik(A-27) were present wherein a speech was delivered by Taukir (absconder)

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				9) A-75: Mohammad Rafiq @ Javed @ Alamzeb Afridi S/o Maskur Ahmed **10) A-80(deceased):** Mujib **11) Absconder:** Abdul Subhan @ Taukir Qureshi	advocating jihad and describing India as a kafir country. A speech was also delivered by the bespectacled person justifying jihad and reference was made to Afghanistan, Palestine, 2002 riots, and calling for revenge against V.H.P., Bajrang Dal, R.S.S., and acts attributed to a political leader. A similar speech was also delivered by Rambhai. ii) Subsequently a programme was held at Jahid's(A-1) place, wherein Safdar Nagori (A-12), Mufti (A-15), Taufik, Raja, Kayamuddin(A-37), Mujib (A-80: deceased), Alamzeb (A-75), Rajiv, Javed (A-18), Yasuddin were present apart from him. Safdar Nagori (A-12) stated that SIMI was divided into two groups; one to carry out jihad, and that, persons would be selected for training in camps. However, because of a raid in Indore, many people were arrested. iii) Subsequently, Taukir (absconder) and Kayamuddin(A-37) took him and Mujib (A-80: deceased) near a bridge behind the shop of Jahid and told him that many

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					people had been arrested in M.P. and that they met Alamzeb (A-75) and that jihad had to be carried out to which this witness told that he would consider due to college commitments meanwhile, Mujib (A-80: deceased) agreed and this witness agreed too under excitement. It was told to them that they would initially do small activities such as encounters and robberies and, if a suitable party is found, bomb blasts would be carried out. Stated that he was told that Rs.3,000/- had been given to Alamzeb (A-75). They were asked to focus on physical training including swimming, diving and physical fitness. Accordingly, they undertook training in swimming at Vasna. iv) States that 45 days prior to the blast, there was a DVD programme at Alamzeb's (A-75) house wherein Taufiq, Mufti (A-15), Kayamuddin(A-37) were present alongwith Alamzeb (A-75), Mujib (A-80: deceased) and him. The DVD showed Al-Qaeda training, methods to carry out bomb blasts,

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					speeches of religious leaders, attack on World Trade Centre, speeches of Osama bin Laden and others, and bomb-making techniques using RDX, HNO-3, nitrocellulose, cylinder blasts, and PETN bombs. After about 10 days of watching the CD, demonstration was carried out by Kayamuddin(A-37) by using potassium permanganate and glycerin which ignited after a specific time. v) About one month prior to the blasts, Kayamuddin(A-37) stated that a third party capable of preparing bombs was ready, and that their role was confined to placing old bicycles at specified locations, for which about twenty bicycles were required, and accordingly Kayamuddin (A-37) took Rs. 5,000/- for the same. States that the bicycles could not be procured initially. States that Alamzeb (A-75) contacted him weekly but he did not respond because of his studies and he eventually stopped calling. vi) Subsequently, after a week, Alamzeb (A-75) called him to Real Akbar Tower, Juhapura, where he had purchased bicycles.

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					States that 2 bicycles were kept in the general parking area of the flat and one in the parking area of another flat which were identifiable by yellow seats and pink rubber brake coverings had been procured and were old black Atlas cycles. States that the bicycles remained parked at those locations for about fifteen days prior to the blasts. vii) Subsequently, after about 5 days, Kayamuddin(A-37) met him near the Juhapura Reliance Petrol Pump and handed over a Reliance mobile phone to Alamzeb(A-75). On another occasion, Kayamuddin(A-37) called him near Sarkhej Roza wherein Mujib (A-80: deceased) was present and he expressed anger over the delay and informed that the bicycles would be given to them to place bombs at various crowded locations. Subsequently, Kayamuddin(A-37) called him to Rupali at 2:30 p.m. however, he could not meet him. Thereafter, on the next day, Kayamuddin(A-37) took him by rickshaw to Naroda and showed three crowded places, including

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					Galaxy Talkies, and upon asking how many bombs he would place, he replied one, whereupon Kayamuddin(A-37) became angry, and this witness refused to participate further upon which Kayamuddin(A-37) left angrily. viii) On the next morning at 7:30 a.m., Mujib(A-80: deceased) came and collected the bicycle keys near Real Akbar Tower, took out three bicycles, and placed one near Moti Bakery and two near the staircases at both ends near New Plaza. Thereafter, they left and this witness went to college. Later that evening, he learnt through television news that bomb blasts had occurred in Ahmedabad. ix) States that the accused were not seen 3-4 days thereafter and that after 4-5 days, he met Alamzeb (A-75) who told him that they should not meet for the time being. Later that night, when they met, discussion took place that Mujib had placed a yellow bicycle (location unknown), as seen in the newspapers. Alamzeb(A-75) had placed a bicycle in Maninagar, the bomb

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					blasts on the bicycle were carried out by this accused, and the bomb in the Civil Hospital area was planted by persons from another State, who were residing in a rented double-storey house in the city wherein materials for making bomb such as, plastic bag, knives, etc were kept and they used to handle bombs as if they were playing with a ball. Also, he was told by Alamzeb (A-75) to destroy any remaining materials and that among them only Mujib (A-80: deceased), Alamzeb(A-75), Kayamuddin(A-37) and Razik (A-27) had beards and that the outsiders did not have beards. Also, the outsiders were not members of SIMI and were known only to Kayamuddin(A-37).
2	**(Secret Witness) PW No.1004:** Mohammadkaushar Mohammad Ibrahim Saiyed	6979	16.12.2008	**A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	States that he runs an electrical repairing shop named Neelam Electrical and in the second week of July 2008, Kayamuddin Kapadiya(A-37) took him to Almohammadi Society, House No. 10, where he fixed a light for which he was paid Rs. 40/-. He had no further meeting with Kayamuddin Kapadiya(A-37).

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Sr. No	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
3	**(Secret Witness) PW No.1005:** Naushin Mamshad Ahmed Imambax	6981	07.10. 2008	**A-17**: Naved Naimuddin Kadri	i) States that he and Naved Kadri (A-17) were classmates in school and used to talk occasionally over phone and that most of their conversations were regarding Islamic religion. ii) States that he received a call around 6 to 7 months back, although he does not remember the exact date, from Naved (A-17) telling that he wanted to give him something and asked him to meet. Accordingly, this witness met him near the bus stand at Paldi wherein he was handed over a CD and was asked to watch the contents of it, and as this witness was in a hurry, he did not talk much and left with the C.D. Upon watching the CD, he did not like the contents of it and were beyond his thinking and it pertained to jihad and therefore, he did not watch it entirely and switched it off and kept it aside. iii) States that one to two weeks after the bomb blast, he received a call from Naved (A-17) asking him to destroy the CD which was handed over to him upon which, this witness destroyed the

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					C.D. iv) States that he was unaware about his activities and that had he been aware of the activities, he would have handed over the C.D. to the police and that he was also not aware that by destroying the CD, it would render it useless for the case and that had he known, he would have informed the police and handed over the CD.
4	**(Secret Witness) PW No.1098:** Aasif Ibrahim Vora	7770	24.12.2008	**A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	i) States that he resides at Vapi and that Kayamuddin Kapadiya(A-37), his childhood friend from Vadodara, and he contacted him in December 2007 and informed him that a person named Taukir would come to meet him. States that on the next day, Taukir came to his shop and asked him to show his house, and upon seeing it, he told that he would come in the evening with his family. States that later in the evening, at about 10 to 11 p.m., Taukir came to his house along with his wife and child and as his wife strictly observed purdah, he found it inappropriate to stay there and he went to the house of his former roommate Bikaji Surve.

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					States that his family was not there at his house and his wife was staying at her parental house in Vadodara as she was pregnant. ii) States that on the next day, when he went to his house, he was told by Taukir that he would complete his work and would return the keys of his house at the shop. States that, later in the evening at about 4 to 5 p.m., Taukir came alongwith his family and handed over the keys before leaving. iii) States that in March-April, Kayamuddin Kapadiya(A-37) came to his place and used his mobile phone to contact one of his friends, namely Umar Mansuri of Vadodara. States that on the following day, he went to Vadodara for the wedding of his sister-in-law and while he was in Vadodara, he came to know that Kayamuddin(A-37) was an absconding accused. States that on the next day, he got a call from Kayamuddin (A-37) and upon informing him that he was an absconding person, Kayamuddin(A-37) left without returning

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Sr. No	Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
					the house keys. States that, apart from this, he does not know anything further.

- Confessional Statement of co-accused

14.2.104. For considering the topic of confession, it is important to refer to Section 30 of Indian Evidence Act, which provides for consideration of proved confession affecting the person making it and others jointly under trial for the same offence. Before a statement of one of the accused persons can be taken into consideration against the other accused under section 30 of the Act, the following ingredients/conditions must exist/be fulfilled:

(i) there must be joint trial for the same offence

(ii) it must be a confession;

(iii) the confession of guilt must affect himself and others, i.e., implicate the maker substantially to the same extent as the other accused:

(iv) the confession of guilt must be duly proved."

14.2.105. In this regard, reference may be made to the decision of the Apex court in case of ***Prakash Dhawal Khairnar (Patil) v/s. State of Maharashtra, reported in, (2002) 2 SCC 35,*** wherein the Apex Court in para-19 held as under:-

"19. Further, explanation to Section 30 of the Evidence Act clarifies that "offence" as used in the Section includes the abetment of, or attempt to commit, the offence. Dealing with the scope of Section 30, this Court in State vs. Nalini has held that a plain reading thereof discloses that

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when the following conditions exist, namely, (i) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); and (v) such a confession is proved in court, the court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence). The Court further observed thus:- [SCC p.577, para 695]

> *"695. In Kashmira Singh vs. State of MP this Court approved the principles laid down by the Privy Council in Bhuboni Sahu case vs. R. and observed:*
>
> *'But cases may arise where the Judge is not prepared to act on the other evidence as it stand even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.'"*

14.2.106. For this issue, extensive reliance is placed on ***Bhuboni Sahu v/s. King, reported in, 1949 SCC Online PC 12***, of the Privy Council as a pioneer judgment on issue of confessional statement of co-accused. What was the prevailing foundational situation in India then, was the prime consideration for such a view. The Privy Council, of course, held that the confessional statement of a co-accused is a weak type of evidence, and before the Court there was only the evidence of the

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"Approver", with the only supporting evidence being the confessional statement of another co-accused. Therefore, the Privy Council while considering the case of appellant, had before it a version of the approver supported by the confessional statement of co-accused, and the High Court did not act on these two pieces of evidence, which was approved by the Privy Council.

14.2.107. At the same time, this Court should not miss the categoric prevailing circumstance in Indian society, which was also observed by Privy Council in the very judgment and which is narrated by Privy Council as under:-

> *"....He may implicate ten people in an offence, and the story may be true in all its details as to eight of them, but untrue as to the other two, whose names have been introduced because they are enemies of the approver. This tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions, and it is very difficult for the Court to guard against the danger. An Indian villager is seldom in a position to produce cogent evidence of alibi. If he is charged with having taken part in a crime on a particular night when he was in fact asleep in his hut or guarding his crops, he can only rely, as a rule, on the evidence of his wife, members of his family, or friends to support his story, and their evidence is interested and not likely to carry weight. The only real safeguard against the risk of condemning the innocent with the guilty Ties in insisting upon independent evidence which in some measure implicates each accused This aspect of the matter was well expressed by Sir George Rankin in Ambikacharan Roy v. Emperor....."*

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14.2.108. The Court would therefore consider the development on the issue through the statute itself. The constitutional guarantee under Article 20(3) of the Constitution of India, the procedural safeguard envisaged under Section 164 of Cr.P.C. and the guidelines issued from time to time covered in the manuals to bring the procedure of recording confessional statement in conformity of various decisions of the Apex Court is an exercise in the direction to overcome the short comings observed by the Privy Council in its judgment before the adoption of Constitution of India and enactment of Cr.P.C. in the present form. With these developments in law, the Court would find it safe to examine the evidence in the light of the provisions of law as referred to hereinabove and the decision of the Apex Court rendered subsequent thereto.

14.2.109. This Court is of the view that such an evidence cannot be discarded and in fact assigns a specific role to such an evidence of confessional statement of co-accused as under:-

> *"....The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. Their Lordships think that the view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct...."*

14.2.110. The defence has relied on another decision of Apex Court in support of the very contention that confessional statement of co-accused is not a reliable piece of evidence in case of ***Balvant Kaur v/s. Union Territory of Chandigarh, reported in, (1988) 1 SCC 1***. However, an interesting observation in this very judgment in fact supports the

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prosecution.

"20. Thirty five years ago, Bose J referring with approval to the principles in Bhaskerville said that this branch of the law in India is the same as in England and that the lucid exposition of it given by Lord Reading, cannot be bettered.

21. The felicitous formulation of the law on the matter by that great master of phrase, Bose J, which has now become classical, may be re-called:

> *But to this extent the rules are clear:*
> *First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant of the accomplice, should in itself be sufficient to sustain conviction….*
>
> *Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. <u>This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence</u>….*
>
> *Thirdly, the corroboration must come from independent source and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another…*

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Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime .... "
(See Rameshwar Kalyan Singh v. State of Rajasthan)

22. In Rex v. Bhaskerville, Lord Reading, CJ noticed the different views as to the extent and scope of reasonable corroboration:

The difference of opinion has arisen in the main in reference to the question whether the corroborative evidence must connect the accused with the crime. The rule of practice as to corroborative evidence has arisen in consequence of the danger of convicting a person upon the unconfirmed testimony of one who is admittedly a criminal.

Resolving the difference of opinion it was held:

We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms is some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute. "

14.2.111. While considering the confessions of the co-accused in a case

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like the present one, which has a strong base for conspiracy, two particular Sections of Indian Evidence Act will have to be taken into consideration as these two sections are important from appreciation of evidence point of view. (i) Section 10 & Section 30 of Indian Evidence Act which provides for consideration of a proved confession affecting person making it and others jointly tried and Court may take into consideration such confession as against other person as well as against the maker. Following are the ingredients for the application of this sections.

14.2.112. "Before a statement of one of the accused persons can be taken into consideration against the other accused under section 30 of the Act, the following ingredients/conditions must exist/be fulfilled:

(i) there must be joint trial for the same offence

(ii) it must be a confession;

(iii) the confession of guilt must affect himself and others, i.e., implicate the maker substantially to the same extent as the other accused:

(iv) the confession of guilt must be duly proved."

14.2.113. The purpose behind the provision is where an accused person unreservedly confesses his own guilt, and at the same time implicates another person who is being jointly facing trial with him for the same offence, his confession may be taken into consideration against such other person as well as against himself, because the admission of his own guilt operates as a sort of sanction, which, to some extent, takes the place of the sanction of an oath and affords some guarantee that the whole statement is a true one. When a person admits his guilt to the fullest extent, and exposes himself to the pains and penalties provided therefore, there is a guarantee for his truth. The policy of the law in

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allowing a confession by one accused to be considered against another who is being jointly tried for the same offence, seems to rest on the recognition the palpable fact that such a confession cannot fail to make an impression on the judge's mind, which it was therefore better to control within limits than to ignore altogether.

14.2.114. The Court is conscious of the extent of impact and utility of such a confessional statement with the aid of Section 30.

14.2.115. Therefore, even in the judgment cited by defence in case of ***Kashmira Singh vs. State of Madhya Pradesh, reported in 1952 (1) SCC 275,*** where the Court has cautioned in Para-11 that to first marshal the evidence against the accused excluding the confession and still record the conviction then proceed to convict without the confession but in a case, Judge is not prepared to act on other evidence as it stands then the Judge can well in aid the confession and use it to lend assurance to other evidence to fortify himself in recording conviction and immediately thereafter in Para-13, the Court goes on to record as under:

> "*13. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. Two of us had occasion to examine this recently in Rameshwar v. The State of Rajasthan. It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed. As the Privy Council observe in Bhuboni Sahu v. R: IA pp.157-58*

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> *"...[The] tendency to include the innocent with the guilty is peculiarly prevalent in India, as judges have noted on innumerable occasions, and it is very difficult for the court to guard against the danger. ... The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused*."

14.2.116. On the same line, the defence did cite another judgment following ***Kashmira Singh (supra)*** in ***Pancho v/s. State of Haryana reported in 2011 (10) SCC 165***. The principle of confession of co-accused invoking Section 30 was not really applicable to the facts of the case as in the penultimate para-29, the facts narrated would show that the only basis of conviction was an extra judicial confession of the co-accused No.1 against appellant-Pancho. The extra judicial confession and the confession recorded under Section 164 are two different processes, therefore, the judgment of **Pancho (supra)** does not assist the case of defence.

14.2.117. Therefore, the twin test to decide the applicability of confessional statement of co-accused is (i) whether the confession is voluntary and (ii) whether it is true and trustworthy.

14.2.118. At this stage, the Court may also touch upon the topic of confession of co-accused and to what extent it can assist the case of prosecution. Where the Court finds that there is a 'reasonable ground' to believe that the other accused has conspired together in committing the offence, the confession of one accused can be used for other accused also.

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14.2.119. In this connection, the Court may refer to the decision of Apex Court in case of ***Ammini v/s. State of Kerala, reported in 1998 (2) SCC 301***. In this judgment in Para-21, the Court has appreciated the evidence in form of retracted confession. The retracted confession was discarded by the trial Court on the ground that the accused had retracted within four days of granting bail and in statement under Section 313 of Cr.P.C. he had alleged that he had made the confession under pressure and force from the police. However, the High Court reversed such finding that except for bare allegation, there was no material to indicate that Police had put pressure for confessional statement and where the Magistrate has sufficiently observed the steps to safeguard the voluntariness, the retracted confession can be relied upon. This view of High Court was affirmed by the Supreme Court for the reasons recorded by it.

14.2.120. In Para-22 of the same judgment, applying Section 10 of Indian Evidence Act, it was held as under:

> *"22. The trial court had further held that even if the confession was regarded as voluntary and true it could be used only against A-4 and not against the other accused. The High court found the trial court wrong on this point in view of Section 10 of the Evidence Act which provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of providing the existence of the conspiracy as for*

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the purpose of showing that any such person was a party to it. The High court held as there was reasonable ground to believe that Ammini and other accused had conspired together and, therefore, the confession made by A-4 could be used against other accused also."

14.2.121. With regard to issue of confessional statement of co-accused, who is acquitted, the argument of the defence is required to be rejected. In view of the decision of the Apex Court in case of ***Prakash Dhawal Khairnar (Patil) v/s. State of Maharashtra, reported in (2002) 2 SCC 35***. In this, the Supreme Court held that plea of defence that confessional statement of co-accused would not be admissible in evidence because he was acquitted of the main offence on benefit of doubt, as untenable and went on to hold in Para-18 as under:

"18. Learned senior counsel Mr. Gupta submitted that the High Court has given benefit of doubt to A-2 with regard to conspiracy for commission of murders and, therefore, as he is acquitted for the main offence, his confessional statement is not admissible in evidence. This submission, in our view, is without any substance. Firstly, the confessional statement of A-2 recorded under Section 164, Cr.P.C. by the Magistrate would be admissible in evidence as accused Nos. 1 and 2 were jointly tried. The said statement is proved by examining the Magistrate who recorded the same. (Re: Ghulam Hussain V/s. The King [(1950) 52 BLR 508]. Only question would be - to what extent it can be used against A-1. In the present case, conviction of A-1 for the offence for which he is charged is based on

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circumstantial evidence. Conviction of A-2 for the offence punishable under Section 201 is also based on circumstantial evidence and after taking into consideration confessional statement. The circumstantial evidence which gets corroboration from the confessional statement of A-2 for connecting A-1 with the crime could be relied upon. This Court in Aghnoo Nagesia V/s. State of Bihar [(1966 1 SCR 134], held that confessional statement includes not only admission of the offence but also other admissions of incriminating facts relevant to the offence such as motive, preparation, absence of provocation, concealment of weapon, and subsequent conduct which throw light upon the gravity of the offence and the intention and knowledge of the accused. The Court also observed that each and every admission of incriminating fact contained in the confessional statement is part of the confession."

14.2.122. The Apex Court in yet another decision in case of ***Krishna Mochi v/s. State of Bihar, reported in AIR 2002 SC 1965*** regarding confessional statement of co-accused held that if in such confessional statement, the accused did not name several accused persons then merely non-mentioning about their participation in offence will not make the confessional statement doubtful.

14.2.123. The Court in the preceding paras already referred to the confessional statements of the co-accused persons as there is not only one co-accused, but several of them. The Court has also found that the necessary procedural safeguard in recording such statement was undertaken. The confessional statements have also been exhibited in

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course of trial and therefore, the confessional statements were found to be admissible in evidence. The confessional statements were not exculpatory in nature, but have involved the maker also in the offence to the extent that they have participated meaning thereby to be part of conspiracy to cause terror by resorting to mass killing.

14.2.124. In the opinion of the Court, confessional statement of the co-accused who are being tried jointly with the accused here can be taken into consideration as an evidence and can be acted upon both for the purpose of corroboration as well as for conviction.

- Extra-judicial confession

14.2.125. With regard to the submission of extra judicial confession where the basic submission is that such extra judicial confession is not an evidence at all in the facts of the case as the circumstance under which extra judicial confession is made, is not made out. It is submitted that the extra judicial confession to PW No.957-Zakirhussain Abdul Jaffar Qureshi by Adbul Rajik (a-27) was made in train and there is no record of travel either of PW No.957-Zakirhussain Abdul Jaffar Qureshi or Abdul Rajik on the same train like tickets or reservation chart or CDR about their previous conversation. Moreover, the omission regarding his version is proved as what he mentioned in chief regarding confession was not mentioned in Section 164 statement at Exh.6688. Also, he did not disclose it to the Police.

14.2.126. Learned Advocate submitted that there were five prosecution witnesses, who could be termed as accused, but to save them and gain their support to the case of prosecution they are made prosecution witnesses. Reference is made to PW No.1117-Asif Usmanbhai Shaikh at Exh.8019, PW No.1151-Riyazhussain Mohammadhussain Siddique at

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Exh.8265 and PW No.1115-Mohammadumar Usmanbhai Mansuri at Exh.8002.

14.2.127. In the opinion of the Court, confession made by accused No.37-Kayamuddin to PW No.1115-Mohammadumar Usmanbhai Mansuri at Exh.8002 and PW No.1117-Asif Usmanbhai Shaikh at Exh.8019 cannot be treated as an extra judicial confession as what was conveyed to Prosecution witnesses by Kayamuddin was regarding his plan and much before the incident and not that he has met the prosecution witness to confess what he did after the commission. Hence, this argument for the above prosecution witness cannot be accepted to treat the evidence of this prosecution witness as extra judicial confession at all. The arguments of the defence on this count cannot be accepted at all. Whereas, the confession of accused No.27-Abdul Rajik to Imran in train falls in category of Extra Judicial Confession, however, such a confession also cannot be discarded on the grounds argued.

14.2.128. The evidentiary value of extra judicial confession depends on the nature of circumstances, the time at which confession was made and credibility of witnesses, who speaks about the confession. In case of ***Narayan Singh and others v/s. State of M.P. reported in AIR 1985 (SC) 1678*** in Para-7 it is observed that the Sessions Court has adopted wrong view of the law by brushing aside the evidence of two witnesses, who stated on oath that accused came up to them and admitted that he murdered and it is open for the Court to start with such presumption, but can rely upon it depending on various factors.

14.2.129. The Court has discussed the evidence of extra judicial confession in a different chapter. However, the Court is of the opinion that extra judicial confession can be taken into consideration. In the facts of the present case, though the extra judicial confession is not the sole

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evidence on which the conviction is based but the same is being considered in support of the prosecution to corroborate the other evidence available on record.

14.2.130. For the proper justification, the Court may quote relevant paras from authoritative of pronouncement of Apex Court in case of ***Subramanya v/s. State of Karnataka, reported in, (2023) 11 SCC 255.*** In para-52 and para-55, the Apex Court has held as under:-

> "*52 In extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted*

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by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

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55. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another, (1992) 3 SCC 204, this Court after referring to Piara Singh and Others v. State of Punjab, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated."

14.2.131. Before referring to the evidence on record which will fall in category of extra-judicial confession, the Court may look into certain judgments cited at bar on this issue.

14.2.132. In case of ***Nikhil Chandra Mondal v/s. State of West Bengal, reported in, (2023) 6 SCC 605***, where the Apex Court has relied on earlier decision in case of ***Sahadevan v/s. State of Tamilnadu, reported in, (2012) 6 SCC 403***, where a sort of guideline is laid down while dealing with extra-judicial confession.

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14.2.133. From the above case law, it is evident that extra-judicial confession is a form of "evidence" and the utility of the evidence is in twin form. If corroborated and found reliable by the Court, the same can be the basis of conviction and other form is that it can be used to corroborate the other evidences available on the record.

14.2.134. The Court may now refer to the extra-judicial confession made to PW No.957-Zakirhussain Abduljabbar Qureshi, who has deposed to it in Exh.6687 and also in Section 164 statement at Exh.6688.

14.2.135. Regarding the basic argument for not accepting the extra-judicial confession made by Adbul Rajik, The Court has already discussed at length the evidence of PW No.957-Zakirhussain Abduljabbar Qureshi, on the issue of "conspiracy". However, Court may also refer to the same with regard to the extra-judicial confession. Exh.6688 is the statement under Section 164 of Cr.P.C., which records that on 24.10.2008, the statement was before the Magistrate under the outward dated 20.10.2008 of Metropolitan Magistrate and the Magistrate ascertained his willingness and no outside pressure, inducement of any police authority and after being satisfied granted time to reflect and scheduled the recording on 05.11.2008.

14.2.136. On 05.11.2008 also, the Magistrate ascertained the willingness and whether he was under any influence and as the witness wanted to help the nation and that he has come on his own without any help of police, the statement came to be recorded.

14.2.137. In this statement, he gives out the details about his knowledge of what transpired and who all met in the meetings naming the accused persons whom he knew by name from the beginning. He also refers to phone call received from both accused Mujib and Abul Rajik on 03.08.2008 at different time, but from same number apparently from

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M.P., but when he asked their whereabouts, they disconnected the call.

14.2.138. He then referred to 07.08.2008 when he was on way to bring his wife from Gwalior when Abdul Rajik called up and came to meet in train at Ratlam after collecting the details of his coach number, etc.

14.2.139. So when the train reached Ratlam at 3:00 a.m., Rajik came to meet and appeared to be frightened and narrated the entire story of Abdul Rajik as conveyed during the journey. The details of such Section 164 statement is already given in the tabular form.

14.2.140. The Court may thereafter also peruse the deposition of PW No.957-Zakirhussain Abduljabbar Qureshi vide Exh.6687. In this deposition also the witness gives in detail the manner in which he first received phone call on 03rd August and there Abdul Rajik coming to meet him on 07.08.2008 in train to Gwalior at Nagda. Thereafter, the confession made by Rajik to him about the serial bomb-blast and role played by him as well as other accused.

14.2.141. In the cross-examination, the witness is questioned about how he went to give statement under Section 164 to which he has given answer, which is consistent with his statement under Section 164 recorded on 05.11.2008 about his reaching the Court of Magistrate and his reason for recording the statement to serve his nation.

14.2.142. At this stage, the Court may record the submission of the defence that the reason given for the statement under Section 164 of "service to nation" should not be taken as a genuine reason and if it is so, where was his intent to serve nation when the witness was attending other meetings, why no authority was not informed by him. The Court is surprised to find the submission made "for serving nation" rather mockingly, that this can not be a genuine reason for PW No.957-Zakirhussain Abduljabbar Qureshi to come out and give a statement

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under Section 164. The Court is of the opinion that any good citizen with nation's interest would come out to depose the truth. Merely because he did not speak out earlier will not give reason for the Court to doubt his version. He has been cross-examined in great detail about Section 164 statement, but no question has been asked about the "service to Nation" as a reason to give the statement. The Court deprecates the arguments advanced by defence mocking "Service to Nation" being a reason to give statement under Section 164 or to depose in Court in this case.

14.2.143. Having examined the contents of both Section 164 of Cr.P.C. statement as well as the deposition in Court, the Court finds the witness to be reliable even for the extra-judicial confession of Abdul Rajik by appreciating the "Rule of Prudence" as is held in Apex Court judgment in case of ***Subramanya (supra)***.

14.2.144. The Court has also found that this extra-judicial confession is supported by other material and therefore, can be the basis of conviction of Abdul Rajik and at the same time, Court also finds the same can be considered in cases of co-accused named by this witness in the extra-judicial confession of the accused Abdul Rajik.

14.2.145. In the cross-examination, the defence has tried to create doubt on the very fact of making extra-judicial confession by Rajik to this witness by arguing that there is no documentary evidence in the form of railway ticket or reservation chart of railway to support the fact of travel by PW No.957-Zakirhussain Abduljabbar Qureshi to Gwalior to bring his wife or any call details records of Rajik calling the witness to know his travel plan.

14.2.146. The Court has already found from the deposition that the witness is consistent in his version and given exact travel date, the seat

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number and coach number both at the time of recording 164 statement on 05.11.2008 and the deposition on 11.10.2018. Moreover, from the deposition itself, it is coming out that both were having close friendship to which the accused Rajik had confided in him about the role and incident in great details. In view of the above the court has no hesitation in relying upon the version of this witness Zakir in so far as he has related the extra judicial confession of Abdul Rajik to him to be truthful and reliable. Same can be acted upon as a corroborative piece of evidence even where the role of other co accused are also deposed to by this witness on the basis of such confession.

14.3. Identification

14.3.1. On the issue of identification, it is the case of the defence that identification of accused standing the trial is an important evidence. However, the prosecution has failed to establish the identification by following the known principles for identification. According to defence, the identification in the Court is the substantive evidence and Test Identification Parade is only a corroborative piece of evidence. It is submitted that the trial Court has erred in treating the Test Identification Parade as a substantive evidence.

14.3.2. It is further submitted that identification in the Court also suffers from various infirmities as there is a long gap in the trial, there is a delay in undertaking Test Identification Parade, non-maintaining of ratio of accused to dummy persons, the witnesses not give any description of the accused by which the accused could be identified. In some cases through there is identification in Court, but no proper name is given.

14.3.3. It is therefore submitted that in absence of the identification

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being absolute, the case of prosecution suffers from a major lacuna.

14.3.4. The defence therefore made elaborate submissions on case law on this issue. In case of ***Sampat Tatyada Shinde v/s. State of Maharashtra reported in (1974) 4 SCC 213***, the defence has relied on Para-16, where it is held that Test Identification Parade is admissible under Section 9 of Evidence Act and is a supporting evidence and can be used to corroborate evidence given by the witness in the Court regarding identification of accused, and Test Identification Parade done earlier in itself has no value.

14.3.5. However, the Court also holds that Test Identification Parade is not the only type of evidence tendered to confirm the evidence of witness regarding identification of the accused in the Court as perpetrator of crime, the identification can be fixed by circumstantial evidence also.

14.3.6. Reliance is placed on the decision of the Apex Court in case of ***Umesh Kamat v/s. State of Bihar reported in (2005) 9 SCC 200***. However, the observations made by Apex Court are only on the facts of that case and no ratio on identification was laid down. In Para-9 which is devoted to identification, it discusses the specific fact of that case and the reason to disbelieve the witness.

14.3.7. Reliance is placed on the decision of Apex Court in case of ***Vijayan v/s. State of Kerala reported in (1999) 3 SCC 54.*** Considering the fact that the witness who saw accused boarding auto driven by another witness, the witness did identify in the Test Identification Parade, but not in the Court. Moreover, in Para-8 specific fact has been recorded that the photo of the accused was widely publicized in Newspaper and there was lot of publicity giving opportunity to the witness to see the accused. Therefore, the observations made are in specific facts of the

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case.

14.3.8. In case of ***Subash and Shiv Shankar v/s. State of U.P. reported in (1987) 3 SCC 331,*** the Court may refer to the facts i.e., accused-Subash assisted by his three companions attacked Ram Babu and caused fatal injuries to him. There were as many as 14 injuries on Ram Babu among which 7 were punctured wounds. Among the punctured wounds, injury nos. 7 and 8 were deep injuries which had injured the pleura, left lung, pericardium and the heart. These injuries were certified to be sufficient in the ordinary course of nature to cause death. Dinesh Shankar (P.W. 2) also had sustained an incised wound on his left thigh. Budh Sen (P.W. 1) got a report Exhibit Kha 1 written by his son and presented it at the Police Station at 1.12 p.m. Therein he has stated that accused Subash was known to him but the other three assailants were not known to him but another witness Bhuvan Chand examined as C.W. 1, had in- formed him that one Raja Ram was one of the assailants of Ram Babu. Subash was absconding and he surrendered before the court on 12.3.71. He was subsequently questioned by the Investigating Officer and he gave information regarding the names and addresses of the other three assailants. Test identification parades were held for Raj Kishore and Shiv Shankar on 5.5.71 wherein Shiv Shankar was identified by Budh Sen, Dinesh Shankar and Shyam Behari but Raj Kishore was identified only by Dinesh Shankar. In the subsequent test identification parade held for Om Kumar on 27.7.71 none of the witnesses was able to identify him.

14.3.9. Shiv Shankar was an employee in the office of the Central Excise Department at Bareilly itself. It is, therefore, difficult to believe that the Investigating Officer would not have been able to trace him and arrest him for nearly 9 weeks after coming to know of Shiv Shankar's

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name and address from Subash. As a matter of fact, the Investigating Officer has stated in his evidence that he visited the house of Shiv Shankar two or three times to arrest him but Shiv Shankar was not to be found. If Shiv Shankar was absent from the house the Investigating Officer could have easily learnt from the neighbours where he was working and where he had gone and located him and arrested him. It is not the prosecution case that Shiv Shankar was absconding. In such circumstances it is difficult to accept the prosecution case that the Investigating Officer could not trace and arrest Shiv Shankar till 14.6.71.

14.3.10. It was in view of these facts that the observations were made in Para-9 as under:

> *"9. ....It is, no doubt, true that all the three witnesses had correctly identified Shiv Shankar at the identification parade but it has to be borne in mind that nearly 4 months had elapsed during the interval. It is relevant to mention here that neither in Exhibit Kha-I nor in their statements during investigation, the eye witnesses have given any descriptive particulars of Shiv Shankar. While deposing before the Sessions Judge they have stated that Shiv Shankar was a tall person and had 'sallow' complexion. If it is on account of these features the witnesses were able to identify Shiv Shankar at the identification, parade, they would have certainly mentioned about them at the earliest point of time because their memory would have been fresh then. Thus in the absence of any descriptive particulars of Shiv Shankar in Exhibit Kha-1 or in the statements of witnesses during investigation, it will not be safe and proper to act upon the identification of Shiv Shankar by the three wit- nesses at the*

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identification parade and hold that he was one of the assailants of Ram Babu…."

14.3.11. Moreover, the Court has relied on previous decision in case of ***Mohd. Abdul Hafeez v/s. State of U.P. [(1983) 1 SCC 143]*** that if description is not given in the FIR by the witness then identification cannot be safely relied on conviction.

14.3.12. This argument is advanced by defence to counter the dock identification by PW No.1105-Idrish Gulabsha Fakir Diwan at Exh.7923, who has identified the participants of Halol Terror camp. In the present case, PW No.1105-Idrish Gulabsha Fakir Diwan is not the first informant and therefore, when his statement was recorded, he had claimed that he knew the identity of the participants and that he had stayed with the accused for number of days so his identification cannot be compared with a witness who has only an occasion to see the accused in committing of offence.

14.3.13. Defense advocate has placed reliance in case of ***Manzoor v/s. State of Uttar Pradesh, reported in (1982) 2 SCC 72*** in support of submission that at the earliest opportunity the witness has to give description and identifying feature of accused person to lend strength to test identification. In offence of dacoity the Home Guard witnesses had flashed torchlight to see two persons running from scene. Moreover, as observed in Para-12 of the Judgment, the Court has recorded a specific fact that accused persons were shown to the witnesses before the identification parade took place. Such a fact will obviously make identification doubtful. Such are not the facts in this case where it is emerging on record that the accused were shown to the witnesses.

14.3.14. Defense has then referred to decision in case of ***Lakhwinder***

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Singh and others v/s. State of Punjab, reported in (2002) 10 SCC 295 on the importance of Test Identification Parade, but in Para-36, it is observed on facts that on the date of occurrence the informant did not know the names of the Gunmen, who carried out assault still no Test Identification Parade was held, which was held to be a serious lapse.

14.3.15. For the same point, reliance is also placed on the decision of Apex Court in case of ***Mohd. Iqbal M. Shaikh and others v/s. State of Maharashtra, reported in 1998 (4) SCC 494***. Both the aforesaid judgments are cited to oppose the evidence of Idrish (Munjavar). However, as explained earlier, the Munjavar had an occasion to stay with the accused continuously for some days.

14.3.16. In the present case, it is apparent that the witnesses who did not know the accused before the offence was committed, the Test Identification Parade has been conducted. Also for those who knew by name Test Identification Parade is conducted, but for those who knew the accused even prior to offence for them there is no need to hold the Test Identification Parade. In this regard, the Court may refer to the judgment of the Apex Court in case of ***Jadunath Singh v/s. State of Uttar Pradesh reported in 1970 (3) SCC 518*** has observed in para-15 as under:-

> *"15. It seems to us that it has been clearly laid down by this Court in Prakash Chand Sogani v/s. The State of Rajasthan (supra), that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in*

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the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eyewitnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on an identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously, as pointed out above the prosecution will, unless there is some other evidence, run the risk of losing the case on this point."

14.3.17. Also, in this regard the Court may refer to the judgment of the Apex Court in the case of ***Harbhajan Singh v/s. The State of J&K reported in AIR 1975 SC 1814*** has observed that absence of test identification parade is not fatal to the case of the prosecution and that when there is other corroborative evidence on record, failure to hold test identification parade or omission to disclose the name of the accused at the earlier stage would not affect the case of the prosecution. In this regard, para-4 is reproduced as under:-

"*4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the Investigating Officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the*

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scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh and Anr. v. State of U.P., absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant. Gurumukh Singh's acquittal errs in its generosity but that order has become final."

14.3.18. In case of ***Tukesh Singh and others v/s. State of Chhattisgarh reported in 2025 SCC OnLine SC 1110,*** the Hon'ble Apex Court has referred in para-21 to the situations for which Test Identification Parade be necessary, which reads as under:-

"21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade…"

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14.3.19. The Court has further observed by giving example in para-21 as under:-

> *"21...Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that "he had seen A, B and C killing X and he knew A, B and C". Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition…."*

14.3.20. This illustration is true when the eyewitnesses are to the incident of crime. In the present case, there is no contest that the persons who are standing the trial are the very persons who have been charged for the offense as conspirators, and/or preparing for the offense. Therefore, the identification will have to be appreciated in the facts of the present case.

14.3.21. Great emphasis is made by defence on the observations made in ***Tukesh Singh (supra)*** in para 22. The eye witness has to identify the accused in Court even when accused is known to the eyewitness else it cannot be established that accused are the same persons who are named by eyewitness in deposition. This observation was expanded by the defence to submit that in the panchnamas, the panch witnesses have also failed to identify the accused during deposition raising doubt as to whether person named as accused at whose behest the panchnama was drawn is the same person standing the trial as accused and it is possible

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that accused in panchnama is a different person than who is tried. Such an argument is to be rejected outrightly as the observation in para-22 in ***Tukesh Singh (supra)*** is regarding and eyewitness. In case of panchnama, it is the police which introduced the accused to the panch witness so identifying through panch is not relevant for the commission of act of offense. An attempt to raise doubt that accused in panchnama and trial are two different persons is rather a mischievous attempt to stretch observation of Supreme Court to cover such arguments. Particularly, during the cross-examination of the investigating officer or the panch witness which are very large in numbers, there is no line of questioning even remotely casting doubt on identity of the accused being tried or the trial is proceeded on a mistaken identity.

14.3.22. Undoubtedly, the evidence as to identification deserves to be subjected to close scrutiny, but certainly no hard and fast rules can be laid down. Only certain guiding principles are to be taken care of leaving it upon the Court to appreciate the evidence of identification along with other evidence.

14.3.23. The identification during the investigation is through Test Identification Parade covered under Section 9 of Evidence Act and other is identification during the trial. It is trite that the evidence of Test Identification Parade is having corroborative value while the evidence of the witness in the Court is substantive evidence.

14.3.24. According to this Court, the evidence deposed by the witness regarding the identification of the accused on oath is the substantive evidence and to complete this substantive evidence necessary corroboration will be required by Test Identification Parade, which is of course established by a separate set of witnesses.

14.3.25. The Court in the present case has perused the evidence

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regarding the identification and analyzed the same herein below. The witnesses have deposed on oath that Test Identification Parade was conducted and he also narrates the manner and procedure followed in front of him and how he has been able to identify the accused from amongst the group of individual in the Parade. The Test Identification Parade panchnama is thereafter proved through the Executive Magistrate who has independently deposed as a witness and through him, Test Identification Parade panchnama is exhibited, thereby making the evidence of identification admissible.

14.3.26. During the course of trial, the identifying witness has clearly deposed that with the passage of time and changes in the appearance deliberate or otherwise has made only an attempt to identify by the process adopted by the trial Court through video conference. According to this Court, after more than 10 years with definite changes in the features of the accused, it is natural that his attempt to identify may not succeed.

14.3.27. However, their deposition in the Court about the fact and Test Identification Parade and success therein being corroborated by exhibited Test Identification panchnama through Executive Magistrate. In the opinion of the Court, it is sufficient to safely accept the identification of the accused.

14.3.28. Further, the Calcutta High Court in case of ***Subhas Bhattacharyya and others v/s. State reported in 1985 (0) Cr.LJ 1807*** wherein it was observed that where there is a time gap between holding test identification parade and the trial, failure of the witness to identify the accused in the Court would not by itself render the identification which was conducted earlier unreliable particularly when the witness is otherwise found trustworthy and there exists corroborative evidence. In

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this regard, the Court may reproduce paras-12 and 13 of the judgment as under:-

> *"12. From the evidence on record it appears that Subhas the accused-appellant was thick and thin with both Kalipada and Probhas. That is why P.W. 7 marked that on some previous occasions Subhas was talking with Probhas Misra while taking their meals at the local Mihijam Hotel P.W. 7 also had seen Subhas along with others decamping with the three cash boxes by the black Ambassador Car. P.W. 7 Pabitra was confident that he knew Subhas from before the occurrence. Pabitra therefore correctly identified Subhas in court. The evidence of Mrinal (P.W. 34) read with the evidence of the learned Judicial Officer (P.W. 29) who held the T. I. Parade clearly proves that Mrinal could well identify Subhas at the T. I. Parade. It has been argued by Sri Dilip Kumar Datta, the Id. Advocate appearing on behalf of Subhas that mere identification at T. I. parade is no part of substantive evidence and that therefore, as P.W. 34 failed to identify Subhas at the trial his evidence may be ignored altogether. Reliance was placed in this connection in the case Budhsen v. State of U. P. This case law relied upon by the defence, in our opinion rather helps the prosecution. For it has been observed in this reported case that identification in T. I. Parade does not constitute substantive evidence...there may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration'. We may like, to point out here that the learned Additional Sessions Judge was highly impressed by the*

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testimony of this witness No. 34 seeing that he was straight forward enough to declare that with the lapse of 10 years time he had forgotten everything and that he was not in a position to identify the accused anymore in the court room. In our opinion, it is just probable and natural that a man should fail to identify a person whom he had seen 10 years ago. Indeed, in an unusual and exceptional case where the time gap in between the date of holding T, I. Parade and the date of commencement of the Sessions trial is long 10 years or so, the trial court in our judgment may if it so chooses rely upon the statements of recognition of the culprits made , by the witnesses in course of the T. I. Parade.

13. The learned Advocate appearing for Subhas has drawn our attention to the decision reported in 1983 Cri LJ (SC 527) (sic) (Mysuddin v. State of U. P.) and has contended on the strength thereof that Test Identification Parade took place only 41 days after the arrest in that reported case, that in our present case the T. I, Parade was held long after one year 14 days and that the delay of only 41 days considered to be fatal for the prosecution in that reported case. We do not, however, see how the reported case helps the case of Subhas in any way. For in this case the learned Additional Sessions Judge it appears, based his judgment not merely on the fact of identification at the T. I. Parade. He relied upon the evidence adduced by other witnesses as well. There is for example, the evidence of P.W. 7 who was confident that Subhas along with others decamped with the booty. Subhas was again identified in court by P.W. 7

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There again the evidence of P.W. 21 Krishna Paul read with the evidence of the I. O., P.W. 45 shows that Subhas led them to Danduya wherefrom two of the cash boxes were recovered. It is undisputed that these cash boxes were used for the purpose of filling them up with the currency notes of various denomination (vide unchallenged evidence of P.W. 6, Priyabrata) Ext. 21/2 is the seizure list wherein PW 23 had signed in presence of the I. O., PW 45 Ext. 21/2 contains the signature of Subhas as well. Subhas is not a resident of Danduya. It was not possible for him either to lead the Police Officers thereto make the discovery of the boxes therefrom unless he had taken part in the dacoity. It is indeed difficult to believe that all these witnesses viz. PW 7, PW 34, PW 21 and PW 45 were in collusion with one another just to do harm to Subhas with whom they had never the slightest enmity."

14.3.29. The Gujarat Police Manual provides for the procedure for the identification parade. The defence did point out these guidelines laid down under G.R. No.G/1926/63 dated 29-01-1964 with main objection to maintaining ratio of 1:9 to mix up the suspect with the other person. In the guidelines itself, it is stated as 'advisable' to mix the suspect and other persons, so far as possible the investigation has to match this. In the present case, the Court does find the ratio not maintained on only certain Test Identification Parades, which will certainly not vitiate the evidence of identification. Moreover, it is not a fact that the ratio has fallen to such an extent that Test Identification Parade is rendered doubtful. None of the Test Identification Parades have been undertaken with the ratio of 1:2 or 1:3 or 1:4, but appropriate number of other

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persons have participated in the parade.

14.3.30. Moreover, all the other safeguards in protecting identity of the accused have been followed. Nowhere, it is coming on record that the accused were made to be seen by the witness prior to Test Identification Parade and these aspects have been deposed to not only by the witness, but also by the Executive Magistrate.

14.3.31. One more grievance particularly regarding identification through three eyewitnesses to the Terror camp at Halol-Pavagadh that all the three prosecution witnesses participated in the common Test Identification Parade on one day. The Court has perused relevant Test Identification Parade and the Court has found from the deposition of Executive Magistrate who conducted the Test Identification Parade that the safeguard and procedure have been followed to keep the actual process of identification independent for each witness. Moreover, the Apex Court in case of ***Sheikh Sintha Madhar Alias Jaffer Alias Sintha and others v/s. State Represented by Inspector of Police reported in (2016) 11 SCC 265*** has held in this regard in Para-16 that there is no invariable rule that two accused persons cannot be made part of same Test Identification Parade and joint Test Identification Parade would not affect validity of Test Identification Parade. In our case, precaution is also taken that two accused are not made part of the same identification process, though the Test Identification Parade may have been held on the same day.

14.3.32. The identification of the accused have been carried out by the witnesses who would fall in category as (1) witnesses to the holding of terror camp, (2) witnesses from whom purchases are made, (3) witnesses from whom help was taken for preparation, (4) witnesses to the conspiracy out of which many witnesses knew the accused from the time

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prior to offense. Hence, Test Identification Parade through such witnesses is not necessary, through others Test Identification Parade were conducted.

14.3.33. Though arguments were advanced that the panch witnesses of the pointing out panchnama have not been able to identify the accused in the Court, however, such argument cannot be accepted as the panch witnesses were themselves introduced to the accused at the time of preparing the panchnama and therefore, their identification in Court is of no consequence.

PW No.579-Dharmesh Kanaiyalal Patel (Exh.3106):

14.3.34. The Court has perused the evidence of the Executive Magistrate who has been examined as PW No.579-Dharmesh Kanaiyalal Patel vide Exh.3106 has deposed in his examination in chief about the Yadi being sent through the Investigating Officer vide Exh.3107 to conduct Test Identification Parade. He deposed that he had summoned proper panch witnesses for Test Identification Parade. He has ensured presence of the correct witness and taken steps to protect the identity of the accused and after bringing accused to him, he ordered identical dummy person be brought for parade through his own staff making sure that such persons are not exposed. He then ensured that there is no presence of any Police staff throughout the parade. He also gave choice to the accused for change of his clothes etc. and to stand amongst dummy persons as per his choice. After calling the witness, he asked the witness to identify and upon identification, he made the record of the panchnama in the presence of panch witnesses. After inquiring the name of the accused identified by the witness, he disclosed the same to be

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Kayamuddin Kapadiya (accused No.37). Thereafter, the accused was again given the liberty to change his dress or alter his position and accordingly, he changed his position and then, the second witness was called and was asked to identify. The witness took out one person from the line and upon asking the name of the identified person, the same was disclosed to be Kayamuddin Kapadiya (accused No.37). Exh.3108 was exhibited through this prosecution witness. Exh.3109 was the yadi for conducting another Test Identification Parade and on 12.02.2009, he conducted the Test Identification Parade wherein also he followed the same process and the accused was identified as Kayamuddin Kapadiya (accused No.37) and the panchnama came to be exhibited through this witness vide Exh.3110. This witness was cross examined about his awareness about the Circular regarding maintaining the ratio to which he has referred to the decision of the Supreme Court Judgment to maintain ratio between 5 to 10 persons. He is also cross examined regarding the safeguards required to be followed and the distance between the offices to create doubt that there was possibility of the witness seeing the accused, but the same is ruled out by the Executive Magistrate.

14.3.35. Accordingly, the witness has successfully exhibited the document of Test Identification Parade panchnama and these documents have been rightly admitted in evidence. The Court has discussed the names of the accused thus identified in appreciation of evidence of the eye witness.

14.3.36. The respective witnesses have identified the accused- Kayamuddin @ Rizwan Sarfuddin Kapadiya (accused No.37) during the Test Identification Parade.

PW No.588-Laxman Keshavlal Pargi (Exh.3130):

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14.3.37. The Court has also perused the deposition of the Executive Magistrate; PW No.588-Laxman Keshavlal Pargi at Exh.3130; who has deposed in his examination in chief about yadi being sent through the Crime Branch on 09.09.2008 for conducting Test Identification Parade which has been exhibited at Exh.3131. He has deposed that on 12.09.2008, he conducted Test Identification Parade and the accused was produced before him with his face covered and he verified the identity of the accused and directed police to leave the Court and thereafter, the doors and windows were directed to be closed ensuring no outside interference and the accused person not being seen by any person prior to the Test Identification Parade. He has deposed that he summoned two independent panch witnesses whose names were recorded, that the witnesses were kept separately ensuring they do not interact with anyone and that five dummy persons were brought through his staff whose names were recorded.

14.3.38. He has deposed that he gave the option to the accused to change his clothes and to stand amongst dummy persons as per his choice and thereafter he called the witnesses one after the other and asked them to identify the accused upon which, he made the record of the panchnama in the presence of the panch witnesses. After inquiring the name of the accused which was identified by the witnesses, the same came to be recorded, wherein both the witnesses have identified the accused as Abbas Umar Sameja (accused No.16). He has also deposed that before the second witness was called, an option was again given to the accused to change his position in the line which was exercised by him and was also given an option to change the clothes which was not done by him. Exh.3133 is the panchnama for this Test Identification

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Parade which was exhibited through this prosecution witness.

14.3.39. From his deposition, it appears that the same process has been followed for carrying out other Test Identification Parades, the details of which are as follows. Exh.3134 was the yadi for conducting Test Identification Parade and on 05.11.2008, he conducted the Test Identification Parade and the accused was identified as Mohammad Ismail Mohammad Ishaq Mansuri (accused No.27) and the panchnama came to be exhibited through this witness vide Exh.3136.

14.3.40. Exh.3137 was the yadi for conducting another Test Identification Parade and on 16.09.2008, he conducted the Test Identification Parade and the accused was identified as Aiyaz Razakmiyan Saiyed (accused No.23-approver) and the panchnama came to be exhibited through this witness vide Exh.3139. Exh.3140 was the yadi for conducting another Test Identification Parade and on 15.12.2008, he conducted the Test Identification Parade wherein the accused was identified as Kayamuddin @ Rizwan Sarfuddin Kapadiya (accused No.37) and the panchnama came to be exhibited through this witness vide Exh.3142. Exh.3143 was the yadi for conducting another Test Identification Parade and on 09.01.2009, he conducted the Test Identification Parade wherein the accused was identified as Mohammad Ismail Mohammad Ishaq Mansuri (accused No.27) and the panchnama came to be exhibited through this witness vide Exh.3145. Exh.3146 was the yadi for conducting another Test Identification Parade and on 01.12.2008, he conducted the Test Identification Parade wherein the accused was identified as Mohammadsaif Sadabahmed Shaikh (accused No.38) and the panchnama came to be exhibited through this witness vide Exh.3148. Exh.3149 was the yadi for conducting another Test Identification Parade and on 10.12.2008, he conducted the Test

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Identification Parade wherein the accused was identified as Mohammadarif Naseemahmed Shaikh (accused No.36) and the panchnama came to be exhibited through this witness vide Exh.3151. Exh.3152 was the yadi for conducting another Test Identification Parade and on 04.02.2009, he conducted the Test Identification Parade wherein the accused was identified as Kayamuddin Sarfuddin Kapadiya (accused No.37) and the panchnama came to be exhibited through this witness vide Exh.3154.

14.3.41. Thereafter, in the cross examination of this witness he has deposed that he has followed the necessary safeguards which are to be followed for conducting Test Identification Parade such as, the absence of police during the process of Test Identification Parade. Also, he has deposed that he is aware of the rules for conducting Test Identification Parade and that for conducting a Test Identification Parade, at least five dummy persons are needed and that the witnesses were kept separately and all necessary precautions were undertaken to ensure that there was no contact of the accused person with the witnesses prior to the process of identification and that the face of the accused persons were covered. He has also affirmed that he has followed the necessary rules for conducting Test Identification Parade and the said procedure has also been recorded in the panchnama.

14.3.42. Accordingly, this witness has successfully exhibited the documents of Test Identification Parade panchnama and the documents have rightly been admitted in evidence, wherein the following accused persons came to be identified by the respective witnesses during the Test Identification Parade:

i) Abbas Umar Sameja (accused no.16),

ii) Mohammad Ismail Mohammad Ishaq Mansuri (accused no.27),

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iii) Aiyaz Razakmiyan Saiyed (accused no.23),

iv) Kayamuddin @ Rizwan Sarfuddin Kapadiya (accused no.37),

v) Mohammadsaif Sadabahmed Shaikh (accused no.38), and

vi) Mohammadarif Naseemahmed Shaikh (accused no.36).

PW No.589-Indravir Vajubhai Zala (Exh.3159):

14.3.43. The Court has thereafter perused the deposition of the Executive Magistrate; PW No.589-Indravir Vajubhai Zala at Exh.3159 who has deposed in his examination in chief about yadi being sent through the Crime Branch on 15.12.2008 for conducting Test Identification Parade which has been exhibited at Exh.3160. He has deposed that on 16.12.2008, he conducted Test Identification Parade and the accused was produced before him with his face covered and thereafter upon removal of burkha/cloth, dummy persons of similar height, appearance and age were called through his staff and their names were recorded. He has deposed that the witnesses were kept separately outside the Courtroom and he directed his staff to ensure that until the witness is called by him, the witness does not leave the room and the peon was directed to sit there and keep a watch.

14.3.44. He has deposed that he had asked the accused as to whether he had been shown to any witness prior to that, to which the accused denied and thereafter the accused was given an option to change his clothes and was given the option to stand amongst the dummy persons as per his choice. Thereafter, the witnesses were called one after the other and were asked to identify the accused upon which, the record of the panchnama was made in the presence of the panch witnesses. He has deposed that both the witnesses identified the accused as Kayamuddin

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@ Rizwan @ Ashfaq Sarfuddin Kapadiya (accused no.37) and he has deposed that before the second witness was called, the accused was again given an option to change his clothes which was denied by him. He has deposed that the procedure of Test Identification Parade was conducted behind closed doors in a well lit room and that there was no presence of any police officer, public prosecutor or an outsider. Exh.3162 is the panchnama of the said Test Identification Parade which was exhibited through this prosecution witness and it appears that all necessary procedures have been followed while conducting the Test Identification Parade.

14.3.45. From his deposition, it appears that the same process has been followed for carrying out other Test Identification Parades, the details of which are as follows. Exh.3163 was the yadi for conducting Test Identification Parade and on 15.12.2008, he conducted the Test Identification Parade wherein three accused persons were produced before him and upon removal of burkha, 15 dummy persons of similar height, age and appearance were called through his staff and both the witnesses identified all the three accused persons namely; Fazal Rehman @ Sabauddin Musadikkhan (accused no.45), Mohammad Akbar Ismail Chaudhary (accused no.44) and Aneek Shafiq Saiyed @ Khalid (accused no.43) and the panchnama came to be exhibited through this witness vide Exh.3165.

14.3.46. Similarly, Exh.3166 was the yadi for conducting another Test Identification Parade and on 17.12.2008, he conducted the Test Identification Parade wherein all the three witnesses identified the accused person; Kayamuddin @ Rizwan @ Ashfaq Sarfuddin Kapadiya (accused no.37) and the panchnama came to be exhibited through this witness vide Exh.3168. Exh.3169 was the yadi for conducting another

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Test Identification Parade and on 24.11.2008, he conducted the Test Identification Parade wherein the witness has identified the accused person; Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Ishak Mansuri (accused no.27) and the panchnama came to be exhibited through this witness vide Exh.3171. Similarly, Exh.3172 was the yadi for conducting another Test Identification Parade and on 07.01.2009, he conducted the Test Identification Parade wherein the witness has identified the accused person; Mohammad Arif @ Asif Badar @ Badruddin @ Juman Sheikh (accused no.31) and the panchnama came to be exhibited through this witness vide Exh.3176. Exh.3177 was the yadi for conducting another Test Identification Parade and on 09.01.2009, he conducted the Test Identification Parade wherein both the witnesses have identified the accused person; Asif @ Hasan Basiruddin Sheikh (accused no.32) and the panchnama came to be exhibited through this witness vide Exh.3179. Exh.3180 was the yadi for conducting another Test Identification Parade and on 12.01.2009, he conducted the Test Identification Parade wherein the witness has identified the accused person; Fazal Rehman @ Sabauddin Musadikkhan Durani (accused no.45) and the panchnama came to be exhibited through this witness vide Exh.3182. Exh.3183 was the yadi for conducting another Test Identification Parade and on 21.01.2009, he conducted the Test Identification Parade wherein the witness has identified the accused person; Kayamuddin @ Rizwan @ Ashfaq Sarfuddin Kapadiya (accused no.37) and the panchnama came to be exhibited through this witness vide Exh.3185.

14.3.47. Thereafter, in the cross examination of this witness he has deposed that he has followed the necessary safeguards and that there was no contact of the accused person with the witnesses prior to the

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process of identification and that the face of the accused persons were covered and that the witnesses were kept separately until called in order to ensure that the accused person was not seen by the witnesses prior to the Test Identification Parade. He has also affirmed that the procedure followed while conducting the Test Identification Parade has been recorded in the panchnama and that instructions were given to bring dummy persons who were similar in appearance and has denied that the panchnama was prepared at the instance of police and that the Test Identification Parade had not been conducted.

14.3.48. Accordingly, this witness has successfully exhibited the documents of Test Identification Parade panchnama and the documents have rightly been admitted in evidence, wherein the following accused persons came to be identified by the respective witnesses during the Test Identification Parade:

i) Kayamuddin @ Rizwan Sarfuddin Kapadiya (accused no.37),

ii) Fazal Rehman @ Sabauddin Musadikkhan Durrani (accused no.45),

iii) Mohammad Akbar Ismail Chaudhary (accused no.44),

iv) Aneek Shafiq Saiyed @ Khalid (accused no.43),

v) Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Ishak Mansuri (accused no.27)

vi) Mohammad Arif @ Asif Badar @ Badruddin @ Juman Sheikh (accused no.31), and

vii) Asif @ Hasan Basiruddin Sheikh (accused no.32)

14.3.49. The Court may while appreciating the evidence of the Executive Magistrates through whom the Test Identification Parades have been exhibited, consider the judgments cited before this Court in support of ‘Dock Identification’ are the instances of 1 or 2 or 3 or 5 accused, who are on trial unlike present case where 78 accused are tried.

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Even in guidelines for Test Identification Parade ratio of 1:5 or 1:9 is to be maintained. Here the identification is required to be made of one accused out of 78 who are being jointly tried.

14.3.50. A stock Argument is offered based on various judicial pronouncement that identifying the accused in the Court during deposition is only substantive evidence and the Test Identification Parade which is an evidence not before the trial Court is only to corroborate the identification in Court.

14.3.51. The Court is of the view that in our case the identifying witness has deposed before the Court about the fact that he has participated in the Test Identification Parade. This deposition of the witness becomes a substantive evidence. The parade was recorded in the form of panchnama and that he has gone on to identify the accused. Upon identification name of the accused and details have been recorded by the Executive Magistrate. The identifying witness is also cross examined. However, the Court has found that in the cross examination, the defence has not succeeded to affect the credibility that the witness is a got up witness or has just imagined presence of the accused or was tutored to identify the accused by showing him beforehand or the time gap in Test Identification Parade has led to the situation where the accused was exposed to the witness immediately before the Test Identification Parade.

14.3.52. Thereafter, the Court has also perused the evidence of the Executive Magistrate, who is examined as a witness. The Executive Magistrate has also deposed in detail about the Test Identification Parade being conducted with all the safeguards protecting the identity of the accused and in compliance of the guidelines as far as possible except on the occasions mentioned herein above where the perfect ratio of 1:9 is not maintained. There also, the ratio has not fallen to the extent

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rendering the exercise as illegal. The Executive Magistrate has deposed about the accused being given opportunity to select his appearance and position amongst the dummies who were selected to match general appearance. Thereafter, recording in the panchnama about the actual identification by the witness and then recording the name and detail of the accused thus identified.

14.3.53. The Court also finds extensive cross-examination by the defence Advocate, which pertained to all the prescribed safeguards including verification about the witness himself and presence/absence of the Police etc. and the Court finds that there is nothing to create doubt on the fact of Test Identification Parade being conducted and the same being recorded in the Panchnama. The recording of the proceedings of the panchnama has also been narrated by this witness. It is thereafter that the panchnama of the Test Identification Parade has been given an Exhibit and treated as an admitted evidence.

14.3.54. In the opinion of this Court, this entire exercise was undertaken before the trial Court and subjected to cross-examination and therefore all the aforesaid evidence is indeed the substantive evidence led before the trial Court and the same is corroborated by the actual Test Identification Parade panchnama which also is an exhibited document.

14.3.55. The argument that the failure to identify the accused in the Court will nullify the afore discussed evidence on Identification is not accepted. More particularly, when the witnesses have deposed about the changes in the appearances and body structure of all the accused deliberately or otherwise.

<u>P.W. No.575-Kirtanbhai Chaturbhai Patel (Exh.3076):</u>

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14.3.56. The Court may now consider the evidence of P.W. No.575-Kirtanbhai Chaturbhai Patel at Exh.3076, who performed the test identification parade of the accused persons who were arrested for the offences registered at Surat. In his deposition, the witness has deposed that in 2008, he was posted as Addl. Executive Magistrate in Surat City and in Surat, he performed duties under the Cr.P.C. like inquest panchnama, identification parade, chapter cases, etc. As and when test identification parade is to be conducted, a written report is received from the concerned police station and considering the details contained in such report, the test identification parade was conducted by him.

14.3.57. The witness has, thereafter, deposed about a communication received from the A.C.P., 'C' Division Police Station, Surat City regarding conducting of test identification parade on 29.08.2008 in connection with FIR bearing II-C.R. No.176 of 2008 registered with Kapodara Police Station. Accordingly, the test identification parade was organized at his Office at 03.30 PM where the accused was brought with necessary precaution so as to hide his identity. The identification was to be at the hands of three witnesses. The report in this connection was submitted at Exh.3077. Upon receiving the report Exh.3077, necessary formalities were undertaken (Exh.3078) and panch witnesses–Kanaksinh Natvarsinh Champavat and Jimmykumar Kantibhai Mali were summoned, who were explained the procedure of test identification parade and were made to sit in a separate Chamber and thereafter, three witnesses namely, (i) Bimleshkumar Bindunath Jha (ii) Abbas Ibrahim Kachwala and (iii) Jayesh Manubhai Patel (Exh.6010), were also summoned, who were also made to sit in a separate Chamber.

14.3.58. It is deposed that, thereafter, the accused, named, Tanvir, S/o. Mohammad Akhtar Pathan, was summoned along with the report of

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police. After examination, the staff of the witness gave a description about his height, age, physical built, etc. and asked to call dummy persons. Accordingly, 08 dummy persons were summoned in the Chamber. The test identification parade was convened where the 'burkha' was removed from the face of the accused and he was allowed to stand in the row at the place of his choice. The accused chose to stand between Sr. nos.4 and 5. Thereafter, the panch witnesses were summoned and it was ensured that they had never seen the accused earlier. Thereafter, the witness was summoned in the Chamber and was asked to identify the accused by holding his hand. Accordingly, the accused, namely, Tanvir S/o. Mohammad Akhtar Pathan, was identified by witness - Bimleshkumar Bindunath Jha. After the identification and recording of details of the person identified, the witness was allowed to go and the accused was given an option to change the sequence of his standing and to change his appearance, if he so desired.

14.3.59. Before summoning the second witness, namely, Abbas Ibrahim Kachwala, the accused was given an option to change his place of standing in the row and accordingly, the accused chose to stand in between Sr. nos.2 and 3. Again, the same procedure was repeated, where witness – Abbas Ibrahim Kachwala successfully identified the same accused Tanvir S/o. Mohammad Akhtar Pathan.

14.3.60. In similar fashion, the witness has deposed about the test identification parade conducted at the behest of third witness – Jayesh Manubhai Patel. The report in connection with the holding of test identification panchnama and the panchnama bearing the signatures of all concerned was submitted and has been given Exh.3079.

14.3.61. The witness deposed that on 03.10.2008, he received a report of A.C.P., 'C' Division Police Station in connection with the FIR bearing

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II-C.R. No.365 of 2008 for conducting test identification parade, which, after necessary formalities, was held on 06.10.2008 at 11.00 AM. The report is given Exhs.3080 and 3081. For the purpose of this test identification parade, two panch witnesses, namely, (i) Roshan Arunbhai Nayak and (ii) Rupesh Rameshbhai Parmar were summoned and were made to sit in a separate Chamber. The identification was to be carried out through witness – Radheshyam Madanlal Thakkar (Exh.6851), who was made to sit in a separate room of Mamlatdar, Choryasi. The accused, namely, Tanvir S/o. Mohammad Akhtar Pathan was summoned by covering his face with cloth. After considering his height, age, physical built-up, etc., the staff was called upon to summon ten dummy persons and accordingly, the dummy persons were summoned and made to stand in a row for the purpose of test identification parade. The witness – Radheshyam Madanlal Thakkar was called from outside but, before that, the accused was given an option to change his appearance and to stand in the row at a place of his choice. He deposed that proper care was taken not to reveal the identity of the accused. Thereafter, the witness was summoned and asked to identify the accused by holding his hand and accordingly, witness – Radheshyam Madanlal Thakkar identified accused Tanvir S/o. Mohammad Akhtar Pathan. Accordingly, the report and the panchnama was forwarded to the investigation, which is given Exh.3082.

14.3.62. Again, on 17.11.2008, a report was received from Kapodara Police Station in connection with the FIR bearing C.R. No.II-176 of 2008 for carrying out test identification parade of one accused, namely, Fazal Rehman @ Salauddin Mussadikhan Durani. The report was given Exhs. 3083 / 3084.

14.3.63. Thereafter, on 18.11.2008, the test identification parade was

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organized, where care was taken not to reveal the identity of the accused. Two panch witnesses, namely (i) Shivbhadra Danubhai Jadeja and (ii) Bhavesh Haribhai Rathod were summoned and thereafter, three witnesses, namely (i) Radheshyam Maganlal Thakkar (ii) Jayesh Manubhai Patel and (iii) Abbas Ibrahim Kachwala were also summoned and made to sit separately in the Office of Mamlatdar, Choryasi and thereafter, in a 'burkha', the A.C.P., 'C' Division Police Station brought the accused in the Chamber, whose height, age, physical built-up, etc. was examined and the supporting staff was asked to call for ten dummy persons resembling the description of the accused. After summoning the dummy persons, the accused was given the option to change his appearance and to stand in the row at a place of his choice and accordingly, the accused stood in the row between Sr. Nos.6 & 7. Thereafter, through the panch witness, witness - Radheshyam Thakkar was summoned and was asked to identify the accused by holding his hand and accordingly, the witness identified Fazal Rehman @ Salauddin Mussadikhan Durani and stated that he is the person who had purchased the cloth from his shop.

14.3.64. The same exercise for identification was repeated where the accused was called upon to change his appearance; however, he declined and stood amongst the dummy persons between Sr. Nos.8 and 9. Through panch witness No.1, witness – Jayesh Manubhai Patel was summoned and was asked to identify the accused by holding his hand and accordingly, once again, the witness identified Fazal Rehman @ Salauddin Mussadikhan Durani to be the person who had come to his shop to purchase nuts and bolts. After identification, the witness was allowed to go and for the purpose of identification by third witness – Abbas Ibrahim Kachwala, the accused was given an option to change his

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appearance and to stand in the row at a place of his choice and accordingly, he did not agree to change his appearance but stood at a position between Sr. Nos.3 and 4. The panch witness was, thereafter, asked to summon witness – Abbas Ibrahim Kachwala, who, in the process of identification, stated that the accused had come to his place for purchasing nuts and bolts and he, thereafter, identified Fazal Rehman @ Salauddin Mussadikhan Durani. The report in connection with this was prepared and the panchnama is given Exh.3086.

14.3.65. Thereafter, on 17.11.2008, in connection with FIR bearing II-C.R. No.176 of 2008 registered with Kapodara Police Station, a report was received for conducting test identification of accused – Mohammad Akbar Ismail Chaudhary @ Saeed, being Exhs. 3087 / 3089. The accused was summoned after taking due care for not revealing his identity and two panch witnesses, namely, (i) Rakesh Ochhavlal Patel and (ii) Manish Dineshchandra Chovala, were summoned and made to sit in a separate Chamber. Thereafter, the accused and two witnesses, namely (i) Liyakatali @ Yakubgulamrasulhussain Abdul Shaikh and (ii) Mohammad Sharif Asmatali, were summoned for the purpose of test identification and were made to sit in a separate Chamber.

14.3.66. It is deposed that the accused was summoned and after examining his height, age, physical built-up, etc., the staff was asked to call ten dummy persons, who would resemble the accused to be identified. Thereafter, the identification was conducted in the Chamber where the accused was summoned and given an option to change the clothes and to stand in the row at a place of his choice. The accused stood between Sr. Nos.9 and 10 and thereafter, the witness–Liyakatali @ Yakubgulamrasulhussain Abdul Shaikh was summoned through panch witness – Rakesh Ochhavlal Patel and was asked to identify the accused

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person that he knows. Accordingly, the witness identified the accused and identified him as the person who had taken the house on rent from the house-owner. After successful identification by witness – Liyakatali @ Yakubgulamrasulhussain Abdul Shaikh, he was allowed to go and preparation was made for identification of the accused through another witness, namely, Mohammad Sharif Asmatali. Before this witness was called for identification, necessary formality of asking the accused whether he wants to change his appearance and to stand at the place of his choice in the row was undertaken. Without changing his clothes, the accused stood between Sr. Nos.6 and 7. Thereafter, through panch witness - Rakesh Ochhavlal Patel, witness - Mohammad Sharif Asmatali was summoned and was asked to identify the accused. He also successfully identified the accused as the person with whom he has dealt with for renting of the house. Accordingly, a panchnama of successful identification of two accused was prepared under his signature and was assigned Exh.3090, which was sent to the investigation.

14.3.67. Thereafter, on 17.11.2008, the witness received report Exh.3091 from the A.C.P., 'C' Division Police Station for test identification parade to be organized in connection with one accused Anik S/o. Safik Saiyed @ Khalid, who was brought before the witness by covering his face to protect his identity. For the purpose of identification, two panch witnesses– Khengarbhai Mahalabhai Bharvad (Exh.2549) and Bipinbhai Dayalbhai Patel, were summoned and were made to sit in a nearby room and on 18.11.2008, witness–Mukesh @ Tiniyo Natvarbhai Prajapati was summoned for the purpose of test identification; however, the test identification, on account of absence of the witness, could not be conducted on 18.11.2008 and accordingly, a report was made at Exh.3093. However, later on, when

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the witness was available, the procedure for test identification was undertaken in the presence of two panch witnesses. The accused was summoned in 'burkha' and after examining the accused, the staff was asked to call for ten dummy persons of similar description and they were made part of the test identification parade. The accused was summoned to the Chamber and was given an option to change his appearance, which he refused and was also given the option to stand in the row amongst the dummy persons at a place of his choice and accordingly, he stood between Sr. Nos.7 and 8. Thereafter, through the panch witness, witness – Bhavesh Bhupatbhai Thakkar (Exh.8094) was summoned and was asked to identify the person. Accordingly, the witness - Bhavesh Bhupatbhai Thakkar identified the accused as the person to whom he had sold the Kinetic Honda two-wheeler vehicle. After completion of the test identification parade, the witness was allowed to go and thereafter, preparation was made for identification through the second witness – Dineshbhai @ Dhirubhai Ambaram Fitter. Before summoning witness - Dineshbhai @ Dhirubhai Ambaram Fitter through the panch witness, the accused was given the option to change his appearance and his place in the row, to which, he did not change his clothes but, changed his position to stand between Sr. nos. 4 and 5. Thereafter, through another panch, witness - Dineshbhai @ Dhirubhai Ambaram Fitter was summoned and asked to identify the accused. Accordingly, the witness identified the accused, which was recorded by this witness under the panchnama Exh.3094.

14.3.68. The witness has, thereafter, deposed regarding yet another test identification parade conducted on the report made by the A.C.P., 'C' Division Police Station dated 19.11.2008 (Exh.3095), pursuant to which, identification of accused - Fazal Rehman @ Salauddin Mussadikhan

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Durani was conducted. For this purpose, two panch witnesses– Bhupendra Dineshbhai Ravatka and Naresh Naranbhai Maru were summoned. After completing necessary formalities, the accused was summoned in the Chamber and before that, four witnesses, namely (i) Irfanbhai Abdulbhai Momin (ii) Jayaben Dhananjaybhai Joshi (Exh.8139) (iii) Gulambhai Adambhai Patel (Exh.6638) and (iv) Nareshbhai Ambalal Mehta (Exh.6846) were called in advance and made to sit in the Office of Mamaltdar, Choryasi.

14.3.69. After the witness was summoned in the Chamber, he was examined and directions were given to the staff for bringing ten dummy persons who resemble the accused. The test identification parade was commenced with witness - Irfanbhai Abdulbhai Momin being called through the panch witness and asked to identify the accused who was standing in a place of his choice between Sr. Nos.8 and 9 and with clothes worn of his choice. Witness – Irfanbhai Abdulbhai Momin identified the accused in his capacity as a Waiter of Hotel Narmada at Bharuch.

14.3.70. Thereafter, the identification was to be conducted through another witness, for which necessary formalities were undertaken and the accused was given the option to change his appearance and to stand at a position of his choice, for which, without changing his appearance, he stood between Sr. Nos.5 and 6. Thereafter, witness–Jayaben Dhananjaybhai Joshi was called through panch witness and she identified the accused correctly in her capacity as Receptionist at Hotel Harimangla in Bharuch and the accused having stayed in the said Hotel.

14.3.71. Thereafter, the test identification was carried out by yet another witness and after completing necessary formalities and of giving the option to the accused to change his appearance, which he denied and to

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stand at a place of his choice in the row, for which he stood in between Sr. Nos.3 and 4, witness – Gulambhai Adambhai Patel was summoned through the panch witness. The accused was correctly identified as he was the owner of Hotel Raven in Bharuch where the accused had stayed.

14.3.72. Lastly, the test identification was conducted at the hands of yet another witness-Nareshbhai Ambalal Mehta and after completing necessary formalities and of giving option to the accused to change his appearance, which he denied and to stand at a place of his choice in the row, for which he stood in between Sr. Nos.8 and 9, witness - Nareshbhai Ambalal Mehta was summoned through panch witness and during the test identification, the witness correctly identified the accused as the person who had visited his Hardware shop for the purchase of Plywood and Galvanized sheet. Upon completion of the test identification panchnama, the report was sent to the investigation and after identifying the hand-writing and the signatures, the panchnama was assigned Exh.3097.

14.3.73. The witness has, thereafter, deposed about the test identification of the accused, named, Afzal @ Afsar Mutallib Usmani, who was produced before him with proper precaution for protecting his identity and his head being covered. For the identification, two witnesses were summoned, namely – Alpesh Chimanlal Soni and Ankit Harshadbhai Dave, who were made to sit in a separate room. Thereafter, witness – Hasanali Ahmedali Sunsara was summoned and was made to sit in the Office of Mamlatdar and thereafter, in the Chamber, the accused was summoned along with the police officer and the police officer was ordered to leave the Chamber. The accused was examined and thereafter, directions were given to the support staff for calling dummy persons resembling the accused. After summoning the dummy

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persons, the accused was also summoned through the panch witness and was allowed to stand at a place of his choice amongst the dummy persons and he chose to stand in between Sr. nos.8 and 9. He was also given an option to change his appearance, which he refused. Thereafter, the witness was summoned by another panch witness. The witness correctly identified the accused as the person who had stayed in Hotel Shrinath located in Killa Pardi, NH-8. The panchnama along with the report was submitted to the investigation. After identifying the hand-writing and signature, the panchnama was assigned Exh.3100.

14.3.74. This witness was cross-examined by the advocates on behalf of the defence, wherein he admitted that for all the seven panchnamas prepared by him, he has not given any Inward Number and that the police reports were received by him personally. He also admitted that details with regard to the accused persons as well as the witnesses were made available in the reports by the police. He also admitted that in the reports itself, gist was given about how the witness was knowing the accused. He admitted that the time for starting the panchnama has not been written at the top of the panchnama. He has admitted that in all the panchnamas, there is no reference as to how the panchas were summoned.

14.3.75. Thereafter, questions were posed with regard to geographical location of the Office of Executive Magistrate and the surrounding Government Offices; however, such questions were of no relevance.

14.3.76. The witness was questioned with regard to the contents of Exh.3079, para-2 on page-5, where it is mentioned that the accused, after removing his head-cloak, was kept in the same position, which was denied by the witness. He has admitted that before going to find dummy persons, his staff had seen the accused but the names of the staff have

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not been mentioned in the panchnama. He has also admitted that in the panchnamas, the features of the face of the accused are not mentioned. He has also admitted that in the panchnamas, the description of the dummy persons is also not made. He has admitted that summons to the witnesses for panchnamas were not sent through his Office. He has admitted that except for mentioning in the panchnama of keeping the accused and witnesses in separate rooms, there is no mention of any other precaution taken by him.

14.3.77. With regard to Exh.3079, the witness has admitted that there is no mention of the accused having changed his clothes on three occasions in the panchnamas. Also, there is no mention that with which dummy person, there was exchange of clothes. He has also admitted that in the panchnamas, there is no mention about the names and addresses of the accused and except for the names and addresses, no other enquiry was made by him from the accused. He has admitted that though his staff had done several other work regarding the panchnamas, the same are not mentioned in the panchnamas. He has admitted that after the test identification, he has not kept track as to in which direction the witnesses had gone after leaving his Office. He has also admitted that once the witnesses had left, he had not recalled any of them to his Office. He has admitted that he has not made any enquiry about how long the accused has been in police custody. However, he has stated that the witnesses were not brought by the police themselves and he has not made any note about the time at which the witnesses had arrived at his Office. He has deposed that panchnamas Exhs.3085 and 3093 pertaining to which some of the witnesses have not remained present, report has been given to the police. However, he has denied that in conducting the test identification parade, the directions of the High

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Court or Supreme Court have been breached.

14.3.78. The witness is, thereafter, cross-examined by another defence counsel, who was questioned with regard to the geographical situation of the Office of Executive Magistrate and the description of furniture and fixtures, which has not been mentioned in the panchnamas. He has admitted that in the panchnamas, there is no mention of the exact time of arrival of panch wintesses, witnesses and accused persons. The remaining questions posed by this defence counsel are repetition of the questions posed by the previous counsel and therefore, are not referred to herein.

14.3.79. He has admitted that he is not aware as to how many police officers or staff had brought the accused to his Office. He has denied any knowledge of strict police 'bandobast' during the holding of test identification parade. He has deposed that the panch witnesses were summoned by him. He had summoned the panch witnesses and had verified their status and in undertaking this exercise, some time was consumed. However, he admitted that he had not made any enquiry about the reasons for the panch witnesses to be there or as to whether they know the accused. He had inquired from the panch witnesses whether they are facing any criminal cases. However, he has admitted that he has not mentioned this fact in his panchnamas. He has admitted that in all the panchnamas, there is no mention of the fact as to whether police had introduced the panch witnesses to the accused or of the place from where they were summoned. He has also admitted that in the panchanamas, there is no mention that he had asked the accused persons as to when and from where the police had brought them. He has also admitted that in all the panchnamas, where more than one witness had identified the accused, after the first panch went out, the second witness

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was called. He has, however, denied that in all the panchnamas, the witnesses have not given any reasons for identifying the accused. He has denied that in the police 'yadi' received by him, there is no description of the accused on the basis of which the description in the panchnama has been given. Lastly, he has denied that the panchnamas were executed under the say of the police officers.

14.3.80. Thereafter, the witness has been cross-examined by yet another defence counsel wherein, he has admitted that lose note is prepared during the identification parade and after completion of the identification parade, the lose note was teared off. This loose note is prepared when the panchnama proceedings are undertaken. He has admitted that during the test identification parade, the cloth from the face of the accused was removed after the dummy witnesses were found. Thereafter, the questions put to the witness are of general observation, viz. appearance of an individual, etc. which do not pertain to any specific issue relating to the accused or their identification.

14.3.81. Learned advocates for the remaining accused have adopted the cross-examination by the defence counsel.

14.3.82. A perusal of the aforesaid evidence in the form of panchnamas reveal that the following accused, namely, Tanvir, S/o. Mohammad Akhtar Pathan, (A-63) Fazal Rehman @ Salauddin Mussadikhan Durani (A-45), Mohammad Akbar Ismail Chaudhary @ Saeed (A-44), Anik S/o. Safik Saiyed @ Khalid (A-43) and Afzal @ Afsar Mutallib Usmani,(A-28) have been identified by the witnesses correctly. Along with the identification, the witnesses have also given reasons for the identification of the accused. The reasons for such identification varies from identifying the accused on the basis of their stay in the Hotel to purchase of certain articles from the shop, which, in the opinion of the

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Court, are relevant circumstances from the point of view of the offence, particularly, the continuous presence of the accused in the area away from their homes in various hotels in quick succession and at proximate period of the offence. The Court has already appreciated the evidence of such witnesses under a separate Chapter. The identification, therefore, of the accused is established by the aforesaid documents through this witness.

P.W. No.571-Ramanbhai Sendhabhai Solanki (Exh.3051):

14.3.83. The Court may, thereafter, peruse the evidence of Ramanbhai Sendhabhai Solanki, Executive Magistrate, who has been examined as PW-571 vide Exh.3051. This witness has performed the test identification of several accused in the presence of panch witnesses and through this witness, the panchnamas of test identification parade have been exhibited.

14.3.84. The witness has deposed that on 27.02.2008, he was serving as Executive Magistrate in Ahmedabad City and has performed his duty till 31.12.2008. He is aware of his duty-list, which includes inquest panchnamas, dying declaration, identification parade, etc.. He has described the location of his Office and the staff working under him. That, on 26.08.2008, in connection with the serial bomb blasts in Ahmedabad, a report was received with respect to the FIR bearing C.R.No.I-203 of 2008 registered with Maninagar Police Station for conducting test identification of accused Mufti @ Abubasar @ Abdulrashid S/o. Abubakar Shaikh, resident of Village: Binapura, District: Azamgarh, Uttar Pradesh. Upon receipt of the report, test identification parade was scheduled on 27.08.2008 at 1730 hrs. in the

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Court of Executive Magistrate where the accused was brought with proper precaution (cloaked) to hide his identity 10–15 minutes prior to the parade. The report is assigned Exh.3052. The communication for holding test identification of this witness is at Exh.3053. On 27.08.2008 the test identification parade was organized and two panchas, namely (i) Jaydip Sarojkumar Bhansali and (ii) Prahlad Manchharambhai Purohit were summoned through the staff. Later on, the accused was produced in cloak. After examining him through the Peon, five dummy persons, having identical description, were summoned. They were made to sit in the Court-room. The dummy persons were made to stand in a line and accused Mufti @ Abubasar @ Abdulrashid S/o. Abubakar Shaikh was called for. A preliminary enquiry was made from the accused as to who all had accompanied him to the Executive Magistrate Court in order to ascertain that his identity is not revealed. After ascertaining that the accused was not made to interact with any other outsider, he was given an option to change his clothes and to stand in the line of dummy persons at the place of his choice. The accused refused to change his clothes and stood in between Sr. Nos.1 and 2. Thereafter, witness – Rafikbhai Hussainbhai Abdad was summoned through the Peon and was given to understand the process of test identification and was asked to identify the accused by holding his hand. Accordingly, the witness proceeded to examine each of the persons standing in the line and identified one person by holding his hand, whose name the Executive Magistrate inquired and was informed that the identified person is Mufti @ Abubasar @ Abdulrashid S/o. Abubakar Shaikh. The witness has deposed that the identifying witness stated that while he was doing business of Hotel Garib Navaz, before about one-and-a-half months (before the test identification parade), this accused along with two

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persons came for meals for ten days continuously and also used to carry tiffin from his Hotel. After completing the identification parade successfully, the witness was sent out of the Court-room. The witness has deposed that during the entire process, no police person was kept present inside the Court-room and only independent witnesses were kept present. The test identification parade was concluded at 1815 hrs.. The writing and signatures on the panchnama were identified by the witness and is assigned Exh.3054.

14.3.85. Thereafter, the witness has deposed that on 28.08.2008, he received a report for conducting test identification parade in connection with the FIR bearing C.R.No.I-236 of 2008 registered with Shahibagh Police Station, on the basis of which, the witness instructed the police for keeping the accused to be identified present before him on 30.08.2008 at 1400 hrs. with proper precaution for not revealing their identity. This communication is Exh.3057. The original 'yadi' of the police is at Exh.3058. Accordingly, on 30.08.2008, at 1330 hrs., the panch witnesses were summoned and at 1400 hrs., the accused persons with their identities hidden (cloaked) were produced before this witness. The panchnama proceedings commenced at 1400 hrs. and after examining the accused produced before him with regard to their height, weight, body built-up, etc., 50 dummy persons with identical description were summoned. After summoning the dummy persons, they were made to sit in the Court-room and thereafter, the accused persons were also called in the Court and their details were recorded. They were – (i) Jahid Kutubuddin Shaikh, age: 31, occupation: Mobile shop, resident of Sindhi Avenue, In the house of Popatlal, Opposite Vishala Hotel, Juhapura, Ahmedabad; (ii) Imram Ibrahim Shaikh, age: 23, occupation: sari vendor, resident of Panjra Ghar, Opposite Mosque, Taiwada,

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Vadodara; (iii) Iqbal Kasam Shaikh, age: 31, occupation: Grocery store, resident of House No.3, G-3, Yakubpura, Kabir Complex, Bhoiwada, Vadodara; (iv) Mohammad Arif Mohammad Iqbal Kagji, age: 34, occupation: cloth vendor, resident of House No.179, Sagarwad, Near Pattharwada Mosque, Shahpur, Ahmedabad; (v) Mohammad Usman Mohammad Anis Agarbattiwala, age: 24, occupation: Incense stick vendor, resident of Mahanth-no-khancho, Vadi, Naiwada, Vadodara; (vi) Younusbhai Mohammadbhai Mansuri, age: 31, occupation: Bandhni vendor, resident of C-132, Ajitmill Society, Ajitmill cross-roads, Bapunagar, Ahmedabad (vii) Mohammad Sajid @ Salim @ Sajjad @ Saad S/o. Gulam Khwaja Mansuri, age: 35, occupation: labour work, resident of 4/3013, Begampura, Surat and presently staying at House No.33, Luk khan Park, Juber Road, Bharuch; (viii) Kamruddin Chandmohammad Nagori, age: 35, occupation: Business, resident of Nagori Mahollah, Thana Mahakal, Ujjain; (ix) Aamil Parvak Kaji Saifuddin, age: 34, occupation: Agriculture, resident of Chota Bazar, Mama Masjid Road, Chotabazar Thana, Unhel, District: Ujjain; and (x) Safdar Nagori Jahrulhasan @ Jahiruddin Nagori, age: 34, occupation: Mechanical Engineer, resident of Nagori Mahollah, Thana Mahidpur, District: Ujjain.

14.3.86. Thereafter, this witness made preliminary enquiries with the accused persons to ensure that their identities were not revealed in transit and thereafter, in a 'U' shape, the accused persons were asked to stand in the place of their choice amongst the dummy persons and if they wanted to change their clothes. Accordingly, the accused persons, on their own, stood at the places of their choice and thereafter, through the Peon, the first witness – Baraiya Ambalal Vechatbhai, age: 40, occupation: agriculture, Village: Kapola, Taluka: Halol, District:

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Panchmahals, was summoned. He was given understanding of the test identification parade and instructed to identify the accused from amongst the dummies. The witness went closer to the persons standing and identified them by holding their hands, who names are - (i) Kamruddin Chandmohammad (ii) Aamil Parvaz Kaji Saifuddin (iii) Safdar Nagori Jahrulhassan @ Jahiruddin Nagori (iv) Mohammad Arif Mohammad Iqbal Kagzi (v) Mohammad Sajid @ Salim @ Sajjad @ Saad S/o. Gulamkhwaja Mansuri (vi) Mohammad Usman Anees Agarbattiwala (vii) Jahid Kutubuddin Shaikh (viii) Younus Mohammadbhai Pandheri (ix) Imran Ibrahimbhai Shaikh.

14.3.87. The witness-Executive Magistrate, thereafter, enquired from the witness about the reasons of his identifying, to which the witness has given details as to how he came across the accused persons. As witness – Baraiya Ambalal Vechatbhai himself has been examined as a witness, who has deposed on the same line, the Court is not referring to it to avoid repetition. After completion of the test identification parade, the accused No.1 was permitted to leave the Court-room being escorted by the Peon.

14.3.88. Thereafter, before calling upon the second witness, the accused persons were once again given the option of changing their position as well as appearance / clothes and accordingly, the accused persons adjusted themselves amongst the dummy persons. Thereafter, through the Peon, witness No.2 – Ramkabhai Devkaranbhai Keshariya, age: 24, resident of behind Panchayat Office, Pavagadh, Taluka: Halol, District: Panchmahals, was called and was explained about the procedure of test identification. He was instructed to identify the accused by holding his hand from amongst the dummy persons and pulling him out of the line. Accordingly, witness No.2 went close to the persons standing and

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identified seven persons, whose names are – (i) Imran Ibrahimbhai Shaikh (ii) Kamruddin Chandmohammad Nagori (iii) Younus Mohammadbhai Mansuri (iv) Jahid Kutubuddin Shaikh (v) Aamil Parvaz Kaji Saifuddin (vi) Safdar Nagori @ Jahrul Hassan @ Jahiruddin Nagori; and (vii) Mohammad Arif Mohammad Iqbal Kagzi.

14.3.89. After the test identification, the Executive Magistrate inquired from the witness as to for what reasons he could identify the accused, to which the witness gave details that are identical to the details deposed by the witness as witness – Ramkabhai Devkaranbhai Keshariya has also been examined as a witness. After the proceedings were concluded, accused No.2 was permitted to leave the Court being escorted by the Peon.

14.3.90. Before summoning witness No.3, once again, the accused persons were given an option to change their appearance / clothes, to which they refused and they adjusted their positions amongst the dummy persons. Thereafter, witness No.3 – Babulal Sohanlal Sharma was summoned in the Court-room through the Peon. The witness was given instructions about the test identification and to identify the accused persons by holding their hand and pulling them out of the line. The witness, thereafter, removed ten accused from the line of dummy persons, whose names are - (i) Aamil Parvaz Kaji Saifuddin (ii) Imran Ibrahimbhai Shaikh (iii) Jahid Kutubuddin Shaikh (iv) Iqbal Kasam Shaikh (v) Mohammad Sajid @ Salim @ Sajjad @ Saad S/o. Gulamkhwaja Mansuri (vi) Kamruddin Chandmohammad Nagori (vii) Mohammad Arif Mohammad Iqbal Kagzi (viii) Younus Mohammadbhai (ix) Mohammad Usman Mohammad Anees; and (x) Safdar Nagori Jahrulhassan @ Jahiruddin.

14.3.91. After identification, witness No.3 was enquired by the

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Executive Magistrate about the reasons for identifying the accused persons, to which he has given the reason that he had seen these accused persons fixing tents in the area of Kamlesh Quarry in the afternoon hours and all these persons were having discussion in a group when he had reached the place in search of his buffaloes. This witness has also been examined independently as a prosecution witness. After completion of the test identification, the witness was allowed to leave.

14.3.92. Thereafter, before summoning witness No.4, the procedure was undertaken where option was given to the accused to change their clothes and to stand at the position of their choice in the line of dummy persons. Thereafter, witness No.4 – Pravinbhai Hamirbhai Katharia, age: 43, Village: Otal, Taluka: Halol, District: Panchmahals, was summoned through the Peon and was given an understanding about the test identification parade and was asked to identify the accused by holding his hand and by bringing him out of the line. Accordingly, the witness identified ten accused, whose names are - (i) Safdar Nagori (ii) Aamil Parvaz (iii) Mohammad Sajid (iv) Kamruddin Chandmohammad (v) Mohammad Usman (vi) Younus Mohammad (vii) Mohammad Arif Mohammad Iqbal (viii) Imran Ibrahim (ix) Azharkhan (x) Mohammad Iqbal.

14.3.93. After identification, the Executive Magistrate enquired about the reasons for identifying the accused persons, to which this witness gave detailed reasons, which are already deposed by the very witness, as he has also been examined as a prosecution witness and to avoid repetition, the same is not narrated herein. After conclusion of the test identification, the witness was allowed to leave being escorted by the Peon.

14.3.94. Before summoning witness No.5, once again, the accused

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persons were given an option to change their clothes, to which they refused and to change their position and accordingly, the accused adjusted themselves in the position of their choice amongst the line of dummy persons and thereafter, witness No.5 – Mohammadfaruk Ajizbhai Memon was summoned and was given instructions about the test identification parade and to identify the accused by holding his hand and bringing him out of the line. Accordingly, the witness went near the accused and identified one accused person from the line, whose name is Younus Mohammad Mansuri, resident of C-132, Ajitmill Society, Ajitmill cross-roads, Bapunagar, Ahmedabad. The witness was asked the reasons for identifying the accused, to which the witness conveyed to the Executive Magistrate that he is serving in a shop selling utensils and from the shop the accused had purchased utensils like steel dishes, holders, spoons, lighters, etc.. After recording of the test identification panchnama, the witness was allowed to leave.

14.3.95. The connection between the utensils and the accused is that such utensils were recovered from one of the hide-outs. The witness has deposed about the procedure undertaken for conducting the test identification with all necessary precaution keeping the police and staff out of the entire process and only in presence of the panch witness when the identification parade took place. After identifying the signatures and hand-writing of the panchnama, Exh.3061 was assigned to the aforesaid test identification panchnama.

14.3.96. Thereafter, on 18.09.2008, a report was received with respect to FIR bearing C.R.No.I-203 of 2008 registered with Maninagar Police Station for conducting test identification of accused – Safdar Nagori @ Jaharuhussain. Upon receipt of the report, test identification parade was scheduled on 20.09.2008 at 1600 hrs. in the Court of Executive

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Magistrate where the accused was brought with proper precaution (cloaked) to hide his identity. The report is assigned Exh.3062. The communication for holding test identification of this witness is at Exh.3063. On 20.09.2008 the test identification parade was organized and the panchas were summoned through the staff. Later on, the accused was produced in cloak. After examining him through the Peon, five dummy persons, having identifical description, were summoned. They were made to sit in the Court-room. The dummy persons were made to stand in a line and accused Safdarhussain Jaharulhussain @ Jahuruddin Nagori was called for. A preliminary enquiry was made from the accused as to who all had accompanied him to the Executive Magistrate Court in order to ascertain that his identity is not revealed. After ascertaining that the accused was not made to interact with any other outsider, he was given an option to change his clothes and to stand in the line of dummy persons at the place of his choice. The accused refused to change his clothes and stood in between Sr. Nos.4 and 5. Thereafter, witness – Mohammadyounus Abdullatif Sumra was summoned through the Peon and was given to understand the process of test identification and was asked to identify the accused by holding his hand and bringing him out of the line. Accordingly, the witness proceeded to examine each of the persons standing in the line and identified one person by holding his hand, whose name the Executive Magistrate inquired and was informed that the identified person is Safdarhussain Jaharulhussain @ Jahuruddin Nagori.

14.3.97. The witness was asked the reasons for identifying the accused, to which the witness conveyed to the Executive Magistrate that he is not knowing the accused from an earlier point of time but the accused had come to his place of business, being a Cyber Cafe situated at Hospital

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Road, Bhuj, in the month of February. The identifying witness stated that he does not remember the date of visit but has made entry regarding such visit of the accused to his Cyber Cafe in the Register maintained by him. The accused had come to his Cyber Cafe, along with a local individual of Bhuj named Abbas Rakheja, for internet related work and had stayed back for about an hour doing internet surfing and since the time of his visit was somewhere around 1600 hrs. - 1700 hrs. and there was sufficient day-light, he could identify the accused.

14.3.98. After completing the identification parade successfully, the witness was sent out of the Court-room. The witness has deposed that during the entire process, no police person was kept present inside the Court-room and only independent witnesses were kept present. The test identification parade was concluded at 1710 hrs.. The writing and signatures on the panchnama were identified by the witness and is assigned Exh.3065.

14.3.99. On 18.09.2008, a report was also received with respect to FIR bearing C.R.No.I-71 of 2008 registered with Khadia Police Station for conducting test identification of accused – Jahid Kutubuddin Shaikh. Upon receipt of the report, test identification parade was scheduled on 20.09.2008 at 1700 hrs. in the Court of Executive Magistrate where the accused was brought with proper precaution (cloaked) to hide his identity. The report is assigned Exh.3066. The communication for holding test identification of this witness is at Exh.3067. On 20.09.2008 the test identification parade was organized and the panchas were summoned through the staff. Later on, the accused was produced in cloak. After examining him through the Peon, five dummy persons, having identical description, were summoned. They were made to sit in the Court-room. The dummy persons were made to stand in a line and

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accused Jahid Kutubuddin Shaikh was called for. A preliminary enquiry was made from the accused as to who all had accompanied him to the Executive Magistrate Court in order to ascertain that his identity is not revealed. After ascertaining that the accused was not made to interact with any other outsider, he was given an option to change his clothes and to stand in the line of dummy persons at the place of his choice. The accused refused to change his clothes and stood in between Sr. Nos.3 and 4. Thereafter, witness – Mohammadyounus Abdullatif Sumra was summoned through the Peon and was given to understand the process of test identification and was asked to identify the accused by holding his hand and bringing him out of the line. Accordingly, the witness proceeded to examine each of the persons standing in the line and identified one person by holding his hand, whose name the Executive Magistrate inquired and was informed that the identified person is Jahid Kutubuddin Shaikh.

14.3.100. The witness was asked the reasons for identifying the accused, to which the witness conveyed to the Executive Magistrate that the accused had come to his place of business, being a Cyber Cafe, situated in the building named Dr. Ramrao House in Bhuj and at that time, two other individuals had also accompanied him and one of the two individuals was a local resident of Bhuj, named, Abbas Sameja. All three of them had come to his Cyber Cafe some time between 1600 – 1700 hrs. in the month of February. The said two individuals were sitting outside in the lobby area of the building, whereas the accused had done internet surfing in his Cyber Cafe for about an hour and since the identifying witness had seen the accused in his shop, he could identify him.

14.3.101. After completing the identification parade successfully, the witness was sent out of the Court-room. The witness has deposed that

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during the entire process, no police person was kept present inside the Court-room and only independent witnesses were kept present. The test identification parade was concluded at 1815 hrs.. The writing and signatures on the panchnama were identified by the witness and is assigned Exh.3068.

14.3.102. The witness has been extensively cross-examined by the defence counsel with regard to the holding of the Test Identification Parade. The questions were posed initially for the purpose of ascertaining the hiding of the identity of the accused persons, where the witness has deposed that accused were brought to him with their heads covered by the cloth. Though elementary questions were asked about to what extent head was covered, such questions not being of much relevance, are not referred to herein. He has deposed that he has not made any inquiry during the panchnama process as to when the accused persons were arrested.

14.3.103. He has admitted that only when the witnesses, who are referred to in the panchnama, were brought before him, he came to know their details which are mentioned in the panchnama and prior thereto, where they were made to sit, is not known to the witness. He has also admitted that no name of the peon who was in-charge of this witnesses has been mentioned in the panchnama and there is no reason for not mentioning the name of the peon. These questions were put to create doubt about the role of a peon, who may have revealed the identity of the accused to the witness. However, the perusal of the answers given by this witness, the fact as canvassed by this defence is not emerging.

14.3.104. The witness has admitted that in the panchnama, the body built appearance and clothing is not mentioned and that in Exh.3061, an observation is made that the body built of the accused are not similar. It

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is not mentioned in the panchnama that for bringing the dummy persons, the peon had also seen the accused persons. According to him, the dummy persons were brought by the peon within period of approximately 10 minutes.

14.3.105. The witness was thereafter, questioned about his understanding after looking at the accused, who were apparently from Muslim community and the fact that out of 50 dummy persons, 30 were from Hindu community and 20 were from Muslim community and that the majority dummy persons were from labour class. The witness was thereafter, questioned about the time consumed in each stage of preparing the panchnama and the procedure undertaken before embarking upon the panchnama like reading of the police report, examining of any marks on the body etc. The witness was thereafter specifically questioned for Exh.3061 panchnama, wherein name of Mohamad Iqbal and Azarkhan Mukhtarkhan is not amongst the list of the accused. In this regard, witness-Pravinbhai Hamirbhai Katariya had identified Mohammad Iqbal and Azarkhan Mukhtarkhan which has been noted in the panchnama though they were not present at the time of the deposition, in this connection, the witness has deposed that he is unable to comment. The perusal of Exh.3061 would reveal that in the panchnama, these two names have appeared at item Nos.9 and 10 after the identification carried out by witness-Pravinbhai Hamirbhai Katariya and thereafter, when the names were inquired by the Executive Magistrate himself, it is at that time, these names were given by the identified persons themselves and therefore, those names coming on record are attributed to the accused person, who upon their own identification have given their names as such. Therefore, the questions put to confuse the issue is of no consequence and would not affect the

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proceeding of Test Identification Parade.

14.3.106. The witness has admitted that after the identification process is over, witness is not aware as to where the identifying witnesses had gone. He was thereafter, asked about some overwriting being made on Exh.3061 on various paras, to which the witness has explained that to correct an error, such overwriting has been made, but has been countersigned by him, which is identified by the witness and therefore also, the Court is unable to doubt the panchnama at Exh. 3061 on account of some overwriting on couple of pages of the document, which in any case is a lengthy document.

14.3.107. The witness was thereafter, questioned that for the purpose of giving an option to the accused to change is clothes whether necessary arrangement has been made for changing the clothes, to which the witness has answered that wherever the accused desirous to change his clothes, then his clothes are made to be interchanged with the persons (dummies present over there). He is unable to answer that in case any artificial change is made in the witness by growing beard or putting on specs and such artificial changes would affect the identification. This question, in the opinion of the Court, is of no consequence being very subjective in nature, which a witness, who is a Executive Magistrate and recording the proceedings, may not be able to answer and even if answer, it would only be his opinion.

14.3.108. With regard to panchnama at Exh.3065, the witness has admitted to the mentioning of time, which according to him, was a bonafide mistake, but has denied that the blanks were later on filled in. He has denied the suggestion that the dummy persons were called by the peon without having a look at the accused.

14.3.109. The witness was thereafter, cross-examined with regard to the

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geographical location of the office, parking area so as to suggest that the place was open and there was a possibility of the identity of the witnesses being revealed however, in the opinion of the Court in view of the answers given by this witness, such possibility is ruled out, merely by mentioning the geographical situation of the area.

14.3.110. The overall perusal of the evidence of this witness, the Court finds that the witness being a Magistrate in discharge of his duty has undertaken the Test Identification Parade and the panchnama exhibited through him of identification, is sufficiently proved by the witness. Thereby, establishing the identity of the accused through the witnesses, who have stated before the Executive Magistrate the correct reason by which they were able to identify the accused persons and these reasons are in consonance with their own deposition as independent witnesses. In the opinion of the Court, therefore, the accused who are identified under the aforesaid panchnamas exhibited through this witness, list of which are as under, stands established.

(1) Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh (A-15)

(2) Kamruddin S/O Chandmohammad Nagori (A-9)

(3) Aamil Parvaz S/O Kaji Saifuddin Shaikh (A-10)

(4) Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori (A-12)

(5) Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri (A-14)

(6) Mohammad Usman S/O Mohammad Anis Agarbattiwala (A-7)

(7) Jahid Kutubuddin Shaikh (A-1)

(8) Yunus S/O Mohammad Mansuri (A-8)

(9) Imran Ibrahimbhai Shaikh (A-2)

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(10) Iqbal S/O Kasam Shaikh (A-3)

(11) Mohammad Aarif S/O Mohammad Iqbal Kagzi (A-6)

P.W. No.784-Danaji Bhuraji Rajput (Exh.4082):

14.3.111. The Court has also perused the evidence of another Executive Magistrate being P.W. No.784-Danaji Bhuraji Rajput at Exh.4082 who conducted the Test Identification Parade of accused No.74-Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/o Babukhan Maniar in connection with the offence registered at Maninagar Police Station being C.R. I-No.203 of 2008. This witness has deposed that on 04.06.2012 while he was serving as a Executive Magistrate at Metro area Court No.2, Gheekanta, Ahmedabad, he received a yadi from the Assistant Commissioner of Police, Crime Branch, Ahmedabad for conducting Test Identification Parade in connection with the aforesaid offence. The witness deposed that the said yadi pertain to accused named Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/o Babukhan Maniar and that he fixed the date of 06.06.2012 at 14:00 hours for conducting the Test Identification Parade. This witness has identified the police yadi and his reply which came to be exhibited at Exhs.4083 and 4084 respectively.

14.3.112. This witness has further deposed that on 06.06.2012 at around 2:10 pm, the said accused was produced before him by the Ahmedabad Crime Branch and that his face was covered. Thereafter, upon closing the doors and windows of the Court room, the Test Identification Parade was commenced in the presence of two panch witnesses, who were called through his peon. Upon verifying the identity and particulars of the accused persons, he instructed the peon to arrange for persons who

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are of similar appearance, age, height and dress, whereupon after sometime five persons of similar description were summoned , they were made to stand in a line with the accused, the witnesses for the purpose of Test Identification Parade had arrived he instructed the peon to make them sit in a separate room and to ensure that they do not talk to anyone. Thereafter, the accused person was given an opportunity to change his clothes and to choose his possession in the line of dummy persons.

14.3.113. Witness No.1 namely Ramkabhai Devkaranbhai Kesariya was thereafter called inside and was explained the procedure of identification. This witness has deposed that Ramkabhai upon observing the person standing in line, held the hand of one person and brought him out. Upon inquiring, that person disclosed his name as 'Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim'. Upon asking the witness-Ramkabhai as to how he could identify this person, he answered that in January 2008, on the date of Utrarayan, he had gone to search for buffalo near an old step-well, near Kamlesh Quarry which was in a forest like area alongwith his friend, wherein he saw something like a tent and about 14 to 15 persons who appeared to be taking some training. Thereafter, one bearded person threatened him and told him to leave. At that time, it was around 11.00 am in the morning and he had seen the said person himself in day light and therefore, he could identify him. The defence has objected to the recording of such statement, which has been duly noted. However this witness has been examined as an independent witness and he has deposed identically to what he conveyed to the executive magistrate.

14.3.114. This witness has further deposed that after witness-Ramkabhai was sent away, the accused person was again given an opportunity to

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change his clothes and position in the line upon which, the accused exchanged his shirt with one of the dummy persons and changed his position. Thereafter, the next witness namely Pravinbhai Hamirbhai Katariya was called and the identification procedure was explained to him. Thereafter, witness-Pravinbhai identified the accused and brought him out of the line and upon asking the name of the person who was identified, he disclosed his name to be ' Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim'. Upon asking witness-Pravinbhai as to how he could identify this accused, he stated that in January 2008, his vehicle got punctured on Halol road, the conductor had gone to get the puncture repaired and that, he and his friend went towards the forest like area, where there was a something like a closed quarry and there, a tent had been put up. He saw 25 to 30 persons there, who were young and some of them had beard and that it was 5.30 pm in the evening and in daylight, he had seen this person there and therefore, he could identify him. The defence similarly objected to the recording of such a statement of witness-Pravinbhai which came to be recorded. The identification witness has been examined as a witness and he has deposed similarly to what is recorded herein above.

14.3.115. This witness has deposed that both these witnesses have successfully identified the accused during the Test Identification Parade. He further deposed that the parade was conducted behind closed doors, with lights turned on and that neither the police officers nor any outsiders were present during the proceedings. He has also deposed that the panchnama was carried out in the presence of both the panch witnesses and that their signatures were obtained on it, and that he affixed the seal and his signature on it. The carbon copy of the panchnama was thereafter handed over to the Investigating Officer upon

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obtaining acknowledgment. This witness has identified the original and the carbon copy of the Test Identification Parade panchnama and the same came to be jointly exhibited vide Exh.4085.

14.3.116. In the cross examination, this witness has deposed that he had conducted more than 100 test identification parades and more than 1000 dying declarations as an Executive Magistrate. He has deposed that he could not identify the accused, witnesses or panch witnesses connected with the said Test Identification Parade as significant time had passed . He has also admitted that he did not maintain a separate diary or record regarding the Test Identification Parade proceedings and has also deposed that he remained in his office when the said proceedings were conducted and had knowledge as to what was happening outside the Courtroom or compound. He was unable to state the exact time the police, accused or the witnesses had arrived in the Court compound before the Test Identification Parade had commenced. He admitted that in such proceedings, the time of arrival and departure must be noted down so as to ensure that the witnesses do not see the accused persons before the parade, and has also deposed that the accused is brought first and thereafter the witnesses are brought to the Court. He has deposed that as per the information received from his peon, the witnesses had arrived at 2:40 p.m. and they were kept in a separate room than where the Test Identification Parade was conducted. He has deposed that he did not personally go outside to verify them and that he verified the identity of the witnesses through the documents which were produced by them and that the same was not recorded in the panchnama and that he could not remember which documents had been examined by him. He has also admitted that he had not obtained the signature of the witnesses regarding their presence or their participation in the proceedings and

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that there was also no written proof of the same. The witness further admitted that he had not instructed the Police Officer that the accused person should not be taken anywhere during the period between the receipt of Yadi and completion of Parade although he had instructed that the accused should not be shown to the witnesses. He has admitted that he had not asked the accused as to how long he remained in Police custody or how he had been treated or where he had been taken by the Police between 04-06-2012 and 06-06-2012. He has deposed that when the accused was produced before him, he was covered with Burkha from head to neck. He has admitted that the panchnama did not record that the accused person was seen upon removal of Burkha before the dummy person was called in or description regarding the physical build, complexion, the outfit or footwear of the accused person. Also, he has admitted that the panchnama did not record the description regarding the physical build or the beard of the dummy persons. He has admitted that he did not independently verify the identity of the accused person as he assumed him to be the accused as he was brought by the Police. He has deposed that he did not obtain the signature of the accused on the panchnama. However, he has denied the suggestion that the panchnama was false or prepared at the instance of the Police or that no Test Identification Parade had actually been conducted.

14.3.117. Thus, upon perusal of the deposition of this witness, it is sufficiently proved that he had conducted the Test Identification Parade wherein accused No.74-Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim was identified by the witnesses as they had seen him at Halol in January, 2008, where several persons were present and undergoing training. Although in the cross examination, there are certain omissions, it appears that the Test Identification Parade was conducted in

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accordance with the procedure, which has been prescribed and that both the witnesses have separately identified the accused person during the parade, thereby establishing his presence at the Halol camp, which becomes an important circumstance against this accused.

14.3.118. Therefore, upon perusal of the deposition of the Executive Magistrate, it appears that the identifying witnesses have successfully identified the following accused, namely:

Mohd. Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim (Accused No.74)

PW No.982- Kaniyalal Dhirajlal Raja (Exh.6842):

14.3.119. The Court has perused the evidence of PW No.982-Kanaiyal Dhirajlal Raja vide Exh.6842, who has deposed that while serving as Deputy Mamlatdar (Non-Agricultural), Surat, and serving additional charge as Executive Magistrate during the period between September to October 2011, he received a report dated 30.09.2011 from the Assistant Commissioner of Police, F-Division, Surat, which required him to conduct a test identification parade in connection with offences registered at Kapodra Police Station II C.R. No.176/2008 for identification of accused (1) Mobin alias Mubin alias Irfan Abdul Sakurkhan (A-70) and (2) Amin alias Raja Ayub Shaikh (A-69) through witness Hasanali Ahmedali Sunsara. Upon receipt of the report on 01.10.2011, he fixed the test identification parade on 03.10.2011 at 16:00 hours in his office and made an endorsement to that effect on the police yadi, which was exhibited at Exh.6843.

14.3.120. He further deposed that the Investigating Officer was instructed to produce the accused and the witness in such a manner that identity of

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the accused is protected. On 03.10.2011, the test identification parade was conducted in the presence of two panch witnesses, who were informed about the purpose of the proceedings and were seated in a room adjoining his chamber. The witness Hasanali Ahmedali Sunsara was made to sit separately outside the office of the Education Officer, District Seva Sadan 2. Thereafter, A.S.I. Prakashbhai Bhagvatbhai Sonawane of D.C.B. Police Station produced both accused persons, who were then in D.C.B. custody.

14.3.121. The witness has deposed that both accused were seated in his chamber and a total of 15 persons having similar faces, appearance, height and age as that of the accused were called and their particulars were recorded in the panchnama. He ensured that only the persons participating in the parade, the panchas, the accused and himself were present and that no police personnel or third person remained present. After ascertaining the names of both accused, he explained the purpose of the test identification parade to them in Hindi and gave them the option to change their appearance or dress, but they declined to do so. The accused were then permitted to stand at places of their own choice in the line of persons.

14.3.122. Thereafter, witness Hasanali Sunsara was brought to the place of parade. After explaining the proceedings to him, he was informed that the accused were standing amongst other persons and that if he could identify them by sight, he should identify them, hold their hands and bring them before the Executive Magistrate. The witness carefully observed the persons standing in the parade and identified two persons one after another, held their hands, brought them out of the line and produced them before the witness. After the witness left, the names of the identified persons were ascertained and they disclosed their names as

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Mobin alias Mubin alias Irfan Abdul Sakurkhan (A-70) and Raja alias Amin Ayub Shaikh (A-69). According to this witness, the witness correctly identified both accused persons from amongst the persons included in the test identification parade.

14.3.123. The witness has further deposed that throughout the proceedings he ensured that the identifying witness did not come to know where the accused were standing and that the parade was conducted legally behind closed doors and in absence of any police official . He stated that the accused were given the option to choose their position in the line and alter their appearance or dress, and no objection was raised by them. Upon completion of the proceedings, he prepared a panchnama, obtained signatures of both panch witnesses on it, signed the same and handed over the original to the Head Constable of D.C.B. Police Station after obtaining acknowledgment on the office copy. He identified the panchnama with its signature , which was exhibited at Exh.6844, and stated that it was prepared between 16:00 and 17:00 hours and that the facts recorded therein are true.

14.3.124. In the cross-examination, this witness has deposed that before conducting the Test Identification Parade, he had taken charge as Executive Magistrate about three to four months earlier and that his actual post was that of Deputy Mamlatdar (Non-Agricultural). He has deposed that he was fully aware of the procedure for conducting a Test Identification Parade. He has further deposed that he had not made any note regarding the manner and time of receipt of the yadi, the source from which the panch witnesses and dummy persons were brought, the time of arrival of the panchas, dummy persons, accused and witness, or the condition in which the accused were produced before him. He has deposed that he did not issue any summons to the witness, did not

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enquire on what basis the witness had remained present, and did not make any note regarding whether any person remained with the witness while he was seated outside prior to the parade. He has further deposed that he had not recorded the appearance of the dummy persons and could not state how many dummy persons had light beards. He has admitted that the panchnama does not record the precautions taken by him to ensure neutrality and legality of the proceedings. He has also deposed that he did not ask the accused regarding the period of police custody, whether they had been shown to the witness, or the manner in which they were brought, nor did he ask the witness whether the police had shown him the accused prior to the parade or how he had come there. He has further admitted that the panchnama does not record the reason on the basis of which the witness identified the accused. However the witness has denied the suggestions that he had no authority to conduct the Test Identification Parade, that no such proceedings were conducted, that the panchnama was prepared as per the say of the police, or that he was deposing falsely.

14.3.125. For the purpose of context, the Court observes that the identification witness was examined as PW No.985 vide Exh.6852, and has deposed that the accused identified by him had stayed at the Hotel where he was working and also seen the car brought by him and which is connected with the bomb blast offence. This evidence according to the court establishes the identity of the witness and joint reading with the evidence of PW No.985, becomes an important circumstance connecting the accused with the car.

14.3.126. A perusal of the aforesaid evidence in the form of panchnamas reveal that the following accused, have been identified by the witnesses correctly, namely:

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(1) Mobin alias Mubin alias Irfan Abdul Sakurkhan (A-70) and

(2) Amin alias Raja Ayub Shaikh (A-69)

14.3.127. Therefore, this entire sequence of evidence on Identification led before the Court by the witnesses and corroborated with the Test Identification Parade panchnama takes the form of evidence to establish the identity of the accused in the Court.

14.4. Panchnamas under Section 27 of Indian Evidence Act

14.4.1. The Court would now evaluate contents of the panchnama and depositions of panch witnesses in context of Section 27 of the Indian Evidence Act.

14.4.2. Though the word 'Panchanama' is nowhere defined in Criminal Procedure Code, 1973, still there are some procedures prescribed to be followed by investigating officers, popularly known as Panchnama. In practice, investigating officers are making mainly 5 kinds of panchnamas, which are as under:

1. Spot Panchnama (Prepared at Scene of offense) : Indicates the situation of things at the crime scene. There may be more than one place of crime.
2. Inquest Panchnama (Prepared in case of death of person) : It is made under Sec.174 of Cr.P.C.. It indicates the condition and other details like wounds on the dead body and surroundings of the place where the dead body lies.
3. Arrest Panchnama : A memo of arrest is prepared at the time the accused is arrested as per Section 41B(b) of the Cr.P.C.. The police officer has to search the person arrested. If anything found from the

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person arrested, is required to be seized by the Police officer under Sec.52 of Cr.P.C.

4. Discovery Panchnama : Sec.27 of Evidence Act says that when any fact is discovered in consequence of information received from the accused person, as relates distinctly to the fact discovered, may be proved. The police officer reduced it into writing.

5. Seizure Panchnama (Recovery Panchnama): Investigating officer found any article from the place of offence or while making personal search of accused (Sec.51 of Cr.P.C.) or while making discovery panchnama (Sec.27 of I.E.Act) or found any articles from dead body(Sec.174 Cr.P.C.) or collected any article useful for the investigation and trial of offence, he makes seizure panchnama.

14.4.3. So far evidence of Panchnama under S. 27 of Evidence Act is concerned, it is an exception to the general rule that no confession shall be proved against the accused which is made before police. For proving even a confession, it has to be proved by deposition before a Court regarding some discovery of facts in consequence of information received from a person accused of any offence. The deposition must relate distinctly to the fact thereby discovered. Essential ingredients of Sec.27 as held by Hon'ble Supreme Court in various judgments would as under:

1. Discovery of fact in consequence of an information received from accused;

2. Discovery of such fact to be deposed to;

3. The accused must be in police custody when he gave informations and

4. So much of information as relates distinctly to the fact thereby discovered is admissible.

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14.4.4. General perception in the minds is that in discovery panchnama, a person accused leads the police toward some place, from where some object or article of offence he showed to the police and police recover it upon the information given by the accused. But it is not necessarily always that discovery would be of an article concealed by the accused. The words used in Sec.27 is “Fact is discovered” not merely an article. To understand what is ‘Fact’ one needs to refer to Sec.3 of Indian Evidence Act,1872. It says that,

"Fact" means and includes-

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

14.4.5. It is an inclusive definition. It is regarding discovery of facts which is a mental fact of knowledge in the mind of the accused, not limited to articles used in offence.

14.4.6. The procedure while recording oral evidence regarding Panchnama is explained by Hon’ble Supreme Court in the case of Shahaja @ Shahajan Ismail Mohd.Shaikh Versus State of Maharashtra-2022 (0) AIJEL-SC 69521, wherein it is held that the contents of the Panchnama should be put to the panch witness in the examination in chief.

14.4.7. Moreover, Indian Evidence Act provides as to how the fact should be proved. In interpretation clause, the word “proved” is explained, it says that-

“Proved”- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence

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so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

14.4.8. The Court may as a necessary corollary also refer to Section 8 of the Evidence Act which refers to the conduct of an accused. As per Sec.8 of Indian Evidence Act, the previous and subsequent conduct of the accused is relevant. During the investigation, while recording the statement of accused giving discovery of facts under Sec.27 of Evidence, would also demonstrate the conduct of accused, apart from the admissibility of the discovery of fact. Hon'ble Supreme Court has held in case of Shahaja @ Shahajan Ismail Mohd.Shaikh Versus State Of Maharashtra- 2022 (0) AIJEL-SC 69521 that:-

> *"Even while discarding the evidence in the form of discovery panchnama the conduct of the appellant herein would be relevant under Section 8 of the Act. The evidence of discovery would be admissible as conduct under Section 8 of the Act quite apart from the admissibility of the disclosure statement under Section 27, as Apex Court observed in A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714".*

14.4.9. The defence has taken great pain to explain the entire philosophy of Section 27 of the Evidence Act and while doing so, has cited plethora of decisions of the Apex Court. Most of judgments have been repeatedly cited by the Counsels during their submissions. The Court may refer to those judgments relied by all the Counsels and also to avoid repetition on point of law laid in all the judgments cited at the bar.

14.4.10. The most celebrated being the case of ***Pulukuri Kottayya v/s. King Emperor*** **of Privy Council** ***reported in AIR 1947 Privy Council 67***. The focus of the defence in this judgment is on the part of Para-10 where the reasoning was given to arguments advanced on behalf of the

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Crown that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. with this view, the information given by a person that the body produced is that of a person murdered by him, and the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. It is observed “If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections (S.25 and 26) on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to S. 26, added by S. 27, should not be held to nullify the substance of the section.”

14.4.11. According to this Court in the very judgment, the purpose and applications of Section 27 is given and in Para-10, it was observed by the Court as under:

> *“10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and*

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thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

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Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed a" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

14.4.12. Therefore, the interpretation of the Privy Council is not to discard anything and everything deposed to relating to a Panchnama executed during investigation but the part of the information disclosed and distinctly related to the fact discovered may be proved and safely be allowed to be given in evidence.

14.4.13. Defense has then relied on ***Aghnoo Nagesia v/s. State of Bihar reported in AIR 1966 SC 119*** while analyzing the provision of Indian Evidence Act relating to 'Admission' and 'Confession' where

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'Confession' is treated as species of 'Admission' (see Para-9) and while considering relationship between Section 26 and Section 27 of Evidence Act appears to have observed that:

> *"9. ……..Sec. 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by sec. 26 relates to a confession made to a person other than a police officer. sec. 26 does not qualify the absolute ban imposed by sec. 25 on a confession made to a police officer. sec. 27 is the form of a proviso, and partially lifts the ban imposed by Sections 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

14.4.14. Thereafter, again considering the inter-connectivity between Section 27 and Section 162. The Court has observed as under:

> *"9. ……..Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-sec. (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of sec. 27 of the Evidence Act. The words of sec. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of*

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an investigation may be recorded by a Magistrate u/s. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by sec. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected u/s. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by sec. 162 of the Code of Criminal Procedure……."

14.4.15. The aforesaid observation in the opinion of the Court saves the voluntary disclosure made by an accused even in presence of the Police Officer and the same can be received as evidence, if the disclosure meets the requiremement of S.27 if the Indian Evidence Act.

14.4.16. The defence has cited ***Himachal Pradesh Administration v/s. Shri Om Prakash reported in 1972 (1) SCC 249*** to emphasise that the reason why Supreme Court has been cautious in Section 27 is the likely abuse by the Police of Section 27. However, the Court may observe from the relevant paras of this judgment firstly an important guideline is laid facing stark reality in the effort of the prosecution to bring home the charge and in Para-7, the Court holds as under:

"7. While it is not the function of this Court to determine who other than the person who has been charged with the murder had committed it, the line which the defence adopted was to establish that the witnesses referred to above had an interest in implicating the accused or at any rate to create uncertainty and doubt sufficient to give the benefit to the accused. It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed

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there on. But what has to be borne in mind is that penumbra of uncertainty in the evidence before a Court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful, they are not certain. It is therefore difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused in entitled is reasonable doubt - the doubt which rational thinking men will reasonably honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether……."

14.4.17. Though the Court gave its reason why caution has to be

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exercised for Section 27 evidence as the information given by the accused in custody leading to discovery of fact, is liable to be abused when the Investigating Officer will attempt to circumvent, by manipulation or ingenuity, that the protection afforded by Section 25 and Section 26 of the Indian Evidence Act. However, the real purpose of Section 27 is explained by Apex Court in Para-14, which is as under:

> *"14. In the Full Bench Judgment of Seven Judges in Sukhan V/s. The Crown, which was approved by the Privy Council in Pulukuri Kotaya's case, Shaid Lal C.J, as he then was speaking for the majority pointed out that the expression 'fact' as defined by Section 3 of the Evidence Act includes not only the physical fact which can be perceived by the senses but also the psychological fact or mental condition of which any person is conscious and that it is in the former sense that the word used by the Legislature refers to a material and not to a mental fact. It is clear therefor that what should be discovered is the material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as the cause and effect. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under Section 27 and cannot be proved."*

14.4.18. In the facts of the aforesaid case, the Apex Court has in fact accepted such evidence and set aside the judgment of acquittal by the High Court and recorded conviction.

14.4.19. Defense has cited ***Yedala Subba Rao v/s. Union of India reported in 2023 (6) SCC 65*** in support that ***Pulukuri Kottayya (supra)***

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is still being followed. At the outset, the aforesaid judgment is the judgment at the stage of Bail, the principle followed is already explained in ***Pulukuri Kottayya (supra)***. However, perusing the fact of this case, especially in Para-19 to 21 it appears that the panchnama drawn is not in two parts but in one part, as there is no confessional statement made by the accused giving information that he is in position to show the place where the landmines were planted.

14.4.20. Whereas in our case the procedure followed is that of drawing of panchnama where the voluntary disclosure is made before the panch witness in first part and in the second part, the discovery of the relevant fact is made. Therefore, though confessional in nature is saved by Section 27 of the Evidence Act.

14.4.21. For the same principle, another judgment cited is ***Vijender v/s. State of Delhi reported in 1997 (6) SCC 171***. Here referring to the facts, the Court observed there was statutory breach noticed in recording evidence of witness under Section 27, where the evidence was led through three Police witnesses, that in consequence of information received from the accused, they discovered the place where the dead body was thrown. However, the body was discovered prior thereto. Therefore, the voluntary disclosure obviously would not be proved by the Police witnesses alone.

14.4.22. The Court may observe that applicability of Section 27 will have to be appreciated on the basis of the Nature of offence. Especially the application of Section 27 in a case of discovery of a dead body in a murder case would be different than that in case of a hatching of conspiracy where the voluntary disclosure can never lead to discovery of any dead body.

14.4.23. The defence has relied on the decision in case of ***Madhu v/s.***

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State of Kerala reported in 2012 (2) SCC 399 to again contend that the pointing out panchnama in this case cannot be treated as panchnama under Section 27 of the Indian Evidence Act. In Para-55 of this judgment, the question to be determined whether the confessional statement by accused; Ext.9 and 10 can be said to led to discovery of unknown fact. As to what are Exh.P9 and P10 is coming out in Para-44 with reference to deposition of PW-21; the Investigating officer and Exh.P9 and P10 are the confessional statements of A1 and A2 recorded by the Investigating Officer; PW-21. Keeping this fact in mind in Para-57, the Court has observed as under:

> *"57. The factual position that recovery of stolen ornaments would be made by the police was a matter of common knowledge well before the confessional statements were made. The said statements recorded vide Exhibits P-9 and P-10 are inadmissible inspite of the mandate contained in Section 27 of the Indian Evidence Act for the simple reason, that they cannot be stated to have resulted in the discovery of some new fact. In the factual background of the present controversy, the gold ornaments which eventually came to be recovered by the police, allegedly at the instance of accused, may well have been planted by the police."*

14.4.24. In the very judgment, in Para-49, the Apex Court has observed what does Section 27 provide for the prosecution, which supports the prosecution and which is as under:

> "49. As an exception, Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The

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rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "...as it relates distinctly to the fact thereby discovered....". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Indian Evidence Act."

14.4.25. Reliance is placed on ***Perumal Raja v/s. State Rep. By the Inspector of Police reported in 2024 SCC Online SC 12*** to emphasis on the principle in ***Pulukuri Kottayya (supra)*** and attention is drawn to Para-19, 20 and 21 and submitted the fact discovered should refer to a material / physical object and not a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

14.4.26. According to this Court, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Based on this principle the Apex Court has held in Para-22 to 24 as under:

"22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced

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or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In Mohmed Inayatullah v. State of Maharashtra, (1976) 1 SCC 828., elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word distinctly is used to limit and define the scope of the information and means directly, indubitably, strictly or unmistakably. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

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23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence."

14.4.27. The aforesaid observations by the Apex Court in the opinion of this Court is favoring the prosecution especially when the pointing out panchnama are drawn upon a voluntary disclosure of the concerned accused about his knowledge of the fact of the place where the conspiracy was hatched.

14.4.28. Defense has then relied on the decision of the Apex Court in case of ***Indra Dalal v/s. State of Haryana reported in 2015 (11) SCC 31***.

However, in this judgment on facts, the Apex Court has observed the facts do not attract the situation contemplated under

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Section 27 as this information provided by the accused to the Police in the form of confessional statement has not led to any discovery.

14.4.29. On the issue of how much of the 'fact discovered' is permissible to be accepted as evidence, the defence has relied upon on the decision of the Apex Court in case of ***Salim Akhtar v/s. State of U.P. reported in 2003 (5) SCC 499,*** wherein the offence being under TADA and disclosure statement leading to recovery of pistol, cartridge and RDX. Following the principle, ***Pulukuri Kottayya (supra)*** held in Para-10 that the disclosure statement made by appellant were made to the police personnel and only that part of the statement would be admissible which is permissible under Section 27 of the Indian Evidence Act.

14.4.30. Thereafter, the Court also held that it is fallacious to treat 'fact discovered' within the Section as equivalent to the object produced and has observed in Para-10 as under:

> *"10. ……..The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to the past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Therefore, what is admissible is the place from where the polythene bag containing pistol and other articles was allegedly recovered. The fact that some terrorist organisation had given the pistol and other articles to the appellant or its use would not be admissible."*

14.4.31. Thereby clearly demarcating the position of voluntary disclosure can be received as an evidence against the accused. Thereby not supporting the contention of the defence that such voluntary disclosure is required to be discarded altogether.

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14.4.32. The Court may on the issue of Section 27 return to initial judgment of the Supreme Court in case of ***Mohmed Inayatullah v/s. the State of Maharashtra reported in 1976 (1) SCC 828*** where perhaps the Apex Court initially had an occasion to deal with the 'Mental fact' being covered in the expression of "fact discovered". The Apex Court in this regards held in Para-12 and 13 as under:

> *"12. The expression "Provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Sec. 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to that fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably" "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" (sic) (and-) is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of*

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the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v/s. Crown; Rex v/s. Ganee). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this. (see Palukuri Kotayya v/s. Emperor; Udai Bhan v. State of Uttar Pradesh).”

14.4.33. The Court may now refer to two latest judgments of the Apex Court dealing with this issue. The first being ***Renuka Prasad v/s. State reported in 2025 SCC online SC 1074*** and second being ***Subramanya v/s. State of Karnataka reported in 2023 (11) SCC 255.***

14.4.34. The judgment of ***Renuka Prasad (supra)*** is relied upon by defence as it held that “the confession under Section 27 cannot be relied upon and there is no question of any aid being drawn from it to implicate the other accused. As far as the sites pointed out by Accused No.1, we have found that it did not lead to any discovery of a fact and it is hit by Section 25 & 26 of the Evidence Act.” It was further held that “Confessions allegedly made by A1 regarding the sites where the

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conspiracy was hatched and the money transacted does not lead to any discovery of fact. The narration about the conspiracy and the money transactions are not admissible and the mere pointing out of two sites does not lead to any discovery of fact, when the narration is eschewed."

14.4.35. To arrive at aforesaid observation the Supreme Court also referred to very typical facts of the case in ***Renuka Prasad (supra)*** in the very 1st Para of the judgment as under:

> *"Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye- witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants."*

14.4.36. The evidence purported under Section 27 in the case of ***Renuka Prasad (supra)*** are the panch witnesses who attested the various recoveries, like cash seized from A2 to A5, the weapons used, and the clothes worn by the accused, when the crime was committed, also turned hostile. Dealing with Exh.P49, recovery of the machetes, the weapons used in the offence and Exh.P50, recovery of the clothes worn by A5 and A6 at the time of the crime, a little later, which has to be considered along with the FSL report and the result of analysis coming forth. It was noticed that there were two Mahazars produced as Annexure P51 and P54, wherein A1 allegedly confessed and pointed out the place where

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the conspiracy was carried out and the money transfer occurred. This, however, is not a confession under Section 27 of the Indian Evidence Act, 1872, since there was no tangible object recovered from the two sites pointed out, leading to the discovery of a fact. The confession statement regarding the conspiracy, of course cannot at all be relied upon, being hit by Sections 25 & 26 of the Evidence Act. The other witnesses examined to prove the aggravating circumstances also turned hostile in which event the Court turned to the evidence of the Investigating Officers, PWs 83, 84 and 87. This factual scenario is quite different then in the present case where the panch witnesses have supported the prosecution they have deposed to the voluntary disclosure made by the accused in custody and that there is nothing on record to malign the voluntary disclosure being made under threat, fear or inducement.

14.4.37. The Court may now refer to decision of the Apex Court in ***Subramanya (supra)*** which is laying down the practical aspect of applying of Section 27 and therefore, has held as under:

> *"78. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc.*

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When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

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79. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Murli and Another v. State of Rajasthan reported in (2009) 9 SCC 417 , held as under:

"34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panch as or the person concerned in the witness box."

80. One another serious infirmity which has surfaced is in regard to the authorship of concealment by the person who is said to have discovered the weapon.

81. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:-

(1) Discovery of fact in consequence of an information received from accused;
(2) Discovery of such fact to be deposed to;
(3) The accused must be in police custody when he gave information; and
(4) So much of information as relates distinctly to the fact thereby discovered is admissible - Mohmed Inayatullah v. The State of Maharashtra: Two conditions for application:
(1) information must be such as has caused discovery of the fact; and
(2) information must relate distinctly to the fact discovered - Earabhadrappa v. State of Karnataka:

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82. We may refer to and rely upon a Constitution Bench decision of this Court in the case of State of Uttar Pradesh v. Deoman Upadhyaya reported in AIR (1960) SC 1125 , wherein, Paragraph 71 explains the position of law as regards the Section 27 of the Evidence Act:

"71. The law has thus made a classification of accused persons into two: (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion, of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says: "I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

83. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67 , which have become locus classicus, in the following words:

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> *"10.....It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."*

14.4.38. With the aforesaid and before referring to the evidence in the form of Panchnama under Section 27 of the Indian Evidence Act as well as appreciation of evidence with the aid of Section 8 of the Indian Evidence Act, the Court may analyse the Section itself vis. a vis. the nature of the panchnama drawn during investigation.

14.4.39. The panchnama drawn in the present case post effecting the arrest where the accused in custody wanted to make voluntary disclosure based on which the Investigating Officer has summoned panch witnesses. From the record it is apparent that the panch witnesses

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of all the panchnama are different and not the stock panch witnesses and in presence of the panch witnesses what voluntary disclosure of information related to the crime disclosed, is recorded. This being first part of the panchnama based on which the accused has led the team to the place regarding which disclosure is made and the same is recorded in the 2nd part of the panchnama.

14.4.40. For establishing the panchnama as an evidence and giving exhibit to the panchnama, the panch witnesses are examined as a prosecution witness, who on oath deposed to the fact of "voluntary disclosure" and thereafter, narrate as to the manner in which the Team is led by accused to the place where the fact disclose is discovered. 'Fact' includes the mental fact of knowledge of the accused regarding the place disclosed in the first part of panchnama and the fact established by other set of evidence connecting the place disclosed with the crime thereby making the panchnama admissible with the aid of Section 27 and then so much of the information relating to the offence as a 'relevant fact', can be proved.

14.4.41. The Court in the facts of the present case may take an illustration of a typical panchnama executed where the offence is of conspiracy. In the offence of conspiracy, there cannot be recovery of article, but disclosure of a place (hideout) where the offence of conspiracy, meeting of mind takes place. So, when the 'information' disclosed by the accused voluntarily leading to locating of the house where meeting took place then the knowledge of the house being used for meeting comes on the record of investigation by way of panchnama, and when the panch witnesses deposes to such fact discovered as a result of information received from accused, then such information which relates to discovery of the house is to be proved even if such information

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may or may not be confessional in nature.

14.4.42. The Court may analyze Section 27 itself which it is argued is a sort of proviso to previous Sections 25 and 26 still Section 27 is an independent Section in itself, which carves an exception to Sections 25 and 26, when certain circumstances are in existence. The Section provides that when any fact is deposed meaning, thereby a fact stated on oath by a panchwitness as a fact discovered, and such 'fact' discovered is on account of the information received from accused in custody, then such information deposed, whether it amounts to confession or not and relates distinctly to the 'fact discovered' can be received as evidence. Therefore, where a confessional statement in our context leads to discovery of a house where conspiracy takes place, then Section 27 is applicable.

1. A clever argument has been advanced by the defence to take out all the point out panchnama out of application of Section 27 that it is only if a 'material object' is discovered on basis of information received from accused only then Section 27 is applicable and therefore, when a panchnama is executed by accused in present case, leading only to the place of offense, then Section 27 does not apply.

14.4.43. However, such arguments can be repelled on the basis of the provision of Indian Evidence Act itself where the word used is 'fact' as a 'fact deposed' and 'fact discovered'.

14.4.44. Section 3 of Indian Evidence Act which is interpretation clause, interprets the word 'fact' as under:

"**Fact**".—"Fact" means and includes—(1) anything, state of things, or relation of things, capable of being perceived by the senses;

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(2) any mental condition of which any person is conscious.

Here Sub-clause (2) clearly provides for any mental condition of which a person is conscious of, to also be treated as 'fact'.

14.4.45. Clarifying this aspect as it appears in ***Pulukuri Kottayya (supra)***, Hon'ble Apex Court in ***Mohmed Inayatullah (supra)*** wherein Para-13, the Court has held as under:

> *"13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact . Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this."*

14.4.46. The attempt of the defence is that the court should read the word 'but' appearing in the aforesaid phrase as 'and' but in the opinion of this court that does not appear to be the correct requirement as prescribed by the Apex Court.

14.4.47. In this regard, the Court may also quote an important para from the judgment in case of ***State of NCT of Delhi Versus Navjot Sandhu @ Afsan Guru*** reported in ***2005 (11) SCC 600***, wherein in Para-125, it was held as under:

> *"125. We are of the view that Kotayya's case is an authority for the proposition that 'discovery of fact' cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place."*

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14.4.48. In the very judgment of ***Navjot Sandhu (supra)***, the Apex Court has also pronounced on the admissibility of joint disclosure and has gone on to hold the same to be admissible.

> *"145. Before parting with the discussion on the subject of confessions u/s. 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Sec. 27, whereas it is the contention of Mr. Gopal Subramanium that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures-to be more accurate, simultaneous disclosures, perse, are not inadmissible u/s. 27. 'A person accused' need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Sec. 27*

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is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Sec. 27 altogether. If information is given one after the other without any break-almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Sec. 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal

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Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

14.4.49. One argument consistently advanced is that when accused is arrested later in point of time and he makes voluntary disclosure regarding a place or house where meetings took place, there is no discovery of a new fact and such fact of the house where meeting took place was already in the knowledge of the Investigating Officer. Similar arguments are also advanced where accused arrested made voluntary disclosure of the sites where the cycle with bomb was planted. This site was also within the knowledge of the Investigating Officer and in fact, was in public domain.

14.4.50. To appreciate this argument, the Court may consider the procedure adopted in drawing the panchnama like the point out panchnama when the accused prefers to make voluntary disclosure, the panch witnesses summoned and the accused in front of him makes a voluntary disclosure that he would like to show a 'place of meeting'. At that stage, the Investigating Officer is not aware as to where the accused would lead to as a 'place of meeting'. It is only upon reaching that place it would appear that it is the very 'place of meeting' which has already been pointed out by another accused previously arrested and through his voluntary disclosure a point of out panchnama is already executed.

14.4.51. However, the knowledge of the fact of 'place of meeting' is the discovery of a 'fact' as physically the 'place of meeting' is pointed out as disclosed, and the same 'place of meeting' coincidentally pointed out at

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different times under different panchnamas by different accused. In fact, this strengthens the case of the prosecution in establishing the place where the meeting had taken place and conspiracy was hatched. Therefore, the point out panchnama of the 'place of meeting', etc. though may be disclosed successively by different accused and different point of time upon their respective arrest will have to be accepted as panchnama under Section 27 and the information disclosed leading to discovery of fact will have to be admitted as evidence even if it is confessional in nature.

14.4.52. One more aspect which the Court notices and is typical to the facts of the case is the arrest of the accused at a later stage. When the first set of accused were arrested through the voluntary disclosure, the Houses where the accused met or resided and assembled the bomb, the panchnama under Section 27 was drawn and various articles connected with the offense were discovered and made part of investigation and were also sent for FSL.

14.4.53. However, later in point of time, after almost two to three months of the first arrest, another accused is arrested and he too makes a voluntary disclosure of place of meeting, residing or assembling the bomb, which is again the same place which has already been discovered through the co-accused who have been previously arrested. However, the accused leading the Investigating Officer to the very same place of meeting will not lead to finding of any material from the same place as in the previous panchnama all the articles have already been seized under a panchnama. Therefore, the question is non recovery of any material object during the subsequent point out panchnama at the same place will render the point out panchnama inadmissible? The answer in the opinion of the Court has to be 'no' as, when there is a commonality

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of the place of meeting pointed out by the accused previously arrested and the accused subsequently arrested, the point out panchnama drawn later in point of time will have to be directly associated with the recovery of object under the previous point out panchnama.

14.4.54. This Court once again may refer to the judgment in ***Navjot Sandhu (supra)*** and extensively quote relevant paras where the Apex Court has undertaken exercise of appreciation of evidence of point out panchnama as it will serve as guideline for this case. This will also help in decoding Section 8 of Indian Evidence Act.

"Hideouts and recoveries

> *204. The other circumstances which prominently shed light on the involvement of the accused Afzal relate to the discovery of the abodes or hideouts of the deceased terrorists and the recovery of various incriminating articles therefrom as well as the identification of certain shops from where the appellant and one or the other deceased terrorist purchased various items used for preparation of explosives etc. These are spoken to by PW76-Inspector Gill, the landlords of the concerned premises and the shopkeepers. The informations furnished to the Investigating Officers leading to the discovery of facts and the conduct of the accused in pointing out the places where the terrorists stayed are admissible either u/s. 27 or Sec. 8 of the Evidence Act and they supplement the evidence furnished by the I.Os., the landlords and the shopkeepers.*
>
> *205. Before proceeding further, we may advert to Sec. 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose*

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makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explains the ambit of the word 'conduct'. They are:

Explanation 1 : The word 'conduct' in this Section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other Section of this Act.

Explanation 2 : When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute 'conduct' unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Sec. 8 deserve special mention.

(f) The question is, whether A robbed B.

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The facts that, after 6 was robbed, C said in A's presence-"the police are coming to look for the man who robbed 6", and that immediately afterwards A ran away, are relevant.

* * *

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

"207. Coming to the details of evidence relating to hideouts and recoveries, it is to be noted that the accused Afzal is alleged to have made a disclosure statement to PW66-Inspector Mohan Chand Sharma on 16.12.2001. It is marked as exhibit PW64/1. In the said disclosure statement, all the details of his involvement are given and it is almost similar to the confessional statement recorded by the DCP. The last paragraph of the statement reads thus:

"I can come along and point out the places or shops of Delhi wherefrom I along with my other associates, who had executed the conspiracy of terrorist attack on the Parliament, had purchased the chemicals and containers for preparing IED used in the attack, the mobile phones, the SIM Cards and the Uniforms. I can also point out the hideouts of the terrorists in

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Delhi. Moreover, I can accompany you and point out the places at Karol Bagh wherefrom we had purchased the motorcycle and Ambassador car. For the time being, I have kept the said motorcycle at Lal Jyoti Apartments, Rohini with Nazeer and I can get the same recovered...."

This statement has been signed by Mohd. Afzal. In fact it is not required to be signed by virtue of the embargo in Sec. 162(1). The fact that the signature of the accused Afzal was obtained on the statement does not, however, detract from its admissibility to the extent it is relevant u/s. 27.

208. We shall now consider the details of evidence on these aspects. PW76-I.O. deposed that the two accused persons, namely, Afzal / Shaukat led him to the following places:

(i) Hideout at 2nd floor, A-97, Gandhi Vihar (PW34)

(ii) Hideout at 2nd floor, 281, Indira Vihar (PW31 and PW32)

(iii)Shop of PW40-Anil Kumar from where Ammonium Nitrate was purchased.

(iv) Shop of PW42-Ramesh Advani from where Silver powder was purchased.

(v) Shop of PW41-Ajay Kumar-Sawan Dry Fruits from where dry fruits were purchased.

(vi) Shop of PW43-Sunil Kumar Gupta at Fatehpuri where Sujata Mixer was purchased.

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(vii) Shop at Hamilton Road from where red light was purchased.

(viii) Shop of PW29-Gupta Auto Deals from where motorcycle HR51E5768 was purchased.

(ix) Shop of PW44-Sandeep Chaudhary at Ghaffar Market from where Sony cellphone was purchased.

(x) Shop of PW20-Harpal Singh at Karol Bagh from where Ambassador Car bearing DL 3CJ 1527 was purchased.

(xi) Shop of PW49-Kamal Kishore from where Motorola cell phone and a SIM card were purchased.

209. Now, we shall refer to the specific details of evidence in this regard. PW76- I.O. deposed to the fact that Afzal and Shaukat pointed out the 2nd floor of A-97, Gandhi Vihar as the place where the deceased terrorists stayed. This is recorded by PW76 in the memo marked as exhibit PW34/1. PW76 deposed that on his request, the landlord of the house-PW34 accompanied him to the 2nd floor and the lock of the house was broken and the premises searched in the presence of PW34. The various articles recovered and seized consequent upon the search of the premises are recorded in exhibit PW34/1. They are: (a) 3 electronic detonators (exhibits P60/1, 60/2 and 60/3). (b) two packets of silver powder bearing the address Tolaram & Sons, 141, Tilak Bazar, Delhi' (exhibit P61). (c) A bucket (exhibit P62) of prepared explosive material. Sample of explosive material is exhibit P63. (d) two boxes containing

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Sulphur (exhibits P64 and P65). (e) two cardboard cartons (exhibits P66 and P67) containing 20 jars each of Ammonium Nitrate of 500 grams each (exhibit P68/1 to exhibit P68/38) (one jar was taken out from each carton as a sample). (f) Yamaha motorcycle bearing No.DL-1 S- K-3122 (exhibit P76) found at the gate of the house and seized as per exhibit PW34/2. (g) Maps of Delhi city and Chanakyapuri area found in the room vide exhibit P34/3. (h) Police uniforms and police beret caps (P73 series). (i) Sujata Mixer Grinder with three jars (exhibit P72) seized as per exhibit PW34/4.

210. PW34 confirmed this fact in his deposition. In addition, PW34 identified Afzal and Shaukat in the Court and stated the following facts:

That Afzal had introduced himself under an assumed name of Maqsood and took the 2nd floor on rent in the first week of November, 2001. That Shaukat and three or four boys used to visit Afzal at that premises quite often and on the crucial day i.e. 13.12.2001, at 10 am, Afzal, Shaukat and four more persons left in an Ambassador car and Afzal had returned a short while later and then left the premises subsequently. That the deceased terrorist Mohammed, whose photograph he identified, was also residing with Afzal sometime after the premises was taken on rent.

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211. The High Court accepted the testimony of PW34 including the identification of the deceased Mohammed by photograph (exhibit PW1/20). He could not identify the remaining four terrorists.

212. Next, we come to the evidence in regard to the premises at Indira Vihar and the recoveries therefrom. Mohd. Afzal, while being examined u/s. 313 of the Code of Criminal Procedure admitted that the house at 281, Indira Vihar was taken on rent by him after his return to Delhi after Eed. PW76 deposed to the fact that Afzal and Shaukat led him and the police party to the premises at 281, Indira Vihar as the place where Afzal and the five slain terrorists stayed. The memo of pointing out is exhibit PW32/1. PW32, who is the landlord, stated that on 16.12.2001, the accused Afzal and Shaukat whom he identified correctly, were brought to his house by the police and Afzal told the police that he was the landlord. Thereafter, the police took him and the two accused to the 2nd floor which was found locked and as there was no key, the police broke the lock. PW32 then stated that on a search of the premises, a number of articles as recorded in the memo of seizure-exhibit PW32/1 were found. The articles recovered as a result of search were, (i) three electric detonators attached with a wire kept in a box, (ii) six pressure detonators fitted in a plastic box, (iii) two silver powder packets of thousand grams each with the slips containing the name of 'Tolaram and Sons, Tilak Bazar', (iv) two boxes of sulphur, (v) a motorcycle of Yamaha make

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parked near the gate of the house, (vi) household articles etc. PW32 attested the seizure memo."

"216. Amongst the hideouts furnishing the links of association between the accused Afzal and the deceased terrorist Mohammed is the one in the Boys' hostel, Christian Colony. It is in the evidence of PW38 who was running an STD booth at Christian Colony that Afzal and Shaukat met him and made enquiries about the availability of rented accommodation. Then on 6.11.2001 he took him to PW37 who was running a hostel at B-41, Christian Colony. PW38 identified Afzal and Shaukat. PW37 deposed that he let out a room on the Ground Floor and when he went to the hostel on 26th November, he found one Kashmiri boy in the room who disclosed his name as Ruhail Ali Shah. It may be noted that the witness identified the said Ruhail Ali Shah as the deceased terrorist Mohammed by reference to his photograph (exhibit PW29/5) in the presence of police and in the Court. The identity card of Ruhail Ali Shah (exhibit PW4/4) shown to him was also identified and it is the card that was found at the spot of offence. PW37 also stated that he had seen Afzal and Shaukat visiting the so called Ruhail Ali Shah. It may be noted that the said room in Christian Colony was taken on rent at about the same time when the premises at Gandhi Vihar was hired. The testimony of this witness was found to be reliable by the High Court. We see no good reason to discard his evidence on the ground that he did not produce the record of their stay."

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14.4.55. The court has purposely quoted at length as above as according to the court the nature of evidence in the aforesaid case of terrorism is quite identical to the nature of the evidence in the present case as well.

14.4.56. The defence has relied upon judgment of the Apex Court in the case of ***Anand Jakkappa Pujari @ Gaddadar*** v/s. ***State of Karnataka*** reported in ***2026 (0) INSC 417*** wherein the case of the prosecution was based on joint and simultaneous discovery made by four accused persons. The discovery panchnamas were referred to as Ex.P.50 to Ex.P.53 and were treated as voluntary statements of accused nos. 1 to 4. The Apex Court also considered the evidence of discovery panchnama through PW-4. PW-4 had clearly deposed accused Kalappa, who was not before the Hon'ble Supreme Court, having led the police party through a kachha road and pointed out the place where the dead body of the deceased was burnt. However, PW-4 had not deposed anything about any particular statement made by the appellants in his presence. Therefore, except accused Kalappa, no other accused made any statement of discovery in presence of PW-4. The Apex Court also considered evidence of discovery given by the Investigating officer; PW-24.

14.4.57. After considering the aforesaid evidence, the Apex Court observed that it did not propose to outrightly discard the evidence in the form of discovery solely on the ground that a joint disclosure statement was recorded by the Investigating Officer without indicating the precise statement made by each of the accused persons. The contention raised on behalf of the appellants was that it could not be said with certainty whether all the four accused persons had simultaneously made the statement or whether each stated separately one after another and with

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what interval. It was further contended that a joint disclosure statement, being a statement by more than one person, would be of no use so far as Section 27 of the Evidence Act was concerned.

14.4.58. The Apex Court thereafter referred to paragraph 145 of the judgment in the case of ***Navjot Sandhu (supra)***, wherein the expression employed under Section 27, namely "a person accused", was interpreted to mean that it need not necessarily refer only to a single person, but may also include plurality of accused persons. It was further observed that disclosures made by two or more persons while in police custody would not altogether go out of the purview of Section 27 of the Evidence Act. It was also observed that admissibility and credibility are two distinct aspects and whether and to what extent such simultaneous disclosure could be relied upon by the Court would be a matter of appreciation and evaluation of evidence.

14.4.59. The Apex Court further noted that PW-4 had not stated a word regarding the exact statement made by the appellants in his presence. Thus, in view of the evidence of PW-4, the Apex Court did not place reliance upon the purported disclosure statements attributed to the appellants. However, the Apex Court did not dispute the proposition regarding joint or simultaneous discovery. The Apex Court also took note of the mental fact aspect even in the context of joint or simultaneous discovery.

14.4.60. Thus, considering the principles laid down in ***Navjot Sandhu (supra)*** and referred to in ***Anand Jakkappa Pujari (supra)***, simultaneous and joint disclosures are not rendered inadmissible merely because more than one accused person is involved. The question with respect to the credibility of such disclosure, which is required to be assessed by the Court on the basis of evidence on record.

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14.4.61. When such disclosures are found to be admissible and credible, the expression "a person accused" occurring under Section 27 of the Evidence Act cannot be confined only to singular but plural. In such circumstances, what assumes importance is not prior knowledge of the Investigating Officer regarding the relevant place, but the knowledge of the accused persons regarding such place. Therefore, even in a case of simultaneous discovery, once the first accused points out a relevant place, the knowledge of the Investigating Officer regarding the said place would not dilute the mental fact or knowledge attributable to the subsequent accused who also points out the very same place.

14.4.62. The defence has relied upon the judgment in ***Prakash Chand v. State (Delhi Administration)***, reported in ***(1979) 3 SCC 90***. The facts of the said judgment relate to conviction of the accused under the Prevention of Corruption Act, 1947. On bare reading of the judgment, it appears that PW-6 was the trap witness, i.e. the first informant, and PW-1 and PW-2 were the panch witnesses who were supposed to oversee the incident of actual demand, acceptance and recovery. However, PW-1 and PW-2 were not found truthful and were treated as hostile by the prosecution. They were confronted with their earlier statements given to the police and their evidence was rejected as the same stood contradicted by their earlier statements. The Court noted that such use of statements is permissible under Section 155 of the Evidence Act and proviso to Section 162(1) of the Cr.P.C. read with Section 145 of the Evidence Act.

14.4.63. With regard to conduct of the accused, the Court observed that there is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act if such conduct is influenced by any fact in issue or relevant fact, and the statement made to a police officer during the

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course of investigation, which is hit by Section 162 Cr.P.C.

14.4.64. The Court further observed that what is excluded by Section 162 Cr.P.C. is the statement made to a police officer during investigation and not the evidence relating to conduct of an accused person, not amounting to a statement, when confronted or questioned by a police officer during the course of investigation. The Court further gave an illustration that evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in commission of the offence were found hidden, would be admissible as conduct under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act. While observing so, reference was made to ***Himachal Pradesh Administration v. Om Prakash (supra).***

14.4.65. So far as ***Prakash Chand (supra)*** is concerned, it relates to examining the conduct of the accused of telling trap witness PW-6 to put the bribe money in a file. Though the same was not supported by the panch witnesses, and though in presence of PW-9, the Trapping Officer, i.e. the police officer, the accused stated that he had not accepted nor demanded bribe money, the said aspect was appreciated as conduct of the accused relevant under Section 8 of the Evidence Act. Moreover, so far as PW-1 and PW-2 of the cited case are concerned, who were treated hostile, the judgment considered the statements of these two witnesses to be seen and examined under Section 155 of the Evidence Act and the proviso to Section 162(1) of the Cr.P.C. read with Section 145 of the Evidence Act.

14.4.66. As there is an amendment in Section 154 of the Evidence Act,

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introduced with effect from 16.04.2006 by inserting sub-section (2), the same reads as under: "Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness."

14.4.67. In view of the above, the total prohibition of examining and looking into the statement of police when a hostile witness is confronted with it is lifted if there is other convincing material submitted by prosecution in support of the version denied by the hostile witness.

14.4.68. Thus, the ratio of the aforesaid judgment relates not only to Section 8 of the Evidence Act but also to the manner in which evidence of hostile witnesses is required to be examined. In view of insertion of sub-section (2) to Section 154 of the Evidence Act with effect from 16.04.2006, evidence of a hostile witness is not required to be discarded in toto and reliance can still be placed upon such part of evidence which is otherwise found reliable and corroborated by other material on record. Therefore, the aforesaid principles would also be relevant while appreciating the evidence of hostile witnesses Riyaz (PW-1151/Exh.8265) and Dr. Sadab (PW-1121/ Exh.8059).

14.4.69. The Court has also considered the judgment relied upon by the defence in the case of ***Himachal Pradesh Administration v. Shri Om Prakash***, reported in ***(1972) 1 SCC 249***. The judgment considers the applicability of Section 27 and Section 8 of the Evidence Act. The Apex Court considered the information furnished by the accused that he had purchased the weapon from Ganga Singh, PW-11 and that he would take the police party to him. Pursuant thereto, the accused led the police party to the thari of PW-11 and pointed him out. It was contended that the information given by the accused that he had purchased the dagger from PW-11, followed by his leading the police to the thari of PW-11 and

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pointing him out, was inadmissible under Section 27 of the Evidence Act. The Court observed that there was force in the said contention.

14.4.70. However, the Court further observed that even apart from the admissibility of the information under Section 27 of the Evidence Act, the evidence of the Investigating Officer and the panchas that the accused had taken them to PW-11 and pointed him out, duly corroborated by PW-11 himself, would be admissible under Section 8 of the Evidence Act as conduct of the accused.

14.4.71. Thus, pointing out of PW-11 by the accused as the person from whom the dagger had been purchased was not treated as admissible under Section 27 of the Evidence Act, but was nevertheless found admissible under Section 8 of the Evidence Act as conduct of the accused.

14.4.72. Considering the aforesaid principles, the prosecution in the present case has examined several witnesses who have deposed regarding sale of different objects/articles to different accused persons, which were allegedly used for preparation of bombs, accessories connected thereto or for stay at different places (hideouts) of relevance. Such witnesses have identified the concerned accused persons in the Test Identification Parade and have also identified the concerned articles/objects collected during investigation. Therefore, such evidence relating to conduct of accused persons in pointing out relevant persons, places or circumstances connected with the offence would be admissible within the ambit of Section 8 of the Evidence Act.

14.4.73. As against these judgments, the prosecution has relied upon the judgment in ***K. Chinnaswamy Reddy v/s. State of Andhra Pradesh***, reported in ***1962 SCC OnLine SC 32***. The Court observed that under Section 27 of the Evidence Act, only that portion of the information

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supplied by the accused which distinctly relates to the discovery becomes admissible. The Court further observed that if any part of the statement distinctly relates to the discovery, the same would be admissible wholly and the Court cannot excise one part of the statement merely because it is confessional in nature. It was further observed that Section 27 makes that part of the statement, which distinctly relates to the discovery, admissible as a whole, irrespective of whether it is in the nature of confession or not.

14.4.74. In the facts of the said case, the statement attributed to the accused was that he would show the place where he had hidden the ornaments. The Sessions Judge had held that the portion of the statement, namely "where he had hidden them", was inadmissible. However, the Court observed that if the said portion was excised, the remaining statement, namely that he would show the place, would become completely meaningless. The Court therefore held that the whole of the statement distinctly related to the discovery of the ornaments and was admissible under Section 27 of the Evidence Act. The Court further observed that the words "where he had hidden" were not on the same footing as the words "with which I stabbed the deceased" occurring in the illustration referred to in the judgment of the Judicial Committee.

14.4.75. Thus, the aforesaid judgment makes it clear that a disclosure statement cannot be mechanically excised (discarded) merely because some part thereof appears to be confessional in nature. What is required to be examined is whether the part sought to be relied upon distinctly relates to the discovery and such aspect is required to be appreciated in the context of the facts and circumstances of each disclosure statement.

14.4.76. The prosecution has relied upon the judgment in ***State of Himachal Pradesh v. Jeet Singh***, reported in ***(1999) 4 SCC 370*** and has

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referred to the observations made therein in relation to recovery from a place which is open or accessible to others. The Apex Court observed that it is a fallacious notion that when recovery of any incriminating article is made from a place which is open or accessible to others, the same would vitiate the evidence under Section 27 of the Evidence Act. The Court further observed that the crucial question is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If it was not ordinarily visible to others, then it would be immaterial that the concealed place was otherwise accessible to others. The Court further observed that it is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statement given to a police officer admissible in evidence by employing the words "whether it amounts to confession or not".

14.4.77. Thus, relying upon the aforesaid principles, the prosecution seeks to justify the recoveries of different incriminating articles from the site of Halol terror training camp on the ground that though the place may have been open or accessible to others, the incriminating articles were not ordinarily visible to others.

14.4.78. The prosecution has further relied upon the observations made in *K. Chinnaswamy Reddy* as well as *Jeet Singh* to contend that every inculpatory statement is not required to be kept out of consideration merely because it contains a confessional element. Since Section 27 of the Evidence Act operates as an exception to Sections 25 and 26 of the Evidence Act, the expression employed therein, namely "whether it amounts to confession or not", is required to be examined in the facts and circumstances of each case. The prosecution has therefore submitted that while deciding such an issue, no straight jacket formula can be

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applied and each disclosure statement would require independent consideration depending upon the nature of the disclosure and the facts and circumstances of the case.

14.4.79. Further, alongwith the issue of Section 27 of Indian Evidence Act, reference to Section 8 of Indian Evidence Act is also necessary to understand the interplay between Sections 27 and 8 of Indian Evidence Act. At the cost of repetation to maintain the relevancy the Court may refer to the definition of the word 'fact' under Section 3 of the Indian Evidence Act for quick reference, which is as under:

"**Fact**".—"Fact" means and includes—(1) anything, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

14.4.80. Therefore, when the term 'fact' has been used under Section 27 and Section 8 of the Indian Evidence Act, the same has to be meant and understood in terms of the definition provided under Section 3 of the Indian Evidence Act.

14.4.81. The Court has referred to the judgment of the Apex Court in the case of ***Mohmed Inayatullah (supra)*** wherein it was observed that though at one point of time, the expression "fact discovered" had been restricted to a physical or material fact which is capable of being perceived by the senses and did not include a mental fact, it is now fairly settled that the expression "fact discovered" includes not only the physical object which has been produced, but also the place from which it is produced and the knowledge of the accused with respect to the same. Further, it was also observed that the first step in the process was to pinpoint the "fact discovered" in consequence of the statement made by the accused. In the said judgment, the "threefold fact discovered" was:

i) the chemical drums (physical object) in question

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ii) the place where the said object was lying deposited

iii) the knowledge of the accused person regarding such deposit.

14.4.82. Thus, out of the threefold facts discovered, one relates to the place and the other relates to the knowledge of the accused.

14.4.83. The Court may thereafter referred to the judgment of the Apex Court in the case of ***Charandas Swami v/s. State of Gujarat*** reported in ***2017 (7) SCC 177*** wherein the facts of the case were that Gadadharanandji went missing on 03.05.1998 and subsequently, a burnt body was found in a ditch at Barothi village in the neighboring state of Rajasthan. A missing person complaint was filed by PW-3 regarding the sudden disappearance of Gadadharanandji on 05.05.1998 with the local police. The case of the prosecution was that Gadadharanandji was kidnapped from Vadtal temple complex, taken to Navli temple complex and strangled there. The confession of accused No.3 stated that he had kidnapped Gadadharanandji from the temple, drove him to his house at Vadtal and thereafter strangled him. It was further stated by accused No.3 that he had returned with the dead body of Gadadharanandji in his car to Vadtal, informed accused No.1 about the incident and then took accused No.5 alongwith him to Rajasthan where the dead body of the deceased was disposed of by throwing it in a ditch and setting it on fire. Also, PW-50 had deposed that he had found a burnt body in a ditch behind his house in Barothi village and informed the police about the same and a video of the body was also taken by the police. PW-57 conducted the autopsy of the dead body found at Barothi.

14.4.84. The Hon'ble Supreme Court has treated the disclosure statement of accused no.3 wherein it was stated that the body of the deceased had been dumped at a spot in Barothi village (Exh.188), as an admissible piece of evidence under Section 27 of the Evidence Act.

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Further, accused no.5 led the investigating officials to the alleged room at Navli wherein the crime was executed and the Court found no reason to disbelieve that evidence. Even the High Court had held that the disclosure made by accused No.5 was crucial in discovering the place of murder.

14.4.85. Further, the Hon'ble Supreme Court also considered the submission of accused No.3 wherein it was contended that the panchnama drawn at the instance of accused No.3, wherein he disclosed the place where the body of the deceased was burnt and dumped, was inadmissible under Section 27 of the Evidence Act since the body had been already discovered at the same place and the same was a matter of public record. It was further contended that accused No.3 did not reveal any exclusive information and therefore the information in the panchnama was inconsequential. The Hon'ble Supreme Court has affirmed the admissibility of disclosure made by accused No.3 relating to the spot where the dead body of the deceased was disposed off and also the disclosure made by accused No.5 relating to the room in Navli temple complex where Gadadharanandji (deceased) had been brought and murdered.

14.4.86. Thus, according to this judgment pointing out of two different spots, one where the dead body was dumped and second where Gadadharanandji was murdered were both found admissible under Section 27 of the Evidence Act. There was no recovery or discovery of any physical object and the disclosure information related only to two different spots/places and the knowledge of accused no. 3 and 5 regarding the same. Therefore, discovery under Section 27 of the Evidence Act is not confined only to the recovery of a physical object but also includes discovery of a place connected with the offence and the

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mental knowledge of the accused regarding the same.

14.4.87. The Court thereafter refers to the judgment of the Apex Court in the case of ***Sambubhai Rasangbhai Padhiyar v/s. State of Gujarat*** reported in ***2025 (2) SCC 399*** wherein the facts of the case are that the incident occurred on 13.04.2016 wherein a 4-year-old child was found murdered in the outskirts of the village. PW-11(witness) called PW-9 (father of deceased) and informed him that to reach the lake behind Pir dargah and upon reaching there, PW-9 found his son lying naked near the bushes. The place of occurrence was discovered at the instance of the accused through panchnama drawn (Exh.18) on 15.04.2016 between 7:30 a.m. to 9:00 a.m. Further, within few minutes of panchnama (Exh.18) being drawn, the accused voluntarily expressed willingness to show the place where he had thrown the clothes of the victim and in pursuance thereof the recovery panchnama (Exh.21) was drawn between 9:15 hours and 9:45 hours on 15.04.2016. The Court also considered an objection which had strongly been raised by the defence about admissibility of Exh.21 panchnama on the ground that no statement of the accused was recorded on the said aspect and that what was available was merely a purported recovery carried out.

14.4.88. For understanding of the aforesaid objection, the Court has considered the evidence of panch witness of Exh.21 panchnama namely; Maheshbhai Gohil, examined at PW-6 at Exh.20 who has clearly stated in his examination-in-chief as well as cross-examination that the clothes allegedly discovered at the instance of the accused, as stated in the panchnama at Exh.21 were already with the police.

14.4.89. The Hon'ble Supreme Court while considering the aforesaid objection has observed that the conduct of the accused in leading to the place where the clothes of the deceased were found was to be considered

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in light of Section 8 of the Evidence Act to ascertain whether such conduct of the accused would be admissible in evidence. Ultimately, it was observed that irrespective of the admissibility of the discovery panchnama(Exh. 18) and the recovery panchnama (Exh.21) and irrespective of the admissibility of the recovery of the clothes of the deceased on the statement of accused, the conduct of the accused in leading the investigation team and the panchas and pointing out where the apparel of the deceased was hidden would be admissible. It was further observed that PW-17; the Investigating Officer had clearly deposed that the accused had shown willingness to show the place where he had thrown the clothes and thereafter, he and his team and the panchas reached by walking to the place as indicated by the accused.

14.4.90. Thus, considering the objection raised by the defence regarding absence of any disclosure statement with respect to the recovery of clothes and the finding of the Apex Court, it emerges that, what remained was only showing and pointing out of the place by the accused from where the clothes were found and nothing more. The Apex Court held that such conduct would be relevant under Section 8 of the Evidence Act. Therefore, even in a case based on facts and circumstances where no object or article is discovered, the conduct of the accused in showing and pointing out a place connected with the offence was found to be relevant under Section 8 of the Evidence Act and can be considered as an additional link in the chain of circumstances.

14.4.91. The Court has also considered the judgment in ***Mohd. Naushad***, reported in ***(2024) 12 SCC 494***. Though the said judgment has neither been relied upon by the defence nor by the prosecution, the same covers several relevant circumstances and features comparable with the prosecution case on the aspect of pointing out of different places,

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namely the place where the car loaded with bomb was parked and places from where different articles/objects were purchased. Such circumstances of pointing out was found and weighed against the concerned accused persons who pointed out the aforesaid places as an additional chain of circumstances against them. The judgment further reflects that one particular place of relevance was pointed out by more than one accused.

14.4.92. The aforesaid judgment pertains to the bomb blast which occurred on 21.05.1996 at crowded Central Market, Lajpat Nagar, New Delhi. It further appears that accused nos.11 to 17 were declared proclaimed offenders and never faced trial and accused no.13 expired. Considering the nature of charges reflected therein, the charges framed against the accused persons were under the Indian Penal Code, Explosive Substances Act and Arms Act. There was no charge under UAPA. The Court examined various charges against Mohd. Naushad A-3, Mirza Nisar Ahmed @ Naza A-5, Mohd. Ali Bhatt @ Killy A-6 and Javed Ahmed Khan A-9.

14.4.93. While discussing the arrest, recovery and circumstances against A-3, the Court elaborately considered various features of the prosecution case and ultimately held several circumstances to be proved against A-3. So far as pointing out of different places is concerned, the same included pointing out of shop from where duplicate key was prepared, pointing out of shop where fake number plates were prepared, pointing out of place where Maruti car was parked for days before the blast, pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996, pointing out of residence of A-8 from where stepney of stolen Maruti car was recovered, pointing out of shop from where shouldering iron and shoulder was purchased, pointing out of shop from where gas cylinder

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was purchased, pointing out of shop from where wire was purchased and pointing out of shop from where drill machine was procured.

14.4.94. Immediately thereafter, the Court observed that the argument and case laws advanced on behalf of A-3 that the disclosure statement of A-3 was in the nature of Section 164 Cr.P.C. statement and therefore inadmissible was not of relevance. The circumstances under consideration were in the nature of pointing out proceedings and recoveries effected by the accused. The Court further observed that failure of the prosecution to examine PW-13 and Mangalchand as accused, though a glaring omission, would not render any impact upon the case against the concerned accused persons.

14.4.95. The Court thereafter examined whether acquittal of A-5 and A-6 was correct in the facts and circumstances of the case. While discussing the common circumstances attributable to A-5 with A-3, the Court again considered circumstances relating to pointing out of shop from where duplicate key was prepared, pointing out of shop where fake number plates were prepared, pointing out of place where Maruti car was parked for days before the blast, pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996, pointing out of shop where shouldering iron and shoulder was purchased, pointing out of shop from where gas cylinder was purchased and pointing out of shop from where wire was purchased.

14.4.96. After considering the aforesaid circumstances, the Court answered the question framed by it in the negative and set aside the acquittal of A-5. The Court thereafter proceeded to examine whether acquittal of A-6 was correct in the facts and circumstances of the case. The Court observed that the circumstances proved against A-3 and A-5 stood on equal footing qua A-6 and therefore the same reasoning would

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apply against A-6 also.

14.4.97. The Court thereafter again considered the circumstances relating to pointing out of shop from where duplicate key was prepared, pointing out of shop where fake number plates were prepared, pointing out of place where Maruti car was parked for days before the blast and pointing out of Dulhan Dupatta shop where the stolen car was parked on 19.05.1996.

14.4.98. The Court further considered additional circumstances proved against A-5 and A-6, namely pointing out of shop where 9V battery used in the blast was purchased, pointing out of shop where shouldering of battery terminals was done and pointing out of shop where Jaiko wall clock was purchased. Ultimately, the Court answered the question framed by it in the negative and set aside the acquittal of A-6.

14.4.99. Thus, the aforesaid judgment reflects that several places of relevance, though common, had been pointed out by accused nos.3, 5 and 6 and such pointing out circumstances were treated as proved against them. Similarly, in the present prosecution case also, there are several places which have been pointed out by different accused persons though the places remain the same. Hence, on the issue of pointing out proceedings, the aforesaid judgment would be squarely applicable to the facts and circumstances of the prosecution case. So far as accused no.9 in the cited case is concerned, the conviction appears to have been recorded purely on the basis of confessional statement recorded under Section 164 Cr.P.C. in different proceedings.

14.4.100. Further, considering that the aforesaid judgment pertains to a bomb blast case, there are several other similarities and comparable features with the present prosecution case including conspiracy, application of Section 10 of the Evidence Act in context of confessional

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statement of accused no.9 and also application of Section 30 of the Evidence Act besides others.

14.4.101. With the aforesaid analysis of S. 27 as well as S.8 of the Indian Evidence Act the court may hereby deal with the Panchnamas which have been exhibited on the strength of the deposition of the panch witnesses and supported by the Investigation officer's evidence. The court has been careful in not dealing with the panchnama at all which is not exhibited with the deposition of the panch witness or where the witnesses have been declared hostile.

14.4.102. Exh.2757 is the panchnama is regarding the discovery of a fact by accused No.63-Tanvir, who was in the custody of police and wanted to show a house which he obtained on rent for other accused. Upon searching the house, police found some materials which is used in preparing bomb. On perusal of contents of the said panchnama, it is revealed that it was carried out on 28.8.2008 at 12.15 PM. Accused No.63 Tanvir has made voluntary disclosure before panch witness that he wanted to show a house which he obtained to other accused on rent. The house was situated near Paliya Ground. Exh.2757 further says the house was locked, therefore using the tommy (iron rod) it was broken open. Some articles like pellets, bolt, scissors, plastic containers having the smell of petrol, some particles having the smell of Ammonia (on experiment by a scientific officer on the spot) were found from the house. Articles and dust on the floor were collected as per the instruction of a forensic science expert.

14.4.103. In the examination in chief, Sanjay Patel (PW No.235, Exh.1225) has deposed that he was called by PSI Mr.N.S. Chaudhary near Chok Bazar and brought him to PI Parmar. He consented to be a Panch witness. Accused Tanvir was present before the police. The

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accused Tanvir was identified by Sanjay Patel during his deposition. Sanjay further stated that Tanvir wanted to make voluntary disclosure about a house which he obtained on rent for other accused. Another witness Ajay Patel was also present before the police. As per the instructions of Tanvir all proceeded at the house situated near Paliya Ground in a Tata 407 police vehicle. The house was shown by Tanvir. It was locked, therefore broken open, wherein some articles like pellets, bolt, scissors, and plastic containers having the petrol smell were found. The description of the house was also deposed. Forensic experts were called, as per their instruction the dust on the floor was also collected. An electric switch board was seized with the help of an electrician Mr. Rameshbhai. It is deposed that plastic carpets, plastic bags, plastic boxes, gas stove, beg sheets, pillow etc. were seized from that place.

14.4.104. It is pertinent to note here that Sanjay Patel (PW No.235, Exh.1225) has mostly supported the contents of panchnama, but few facts he could not depose on his own, regarding one brass scissor and white plastic sheet found at the house. Ld. Sp.P.P. has put some facts of panchnama in the form of leading questions which were answered in affirmative.

14.4.105. All the muddamal articles seized were identified by Sanjay Patel. He also identified his own signature and signature of Ajay Patel on Exh.2757 to 2761 on Panchnama and signature slips.

14.4.106. Looking at the cross examination, he admitted that his house is situated 5 to 6 kms. away from the crime branch police station. He explained that on that day he had to go to the municipal corporation to pay the tax and thereafter went toward the petrol pump where the police had called him. *Therefore, his presence near the Police station is satisfactorily explained.* Further, he said that the alleged house was 2 to

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3 kms away from the police station. It is admitted that he does not know sections of offence and he did not dictate panchnama to police. Police have written it in his presence.

14.4.107. In view of the aforesaid facts coming in the deposition and cross-examination of the panch witnesses and on perusal of the panchnama, it appears to the Court that a particular house situated in River View society was obtained on rent by Tanvir is proved. It is also proved that materials mentioned in panchnama were seized from that house. Only two leading questions were asked by Ld.Sp.P.P. which is answered in affirmative. It is on record that panchnama was made on 28.8.2008 and deposition of Sanjay Patel was recorded on 15.4.2015 i.e. after more than 6 years. Therefore, there happens to be some minor discrepancy which does not create any doubt. No quesions asked in cross examination suggests that the statement made by Tanvir was not voluntary. Panchnama is not supposed to be written as per the dictation given by panch witnesses. It is sufficient that the procedure is conducted in presence of the panch witnesses.

14.4.108. The facts of obtaining the house on rent was known to the police but police did not know where it was situated, which was discovered at the instance of accused Tanvir. The proceeding was not done in isolation, but officials of F.S.L. were present at the spot, electrician Mr. Rameshbhai was also called at the spot. The proceeding of panchnama is also supported by F.S.L. officials. The contents of panchnama is validly proved as per the provisions of Sec.27 of I.E.Act. Thereby establishing the connection of accused Tanvir with the house mentioned above.

14.4.109. The panchnama Exh.2794 is a discovery panchnama showing the places where bombs were planted at the instance of accused Tanvir

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(accused No.63). On perusal of said panchnama Exh.2794, it appears that the same was carried out on 27.08.2008 at 1.15 AM and ended at 7.00 AM, wherein accused Tanvir had voluntary disclosed before panch witness that he wanted to show the places where bombs were planted. He leads the police to 27 places and stated before police where the bombs were planted, details of which are as under:

- Planted 4 bombs and other material in a red Wagon-R car. Near Sargam Complex, Doctor house building.
- Planted 1 bomb on the Mango tree. Beside Maharana Pratap Udyan, near the Swimming Pool.
- Put materials in Black Wagon-R Car. Near Poona General Hospital, opposite Saurashtra Hardware.
- Planted 1 bomb on the Pippal tree, Oppo. Bansari Pan Centre, Lambe Hanuman Road.
- Planted 1 bomb on baniyan tree and 1 bomb in advertising hoarding, near Anil Choksi weigh bridge, near Minibazar, Varachha Road.
- Planted 1 bomb, in advertising hoarding hanging on overbridge pole no. 98, near Varachha Main Road.
- Planted 1 bomb, near Samarpan Kapad Kendra (Plot no.91) Prestige Main bazar, Lambe Hanuman Road.
- Planted 1 bomb 50 feet away from sr. no. 7, near Radhe Fashion.
- Planted 1 bomb near the place at sr. no. 8, on the top of the shutter behind the sign board of Omkar Jewellers in plot no. 132.
- Planted 1 bomb inside the Substation of Torrent Power, near Shakti Vijay society, Lambe Hanuman Road.
- Planted 2 bombs, on Varachha bridge, between Pillar no. 28 to 31.
- Planted 2 bombs, on hoardings in front of Alpa Restorant near Bhavna Show room, after over bridge

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- Planted 1 bomb, on hoarding situated in the opposite direction, near Bhavna Show room, after over bridge.
- Planted 2 bombs, one in the northern side and one in the Eastern side divider, at Bhawani Gems circle after the bridge.
- Planted 3 bombs on the electrical pole, near Gajera Circle, oppo. North Zone Health office, at Katargam ward no. 32.
- Planted 1 bomb, at the southern end of Amroli bridge.
- Planted 1 bomb on the shutter of shop Mayank Metler, Hirabazar main road.
- Planted 1 bomb, in the sign board of Genius Instrument shop, at Jadakhadi.
- Planted 1 bomb in the advertising board near Chopati bus stand.
- Planted 1 bomb in Prem Prakash Ashram chok circle, near Maheshwari Bhawan, City light road.

14.4.110. Panch witness Kalpesh Patel (PW No.451, Exh.2793) was examined by the prosecution. He has supported the contents of panchnama.

14.4.111. In his cross examination, he has deposed that he and Nilesh Laljibhai Patel, another Panch (PW No.605, Exh.3241) were called by Mr.Chirag (his friend). Thereafter they went to the police station. The procedure of panchnama continued till morning. There are poles on the road side. Nothing more significant things revealed in cross examination.

14.4.112. In view of the aforesaid facts coming in the deposition and cross-examination of the panch witnesses and on perusal of the panchnama, it has come on record that before proceeding to the place with accused Tanvir, though police knew all the places, because unexploded bombs were already recovered prior to the panchnama. The fact that bombs were planted at various places mentioned in panchnama

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is a a mental fact of knowledge of such places, the evidence of panch Kalpesh proved that Tanvir knew where bombs were planted. To that extent the evidence of a panch witness is admissible. There is nothing proved in cross examination which could shake the testimony of Kalpesh and prove any circumstances which induce Kapesh to falsely implicate accused Tanvir in the offence. Though I.O. was aware of the sites due to previous panchnamayet as discussed here in above the disclosure being voluntary and leading to the discovery of the mental fact of the knowledge of the accused about the very place of planting of bomb much later post his arrest, would make the disclosure admissible as evidence.

14.4.113. Exh.2796 is discovery panchnama regarding discovery of a place from where accused Tanvir (accused No.63) has thrown a pipe bomb in river Tapi. From the contents of this panchnama, Exh.2796, it appears that the same was carried out in the presence of Mr.N.S.Malik, Police Inspector, Traffic Branch, Surat on 01.09.2008 between 9.00 am to 12.05 am, wherein it is mentioned that accused Tanvir Pathan has voluntary disclosed before panch witnesses that he wanted to show a place where he has thrown one pipe bomb in river Tapi standing at Causeway Bridge. It is also stated in the panchnama that Tanvir had made pipe bomb with the help of Qayumuddin @ Asfaq, Rafiq Patel, Jahir Patel, Arif Patel, Ismail Sheikh, Karim Batterywala, and the pipe bomb was kept in the house of Tanvir Pathan situated at River View society F1, Vibhag- 1 and thereafter he has thrown the pipe bomb in the river Tapi from causeway due to fear. As per the disclosure statement given by Tanvir Pathan, they moved towards the causeway, where Tanvir has shown the place standing from where he threw the pipe bomb in the river. Police have called the fire brigade for the purpose of searching for

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a pipe bomb in the water. Approximately 10 people from the fire brigade came to the spot and they searched for a pipe bomb in the river but could not find it. The panchnama ended at 12:05 hours.

14.4.114. One Mr.Sunil Gupta (PW No.452, Exh.2795) was examined by the prosecution. He has deposed that on 01.09.2008 he was called as panch with another panch Mukesh Patil. They have been called at Kurja police station Surat. Malik Saheb was also present there. The accused named Tanvir Pathan was present before police. He wanted to show the place where he threw the pipe bomb. Thereafter, they along with police officers and the accused went towards the place which was shown by the accused. The accused led the police to the causeway from where Tanvir had thrown the pipe bomb. Personnel from the fire brigade were called to the spot and searched for pipe bombs beneath the water but could not find anything.

14.4.115. In his cross-examination, he has deposed that he is a Rickshaw driver. He has also deposed that the place of Causeway pool is 4 to 5 kilometers away from the police station. They reached the Causeway about 10 o'clock. Fire personnel from the fire brigade were called after reaching Causeway. Panchnama was not dictated by him. He could not dictate to the police the sections of offenses leveled against the accused.

14.4.116. In view of the aforesaid facts coming in the deposition and cross-examination of the panch witnesses and on perusal of the panchnama, it appears to the Court that the contents of the panchnama though proved in by the deposition of a panch witness, but nothing was recovered from the place shown by the accused Tanvir. It is quite obvious that pipe bombs may not be found in the flowing water in the Tapi river. Still however, the disclosure by the accused has knowledge of a pipe bomb and it was kept in his house, may have to be established by

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any other independent evidence.

14.4.117. Exh.2806 is again a discovery panchnama, which is regarding Discovery of the place which was used by accused Rafiq (accused No.75) as his residence. The place is shown by accused Tanvir (accused No.63). From the contents of said panchnama, it appears that the same was carried out on 04.09.2008 between 18.05 and 20.15 hours. Accused Tanvir during his police custody has voluntarily disclosed before panch witness that he wanted to show the house which was taken on rent by co-accused Rafik. Police, punch witness and accused moved as per directions of accused Tanvir at the place. Tanvir showed room number 20 of the Master House building, near Saiyad Pumping Station, as the rented house of Rafik. Police broke open the lock and entered the room but nothing suspicious was found there in the room. Forensic science experts were also called at the place, but as per their opinion nothing suspicious was found and nothing has been recovered from the place.

14.4.118. One Mr.Mehulkumar Arunbhai Jadiya (PW No.456, Exh.2805) has deposed that he was called by police constable Dinesh bhai. There was an accused in the custody of police whose name is Tanvir. He wanted to show a house. Therefore, Mehul along with his friend Vipul, Police personnel and accused Tanvir moved towards the place shown by Tanvir. They reached the place as per the directions given by Tanvir. The place was situated in the Master Building. Room number 20. The room was locked. The lock was broken open by police. In the room nothing suspicious was found to the police. Forensic science experts were also called there. Mehul could not identify Tanvir during his examination in chief.

14.4.119. In his cross examination, he has admitted that during the whole panchnama, he was with Tanvir, he repeatedly saw Tanvir during the

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panchnama proceeding. The mentions of various sections of the act was not dictated by him. The language in which the panchnama is written, is language generally used by police.

14.4.120. In view of the aforesaid facts coming in the deposition and cross-examination of the panch witnesses and on perusal of the panchnama, it appears to the Court that accused Tanvir has shown a place which was taken on rent by Rafiq and the place was discovered as per the statement given by accused Tanvir. Panch Mehul has categorically deposed before the court that as per the directions given by Tanvir, the police and all panch witnesses moved towards the place. The place that is room number 20 was also shown by Tanvir as the rented premises of Rafiq. Therefore, there is no doubt at all that the punch witness was telling the lie. No doubt he could not identify Tanvir, but he has given an explanation that the proceedings of panchnama were held eight years ago. At that time when he became a witness to the panchnama proceeding, Tanvir was having a light shave on his face but at the time of deposition all the accused were having long beards. Therefore, he could not identify Tanvir. The explanation given by the witness is trustworthy. Remembering the face of a person and remembering a proceeding is altogether different. It is quite impossible for the witness after 8 years to identify a person to whom he never met during the period of 8 years. Therefore, the the voluntary disclosure of the Master house as a hideout has to be accepted as evidence covered under s. 27 of evidence act as the same was used for conspiracy and for a place of conspiracy there is no question of discovery of any material object but only the mental fact of knowledge of the place which is proved by the deposition of Mehul.

14.4.121. Exh.2822 is a discovery panchnama regarding discovery of

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places, at the instance of Muhmmad Sajid, from where phone calls were made by Accused Muhmmad Sajid to Tanvir, using coin boxes. From the contents of the said panchnama, it appears that the same was carried out on 10.11.2008 between 13.15 to 15.30 hours. It is contained in this panchnama that accused Muhammad Sajid @ Salim @ Sajjad @ Saad wanted to show a telephone coin box from where he called Tanvir Pathan on mobile number 9374553669. There are five various places where coin boxes were installed which were used by the accused to call Tanvir Pathan. As per the panchnama he led the police first at the coin box near hotel Savera on station road Surat, then to the coin box installed near hotel Yuvraj, then at the coin box near the railway station gate, then near hotel Jai Vijay and lastly at near Holi Bangla Kataragam Darwaja Road.

14.4.122. One Mr.Ankit Bhatt (PW No.461, Exh.2821) was examined in support of the prosecution. He has given deposition in examination in chief that he and Mr. Dhaval were called by police at Kurja police station. One police officer, Mr. Parmar, was present. Accused Sajid Mansuri was also present before police. The accused wanted to show some places from where he had called co-accused Tanvir. Thereafter, as per the directions given by Sajid Mansuri, the vehicle was driven towards various places, where coin boxes were used to call accused Tanvir. Ankit Bhat had also deposed the descriptions of the places where he accompanied the accused with police personnel. But he could not identify the accused during the examination in chief.

14.4.123. In his cross-exmaination, he has admitted in his cross examination that out of the places he went with police, at some place, there were no coin box found. He has also admitted that the shop holders Jitendra Soni and Yusuf Patel had not produced any documents

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regarding the installation of the coin box at their shop. He further admitted that the description of the accused was not mentioned in the panchnama. There was nothing mentioned in the panchnama regarding the look of the accused. He admitted that he had never been to be a witness in any panchnama proceedings before. He doesn't know the law and the penal sections mentioned in the panchnama. He did not keep any diary regarding day to day affairs. He had never met accused Sajid before the panchnama proceeding. Police had inquired from Yusuf Patel and Jitendra Soni but he did not know if any statement was reduced into writing or not.

14.4.124. In view of the aforesaid facts coming in the deposition and cross-examination of the panch witnesses and on perusal of the panchnama, it appears to the Court that accused Muhammad Sajid used a coin box to call accused Tanvir. The places from which the accused Muhammad Sajid had called Tanvir were not known to the police before the Muhammad Sajid had given a voluntary statement before police, showing his willingness to show the places. Therefore, the places where coin boxes were installed and they were used by Muhammad Sajid to call Tanvir, was a new fact which the police did not know before the Accused had given a voluntary statement. Accused led police and panch witnesses to the places is a discovery of a fact according to Section 27 of Indian Evidence Act. Witness Ankit Bhatt has categorically given deposition regarding the places where he accompanied the police with the other panch witness and accused. Therefore the contents of the panchnama is proved by the prosecution. The circumstances put to the witness in the cross examination is not creating any doubt regarding the proceedings of panchnama. Therefore though there is no recovery of material object as this evidence is for the purpose of establising the

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contact betwween two accused and that too without being traced through mobile contact the public phone booth appeared to have been used and the places led to by the accused the public phone booth were found in existance. Therefore this is a voluntary disclosure by the accused about the mental fact of knowledge as to how as a part of conspiracy the accused use to be contact with each other. This panchnama being voluntary in nature leading to discovery of a place connected with the offence of conspiracy such confessional part will not be hit by Sections 25 and 26 of the Evidence Act.

14.4.125. Though P.W. Ankit Bhatt could not identify the accused during his examination in chief. But as stated earlier also, we are of the view that many years have passed between proceedings of panchnama and the recording of deposition. Therefore, it is quite obvious that the witness could not remember the face of the accused. So, the only circumstances of not identifying the accused would not create any doubt on the testimony of the witness.

14.4.126. Exh.2849 is Search & Seizure panchnama conducted at House of Accused Jahir Patel & Tanvir Pathan on 27.08.2008 between 21.35 to 23.30 by A.C.P. Mr. N.B.Parmar. From the contents of the panchnama, it appears that ACP had conducted a search of the house of accused Mohammad Zahir Patel and Mohammad Tanvir Pathan. According to the panchnama, police visited the house of Mohammad Zahir Patel first. The house was situated in Natraj compound, behind Rubi complex, where they found one newspaper cutting in which the article was published by the author, Dexter Flicks. With the heading, “Laden got ill before fight” Police also found one gas connection book of Reliance Gas Company, wherein phone number mentioned is 2570842 and the customer's name was Amin Banu Zafar bhai Sayed, of Molvi Falia, opp.

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Asha hardware Nr. Varachha masjid. The office of Reliance gas mentioned in the book was Lakshmi Gas Centre. Police has seized the newspaper article, gas connection book and the cylinder in presence of the punch witnesses.

14.4.127. Thereafter the police visited the house of accused Tanvir Pathan. The house was situated at House number F/1, first floor Riverview Society. Police found one notebook in the house wherein on the cover page it is written. "Life" "commando" "friendship". The notebook contains the pages having square blocks. On page number 18 it is written that "*Vanjara ne jo kiya agar dusri kom ke upar hota to pura Gujarat hila dete. Magar hum chup kyon hai. 92 mein jo musalmano par zulm hue izzate luti uska koi case nahi hai. Ek musalman agar apne mazhab mein zara paband nazar aata hai. To use sidrat pasand kah kar tha chitharth kar use aatankwadi kah kar us par watch rakhi jati hai."* Police have also found one Red gas cylinder of Reliance gas company. The notebook and gas cylinder were seized. Nothing else was found questionable.

14.4.128. The prosecution has examined Panch witness Laxmanbhai Manjibhai Gamit (PW No.463, Exh.2848). In his deposition, he has stated that he was called at Chauk bazaar police station by police officer Mr. Rathod. He went there, when police officer Mr. Parmar was present there. They have been asked for consent in the panchnama proceeding regarding the bomb cases. Another Panch, Anil Marathi was also present in the police station. Zahir & Tanveer were present there. They went to the house of Zahir Patel, which was situated near Ruby complex Natraj compound. They found one newspaper cutting and newspaper cutting having the article regarding Osama bin Laden, gas connection book and one gas cylinder of Reliance company which was seized by police.

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Thereafter they visited the house of Tanvir. The house was situated at F/1. They found one notebook under the bed sheet wherein some writing was there which was seized by police. One gas cylinder was also seized by police and thereafter they returned to the Chauk bazaar police station. He identified his signature on the panchnama, but he could not identify the accused. He tried to identify the accused and he identified two persons but which was wrong identification. He has been shown muddamal article number 29 to 33. The newspaper article, the gas cylinder connection book, the notebook found from Tanvir's house, and the gas cylinders seized by the police from Zahir Patel's house and Tanveer Pathan's house, which was identified.

14.4.129. In his cross examination, he admitted that he doesn't know how to write and read the English language. Even he doesn't know the police officer Mr. Rathod who called him at Chauk Bazar police station for the panchnama proceeding. When he was called, it was 7:30 to 8:00 O'clock in the night. He did not know police officer Mr. Parmar. He could not identify Mr. Parmar today. He had never seen the accused before the panchnama proceeding. He did not know who the family members of both the accused were and what their occupation was. He did not even talk with the accused at the time of the panchnama proceeding. No primary panchnama was prepared before proceeding to search the house of both accused persons. No sign board was there on the house regarding the owner's name. No document was found containing the names of Zahir Patel and Tanvir Pathan. He has not tried to talk to any person who may have gathered at the place when panchnama proceedings were going on.

14.4.130. Perusing the panchnama and the date on which it was made, it is clear that police knew before the panchnama proceedings that Zahir

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Patel and Tanvir Pathan were residing. Therefore, there is no discovery regarding the residence of Zahir Patel and Tanvir Pathan. The panchnama cannot be said to be a discovery panchnama under section 27 of the Indian evidence act, because police were very well knowing where both the accused were residing. It is not the case that only on the information given by Zahir Patel and Tanvir Pathan, police got to know the residence of Zahir and Tanvir. Therefore, the panchnama cannot be said to be a discovery panchnama. Still however as per the contents of the panchnama and deposition of punch witness Lakshmanbhai, it is proved that police has searched the house of Zahir Patel and then Tanvir Pathan and police has found some articles like newspaper cutting, gas connection book, gas cylinders from the house of both accused and one notebook containing some provocative writings. What is stated by Lakshman bhai in his examination in chief remains intact even during cross examination. Therefore when there are sufficient evidence to involve the accused in the offence the present panchnama can be used as a corroborative material.

14.4.131. The only circumstances that came in during the examination is that the witness could not identify the accused persons. But the witness has specifically said before the identification procedure during examination in chief that he could not identify the accused person because so many years have been passed between the date of panchnama and on the day of deposition. But still the court insisted that he may try to identify accused persons, he tried to identify the accused. And indicated two persons as Zahir Patel and Tanvir Pathan but it was a false identification.

14.4.132. At the cost of repetition we again say that it is quite possible that the person to whom the witness did not know before the panchnama

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proceeding. He could only see the accused person for a couple of minutes. It is hardly possible for a person of an average intellect that he could identify the person after seven or eight years. Therefore, only because he could not identify the accused the deposition cannot become questionable or doubtful. Therefore the seizure and search proceeding is proved by the deposition.

14.4.133. Exh.2851 is a discovery panchnama showiing 8 different places where coin boxes were installed which were used by Tanvir to talk with co accused Rafiq Patel. This panchanama was carried out on 05.10.2008 between 17.00 to 20.00 before ACP Mr.N.B.Parmar. The contents of panchnama show that on 5.10.2008 accused Tanvir Pathan was in the custody of police at Chauk Bazaar police station DCB crime branch. He has voluntarily disclosed before a panch witness that he will show the places of coin boxes which were used by him to talk with co-accuse Rafiq Patel. At the instance of the voluntary disclosure of Tanvir Pathan, police officers, panch witnesses and accused Tanvir Pathan went to different eight places shown by Tanvir Pathan.

14.4.134. The prosecution has examined Panch witness Robin Prakashchandra (PW No.464, Exh.2850). He has deposed that on 05.10.2008, he was passing through Chawk Bazar at around 5 o'clock in the evening, where police called him at DCB police station. One police officer, Mr. Parmar, was present. One accused named Tanvir Pathan was also present. Tanveer Pathan has voluntarily disclosed before the panch witness that he wanted to show the places from where he had called. Another panch witness Kushal Chandarana was present with him. They went with the police officers and the accused Tanveer Pathan to eight different places in Surat City. He has described all the eight places in his examination in chief. The first place was Wadiya sons, opposite

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Syedpura police station; Second was Bhola Pan Centre Rampura road; Third was Naz Pan Centre near Syedpura pumping station; Fourth was Ahmad Pan Centre, Fatakdawadi, Ved Road; Fifth was Dinesh Jains shop, situated near Lal Darwaja; Sixth was Satish Chappal Mart the shop situated near Lal Darwaja; Seventh was a Pan Centre outside Hotel Anand, station road, near Ayurvedic college; and the last was Kanaiya Dairy, situated at Ashwini Kumar Road near Pramukh Darshan apartment. He has identified his signature in the panchnama, produced Vide Exhibit 2851. He tried to identify accused Tanvir Pathan on the video screen. But he could not identify the accused Tanvir Pathan and the person he showed as accused Tanvir Pathan was the wrong person.

14.4.135. In his cross-exmaination, he has deposed that he was doing the business of sanitary-ware. On the day of panchnama, he did not go about his business, but he was free. Only one policeman came to him to call him to be a panch witness. He did not know police officer Mr. Parmar before the panchnama proceeding. He did not know the accused before the panchnama proceedings. He did not know who the family members of the accused were and what their business was. He was not keeping any personal diary. He did not meet with any third person during panchnama proceedings.

14.4.136. The Court also finds that the deposition of panch witness Robin appears to be trustworthy regarding the fact that Tanvir Pathan, has voluntarily disclosed eight places before police, where coin boxes were used by Tanvir Pathan to call. This circumstance of use of public phone by coaccused appears to be the modus to prevent the police from tracing the connection between the accused persons to prevent detection. Therefore when a voluntary disclosure of accused is recorded about purpose of usage of phone booth the prosecution has been able to

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establish that the accused persons have remain in touch with each other by using public phones to act in furtherance of their conspiracy. No doubt, the witness could not identify accused Tanvir Pathan, but he has in his examination in chief stated that it is difficult for him to identify the accused Tanvir Pathan because years have passed between the day of panchnama and the day on which he was giving deposition. Therefore, merely by not identifying a person after seven to eight years of time, it would not create any doubt on his evidence. Further, in cross examination it was revealed that he did not meet any third person. This question, perhaps may be asked because at the places where coin boxes were installed, the shopkeepers may be inquired by police officers. But it is not relevant regarding the deposition given by Robin. Robin has also stated in his cross examination that he didn't know the accused before the panchnama proceeding. Even he did not know the family members of accused Tanvir Pathan and their business. To us, this question is not relevant at all and would not be helpful to the accused in any way, because there is nothing in the panchnama vide exhibit 2851 that the witness had met with the accused before the panchnama proceedings and he was known to the family members of the accused. Therefore, the deposition given by Robin is trustworthy to the extent he narrated 8 places where coin boxes were there which were used by accused Tanvir.

14.4.137. Exh.2860 is a discovery panchnama of Nokia 1108 mobile phone thrown in Khadi (Drainage) near Bharimata Road. It was carried out on 30.08.2008 between 10.20 to 14.05 before PSI Mr.K.S.Desai. This is a panchnama wherein accused Tanvir Pathan has voluntarily disclosed before panch witnesses that he will show a place that is drainage Khadi situated near Bhari Mata road, from where he has thrown black color mobile phone of Nokia company model no. 1108 on

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the very next day after the bomb blast in Ahmedabad city. After this disclosure, as per the directions of accused police and panch witnesses went to the place near Bhari Mata road drainage Khadi, where accused Tanvir Pathan had shown a place where he threw mobile phone. Police arranged persons from Surat Municipal Corporation for searching mobile phones from the Khadi but could not find Mobile phones.

14.4.138. In this regard, prosecution examined Panch witness Sanjay Bhandari (PW No.467, Exh.2859). In his examination in chief, has stated that on 30.8.2008 at around 10 o'clock in the morning, he was going towards Sayedpura. Police had called him at DCB police station and made him understand the facts of the offense. Sanjay Bhandari has further deposed that one accused was present in the police custody whose name was Tanvir Pathan. Tanvir Pathan has voluntarily disclosed before him that he wished to show a place from where he threw his mobile phone in the Khadi. The khadi is situated near Bhari Mata road. According to the directions given by accused Tanvir Pathan, police, panch witnesses, and the accused went to Bhari Mata road, drainage Khadi where the accused has shown a place from where he threw the mobile phone. To find the mobile phone from Khadi, police had called personnel of SMC. Mr. Parekh from SMC arrived at the place and searched for the mobile phone but could not find the mobile phone. He had tried to identify the accused but he could not identify accused Tanvir Pathan.

14.4.139. In cross examination, witness has accepted that when he reached the police station, another panch witness Ravi was present in the police station. When they reached drainage Khadi, persons from Surat municipal corporation were present. . He has further admitted that he did not maintain a personal diary wherein day to day affairs are being noted.

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In the cross examination conducted by advocate Mr. Pathan, he has said that when he reached the police station the photographer was not present. He did not know that videography was done at the police station or not. He did not even know that videography was done during the journey from the police station to the drainage Kadi or not. He had not noticed whether the videographer had given a cassette of videography to the police or not. He has signed at two places; First signature was made in the police station and second signature was made at the place i.e. Khadi.

14.4.140. The Court finds that this panchnama is regarding the discovery of a fact that accused Tanvir Pathan was using Nokia mobile phone model number 1108, which he had thrown in the drainage khadi near Bhari Mata road. It is proved in the evidence of Sanjay Bhandari that accused Tanvir Pathan has voluntarily stated before the punch witness that he was using Nokia mobile phone and had thrown it in the khadi. Though the mobile phone could not be recovered from the Khadi because as per the statements made in the panchnama, accused Tanvir Pathan had thrown the mobile phone in khadi on 27.7.2008 and the panchnama proceedings were conducted on 30.8.2008 i.e. almost more than a month is passed from the day when mobile was thrown in the Khadi. As the mobile is not discovered, but still the fact that the accused was using the mobile phone at the time when the alleged offense took place is proved by the panchnama. Whether the mobile phone was used in the offense or not is depending upon the other facts and depending upon the proof of those facts. By evidence of Sanjay Bhandari it is proved that the accused has given voluntary disclosure before police and in the presence of a punch witness that he was using Nokia mobile phone model number 1108 at the time of the alleged offense. There being no reason for the accused to destroy the phone

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unless he wanted to hide or prevent the police from discovering any link with other accused . Therefore up to that extent the discovery of fact is proved.

14.4.141. Exh.5452 is the disocovery panchanama of Discovery of fact that there was a meeting on 20.7.2008 in the house of Yakub Memon situated at House no.B/9, Sharifabad Co. op. Housing Society near Jivraj Park Police Choki. It was carried out on 30.08.2008 between 15.15 to 16.15 before P.I.. Mr. Vinay Shukl. Accused Shamsuddin was in the police custody, in the offense registered at Shahibag police station, Crime registered number 236/2008. He voluntarily disclosed before punch witness that he will show a house owned by Yaqub Memon, where a meeting was held before the bomb blast on 20.7.2008, a week before the bomb blast in Ahmedabad. According to his voluntary disclosure , punch witness and accused went to the Shariffabad cooperative housing society, house number B/9 situated near Jivraj Park police Choki, where Mrs. Nurjahan, wife of Yaqub Memon was present in the house. Police have inquired into the house. Police found one mobile phone of Sony Ericsson company in which the sim card was inserted of Hutch company. The mobile number was 9913770605 which was seized by the police. Police also found one electricity bill issued in the name of Yaqub Memon. Nothing found objectionable in the house. Panchnama ends there. Police started Panchnama at 15.15 hours and ended at 16 15 hours.

14.4.142. In this regard, prosecution examined Panch witness Nasruddin Ismil Shaikh (PW No.809, Exh.5451) in support of panchnama. In his examination in chief, he deposed that police called him as a punch witness. One accused named Shamsuddin is in the custody of the police. Police made him understand that the accused was arrested in a bomb

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blast case and asked him whether he would choose to be a punch witness. He consented and thereafter the accused has told before the punch witness that he will show a place where accused and other co-accused had conducted a meeting. Objection was raised by learned advocates for the accused that incriminating statements could not be recorded in evidence. Learned trial court has put a note that it will be decided at the final decision of the case.

14.4.143. Thereafter, Nasruddin has deposed that they departed from the police station with police officers and the accused in a private vehicle. They went to the Sharifabad Cooperative Society house number B/9. One lady was present whose name was Nurjahan Memon. He saw the house to the police. Police found one mobile phone of Sony Ericsson company having a sim card of Hutch company from one cupboard which was seized by the police. Accused Shamsuddin has stated that they were doing meetings in the house, in this house.

14.4.144. Police also found one electricity bill at the place which was also seized by the police. It was issued in the name of Yaqub Memon.

14.4.145. Witness Naruddin was confronted with the Panchnama wherein he identified his signature which was exhibited. Nasruddin has also identified his signature on the torrent power electricity bill which was seized in his presence. He also identified the Sony Ericsson mobile phone which was seized from the place.

14.4.146. In the cross examination, Nasruddin has admitted that he is residing in Jamalpur area and doing the work of driving. He studied up to 9th standard in Urdu medium. He knows writing and reading Gujarati language. Gayakwad Haveli police station near his house where crime branch police station. Another panch Abdul Rehman was already present there. He did not know who Abdul Rehman was before the

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panchnama proceedings. Not even knowing what Abdul Rehman was doing.

14.4.147. He also did not know who Shamsuddin was and what he was doing for his survival. After completion of the panchnama at Sharifabad Cooperative Society, they return to the Gayakwad Haveli police station at 4:15 hours. 25 to 30 minutes time required to reach Sharifabad society.

14.4.148. The Court finds that some circumstances shown in the cross examination that the witness did not know the name of the police officer and the writer of the police officer, did not know vehicle number, did not record the statement of Nurjahan, do not create any doubt regarding the discovery made by the accused before police. Nothing proved in cross examination which could suggest any false statement on part of witness or suggest that actually no panchnama proceedings were made in the presence of the punch witness and accused Shamsuddin had not voluntarily made a disclosure before the punch witness.

14.4.149. Though Nasruddin Sheikh could not identify Shamsuddin in the examination in chief, he has given a plausible explanation why he could not identify the accused.

14.4.150. Exh.5458 is discovery panchanama Discovery of fact accused Aiyaz Syed (now approver) who has shown one key of the cycle lock used for planting bomb, the key was thrown near Memco Bus Station. It was carried out on 09.09.2008 between 14.05 to 15.45 before ACP Mr. Dave. Accused Ayaz Sayed was in the police custody on 9.9.2008 in the offense registered at Naroda Police Station, crime register number 401/2008 under Section 307 120B of Indian Penal Code. He voluntarily discloses before punch witnesses that he would show something. And therefore, as per the instructions of Ayaz Sayed, police officials, punch witnesses and accused went from crime branch office to the place near

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municipal bus station. Ayaz Sayed removed one Key which was concealed beneath the earth and dust material behind one shop. Aiyaz disclosed before punch witnesses that this is the key of a bicycle lock, which was put by Aiyaz Sayed at Param Shakti tea-stall near Naroda Gam Bhagol cross road. Police officials have seized the key and put a seal in the presence of punch witnesses.

14.4.151. In this regard, prosecution examined Panch witness; Ashish Patel (PW No.810, Exh.5457) has supported the facts narrated in the panchnama. He deposed that on 9.9.2008 he was called by police near Gayakwad Haveli. He went to the police station where one accused was present. His name was Ayaz Rajakmiya Syed. Accused Ayaz Syed has voluntarily disclosed before this witness that he would show something regarding the bomb blast. Thereafter he went with police officials, accused and another punch Mr. Kamal to the place which was near Memco bus station where Aiyaz Syed has shown one silver color Key which was the key of a bicycle lock, which he has put near Param Shakti Tea Stall Naroda Cross Road.

14.4.152. Further, Aashish Patel has identified the Key and his signature on the panchnama as well as on the chit put inside the container in which the key was sealed.

14.4.153. Regarding the identification of an accused, he deposed before the court that as so many years had passed, he could hardly identify the accused. But he disclosed the description of an accused that he was of a single body, having curly hair, wheat like complexion. He could not identify him in courtroom

14.4.154. In his cross examination, he has admitted that the Memco bus station is a traffic junction where there is traffic of people and vehicles. The shop was made of tin which was installed on a lorry cart. A key was

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found from the footpath.

14.4.155. The Court finds that though witness has supported the contents of panchnama but in cross examination he has admitted that the key was found from the foot path behind the temporary shop which was installed on a lorry. And the place from which the key was alleged to have been found, is a place where there is a big traffic junction and so many people and vehicles are passing through the place. Though it is argued about the improbability of the key being found in the manner described in the panchnama yet there is nothing in the cross examination of the witness or in the execution of the panchnama which would lead the court to believe that the panchnama is fabricated or that the key has been planted. Therefore in absence of any of the above the court is inclined to treat the puchnama as under S. 27 and therefore the fact of association of the accuse with the bomb laden cycle will have to be believed especially when it is found that the key did open the lock of the cycle which was seized from the site.

14.4.156. Exh.2860 is the Discovery Panchama of Discovery of place from where accused Aiyaz Syed (Approver) had talked with Co accused Qayamuddin using PCO on 25.7.2008. It was carried out on 08.09.2008 between 16.30 to 17.15 before ACP Crime Branch. This is a panchnama in the offense registered at Naroda police station CR number 401/2008 offense registered under section 307 120 B of Indian penal code. The panchnama is regarding the discovery of a place i.e. PCO using it, accused Aiyaz Sayed had talked with Qayamuddin the co-accused. As per the disclosure by accused Ayaz Sheikh, police and punch witnesses went to the place where PCO Centre was named Ajay telecom, which was used by the accused to call Qayumuddin on his mobile phone.

14.4.157. Looking at the examination in chief, Panch witness; Manish

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Chandrakant Shah (PW No.811, Exh.5462) has deposed before trial court that, he was called by crime branch police officials near Ajay Telecom where one another punch witness Dhiren Patel was already present. Accused Ayaz Sayed was present with police at Ajay Telecom. As per the deposition, witness has deposed that accused Ayaz Sayed has said before him that he used this PCO on 25/7/2008 to call Qayamuddin Kapadia. He also identified his signature on the panchnama, but he could not identify the accused due to the lapse of time.

14.4.158. In cross examination, he has said that it is not true that he was called by police on 8/9/2008 at 4:30 p.m. But he has given an explanation that he was called between 4.00 to 4.15. He admitted that he had never been to the crime branch police station. He has also said that police officials were not in that uniform. He did not know that Dhirenbhai, the other punch witness and police officials.

14.4.159. He admitted that he did not know the accused. He said that the police have not verified the telephone instrument using it by inserting a coin. Police had not collected any evidence from the shopkeeper. he has given the explanation for not identifying the accused before court.

14.4.160. The Court finds that the witness was called at Ajay Telecom by police and accused Aiyaz Sayed was present there and accused Ayaz Sayed has disclosed before him that he used this PCO to call Qayammuddin. This being a narration of a fact of use of PCO to be in contact with each other especialy with co accused Kayamuddin. In fact, the court may not dwell much on this as Aiyaz has already deposed as a witness to all these facts after granting of pardon to him therefore this evidence can be used for corroboration of the version of approver Aiyaz

14.4.161. Exh.5470 is the Discovery Panchama of Discovery of two places; First, the place where the bicycle bomb was put; the place from

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which accused Aiyaz Accused No.23 (approver) boarded bus no.66/3 and put a bomb under the last two seats of the Bus. It was carried out on 08.09.2008 between 08.30 to 12.00 before ACP Crime Branch. According to the contents of Panchnama, accused Aiyyaz Sayed was in the police custody in connection with the crime registered at Naroda police station, CR number 401/2008. It is mentioned in the Panchnama that punch witnesses were called by the police at the police station where accused Ayaz Sayed has voluntarily disclosed before punch witnesses that he will show the place where co-accused Rajik has given a bicycle and two bombs. The place was Ajit Mill Cross road. Thereafter, accused Ayyaz Sayed had put the bicycle at a tea stall and another bomb was put in bus number 66/3. According to the voluntary disclosure of accused Ayaz, the punch, police officers and police staff along with the accused went to the places which was shown by accused Ayyaz Sayed. Accused Aiyaz Sayed has shown the place, that is, Ajit Mill Cross Road where the bicycle and bomb were given to him by Rajik. Aiyaz has also shown a place where he put a bicycle with one bomb and parked the bicycle there. He also showed the place from which he boarded the bus and the place where he got off the bus.

14.4.162. In examination in chief, Panch witness; Dakshish Bhanuprasad Raval (PW No.812, Exh.5469) has categorically deposed the contents of panchnama in his deposition. He supported all the contents of the panchnama as well as the presence of another punch witness, Kishorbhai. He also identified his signatures on the panchnama. But he could not identify the accused, he has given some descriptions of the accused and said that he was of a single body having curly hairs at the time having light beard on the face.

14.4.163. In his cross examination, he has admitted that he knew the

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places where the bomb blast happened in the Naroda area and he knew the places before the panchnama proceeding. He himself and Kishorbhai, the other panch witness, had inquired from the accused. Whatever they have asked the accused, were written in the panchnama. He had never been a punch witness before at the request of police. He did not know whose handwriting was in the panchnama.

14.4.164. The Court finds that it is proved in the cross examination that the places where the bomb blast happened was known to the punch witnesses before the panchnama proceeding. The location of the bomb blast was not covered fact. Therefore there cannot be any discovery regarding the place of blast. But, the panchnama is not only regarding the place of blast but also regarding the place where co-accused Rajik delivered a bicycle and two bombs putting it in a bag which was also shown by the accused voluntarily, which is proved by a panch witness in his deposition. Further the place from where the accused Ayaz Sayed boarded the bus is also not known to anyone. Therefore the evidence regarding the place of boarding is also a discovery and is sufficiently proved in the evidence of Daxeshbhai. The defence side failed to create any suspicion or doubt regarding the facts stated by the witness. Moreover the court may take in to consideration that the very accused no.23 Aiyaz has become an approver hence his evidenc with regards the very circumstance that the puchnama seeks to prove has been deposed to by Aiyaz as a witness and he was also subjected to thorough cross examination.

14.4.165. Exh.5485 is a discovery panchnama of table fan used by co-accused Yasin @ Wasim and Kayayuddin @ Rizwan Accused Nos.12 and 37 respectively while preparing the bombs at Dani Limda at the instance of Mohammad Ismail @ Abdul Rajik accused No.27. The said

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panchnama was carried out on 08.12.2008 between 11.00 to 13.00 before ACP Mr.M.J.Chavda. According to this panchnama, accused Mohammad Ismail @ Abdul Rajik was in the custody of police. He voluntarily disclosed before panch witnesses that he wished to show something. As per his directions police officers, punch witnesses and accused went to the house of accused Mohammad Ismail @ Abdul Rajik, which was situated at Al Aman flat near Mahavir flat, Rajpur Tolnaka, Gomtipur. Accused Mohammad Ismail has shown one table fan of Orient company, as per his say the fan was used by co-accused Wasim @ Yasin and Kayayuddin @ Rizwan for preparing a bomb at the house situated near Danni Limra. Police have seized the table fan.

14.4.166. One Mr.Atul Seth (PW No.816, Exh.5484) was examined as a panch witness of the panchnama. He supported the contents of panchnama. He has deposed before the trial court that he was called by police to be a punch witness where accused Mohammad Ismail Abdul Rajik, was in the police custody and he has voluntarily disclosed the fact that he wish to show something willingly and according to his request, Police officers, punch witnesses and accused went at his house situated at Al Aman flat, near Rajpur tolnaka. One table fan was seized by the police which was shown by accused Mohammad Ismail Abdul Rajik. It is also proved in the deposition that the table fan was used by accused Wasim @ Yasin and Kayayuddin @ Rizwan at the house situated at Dhani Limda.

14.4.167. In the cross examination a question regarding a murder event happened near the house of this punch witness is asked. But it has no relevance for the present evidence in present panchnama. Further it revealed in the cross examination that the witness was having the business of sweets and namkeen. He was doing his business from the

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morning 9 o'clock till the night 9 to 10 o'clock. The business was conducted by himself and in his absence by his father and mother. He did not know any police officials of the crime branch. He knew some police serving at Maninagar police station. He has been confronted with the geography of the places near Victoria Garden, Khamasa char Rasta, and tried to show that he has no occasion to come near the crime branch police station and he was a got-up witness but the questions put to the witness did not create any doubt regarding his presence before the police. It is also admitted by the witness that the fan was not seized by applying any cloth cover or by putting seals on it.

14.4.168. Looking at the evidence, the Court finds that so far the house of Mohammad Ismail situated at Al Aman flat near Mahavir flat Gomtipur is concerned, police were very well aware of the residence address of accused Mohammad Ismail. Therefore to the extent, where accused Mohammad Ismail is residing, is not fact disclosed but fan used by co accused Vasim @ Yasin and Kayayuddin @ Rizwan at the house situated at Danilimda, while preparing the bombs in that house, is a mental fact of knowledge of use of fan by accused at the place where part of the ofence was committed and ultimately fan was recovered by the police from the house of Mohammad Ismail. Therefore, it is proved in this panchnama and deposition by the punch witnesses that the house connected with commisssion of crime is connected with the accused person through the usage of the object fan used during the stay in the house as a part of the conspiracy.

14.4.169. <u>Exh.5488 is Search & Seizure Panchnama of house owned by accused Yunus Mahmadbhai Mansuri.</u> This panchnama was carried on 19.08.2008 between 1.30 to 4.00 before Dy SP Mr.V.R. Toliya. From the contents of the panchnama, it appears that accused Yunus

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Mohammadbhai Mansuri was in the custody of police for the offense registered at Shahibaug police station CR number 236/2008 for the various offenses under section 302 307 etcetera of IPC and other Acts. Scientific officers from Forensic Science Laboratory were also called at Gayakwad Haveli Crime Branch Police Station. In the presence of punch witnesses and scientific officers, the accused has voluntarily said that he wishes to show something and therefore, all have proceeded towards the house number 132 situated in Ajit Mill Society, near Ajit Mill Cross Road, Bapunagar, Ahmedabad.

14.4.170. Police searched the house and found some objectionable articles with the help of scientific officers, were seized by the police which are as under:

- Gujarati book written by Dr. Abdullah, Al ruda publisher
- One book written in Urdu language.
- Photo copy written in Urdu language.
- Different colored cellotape.
- Towel cloth.
- Three blocks.
- Small parts of electric wire.
- 36 pellets/ball bearings
- Some adhesive material on the wall and a control sample from the wall.
- Packing beg of polythene material on which it is printed as “N P [7] C C BOOKS, To, M.YOUNIS, AHMEDABAD, FROM NCPC DLI

14.4.171. In this connection, the prosecution examined Panch witness Chirag Govindbhai Varsada (PW No.817 , Exh.5487). He supported the facts narrated in the Panchnama. He deposed before the court that he was called as Panch witness in Gayakwar Haveli crime branch police

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station where one accused was present. The accused has voluntarily disclosed before him and the other Panch witness Anil Kumar that the accused will lead towards his house. Scientific officers from the forensic science laboratory also came to the crime branch police station. All have proceeded to the house of accused Yunus Mohammad. The house was situated in Ajit Mil society. He also deposed that at the house of Yunus Mohammad, two ladies were present, one was wife of the accused and other was mother. Neighbor Mohammadbhai was called at the time of Panchnama. Police had seized materials, as per the description of narrated in the Panchnama. Punch witness Chirag has identified his signature on the Panchnama and the chit on which he and his friend Anil Kumar Thakur had put their signatures. He also identified the articles which were seized from the place shown during the examination in chief. He could not identify the accused Yunus Muhammad and he has given explanation that at the time of Panchnama the accused was having a light beard but at present when examination at the time of deposition all the accused have long beard and spectacles. Therefore, he could not identify.

14.4.172. In his cross examination, Chirag Govind Bhai has stated that the neighbor Muhammad Bhai called at the house where panchnama was made. The place where the house was situated was on the ground floor. He also admitted that the chit on which he put signature was not affixed on the muddamal article, but it was just put in the box. He also admitted that he was in the business of haircutting saloons. The time of his business was 10:30 to 7:30. Anil Kumar was doing a business of cloth. Anilkumar's friend was admitted in VS Hospital. When police called them as punch witnesses, they were returning from VS Hospital. Their names were not noted on the gate of the crime branch police station. He

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has put one signature at the police station and other signatures at the place of panchnama, that is the house of the accused. It was also put to the notice of witness that some writings in on page number 5 of the panchnama were comparatively small with the other writings in the panchnama. He accepted that police have not seized the container from which books were found. He also admitted that he could not read the English language. He accepted that he did not know Urdu, Arabic, and Persian language. He admitted that the contents of the book were not read over before him when he put signatures on the books seized by police. He admitted that he had not taken the pellets in his hand and thereafter washed his hands. He had not taken any of the muddamal articles in his hand at the time of panchnama.

14.4.173. The Court finds that the contents of the panchnama specifically mentioned that the accused was residing at house number 132, so far the search and seizure made by the police in the presence of witnesses at the house of accused Yunus Muhammad, is proved by the evidence of panch witness Chirag Govindbhai. It is further said by punch witness Chirag Govindbhai that they went to Ajit Mill society, at around 1 o'clock in the midnight. And police found some materials which were used in preparing the bomb. Like pellets, electric wires, cellotape and other adhesive material found on the wall. Also found some books and a xerox copy of a paper. Therefore, the deposition given by the witness is proving to the satisfaction of the court regarding the articles found at the house of accused Yunus Muhammad. The police had also called scientific officers at the place. Four persons from the forensic science laboratory were also present with the police.

14.4.174. The court is of the view that no doubt is created in cross examination of the witness . Further, what is found from the house of the

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accused is new for the police. Before proceeding toward the house of Yunus Muhmmad police would not know what would be found at the place. it is true that getting pellets and other material from the house is discovered which is materials used in preparing the bomb.

14.4.175. It is just the presence of an independent person other than police, who is witnessing the proceedings of what is happening in his presence, to support the version of a police investigation and to support the circumstances revealed during the investigation. If there is any contradictory version in the evidence of punch witnesses and the contents of panchnama, then it can be used by the defence side and with the permission of the court by prosecution. But otherwise the punch witnesses are not supposed to depose verbatim descriptions mentioned in the panchnama in their deposition. The court therefore finds that by way of this panchnama prosecution successfully establish the circumstance of discovery of the material objects connecting to the preparing of bomb as same material has been found from the unexploded devise also and therefore there is direct connect of the accused with the material utilized to prepare the bomb as part of it is recovered from his house.

14.4.176. Exh.5492 is discovery, search and seizure panchnama to discover the fact that accused Zahid Kutbuddin Sheikh was running a shop named “Seema Communication" on the first floor of Nagori complex, Chandola Road. Police searched the shop and seized some articles like Napkins, Clothes, Pellets, Card board etc. The panchanama was carried out on 18.08.2008 between 23.00 to 1.00 before Dy.S.P. Mr. V.R.Toliya. From the contents of panchnama it appears that the accused Zahid Kutbuddin Sheikh, was in the custody of DCB crime branch, for the offense registered at Shahibag Police Station CR number 236/2008,

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where accused Zahid has voluntarily disclosed before punch witnesses that he wish to show something. Therefore, police, punch witnesses and the scientific experts of forensic science laboratory proceeded as per the directions of the accused in the vehicle and reached at Dani Limda Chandola Road at Nagori complex, where on the first floor the accused showed one shop, named Seema communication. The father of the accused was also present near the shop. The accused's father has given the key, accused Zahid has unlocked the shutter and police searched the shop, where police found two napkins, one green cloth, pellets nos. 15, one white cloth and one card box. Scientific officers present at the place have tested using "polirekit" and found that pellets, cardboard and one cloth contains some gluey material. Articles were seized by the police. The receipt was given to Kutubuddin Sheikh, father of the accused.

14.4.177. In this connection, the prosecution examined one Mr.Manish Barot (PW No.818, Exh.5491). He has deposed according to the contents of panchnama. He said that he along with the other punch witness accompanied the police and accused to the place which was shown by the accused. Muddamala articles were found in the shop. He also said that scientific officers were present at the place. He identified all the articles seized from the place. He identified his signature also. But he could not identify the accused and he has given explanation that due to the lapse of time, and the appearance of the accused is also changed, therefore he is not able to identify the accused.

14.4.178. In his cross-examination, he admitted that no photography and videography was done at the place. He also admitted that no documentary evidence regarding the ownership of the shop was collected at the place. No documents regarding the business were collected. He admitted that the packet of pellets was not sealed but

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pellets were put in a polythene bag which was kept in one box and the box was sealed. When he put signature on the panchnama it was late-night. Kutbuddin was not sitting in the shop when they reached the shop. He did not know Kutbuddin before the panchnama proceeding. Kutbuddin was not called at the place after reaching the shop. He has not inquired with Kutbuddin. He could not give any physical description of Kutbuddin. No evidence regarding the identity of Kutbuddin was collected by police, except the accused Zahid said that Kutbuddin is his father. Police knew that Kutbuddin had the key. Some questions regarding the presence of a punch witness near Gayakwar Haveli Police station on the day of panchnama were asked. It is admitted that punch Manish Barot was residing six to seven kilometers far from the place. He also admitted that he has not inquired what the gluey substance on pellets is. Pellets were the same which are used in bicycles.

14.4.179. So far the search of the shop and seizure of the articles is concerned, it is at the instance of the accused. it is proved that the articles were seized in due course of investigation. Witness Manish has supported the procedure and it was done in the presence of scientific officers. Articles were seized after doing a test with the kit the scientific officers were carrying. The nature of articles found are such and can be used in the bomb making articles. How far the material found in the shop connecting the accused with crime is also established by independent evidence of his participation in the crime which is discussed while considering evidence of accused individually.

14.4.180. Exh.5517 is discovery, search and seizure panchnama of a cyber cafe at the instance of accused Zahid Kutubuddin Sheikh. Police also seized seven harddisk from the shop and one electricity bill of the shop in presence of panch witnesses and scientific officers. The

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panchanama was carried out on 01.09.2008 between 21.20 to 23.00 before PI Mr.Vinod Shukla. According to the contents of Panchanama, accused Zahid Kutbuddin Sheikh was in the custody of police in connection with the crime registered at Maninagar Police Station, CR number 203/2008. One FSL officer, Mr. Sanghvi was also present at the police station, where the accused had voluntarily disclosed before punch witness that he will show the cyber cafe from where he sent emails. Therefore, according to the directions of the accused, police officers, FSL officer, and punch witnesses proceeded towards Jamalpur Market then Sardar Bridge, and lastly at the cyber cafe named I-net cyber cafe, near NID. There was one person named Abdul Azim Abdul Hamid Sodagar present in the cyber cafe. He was running a cyber cafe. The shop was on rent. There are four compartments in the cafe, wherein there were seven computers. Police seized the hard disk of all the seven computers and also seized one electricity bill showing the name of shop owner Nazir Mohammad Bhai. Panchama ends there.

14.4.181. In this connection, the prosecution examined panch witness Vikram Manaji Solanki (PW No.820, Exh.5516). He deposed that he was called as a witness. There was another Panch witness Ravindra Sinh was present before the police. FSL officer was also present whose name was Shanghvi. Accused Zahid Kutubuddin was present before police. He asked the name of the accused and also the name of the FSL officer. The accused has voluntarily disclosed before him that he will show the cyber cafe from where he sent emails. Thereafter as per the description in the Panchnama, they went to the cyber cafe, which was situated near NID. He also said that Mr. Abdul Azim was present at the cyber cafe. Police had seized seven hard disk from the computers installed in the cyber cafe. All hard disk were of 40 GB size. Police had also seized one

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electricity bill which was in the name of Najim Bhai. He identified his signature on Panchnama and Muddamal articles, but he could not identify the accused on the TV screen and has given an explanation that the appearance of accused is changed. Therefore he is not able to identify him.

14.4.182. In his cross examination, he admitted that he did not have knowledge of computers. He knew what it meant by sending an email. He admitted that no documentary evidence regarding the ownership of the shop was collected. He admitted that he did not know what was in the email. He further admitted that during the panchnama proceeding at the shop, no customer entered the cyber cafe. Police had not inquired from Ajimbhai. No other person was present except Ajim bhai at the cyber cafe. Hard disks were not separately sealed. Signature slip was not affixed on the box. There was no mention regarding the accused being involved in the bomb blast case. He did not know on which date emails were sent. He admitted that police told them that accused Zahid wanted to show the cyber cafe.

14.4.183. Looking at overall evidence comes in the deposition, the Court is of the view that no doubt is created on the depositions given by Vikram Banaaji. It is admitted by the witness that he did not know on which date emails were sent. But it is not the case in the panchnama that on any particular date the emails were sent. It is only regarding the emails sent from a cyber cafe situated near NID. And the place was discovered according to the directions given by the accused Zahid Kutbuddin. Therefore the discovery of a place that is I-Net cyber cafe is proved. The prosecution has established from pointing out of this Cyber cafe that this accused has used this medium for communication, which is important circumstance for conspiracy.

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14.4.184. Exh.5524 is discovery panchnama of the fact that accused Salim Jamalbhai Sipai wanted to disclose one document wherein the method of preparing bombs is written in Urdu language. The panchanama was carried out on 21.09.2008 between 13.30 to 15.30 before Dy.SP Mr. M.J. Chavda. Perusal of contents of the panchnama shows that accused Salim Jamalbhai Sipai was in the police custody in connection with the offense registered at Maninagar police station. CR number 203/2008. He has disclosed before punch witnesses that he would lead to the place and want to show something. As per his direction, punch witnesses, police and the accused proceeded towards the Bapunagar area where the accused was residing. They reached the house of the accused where his wife was present in the house. The accused himself went into the house and brought one laminated page which was put beneath one bag containing some household material. It is said by the accused that the writings in Urdu language describes the method of preparing the bomb. Which was seized by the police and panchnama ends there.

14.4.185. In this connection, the prosecution examined panch Witness Bhikhabhai Shivabhai Gadhavi (PW No.821, Exh.5523). He deposed before the court according to the description mentioned in the panchnama. He said that he was called by one constable at crime branch police station near Haveli. One accused named Salim Sipai was also present. Accused voluntarily disclosed before the punch witness that he will show something at his home situated in Bapunagar area. Thereafter police officers, punch witnesses and the accused went to the house of the accused, where the accused had brought one laminated paper which was written in the Urdu language. According to the accused, it describes the method of preparing the bomb, which was seized by the police. This

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witnesses also identified his signature on the panchnama and also on the signature slips affixed on the laminated page. The witness was shown the muddamal article seized being art. no.37 in the list ex 3197 and witness has identified it and exhibited 5525. He had tried to identify the accused, but he could not identify the accused and he is given an explanation that he is showing the accused after a very long time and there is difference in the appearance, therefore he is not able to identify the accused.

14.4.186. In his cross-exmaination, he admitted that he could not say whether the writings on a paper describe the method of preparing the bomb or not. He admitted that police had not collected any evidence regarding the ownership of the house. The signature slip was not affixed using the gum. He admitted that another Panch witness was his friend who was serving at the office of an advocate. He was confronted with some questions regarding whether the panchnama was dictated by him or not. The witness replied that he dictated the panchnama. And thereafter he accepted that some portions he was confronted with were not dictated by him. He admitted that he did not know the Urdu language. He was residing 5 to 6 kilometers away from the crime branch police station.

14.4.187. Looking to the evidence of this witness, tt has come out in that the witness has not dictated the proceedings of Panchanama to the police. Law in this regard is never saying that Panchanama should be dictated by witnesses. All the proceedings are made in the active presence of police. The Witness is only supposed to observe the proceedings of the panchnama before the court, what he has observed during the proceeding. Therefore, the questions asked by the defence, showing that dictation was not given by the witness is not helping the defence . so

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far the discovery of a laminated page from the house of accused Salim is definitely proved by prosecution in accordance with the law. Police did not know before the proceeding that accused Salim was having a method of preparing bombs at his house. Therefore, the discovery of the page lying at the house of accused Salim and seizure of that page written in Urdu language is proved by the prosecution. Therefore as apar tof conspiracy literature for preparing bomb as available with the accused.

14.4.188. Exh.5534 is discovery and seizure panchnama regarding the discovery of a fact at the instance of accused Mohammad Ismail @ Abdul Rajik @ Mushaf son of Mohammed Ishak, that he along with co accused Kayamuddin @ Rizwan Kapadia and Mujeeb Jamil Shaikh went at Janta cycle repairing works, take one bicycle on rent and went to Civil Hospital, Asarwa. It is also regarding the discovery of the fact that which way was used for going to the Civil Hospital, Asarwa, Ahmedabad, and what happened at Civil Hospital, Asarwa. The panchanama was carried out on 02.11.2008 between 11.30 to 13.30 before Dy. SP Mr.V.R.Toliya. The contents of the panchanama show that on 02.11.2008 accused Mohammed Ismail @ Abdul Rajik @ Musaf s/o Mohammed Ishaq was in the custody of police in connection of the crime registered in Shahibagh Police Station vide CR number 236/2008. He voluntarily disclosed before panch witnesses that he wanted to show the shop from where they have taken a bicycle on rent and the route they used to reach at civil Hospital, Asarwa.

14.4.189. In this connection, panch witness Jignesh Panchal (PW No.822, Exh.5526) was examined. He deposed that he and other witness Vinod Patel were friends. They were returning from Bhadrakali Mandir and going towards Jagannath Temple where police asked them for being a witness in the Panchanama proceeding, they consented. Accused Abdul

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Rajik Mansuri was in the custody of police. He had voluntarily disclosed the facts stated in the panchanama. As per the directions of the accused, Panch witness and police officers went to the shop which was situated near Kamdar Maidan Bus Stop, from where the bicycle was taken on rent. He also deposed the name of the shop i.e. Janta Cycle, where one person named Rafiq Ansari was present. Police had collected the register kept for the bicycle given on rent. There was an entry in the register on 22.07.2008 in the name of Raju with time. Jignesh Panchal had identified the register from the shop. He has also supported the panchnama that accused there after lead the police staff and Punch witnesses towards Civil Hospital Ahmedabad and shown a place where he stood with co-accused Mujeeb Sheikh and also depose that accused Kayamuddin went to the Trauma centre of Civil Hospital, and returned after 10 to 15 minutes and told to Abdul Rajik and Mujib that “chalo bhai Ho Gaya.”. This witness has also identified his signature on panchnama. But he could not identify the accused during his examination in chief.

14.4.190. In his cross examination, it is admitted by Panch witness that the register was not in the name of RamanLal k. Dave. There is no mention of any of the three accused in the entry in the register. He did not go to the shop of Ramanlal Dave, he did not know Ramanlal. Police had not collected any evidence regarding the ownership of the shop. There is no mention of Janta cycle in the register. In another set of cross examinations he was confronted with some questions regarding his presence near the crime branch police station. He admitted that his house is situated 5-6 km away from the crime grant police station, but he has given explanation that every Sunday he used to visit Bhadrakali Temple. Vinod was his friend. Vinod was doing the business of cloth. Jignesh has

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said that he is working in Rewari Bazar. The Crime Branch Police station did not fall in the way from his house to Bhadrakali Temple, but it is mentioned in his examination In chief that police had come to him and requested him to be a punch witness when he was going towards Jagannath Temple from Bhadrakali Temple. No question whether the crime branch police station situated within Bhadrakali temple and Jagannath temple or not is asked. Writing in the register is shown to the witness, he admitted that Janta Cycle is not mentioned anywhere. He also admitted that when the register was seized, writing on all pages were the same.

14.4.191. The Court finds that this witness in his examination in chief has admitted that he along with accused Kayamuddin and Mujeeb went to Civil Hospital Asarwa, they stood near Troma Centre and Kayamuddin went in to the Troma centre and returned after 10 to 15 minutes and told them that *kam ho gaya.* Though defence raised an objection in examination in chief that this is not admissible under section 25 of Indian Evidence Act, but there is no cross examination regarding this fact. True it is that the general rule says that the statement made by the accused while in the custody of a police is not admissible but section 27 is proviso to Section 25, which says that if the statement made before policy which is regarding any covered fact then the statement made before police is admissible. Here in the present case, police did not know before panchnama proceeding which way was used by the accused to go to Trauma Centre Civil Hospital Asarwa. Police even did not know what Kayamuddin had said to the co- accuseds Abdul Rajik and Mujeeb Sheikh. Police did not know before panchnama proceedings that where accused Abdul Rajik and Mujib Shaikh stood near Trauma centre. So far the questions regarding the muddamala article that is

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cycle rent register seized by the police from Janata cycle repairing works is concerned, the Court is of the view that what is written in the register is a subject which can be looked into by Court while appreciating the evidence. Why the entry reflects the name of Raju and not any of the three accused; obviously when the cycle were to be used for some crime the accused wouldnot disclose their correct identity , also why there is change of hand writing in the register; whether the name of the shop is Janta cycle repairing works or Aarif Cycle repairing work, are not relevant questions as seizure of the register is proved by the panch witness. This witness has stated that he was present with the police and at the instance of Abdul Rajik panchnama proceedings were held by police and muddamala article i.e. cycle register was seized by police. No doubt is created regarding the above evidence. The presence of the witness near the crime branch police station is also explained. Further, witness admitted that he could not know the four directions of the cycle repairing shop, but he has deposed in his examination in chief where the cycle store situated. He might not be knowing four directions of the shop mentioned in the panchnama, but it did not create any doubt. Further, the witness is confronted with some questions regarding the mentioning of sections in the panchnama and the meaning of the word "@" in the panchnama. Witness Jignesh Panchal has admitted that he did not know the meaning of "@" and also did not know the meaning of sections mentioned in the panchnama. By asking such questions the defence tried to prove that the panchnama was not dictated by the panch witnesses. As we have stated earlier, we do not agree with the submissions made by the defence that proceedings conducted by police in the presence of panch witnesses are to be dictated by the panch witnesses to the police officials. It is not the law that a panch witness should give dictation to

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the police personnel. The panch witness, present before the police, is just to witness what is happening in his presence. To avoid any doubt regarding the discovery of facts whilst the accused is in custody of police, independent witnesses are called by the police. Therefore, no doubt is created due to the admission by a panch witness that he has not dictated some sections and particular word "@" in the panchnama.

14.4.192. The Court has perused the discovery panchnama vide Exh.5556 at the instance of accused Muhammad Ismail @ Abdul Rajik, who was in the custody of police in connection with offence registered at Sarkhej Police Station, CR No. 181/2008. The discovery was made regarding the fact from where he boarded the Maruti 800 car; where it was parked in LG Hospital parking; and who accompanied and who was driving the car. The said panchnama was carried out on 04.12.2008 between 11.00 to 13.30 before Dy.SP Mr. M.J.Chavda.

14.4.193. In this connection, the prosecution examined Babubhai Nagarbhai Makwana (PW No.827, Exh..5555). In the examination in chief, witness Babu bhai was examined in support of the panchnama proceeding witness and has deposed before the trial Court that he and his friend Manish Where returning from Jamalpur police had called them at Gaikwad Haveli Police Station where accused was present. Police officer Mr Chavda was present, name of the accused was Abdul Rajik Mansuri, he has voluntarily disclosed before panch witnesses that he wanted to show location and route led by accused Abdul Rajik Mansuri. First of all they went near a place situated at chandula Talav barrel market. Accused has said before panch witness that he boarded the Maruti 800 car from that place and the car was driven to the LG hospital and it was parked near Garden. This witnesses also identified his signature on panchnama but he could not identify the accused and has

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given an explanation that at the time Of panchanama accused was having light shave and today all the accused were having Long beard therefore he could not identify.

14.4.194. In his cross examination, he has admitted that he was residing in Gomtipur area for 40 years and doing cobbler work, having education up to 7th standard. He faced difficulty in reading handwritten paper, but he could read typed writing. He was confronted with the witness summons wherein his signature was “Babubhai” but the panchnama contained a different signature. The police station did not come in the way from Jamalpur to the place where he is doing his work as Cobbler. He admitted that he had put the first signature in the Police vehicle. He admitted that he did not talk with the accused in the police Jeep during the journey from barrel market to LG hospital. He did not keep a daily diary. He did not know the name and resignation of the police officer. He did not talk with the police officer, he did not even talk with Manishbhai in the police Jeep. He admitted that he knew where the barrel market was situated. There is a Mumbai highway near barrel market and continuous traffic of vehicles at that place. LG hospital is situated approximately 10 to 15 minutes away from the barrel market. He did not know other names of accused Abdul Rajik.

14.4.195. He admitted that police had not seized any article during the panchnama proceeding. He knew that a bomb blast happened at LG hospital before panchnama .

14.4.196. Looking at the evidence given by Panch witness Babubhai, it is proved that witness has not read the panchnama and he had not dictated the panchnama to police officers. It is not mentioned in the deposition that there was presence of co-accused Kayamuddin Kapadia and Afzal Usmani and they met the accused Abdul Rajik at barrel market. It is also

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not mentioned that Afazal Usmani had driven the Maruti 800 car from the barrel market to LG hospital. The fact of the blast in the car at this location was in public domain when panchnama was made. But it is proved by the evidence of Babubhai that he witnessed the panchnama proceeding, he accompanied the police and the accused at the barrel market where the accused showed the place from where he boarded the Maruti 800 car. The route used by the accused to travel to LG hospital from the barrel market is also proved. It is also proved that the accused Abdul Rajik had taken part in the conspiracy and done an act of putting the car at L.G. Hospital parking. Therefore, to the extent that Abdul Rajik has put the car at L.G.Hospital is a fact, which police did not know before panchnama proceeding. Not identifying the accused after a very long time and not knowing the name of police officers present at the time of panchnama is but natural by a person having education only of 7th standard, and doing the work of cobbler. Witnesses are not expected to depose word to word of what is written in the panchnama. Suffice it to prove satisfactorily that he witnessed the proceeding and it is there on record. This Ex. Is proved to be a punchnama u/s,27 which establish the conncetion of the accused with the maruti 800 car used for the explosion in the hospital.

14.4.197. Exh.5622 is discovery panchnama of a fact at the instance of accused Mohmad Ismail @ Abdul Razak @ Mushaf, regarding the locations from where he acquired bombs, the place where he parked a bicycle with bomb and the places from where he got the cloth begs for keeping the bombs. The panchanama was carried out on 25.10.2008 between 15:10 to 18:30 before Dy. SP Mr.B.R.Toliya. The contents of the panchnama show that accused-Mohmad Ismail @ Abdul Razak @ Mushaf, while in custody, in connection with the offence registered at

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Shahibagh Police Station CR No. 236/2008, volunteered to show locations from where he acquired bombs in Danilimda; he also stated to show the place where he parked a bicycle with bombs; from where he got the cloth begs for keeping the bombs; the place from where he purchased the bicycle. This voluntary statement was recorded in the presence of the panchas.

14.4.198. In this connection, the prosecution examined panch witness Urmit Bharatkumar (PW No.833, Exh.5621). He testified that he and Brijesh Rami were called to the Crime Branch office to act as panchas. The accused was present and expressed a desire to show the locations involved in the bomb blasts. The accused led the party to Al-Mehmad Society, identifying a house where he came two times on 26.07.2008, first at 11 or 12 o'clock at that time accused Abdul Rajik received Rs.10000/- from Kayamuddin and also instructed him to give Rs.5000/- to Ayaz. Abdul Rajik was again called there at 3 o'clock to receive bombs. The witness confirmed the place where he delivered 2 bombs to Ayaz. He also pointed out a shop named Rajesh Tailor, from where a cloth bag used for the bombs was purchased. Furthermore, the accused identified a spot near Diamond Pan Parlor in Bapunagar where a bomb-laden cycle had been placed. The witness also identified the person from whom the accused had allegedly purchased a bicycle. This witness has identified his signature on panchnama but could not identify the accused during his deposition. He has given explanation that due to change in physical appearance of the accused at the time of deposition he is unable to identify him.

14.4.199. During cross-examination, the witness stated he currently works at the Secretariat on contract basis and was not previously acquainted with the police officers. He confirmed the panchnama began

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around 15:00 hours and ended near 18:30 hours. While he admitted to not keeping personal notes of the events from 2008, he affirmed that the facts recorded in the panchnama were true. Questions were raised regarding the geographic situation of Gomtipur area and route near crime branch police station. He admitted that he did not know the house number. He also admitted that police had not recorded statements of the persons residing near the places and had not called the secretary or president of the society at the time of panchnama. He has also given a physical description of the accused, including his height and beard.

14.4.200. The Court finds that the oral testimony of the witness remained intact in cross examination. The fact that accused Abdul Rajik received three bombs; out of three, he has delivered two bombs to Ayaz at a particular place; Ayaz kept bicycles at a particular place; the place where Abdul Rajik kept his bicycle; the place from where he purchased cloth beg; the person from whom he purchased bicycle; he identified the place where he put the bicycle are all covered facts. All these facts are discovered voluntarily by the accused in front of panchas, and accordingly other corroborative evidence is also collected by the police. Therefore, the contents of panchnama are proved in accordance with the provisions of Sec.27 of the Indian Evidence Act. The witness consistently narrated the sequence of events, from the initial memorandum at the Crime Branch to the discovery of various spots. The identification of specific shops, such as Rajesh Tailor, and individuals, such as the cycle repairer, adds credibility to the discovery of facts under the Evidence Act. Despite the lapse of several years between the panchnama and the deposition, the witness successfully corroborates the contents of the panchnama. The appreciation of this testimony suggests that the panchnama was conducted following due legal procedure in the

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presence of independent witnesses. Therefore the facts discovered are proved.

14.4.201. Exh.5794 is discovery panchnama. It was carried out on 03.11.2008 between 12:30 to 14:45 before Dy. SP Mr.M.J.Chavda. From the contents of the panchnama, it appears that accused, Mohmadsef @ Rahul Sharma, was in police custody in connection with the crime registered at Maninagar Police Station vide CR No. 203/2008. He volunteered to show the house in Al-Mehmadi Society where he stayed with his associates and manufactured bombs. He stated they arrived in Ahmedabad via the Ashram Express on 12.07.2008 . He offered to point out the route from Kalupur Railway Station to the specific house. The proceedings of panchnama were conducted in presence of panch witnesses.

14.4.202. In this connection, the prosecution examined panch witness Mr.Harish @ Bholu Mahadevbhai Pursani (PW No.842, Exh.5793). He deposed that on 3.11.2008, he was called to the Crime Branch office while he was out for business. He stated that the accused was present and volunteered to show the locations. The accused led the police and panchas from Kalupur Railway Station through various landmarks including Gita Mandir and Astodia Darwaja. The witness confirmed that the accused pointed out a house in Al-Mehmadi Society, identifying it as the place where they stayed and prepared bombs used on 26.07.2008. The witness identified his signatures on the panchnama and confirmed the facts recorded therein were true. But could not identify the accused.

14.4.203. During cross-examination, the witness affirmed he has a business in Ahmedabad and is familiar with the local geography. He stood by the contents of the panchnama, asserting that "every detail was written as per the facts" and that he signed it after reading. Still, in

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answering some questions it seems that the witness was bluffing. He said that whatever written in panchnama was dictated by him. He further said that after reaching every spot, he dictated the panchnama and signed it. He did not know in which direction the house was situated and what was in the surrounding of the house. He did not know whether the house was sealed or not.

14.4.204. The testimony of Mr. Harish @ Bholu Mahadevbhai serves as strong corroboration for the Panchnama (Exh. 5794). Still however, the questions put in cross examination and the narration in the panchnama suggest that the fact of the house used in preparing bombs was known to the police before the panchnama proceeding was held. Therefore, the house was not discovered in the statement of the accused before police. Further, the content made in the panchnama also inclines us to believe that it would not be possible for the accused to lead the police and panch witness to various spots like Gita Mandir, Chandola Talav and thereafter to the house situated in Al Ahmadi Society. If it was not possible for the accused to lead the police to the Kalupur Railway station, then how is it possible for the accused to lead the team to Gita Mandir, and then to Chandola Talav etc. Facts are required to be proved or disproved keeping in mind a prudent man's intellect. Though the witness has supported the contents of panchnama, it did not inspire our confidence to believe it. Therefore the testimony could not be relied upon. Further, the defence raised an objection during examination in chief that incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of the Indian Evidence Act. As we have discussed in the very beginning, even the confessional statement of the accused can be admissible if it is a kind of discovery of a fact, distinctly related to the fact discovered. Therefore, the objection is not sustainable.

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14.4.205. Exh.6024 is discovery panchnama. It was carried out on 07.12.2008 between 09:00 to 11:00 before Ms.Usha Rada, Assistant Police Commissioner, Crime Branch, Ahmedabad City. The contents of the panchanama show that accused, Mohmad Arif Nasim Ahmed Mirza, while in police custody, in connection with crime registered at Khadiya Police station CR No. 71/2008, volunteered to point out the location from where he obtained the bicycle used in the blasts and the spot where he placed the bomb-laden cycle in the Khadiya area on 26.07.2008. This voluntary statement was recorded as a memorandum in the presence of the panchas.

14.4.206. In this connection, the prosecution examined panch witness Jagatsinh Javansinh Rajput (PW No.860, Exh.6023). He admitted that on 07.12.2008, while he and his friend were passing through Jamalpur, they were called by the police to be a panch witness on the proceeding. The accused, Mohammad Arif, was present and expressed voluntarily to show the locations involved in the crime. The accused led the party to a house in a society near Chandola Lake from where he collected bags containing bombs. Subsequently, the accused led them to the spot where bicycles were kept. Finally, the accused led the party to Raipur Chakla, where the accused identified the spot where the bomb-laden cycle was placed. This witness has identified his signature on panchnama. But expressed his inability to identify the accused as many years passed during the time.

14.4.207. During cross-examination, the witness confirmed he is a manual laborer and was not previously acquainted with the police. He maintained that the police recorded the statement exactly as the accused spoke. While he admitted that due to the passage of seven to eight years, he could not identify the accused. The explanation is also trustworthy.

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He remained firm that the facts recorded in the panchnama were true. He testified that he signed the document after reading it and denied the suggestion that his testimony was coached by the police.

14.4.208. The ocular testimony of Jagatsinh PW-860 (Exh. 6023) provides direct corroboration of the Panchnama (Exh. 6024). The witness successfully narrated the sequence of the discovery, moving from the initial memorandum at the Crime Branch to the specific locations in Al-Mehmadi Society, Sarangpur, and Raipur Chakla . The identification of the spot near Everest Auto Centre in Raipur as the location for the bomb-laden cycle constitutes a significant discovery of fact under the Evidence Act. Although the witness could not identify the accused's current physical appearance due to the long interval since the event, his consistent testimony regarding the procedural conduct of the panchnama reinforces its reliability. The appreciation of this evidence confirms that the discovery was made voluntarily by the accused and was witnessed by independent panchas in accordance with legal requirements. Therefore the discovery of the fact that the bicycle was collected from the place and the accused has put the bomb-laden bicycle at a place in Raipur area is proved. Police knew the places where the bomb-blast happened, but the offence was committed by hatching conspiracy and so many accused are involved in the crime, therefore, out of them which accused has done what role in the crime is not known to the police before the discovery. Therefore, it is “discovery” in accordance with provisions of Sec.27 of the Indian Evidence Act. Further, the defence raised an objection during examination in chief that incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of the Indian Evidence Act. As we have discussed in the very beginning, even the confessional statement of the accused can be

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admissible if it is a kind of discovery of a fact, distinctly related to the fact discovered.

14.4.209. Exh.6051 is discovery panchnama. By this panchnama, accused Abdul Rajik has admitted a fact that he made recce of the three places where bomb-laden cycles were put and also given discovery of a fact that before ladening the bombs, three bicycles were kept near Durga Foot-ware. He was accompanied by co-accused Mohmmad Arif, Khalid, Salman, Alamjeb Afridi from Al-Mahmadi society. The panchanama was carried out on 08.12.2008 between 12:00 to 14:00 before Mr.M.J.Chavda, Dy. SP, Crime Branch, Ahmedabad City. The contents of the panchnama details a pointing out exercise where the accused, Mohammad Ismail (alias Abdul Razik Mansuri) while in the custody of police in connection with offence registered at Sarkhej Police Station vide CR No.181/2008, led the police and Panch witnesses through various locations in Ahmedabad . The accused pointed out House No. 10 in Al-Mahmadi Society, where he claimed reconnaissance for the bomb blasts had been conducted. He further identified travel routes through Geeta Mandir and Shahalam, and specific shops in Raipur (Shree Ram Pan Ghar and Gokhale Pan House) where he had visited. Most significantly, he pointed out a spot near Durga Footwear at Sarangpur Bridge, where he stated that three cycles had been placed. No physical evidence was seized during this specific procedure.

14.4.210. In this connection, the prosecution examined panch witness Kanubhai Bhimaji Thakor (PW No.865, Exh.6050). This witness deposed that he was summoned by the Crime Branch and voluntarily agreed to act as a Panch witness during the accused's disclosure. He testified to accompanying the police and the accused, Mohammad Ismail, to various locations in Ahmedabad, identifying the specific spots the

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accused pointed out as sites for planning and execution of the offense. He formally identified his signatures on the Panchnama (Exhibit 6051) but could not identify the accused noting a change in the accused's appearance since the time of the incident.

14.4.211. In cross-examination, the defence challenged the witness on his limited education and his status as a daily wage laborer to suggest he was a "stock witness" for the police. The witness admitted he did not maintain a personal diary of the events and confirmed that no videography or photography was conducted during the Panchnama process . He was questioned extensively on his geographical knowledge of the areas visited and the distances between them .

14.4.212. The Court is of the opinion that having less educational qualification and being a labour worker would not be a criteria to doubt the testimony. The important consideration is only whether the deposition is trustworthy or not. Looking at the other evidence it is admitted that before the panchnama proceeding, the police knew the places where bomb-blast happened. But the offence was committed by hatching conspiracy where the pointing out of a place /location is sufficient even if there is no recovery. In fact, the panchnama demonstrates the mental fact of knowledge of this accused regarding the conspiracy. The witness remained consistent regarding the sequence of the site-pointing. Procedural challenges raised by the defence regarding the lack of video/photo recording during panchnama do not inherently invalidate the witness's firsthand account of the accused's voluntary disclosures, which can be treated as an admissible evidence.

14.4.213. Exh.6062 is discovery panchnama at the instance of accused Mohammad Arif Mirja, identifying several locations visited by him along with the other accused. The panchanama was carried out on

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06.12.2008 between 13:00 hours to 15:00 hours before Ms.Usha Rada, Assistant Police Commissioner, Crime Branch, Ahmedabad City. The Panchnama records a pointing out panchnama conducted at the instance of accused Mohammad Arif Mirza who was in the police custody in connection with the offense registered at Khadiya Police Station vide CR No.71/2008. The accused led the police and Panch witnesses to House No. 10 in Al-Mahmadi Society, identifying it as a location where he and other conspirators stayed and planned. He further identified travel routes through Chandola Lake, Geeta Mandir, and Raipur. The accused pointed out a location near Durga Footwear at the Sarangpur Bridge, stating that initially cycles carrying bombs were placed there. No physical objects were seized during this specific discovery of facts.

14.4.214. In this connection, the prosecution examined panch witness Ramesh Shah (PW No.866, Exh.6061). He admitted that he was called by police near Haveli Police Station and he agreed to act as a Panch. The accused has voluntarily stated that the house is situated near Chandola Lake, being an outsider from Ahmedabad, the accused could not led the team towards the lake, as he did not know the route from the police station. The panch team first drove towards Chandola lake. After reaching near Chandola, the accused led the party to the house situated in Al mahmedi Society. He corroborated that the accused voluntarily led the team to various crime-linked locations i.e. S.T. Stand, Shahalam Dargah, Bhulabhai Cross road. The accused further stated that 5 persons in Special Rickshaw travelled to the places and dropped the Rickshaw near Bhut Amli, where they had tea and smoked. Thereafter, the accused showed a shop named Gokhle Pan, Ms. Rada had inquired with the shop owner. The accused then led to the Durga Foot-ware shop, and stated that at that place they kept three bicycles. This witness identified his

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signatures on the Panchnama (Exhibit 6062). But he could not identify the accused Mohammad Arif Mirza via video link, noting he was clean-shaven at the time of the panchnama.

14.4.215. In his cross-examination, the witness admitted that he is a rickshaw driver and was on duty with a passenger when called by police.

14.4.216. The Court finds that the testimony serves as corroborative evidence for the discovery of facts under the Indian Evidence Act . The witness remained consistent regarding the locations pointed out by the accused. Technical objections regarding the lack of video recording do not invalidate the substantive testimony. Minor details regarding distances and travel times were clarified during the proceedings. The facts discovered in this panchnama reflects that the accused had visited the places with accused Abdul Rajik and places have been identified by the accused in presence of independent panch witnesses, therefore, it is "discovery" in accordance with provisions of Sec.27 of the Indian Evidence Act. The witness remained consistent regarding the sequence of the site-pointing. Procedural challenges raised by the defence regarding the lack of video/photo recording during panchnama do not inherently invalidate the witness's firsthand account of the accused's voluntary disclosures.

14.4.217. Exh.6064 is discovery panchnama. It was carried out on 03.01.2009 between 14:00 hours to 17:20 hours before Mr.M.J.Chavda, Deputy Superintendent of Police, Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Mahmmad Isamil @ Abdul Rajik was in the custody of police in connection with the crime registered at Maninagar police station vide CR No. 205/2008. He has volunteered to disclose some facts in presence of panch witnesses. The Panchnama details a site-pointing exercise

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conducted at the instance of accused Mohammad Ismail @ Abdul Rajik Mansuri. The accused led the police and Panch witnesses to various locations in Juhapura, Sarkhej, Chandola Lake, and Shah Alam. He identified specific shops, including Apsara, Star Cycle, M.R. Cycle Works, and United Cycle Works, where he claimed cycles used in the bomb blasts were purchased. The document records the identification of these shops and the statements made by the accused regarding the procurement of old cycles for the conspiracy.

14.4.218. In this connection, the prosecution examined panch witness Rajubhai Vitthalbhai Bharwad (PW No.867, Exh.6063). He admitted that he was summoned to the Crime Branch and agreed to serve as an independent Panch witness. He corroborated that the accused voluntarily led the investigation team to several cycle shops in Ahmedabad. The witness identified the specific spots pointed out by the accused as locations for purchasing cycles used in the blasts. He identified his signatures on the Panchnama (Exhibit 6064). But he refused to identify the accused, as years had passed between the time of panchnama and deposition.

14.4.219. In his cross-examination, the witness stated he has an 11th-grade education and is engaged in animal husbandry. The witness admitted he was not familiar with all the specific street names or police officer names present at the time. He conceded that no physical cycles were seized in his presence during this proceeding.

14.4.220. The Court finds that the place, i.e. shops from where old bicycles were purchased is shown by the accused Abdul Rajik voluntarily. This fact was not known to the police before the panchnama proceeding. It was discovered by the voluntary disclosure of the accused Abdul Rajik before panch witnesses. Looking at the evidence, the

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testimony serves as material corroboration for the discovery of facts. The witness remained consistent regarding the accused's voluntary disclosure and the identification of the crime-linked 7 shops. The presence of the witness near the crime branch police station is also satisfactorily explained. Therefore, the distance between the house of the witness and the Police station did not create any doubt. As discussed in the very beginning, even the confessional statement of the accused can be admissible, if it is a kind of discovery of a fact, which is deposed as distinctly related to the fact discovered. Here in this case also, the fact deposed as discovered is distinctly related.

14.4.221. Exh.6068 is discovery panchnama of a fact regarding the shop and persons from whom 2 bicycles involved in the crime were purchased by accused Abdul Rajik. It was carried out on 02.01.2009 between 17:20 18:50 before Mr.M.J.Chavda, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The Panchnama records a pointing out panchnama conducted at the instance of accused Mohammad Ismail @ Abdul Rajik Mansuri who was in the custody of police in connection with crime registered at Maninagar Police Station vide CR No.205/2008. The accused led the police and Panch witnesses to two specific locations where he claimed to have purchased cycles used in the serial bomb blasts. First, he identified a cycle repairing shop on footpath near Anand cloth Market, where the shopkeeper Saruk Mohammad confirmed selling him a black Hero cycle in July-2008. Second, the accused pointed out a residence in Sujagarwada, Rajpur Gomtipur, where a person named Allahrakha Sattarbhai confirmed selling the accused a black Hercules cycle for Rs. 700/-.

14.4.222. In this connection, the prosecution examined panch witness Rakesh Kantilal Panchal (PW No.868, Exh.6067). He admitted that he

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was called to the Crime Branch and agreed to act as an independent Panch witness. He corroborated that the accused voluntarily led the investigation team to cycle shops in Sarangpur and Gomtipur. He confirmed the accused identified the specific persons from whom cycles were purchased. The witness identified his signatures on the Panchnama (Exhibit 6068). He stated he could not identify the accused in court due to the lapse of eight years.

14.4.223. In his cross-examination, the witness admitted he is a furniture worker and had no prior experience as a Panch witness. He confirmed the Panchnama was drafted by police and he was not aware of the specific legal sections. He admitted that no videography or photography was conducted during the pointing out. He stated he could not identify the individuals (Saruk or Allahrakha) mentioned in the Panchnama.

14.4.224. The Court finds that testimony of this witness serves as corroborative evidence for the discovery of facts under Section 27 of the Indian Evidence Act. The witness remained consistent regarding the locations and the accused's voluntary disclosure of the cycle procurement points. Though he could not recollect the name of shop keeper or cycle owner at the time of deposition, he supported the contents of panchnama substantially. Despite the witness's inability to identify the accused in court, the Exhibit 6068 documents the contemporaneous identification. The evidence establishes a logistical link between the accused and the bicycles used in the crime. It has come in the evidence that police had recorded the statement of the cycle owners in presence of the witness. Therefore, the discovery of a fact i.e. the place and persons from whom the bicycles were purchased is proved by deposition, which is distinctly related to the overall facts of the case. Hence the panchnama is proved and can be treated as an admissible

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evidence.

14.4.225. Exh.6075 is discovery panchnama of a places from where different materials were purchased by accused Kayamuddin Kapadiya for preparing bombs. The panchanama was carried out on 12.12.2008 between 12:00 hours to 15:00 hours before Mr.V.R.Toliya, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The Panchnama details a pointing out panchnama, where accused Kayamuddin Kapadiya who was in the custody of police in connection with crime registered at Shahibagh Police Station vide CR No.236/2008. He led the police and Panch witnesses to various shops in Ahmedabad. The accused identified locations where he purchased materials for the serial bomb blasts, including scissors from Gujarat Tools, strip connectors, batteries, bulbs, and electric wire. He further pointed out shops for the procurement of white canvas, a Maruti 800 car cover, plastic pieces, and blue plastic bags. Additionally, the accused identified the shops where a Reliance mobile phone and a SIM card were purchased for the conspiracy.

14.4.226. In this connection, the prosecution examined panch witness Mr.Vishank Balvantbhai Patel (PW No.870, Exh.6074). He admitted that he was called by the Crime Branch and voluntarily agreed to act as a Panch. He deposed that the accused voluntarily led the team to multiple shops to identify where blast-related materials were purchased. The witness formally identified his signatures on the Panchnama (Exhibit 6075), but could not identify the accused as many years lapsed in between and accused shown to him were having long beards. He confirmed all the 11 places from where different items were purchased by the accused.

14.4.227. In his cross examination, the witness admitted that he was

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stopped by police while returning from a temple. The discussion between the panch witnesses and police was not written on a paper, in the police station. He admitted the Panchnama was drafted by the police in their presence and as per dictation. The shop owners were inquired by the police officer but he could not recollect what was stated by the shop owners to the police officer.

14.4.228. The Court finds that the testimony remains intact in cross examination. No doubt is created in the deposition. What is stated in the panchnama is corroborated by the witness in his deposition. All the 11 articles/items purchased by the accused for preparing bombs are deposed by the witness in his evidence. The witness did not recollect the statements given by the shop owners before police, but it would not have any significance. The facts stated before police in presence of panch witnesses are the facts not in the knowledge of the police prior to panchnama. Therefore, the facts fall within the provisions of Sec.27 of the Indian Evidence Act. The witness remained consistent regarding the sequence of pointing out and the accused's voluntary disclosures.

14.4.229. Exh.6087 is discovery panchnama of a places where co accused Alamjeb Afridi met the accused Mohmmad Saif; discovery of a place where Mohammad Saif park bomb-laden cycle; discovery of a place where Mohammad Saif met with Bada Sajid and Chhota Sajid at nearby bus stand. It was carried out on 05.11.2008 between 13:00 hours to 15:00 hours before Mr.M.J.Chavda, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. As per the Panchnama (Exhibit 6087) accused Mohammad Saif @ Rahul Sharma was in the custody of police in the crime registered at Maninagar Police Station vide CR No.203/2008. The accused made a voluntary disclosure statement before panch witnesses that he will show the places where he met with co

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accused Alamjeb Afridi who had given bicycles. He has also pointed out the place where he has parked bomb-laden bicycle, and a place where he met with Bada Sajid and Chhota Sajid after planting a bomb-laden bicycles. The accused had identified locations in Ahmedabad where he and co-conspirators allegedly planted bombs. He pointed out a spot near Ajit Mill Char Rasta (near Nilkanth Restaurant) where a bomb-laden cycle was placed. He identified another location near a garbage bin in front of Firdosh Police Line Division-2 for the placement of a cycle bomb. The accused also pointed out a bus stand at Hatkeshwar Mahadev where the group met after the parking cycles. Also, stated that he saw the bomb-laden bicycle parked by Chhota Sajid near Ashapura Travels vegetable Market.

14.4.230. In this connection, the prosecution examined panch witness Shaileshbhai Prabhudasbhai Dabhi (PW No.873, Exh.6068). He admitted that he was called to the Crime Branch and agreed to serve as an independent Panch. He deposed that the accused voluntarily led the police and panches to various crime scenes. The witness identified the specific spots pointed out by the accused for planting explosives and meeting co-conspirators. He formally identified his signatures on the Panchnama (Exhibit 6087). But he could not identify the accused as his physical appearance had changed. He confirmed the content of the document was read and explained to him at the time.

14.4.231. In his cross-examination, the witness stated he could not identify the accused in court, citing changes in the accused's appearance over eight years. Defense counsel questioned the witness on the proximity of his residence to the other Panch witness to suggest they were not independent. It was admitted that the language used in panchnama is Gujarati and accused in the custody was speaking Hindi. It

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is not mentioned in the panchnama that panchnama was written after making a translation in Gujarati language. He admitted that he had never been a panch witness in any police case. There was traffic at Hatkeshwar Bus station and Ajit mill cross road. He is unable to mention the location of Ashapura Travels, surrondings of the Crime branch police station.

14.4.232. The Court finds that the unfortunate event of the bomb blast happened on 26.07.2008 and the panchnama proceeding was conducted on 05.11.2008, therefore, the police were very well aware of the places where bombs were blasted. But police were not aware about who had planted the bomb at which place. So many accused had hatched the conspiracy and thereby crime was committed. Therefore, the fact stated by the accused Mohammad Saif regarding the role played by him and other co-accused is a mental fact, which was revealed before the police for the first time at the instance of the accused Mohammad Saif. Therefore, it is discovered in accordance with the provisions of Sec.27 of the Indian Evidence Act. The testimony serves to corroborate the discovery of spots linked to the conspiracy under the Indian Evidence Act. The witness remained consistent regarding the sequence of the site-pointing and the locations identified by the accused. The witness's inability to identify the accused in court due to long time lapse is a common factor and does not inherently discredit the contemporaneous record. Minor procedural omissions regarding visual recording do not invalidate the witness’s substantive account. Therefore, the facts stated in the panchnama are proved by the prosecution. As provided in the Section itself, even the confessional statement of the accused can be admissible, if it is a kind of discovery of a fact, including a mental fact, which is deposed as distinctly related to the fact discovered. Here in this case also, the fact deposed as discovered is distinctly related.

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14.4.233. Exh.6278 is a discovery panchnamaat the instance of an accused Imran Ibrahim. Police have recovered a first aid box from his house. The panchanama was carried out on 22.08.2008 between 21:30 hours to 23:15 hours before Mr.Vinay Shukla, Police Inspector, Crime Branch, Ahmedabad City. From the contents of the panchanama, it appears that accused Imran Ibrahim was in the custody of police in connection with the crime registered at Shahibaug police station vide a CR number 236 2008. The Panchnama records seizure conducted at the residence of accused Imran Ibrahim Sheikh in Wadi Taiwada, Vadodara. The accused voluntarily led the police to his house and pointed out a transparent plastic first aid box kept on a shelf. The box contained medical supplies, including bandages, needles, syringes, Dettol, and various ointments, which the accused claimed were used during Jehadi training in Pavagadh. A visiting card with the accused's name and mobile number was found inside the box. A light bill for July 2008 in the name of the accused's father was also seized to establish occupancy. The items were sealed in a cloth bag with a Panch slip.

14.4.234. In this connection, the prosecution examined panch witness Pravin Ishwarbhai Rajput (PW No.877, Exh.6277). This witness corroborated being called by the DCB Police Station and voluntarily joined the proceedings of panchnama as an independent Panch. He testified that the accused led the team to his residence and produced a medical box used for training. The witness formally identified his signatures on the Panchnama (Exhibit 6278). He identified the seized first aid box and its contents in court (Exhibits 6279 and 6280). He stated he could not identify the accused in court due to a change in the accused’s physical appearance (beard and hair) over nine years.

14.4.235. In his cross-examination, the witness confirmed that no

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videography or photography was conducted during the search and seizure. The witness conceded he did not maintain a personal diary of the investigation. He admitted the Panchnama was drafted by the police while he was present. He admitted he did not personally verify the address on the visiting card found in the first aid box.

14.4.236. The Court is of the opinion that the testimony of this witness provides material corroboration for the discovery and seizure articles. The seizure of medical supplies are such things which are used by everyone and available at everyone's house. It can be argued that nothing can be said to have been established by seizure of the first aid box in absence of any other corroborative evidence. The residence of the accused was known to the police, therefore the place of residence is not a covered fact. The first aid box seized by the police is also a thing of general usage, which would not establish anything which can be said to be a discovery relating to an offence and material thing to commit a crime. It is no one's case that accused Imran has used the first aid box in committing the crime, however, it goes on to establish the holding of a camp at Halol and this discovery of medical box would corroborate the other evidence regarding holding of terror camp at Halol.

14.4.237. Exh.6290 is search and seizure panchnama of accused Mohammad Usman Agarbattiwala was done. Police seized a hard disk, laptop and pendrive from the house. It was carried out on 20.08.2008 between 01:00 hours to 02:00 hours before the Police Inspector, Crime Branch, Ahmedabad City. The panchnama records a search and seizure operation conducted at the residence of accused Mohammad Usman Agarbattiwala in Wadi Taiwada, Vadodara . The accused led the police and Panch witnesses to his home, where his father was present. Scientific officer from F.S.L. present and seized one Seagate Hard Disk,

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one Intel Laptop, and one Pen Drive from the premises. The electronic items were identified, labeled with Panch slips, and sealed with wax for forensic analysis.

14.4.238. In this connection, the prosecution examined panch witness Kamlesh Sureshbhai Gohil (PW No.879, Exh.6289). This witness admitted that he was stopped by police while returning from work and agreed to act as an independent Panch witness. He confirmed witnessing the search and seizure of the hard disk, laptop, and pen drive. The witness formally identified his signatures on the panchnama (Exhibit 6290) and the identification labels on the seized articles (Exhibit 6291). He identified the physical evidence produced in the courtroom.

14.4.239. In his cross-examination, the witness admitted to having an education of 9th class and no technical knowledge of computer systems. He confirmed the electronic devices were not operated or switched on in his presence during the seizure. He stated that no videography or photography was performed by the police during the search. He was unable to identify the accused in court, noting the accused now has a beard whereas he was clean-shaven at the time of the panchnama.

14.4.240. The Court is of the opinion that the testimony of this witness serves as material corroboration for the recovery of electronic evidence linked to the accused. The witness remained consistent regarding the sequence of events and the specific items recovered from the residence. The contemporaneous Panchnama (Exhibit 6290) supports the procedural regularity of the seizure. While the witness lacked technical expertise, still the names of devices seized are common that anyone can name it. Further, the witness stated how the device works. The failure to identify the accused in court after a nine-year interval is a matter of record but does not inherently invalidate the seizure of the articles, as

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articles are also identified by witness while giving evidence. Here in this case also, the fact deposed as discovered is distinctly related. Therefore, the contents of panchanama are proved by the evidence of panch witness Kamlesh Gohil, which goes on to establish the circumstance that the accused was having a computer system and had knowledge of putting such system to a use. This circumstance is sufficient to infer the connection between co-accused through this device.

14.4.241. Exh.6311 is discovery panchnama. It was carried out on 08.12.2008 between 14:15 hours to 17:15 hours before Mr.R.V.Asari, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The Panchnama (Exhibit 6311) records a site-pointing procedure led by accused Ikbal @ Ikrar Kasambhai Sheikh. He was in the custody of police in connection with the crime registered in Odhav Police Station vide CR No. 339/2008. The accused voluntarily led the police and Panch witnesses to several locations where he claimed to have planted explosives. He identified a spot near Sheetal Cinema where a cycle laden with 2 bombs was delivered to him by co-accused Abdul Rajik. He pointed out a second location near Ashapuri Pan Parlor at Thakkar Nagar where he parked a bicycle laden with bombs. Furthermore, the accused identified a bus stop at Odhav Soni ni Chali cross road, from where he boarded in AMTS bus and put the bomb beneath the third seat behind the bus driver. The accused pointed the fourth place, i.e. Kalandari Masjid Cross Road, Rakhiyal, where he got down from the bus as the bus slowed down due to the cross road.

14.4.242. In this connection, the prosecution examined panch witness Kunvarji Meruji Thakor (P.W. 883, Exh.6310). The witness testified that he was called to the Haveli Police Station by police and agreed to act as an independent Panch. He deposed that the accused voluntarily led the

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team to identify various bomb placement sites. The witness confirmed the accused pointed out specific locations for cycle bombs and a bomb planted in the bus. He formally identified his signatures on the Panchnama (Exhibit 6311) and Panchnama Exhibit 6312 (describing the condition of a bus after a bomb blast). Also deposed describing the condition of a bus. He identified the accused in court through a video screen.

14.4.243. In his cross-examination, the witness stated he is a farmer having education up to 6th standard. He admitted that the police performed no videography or photography during the site-pointing process. The witness conceded he did not maintain a personal diary or written record of the investigation. He could not recall the registration number of the police vehicle or the names of all officers present. He also accepted that there were shops and residence houses near the place identified by the accused. He accepted that no description of the bag was known to him. He also explains in his cross examination as to how he came near the crime branch police station on the day of panchnama. He admitted that bus number 150 is not mentioned in the panchnama. Also admitted that he did not notice the route of the bus.

14.4.244. The Court is of the opinion that the testimony of this witness serves as material corroboration for the discovery of spots. The witness remained consistent regarding the accused's voluntary disclosures and the identification of crime scenes. It is a discovery of a place at the instance of the accused, because it is exclusively within knowledge of the accused which are the places he met the co accused, received a bicycle, parked a bicycle, boarded the bus and got down from the bus. All these facts are covered under voluntary disclosure made by the accused and deposed in the testimony of the panch witness. He has also

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identified the accused on the video screen. Identification of the accused and the contemporaneous Exhibit 6311 strengthens the link between the accused and the placement of explosives. Minor procedural omissions, such as the lack of visual recording, making the panchnama Exh.6212 in mobile light, signing the panchnama after coming out from the godown etc. do not invalidate the substantive account of the site-pointing. The evidence establishes a clear logistical trail for the execution of the serial blasts. Therefore the facts of the panchnama are proved by the prosecution.

14.4.245. Exh.6353 is discovery panchnama regarding discovery of documents i.e. Diary of Ahmedabad Municipal Corporation, Driving licence & Bill, at the instance of accused Kayamuddin @ Rizwan @ Asfaq Kapdiya. It was carried out on 22.12.2008 between 11:50 hours to 13:30 hours before Mr.M.J.Chavda, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. This panchnama (Exhibit 6353) records a seizure conducted at the instance of accused Kayamuddin Kapadiya at his father-in-law's residence in Sector-5, Gandhinagar. The accused led the police and Panch witnesses to the house named "Al Habib Manzil". From a wooden cupboard in a storeroom, a 2008-2009 diary of the Ahmedabad Municipal Corporation was recovered. Inside the diary, there was an old driving license belonging to another individual and a mobile phone bill for Rs. 9,000/-. These documents were identified, labeled with Panch slips, and seized for the investigation. The accused had voluntarily disclosed that using these documents, he got a mobile sim card.

14.4.246. In this connection, the prosecution examined panch witness Jitendra Babulal Jaiswal (PW No.893, Exh.6352). He admitted that he was called by police while passing near Sector-7 Police Station and

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agreed to act as a Panch. He corroborated that the accused voluntarily led the investigation team to the residence in Sector-5. He witnessed the discovery of the diary, license, and bill from a cupboard. The witness formally identified his signatures on the Panchnama (Exhibit 6353) and the seized articles (Exhibits 6354, 6355, 6356). He stated he could not identify the accused in court because the person he saw in 2008 was clean-shaven, whereas the person on screen had a beard.

14.4.247. In his cross-examination, the witness admitted he is a cable operator and was not a professional Panch witness. He confirmed that no videography or photography was conducted during the search and seizure. The witness conceded he did not maintain a personal diary of the investigation events. He admitted the Panchnama was drafted by police in his presence. It is admitted by this witness that he has signed the documents in the police station and put a total of 6 signatures. It is also admitted by panchbitness that when he met the police, it was said by police that they have to seize diary, bill and licence from Sector 5. But in the second set of cross examinations, totally adverse material comes out in cross examination. The witness has said that before departing from the police station he was not informed where the House was situated and who owned the house.

14.4.248. The Court finds that accused Kayamuddin has voluntarily disclosed before punch witnesses and police that he will produce a driving licence, a bill and the diary of Municipal Corporation Ahmedabad. He has further disclosed that using the driving licence and bill he has purchased mobile phone and SIM cards. Therefore the articles are important documents. The location of which is exclusively within the knowledge of accused Kayamuddin. The documents were found at the instance of Kayamuddin from the house of father in law of

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accused Kayamuddin. Therefore it is clearly a Discovery within the purview of Sec.27 of the Indian Evidence Act, which is proved by the corroborative testimony of Panch witness.

14.4.249. The Court also finds that it has come on record in cross examination that a Panch witness has signed the document at the police station and not at the place where the seizure occurred. This is an irregularity which did not go to the root of the proceeding and vitiated the recovery of the documents at the instance of the accused.

14.4.250. The Court is of the opinion that the testimony of this witness provides material corroboration for the discovery and seizure of documentary evidence linked to the accused. The recovery of items from a father-in-law's residence establishes a physical link between the accused and documents, thereby establishing the circumstance that the accused had attempted to use fake documents to hide the real identity in procuring of the sim cards meant to be utilized in the offence of conspiracy.

14.4.251. Exh.6422 is discovery panchnama of a place from where accused Mohammad Shakil had received a bicycle; and also the place where the bicycle laden with bombs was parked. It was carried out on 02.11.2008 between 11:00 AM to 1:00 PM (13:00 hours) before Mr.M.J.Chavda, Assistant Police Commissioner, Crime Branch, Ahmedabad City. The panchnama records the voluntary disclosure and identification of crime scenes by accused Mohammad Shakil, who was in the custody of police, for the office registered at Maninagar police station CR No.203 /2008. The accused, while in police custody, offered to show the specific locations in the Maninagar area i.e. Roop Complex near AMTS Bus stand, where he and his associates (Mirza Sadab Beg, Zeeshan Ahmed, and Ziya-ul-Rehman) had received two bicycles laden

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with bombs on 26.7.2008. He further disclosed before panch witnesses that he parked one black colour cycle under a banyan tree near Mahalaxmi Market. Another "Ranger" bicycle was taken by Jiya-ul-Rehman. He made a statement that he had conducted reconnaissance (recce) of these areas on 12.7.2008.

14.4.252. In this connection, the prosecution examined panch witness Durgesh Kanubhai Patel (PW No. 896, Exh.6421). This witness admitted that he was called to the Crime Branch office where the accused expressed a willingness to show where bombs were placed. The witness confirmed that the accused led the team to Maninagar Railway Station and pointed out the exact spots near Roop Complex and the banyan tree. He identified the signatures on the panchnama Exh.6422 as his own and those of the second panch, Jigarbhai, but could not identify the accused. The witness stated that the accused explained how he and his associates distributed the bicycles at the identified locations.

14.4.253. In his cross-examination, the witness admitted he had no prior experience acting as a panch witness and did not maintain a personal diary of the events. The witness stated he could not remember the specific names or ranks of all police personnel present, other than the lead officer. He acknowledged that he did not know the specific distance between various locations or the names of every shop surrounding the identified spots.

14.4.254. The Court is of the opinion that the evidence of this witness constitutes a discovery of facts at the instance of the accused under Section 27 of the Indian Evidence Act. The witness remained steadfast regarding the primary act of the accused pointing out the specific locations. The contemporaneous record of the panchnama, signed by independent witnesses, corroborates the police investigation. Minor

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inconsistencies regarding the description of the surrounding area or the physical appearance of the accused are attributable to the nine-year gap between the event and the deposition. The testimony establishes a direct link between the accused's voluntary statement and the physical locations of the offence. Further, the fact that the accused made a statement that he could not lead to the place from the police station, but he could lead from Maninagar Railway Station, the accused being an outsider, gives a trustworthiness to the facts stated in the panchnama. After reaching Maninagar Railway Station, accused Mohammad Shakil led the team to the places. It is quite difficult for the accused to give a description of the place before proceeding towards the place of crime. Therefore this aspect also did not create any doubt. Therefore, the discovery of locations identified is established by the testimony of a panch witness.

14.4.255. Exh.6434 is discovery and seizure panchnama of a place i.e. house used by accused Abubasar @ Abdul Rasid @ Mufti s/o Abubakar sheikh and seizure of articles from the house i.e. wires, adhesive taps, pellets, cardboard, newspaper etc. The panchanama was carried out on 18.08.2008 between 18:00 to 22:30 before Mr.M.J.Chavda, Assistant Commissioner of Police , Crime Branch, Ahmedabad City. The panchnama records the voluntary disclosure by accused Abubasar , who offered to point out a house in Umraonagar, Vatva, where he and his associates Abdul Subhan and Kayamuddin had resided during the period of the Ahmedabad blasts. The accused led the police and panchas to House No. 3 in Umraonagar Society. Upon searching a room on the first floor, a copy of The Times of India dated May 22, 2008, was recovered, along with scrapings of white powder taken from a "fluorescent spot" on the wall. investigators discovered a plastic bag hidden behind a

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cardboard-covered window containing two pieces of wire, five bolts, and approximately 40 pellets.

14.4.256. In this connection, the prosecution examined panch witness Bipinbhai Chhotalal Patel (PW No.898, Exh.6433). This witness admitted that the accused voluntarily expressed a willingness to show the team the residence in Vatva. He confirmed that he accompanied the police and the accused to the site, where the accused identified the specific house and room. The witness identified the incriminating articles (wires, bolts, pellets, and newspaper) produced in court as the items seized during the procedure. He verified his signatures on the panchnama and the slips attached to the seized articles, but could not identify the accused due to time gap and change of appearance of accused.

14.4.257. In his cross-examination, the witness admitted he could not identify the accused in court via video conference, explaining that the accused now has a long beard whereas he was clean-shaven at the time of the incident. He acknowledged he is a manual laborer who does not understand English or Urdu and was unfamiliar with the term "fluorescent". Panchnama was not written in the language of the accused. The witness stated he did not see any rental documents for the house and did not know the house owner personally before the panchnama. Police have not recorded statements from the house owner and neighbours residing in that area. He admitted that the police or panchas were not searched before entering the premises and that the panchnama was written by the police, though it was read over to him.

14.4.258. The Court is of the opinion that the evidence of this witness establishes a valid discovery of fact under Section 27 of the Indian Evidence Act. The recovery of pellets and wires provides a physical link

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between the accused and materials used in the commission of the blasts. The witness's failure to identify the accused after nine years due to physical changes (growing a beard) does not necessarily invalidate the recovery. The testimony is considered reliable as the witness remained consistent regarding the core facts of the search and seizure. It reveals from the cross examination that the panch witness is doing labour work in the ice industry.

14.4.259. It also appears that proceedings of panchnama were conducted not only in the presence of an accused and panch but also in presence of the owner of the house. Receipt of the seized article is given to the owner. Further, there were FSL officers present on the spot. Merely the witness has answered that the sealing process of the articles were not done on the spot itself does not create doubt. For that purpose, the deposition of the police officer, the owner of the house and FSL officer is also taken into consideration. Therefore, the discovery of the place at the instance of the accused is proved. Therefore, the discovery place i.e. rented house and seizure of the article is proved by the prosecution.

14.4.260. Exh.6438 is discovery and seizure panchnama regarding the discovery of a place where the bomb Laden Maruti WagonR car was parked in Civil Hospital Ahmedabad and also regarding the discovery of a route which was used by the accused Afzal @ Raja @ Afsar Usamani with co accused Adbul Rajik, for travelling from Al Mohammadi society to Civil Hospital Ahmedabad. It was carried out on 13.11.2008 between 18:15 to 20:00 hours before Mr.V.R.Toliya, Deputy Superintendent of Police, Investigation Team, Crime Branch, Ahmedabad City. The panchnama records the voluntary disclosure by accused Afzal (alias Raja or Afsar), who was in the police custody in the offence registered at Shahibagh Police Station CR No. 236/2008, who

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offered to point out locations related to a grey WagonR car (No. GJ-6-CD-9718) used in the blasts. The accused led the police and panchas to a house in Alahmadi Society, Vatva, which he identified as the place where the car was kept and loaded with gas cylinders, time bombs, and nut-bolts. He then led the team to the Civil Hospital Trauma Centre, pointing out the specific corner where he and an associate (Abdul Razik) parked the car on 26.7.2008, to ensure it would not look suspicious.

14.4.261. In this connection, the prosecution examined panch witness Shersinh Khushalsinh Mahavar (PW No.899, Exh.6437. This witness deposed that he was called to the Crime Branch, where the accused Usmani expressed a willingness to show the sites. The witness confirmed the accused led them to the residence Situated near Chadola Talav, and then through various city landmarks (Jamalpur, Shah Alam, Kankaria) to the Civil Hospital. He verified that the accused pointed out the exact spot near the Trauma Centre where the car was abandoned. The witness identified his signatures on the panchnama and confirmed that the contents were read over to him and were correct. But he could not identify the accused on TV, due to the long interval and the accused now having long beard.

14.4.262. In his cross-examination, he denied that before his testimony, the police tutored that if he couldn't recognize the accused, he should give reason that it was due to this change in physical appearance. The witness admitted he had no prior experience as a panch and did not know the names of the police officers involved, other than Toliya Saheb. He acknowledged that he did not know the specific distances between the locations or the names of the societies they passed. He admitted that police inquired with the accused in Hindi language and the accused was answering in Hindi language. He admitted that he could not describe

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four directions of the place where the car was parked in Civil Hospital.

14.4.263. The Court is of the opinion that the testimony of this witness supports a discovery of fact under Section 27 of the Indian Evidence Act, identifying the place where Wagon-R car was parked near Al mahmadi society and also identified the final placement of the car in Civil Hospital. The failure of identification of accused attributed to the accused's changed appearance over nine years. The contemporaneous written record of the panchnama provides a detailed geographical link between the accused and the crime scene. The discovery of specific location i.e. the house near Chandola Talav and the hospital parking spot corroborates the other set of evidence connecting the car with the offence and the accused.

14.4.264. Therefore, the mental fact of knowledge of the place and the route used for travelling from Al mahmadi society to Civil Hospital Ahmedabad is proved by the prosecution.

14.4.265. Exh.6451 is discovery panchnama regarding the discovery of a fact that accused Afjal @ Raja @ Afsar had accessed the AC waiting room at Kalupur Railway station, where he has given his identity as Sanjay. It was carried out on 10.12.2008 between 11:30 to 12:40 before Mr.V.R.Toliya, Deputy Superintendent of Police, Investigation Team, Crime Branch, Ahmedabad City. The panchnama records the voluntary statement and discovery of a place by the accused, Afzal @ Afsar Mutallib Usmani. The accused stated that on July 26, 2008, he and an accomplice named Abdul Razzaq placed a WagonR car filled with explosives at the Civil Hospital Trauma Centre. He further stated that after abandoning the car, he went to the Kalupur Railway Station to board the Rajdhani Express and stayed in the AC waiting room. The accused then led the police and the panchas to Platform No. 1 of the

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Ahmedabad (Kalupur) Railway Station and pointed out the specific AC waiting room where he had stayed under the name "Sanjay".

14.4.266. In this connection, the prosecution examined panch witness Maheshbhai Subhashbhai Jethwa (PW No.901, Exh.6450). This witness admitted that he was summoned to the Crime Branch office where the accused confessed to his involvement in the Ahmedabad bomb blasts. He confirmed that the accused led the police team and panchas to the Kalupur Railway Station. The witness stated they went to the AC waiting room on Platform No.1, where they met the attendant, Chandrakant Solanki. He verified that the accused pointed out the place of his stay and that the panchnama was drawn at the scene. He identified his signatures on the panchnama document but could not identify the accused and assign the reason that the accused had light beard when he saw him at the time of panchnama and at the time of deposition many accused have long beards.

14.4.267. During cross-examination, the witness admitted he did not know the other panch witness previously. He conceded that he did not see any entry in the station register himself, nor did he see the train tickets mentioned. He admitted that the police did not show him any identification documents for the accused at the time. Most significantly, when asked to identify the accused via video conferencing, the witness failed to identify the accused persons, citing changes in their appearance such as grown beards, caps, or glasses. He also admitted he had not kept any personal record or diary of the events.

14.4.268. The Court is of the opinion that the testimony of this witness supports the procedural validity of the discovery panchnama under Section 27 of the Evidence Act. But accessing the AC waiting room by the accused without there being further proof of it, cannot be said to be a

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discovery of a fact. It is voluntarily said by the accused that he has made an entry in the register using his identity as Sanjay, but the register was not found at the waiting room. The Court is therefore not inclined to accept the portion of the voluntary disclosure about the access to waiting room to board a train as a discovery of relevant fact.however inso far as the voluntary disclosure of the location where they abandoned the car near truama centre there is disclosure of the mental fact about the location and that there is sufficient evidence to connect that location with the offence as the blast itself has taken place there.

14.4.269. Exh.6480 is discovery and seizure panchnama of places where camp has been arranged & Jehadi training was given as well as seizure of the articles from those locations. The panchanama in first part was carried out on 27.08.2008. between 8:30 AM to 12:20 PM before Mr.V.R.Toliya, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The panchnama records the voluntary identification of training camp sites in the Pavagadh forest area by accused Jahid Kutubuddin Sheikh, who was in the custody of police in connection with the offence registered at Shahibagh Police Station CR No.235/2008. The accused led the police and panchas and FSL officers and photographer to the place near Helical Vav, where he pointed out the spot where tents were erected. FSL officers searched the surrounding area and recovered a rusted metal pipe plug (bush), 16 airgun pellets, pieces of rubber balloons (used for target practice), and a metal bolt embedded in a dry tree trunk (for tying ropes). The accused has also pointed out one pond where they were doing swimming practice. Additionally, the accused identified the Ek Minara Masjid, where he claimed they performed prayers and held speeches; Also pointed out Khudpir Dargah, where they stayed.

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14.4.270. In this connection, the prosecution examined panch witness Dipakbhai Jivanlal Dalwadi (P.W. 904, Exh.6479). This witness confirmed he was called by the police and has consented to be a panch witness; Accused Jahid was in the custody of police; FSL officers and videographer also present; Accused volunteered to locate the places in Pavagadh Forest; he accompanied the team, the accused led the team to various training sites in the forest are at Pavagadh foothills. This witness verified the discovery of the place where tents were erected for the purpose of training; also identified the physical evidence, including the pellets, bush, the bolt in the tree trunk, parts of balloons in the presence of FSL officers. Witness Deepak also said that there was one pond near the place. Additionally, he supported the details of panchnama and mentioned that he accompanied the team to other places i.e. Ek Minara Masjid and Khundpir Dargah. He identified the seized articles and the associated packaging in court. He confirmed his signatures on the panchnama (Exhibit 6480) and the identification slips attached to the recovered items.But he could not identify the accused, due to change in physical appearance.

14.4.271. In his cross-examination, he acknowledged working in a fabrication and welding shop, where items like bolts and nuts are common, though he insisted the recovered items were distinct. The witness stated he had no prior experience acting as a panch and did not know the exact distances between various locations in the forest. He admitted that the place was open and anyone could access the place. No Air gun found at the place. He admitted that there is a 100 meter distance between Dagah and Ek Minar Masjid. Every Thursday many people come to Dargah for darshan. A fun fair was arranged at Dargah, where small hawkers installed their shops.recheck this FSL officers

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have found pellets from the place. He admitted that the accused had not disclosed initially that he would lead the team to which place. He admitted the police wrote the panchnama, but maintained it was read out and explained to him before he signed it.

14.4.272. The Court is of the opinion that the evidence of this witness constitutes a valid discovery of facts under Section 27 of the Indian Evidence Act, specifically the location of a remote training site. Before the voluntary disclosure statement of an accused, the fact that the Jehadi training was parted at a remote place was not known to anyone. Therefore it is a valid discovery. Further the articles found from the place is also proved by the witness. Materials that came out in cross examination do not create doubt regarding the discovery and seizure. The recovery of specialized items like airgun pellets and balloon parts from a remote forest location strongly corroborates the allegation of training activities. The involvement of FSL experts during the identification and seizure process provides scientific weight to the evidence. Further, the defence raised an objection during examination in chief that incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of the Indian Evidence Act. As we have discussed in the very beginning, even the confessional statement of the accused can be admissible, if it is a kind of discovery of a fact, which is deposed as distinctly related to the fact discovered. Here in this case also, the fact deposed as discovered is distinctly related. Therefore, the objections are not sustainable. Further the process was videographed, therefore there cannot be any chance of fabricating false evidence to support the prosecution. Minor inconsistencies regarding the witness's memory of the travel times are expected as evidence is recorded after an interval of nine-year. This panchnama brings on record the special knowledge of

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the accused as to the location of the traiining camp and that too at a remote isolated location, not frequented by general public except of one particular occasion. Therefore, the discovery and seizure is proved by the prosecution as an important circumstance and evidence of holding of a terror training camp. There are other evidences of eye witness regarding holding of some camp and the evidence in form of confessional statements about the activities held within the camp where the most important part being Jehadi speeches.

14.4.273. Exh.6495 is discovery panchnama, whereby accused Kayamuddin showed STD PCO centre at Vapi, from where co-accused Tofiq called. It was carried out on 03.09.2008 between 14:15 hours to 15:45 hours before Police officer Mr.N.B.Parmar, Assistant Commissioner of Police, 'C' Division, Surat City (at Vapi Camp). The panchnama (Exhibit 6495/Mark 102-100) records the voluntary disclosure by accused Kayamuddin (alias Musa, Rizwan, Ashfaq, or Samir Kapadiya). The accused offered to show an STD/PCO booth in Vapi from which the co-accused, Taufiq, had reportedly made a phone call on 19.5.2008. The accused led the police and panchas to "Minaj Telephone" in Nutannagar, Vapi, near the old railway gate. At the booth, the team identified an individual named Shahbaj Mustak Boga.

14.4.274. In this connection, the prosecution examined panch witness Irshad Sarvarkhan Pathan (PW No.907, Exh.6494). He deposed that he runs a pan shop in Vapi GIDC and claimed that in March 2008, police obtained his signature on papers behind a factory. He denied that the accused Kayamuddin made any statement in his presence or led the police to any location. Because he failed to support the prosecution's case, he was declared hostile by the Special Public Prosecutor (SPP). He did not support the contents of panchnama even in the leading question.

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He was shown the panchnama, he identified his signature but maintained he did not know the contents.

14.4.275. This witness was not cross-examined.

14.4.276. From the deposition of this witness, it appears that nothing proved in support of the prosecution. The attempt of the prosecution through this panchnama was to establish a fact of the accused being in contact with each other to share crucial information how ever in view of the witness being hostile prosecution is unable to establish the same through this panchnama.

14.4.277. Exh.6508 is discovery panchnama. This panchnama describes how the IC is functions to set the time of blast at the instance of accused Asif Shaikh. The panchanama was carried out on 29.11.2008 bteween 12:00 to 13:00 before Mr.N.B.Parmar, Assistant Commissioner of Police, 'C' Division, Surat City. The panchnama records the demonstration and explanation of an electronic timer circuit by the accused, Asif @ Hasan Bashiruddin Sheikh, who was in the custody of police in the offence registered at Kapodra Police Station, Surat City, vide CR No. 175/2008. In the presence of panchas, a sealed transparent jar containing a circuit was produced. The accused explained that the programmable IC circuit used a digital timer to set specific delayed times. He demonstrated how connecting a 9-volt battery and a detonator to this circuit would trigger a blast after the programmed duration.

14.4.278. In this connection, the prosecution examined panch witness Ushakant Chimanlal Mistri (PW No.910, Exh.6507). This witness deposed that he was called to the DCB Police Station in Surat while on his way to a petrol pump. He stated that in the presence of ACP Parmar, the accused Asif Sheikh explained the working mechanism of a timer circuit, IC, and battery. He identified the original panchnama and his

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signatures. He also identified the sealed bottle containing the circuit shown to him in court. However, he failed to identify the accused through video conferencing due to the passage of time.

14.4.279. In his cross-examination, the witness admitted he had no technical knowledge or education in electronics or circuits. He conceded that he did not know the other panch witness previously and had never seen such a timer before the incident. He admitted that the accused spoke in Hindi, but the panchnama did not record that his statement was translated. Crucially, he admitted that he has not verified what accused Asif voluntarily wanted to say regarding circuit, but a police officer told him that accused Asif wanted to say something. He also stated he kept no personal record of these events.

14.4.280. The Court finds that the procedure conducted in this panchnama is not regarding the discovery of any material object. Electronic Circuit and I.C. was in the custody of police, which was produced by one police official Fulsingbhai. Further, how the time of blast is set in the circuit is a subject of a forensic science expert. Blast was made using the circuit is a known fact to the police. Therefore, the voluntary disclosure made by the accused and deposed and recorded in the panchnama demonstrates the mental fact about the knoledge of the functioning of the circuit and time setting made in the circuit which is the special knowledge of the accused and therefore the mental fact will have to be treated as discovery as it satisfies the other parameters for s. 27.

14.4.281. Exh.6528 is discovery panchnama. By this panchnama, accused Mohammad Abrar (accused No.74) has voluntarily stated before punch witnesses that he wanted to show the camp site near Pavagadh forest and accordingly point out the Campsite, Ek Minara Masjid and

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Khundpir Dargah. It was carried out on 11.06.2012 between 05:40 to 09:00 before Mr.Mayur J.Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City. The panchnama records the voluntary statement and discovery of locations related to a terrorist training camp by the accused, Mohammad Abrar @ Munna @ Ismail @ Abdullah @ Ibrahim @ Qurban (accused No.74), who was in the custody of police in the offence registered at Maninagar Police Station vide CR No.203/2008. The accused led the police and panchas to several locations in the Halol and Pavagadh forest areas where he claimed to have received training in January 2008. He pointed to the Khundpir Dargah Trust, where he stayed and where Safdar Nagori delivered Jihadi speeches. He also identified the Ekminar Masjid used for prayers, a hilly area near Helical Vav where they pitched tents and practiced shooting air guns and crawling, and a site near Shakkarkhan Dargah used for rope-climbing training . Finally, he showed a place near a forest check post where they practiced motorcycle riding.

14.4.282. In this connection, the prosecution examined panch witness Mukundbhai Jivanlal Jadav (PW No.914, Exh.6527). This witness deposed that he was called by the Crime Branch and that the accused volunteered to show training sites in Pavagadh. He described the journey to Halol and the various sites pointed out by the accused, including the Dargah, the mosque, and the training spots in the forest. He identified his signatures on the original panchnama (Exh.6528) and confirmed that the document accurately reflected the events. However, when asked to identify the accused in court via video conferencing, the witness failed to identify the accused persons, stating he could not recognize them due to changes in their appearance like beards, caps, or glasses .

14.4.283. In his cross-examination, the witness admitted he did not keep

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any personal record or diary of the events and could not remember the specific day of the week the panchnama was drawn. He conceded that he had no prior knowledge of the locations and merely followed the police and the accused. He admitted the accused spoke in Hindi, but there was no record of a translator being present. Furthermore, he could not provide specific technical details about the mosque or the height of the trees and failed to identify any local persons at the sites who might have recognized the accused.

14.4.284. It is required to mention here that training camp was arranged near Pavagadh forest was no longer a covered fact when this panchnama proceeding was conducted, because the panchnama Exh.6480 very specifically describes that there was training camp arranged in the forest and the the places cited in Exh.6528 are the same places which are described panchnama Exh.6480. Police have also recovered some pellets, parts of balloon, Bolt and other things from the alleged training camp sites at the time of panchnama vide Exh.6480. It is also revealed before police that the accused Mahmmad Abrar was also one of the participants of this training camp. The sites mentioned by the earlier arrested accused Jahid Shaikh as the site of training camp is also identified by the present accused Mahammad Abrar. Further nothing was recovered and seized from the places shown by the accused during the panchnama. Therefore, it is admissible as a corroboration to the facts stated in panchnama vide Exh.6480.

14.4.285. Exh.6537 is discovery panchnama regarding the discovery of the fact that two stolen cars i.e. WaganR model cars were parked at Surat Railway Station Parking. It was carried out on 31.08.2011 between 12:30 to 13:00 before Mr.P.G.Vaghela, Police Inspector, Crime Branch, Ahmedabad City. The panchnama records the voluntary discovery of a

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location by two accused, Mohammad Mobin @ Mobin @ Irfan and Amin @ Raja (accused No.70), were in the police custody in connection with the offence registered at Maninagar Police Station vide CR No. 203/2008. The accused stated they stole two WagonR cars (one black and one silver) from Mumbai in July 2008 and parked them at the Surat Railway Station parking lot. They led the police and panchas to the "Pay and Park Premium Car Parking" in front of the main railway building and pointed out the specific area. They also identified the Tirupati International Hotel nearby, where they had purchased water after parking the vehicles.

14.4.286. In this connection, the prosecution examined panch witness Sureshkumar Ramcharan Sharma (PW No.916, Exh.6536). This witness deposed that he was summoned by the Ahmedabad Crime Branch to the Surat Railway Station. He stated that the accused were present and volunteered to point out the parking area where they have left the stolen cars. The witness identified the location as being near the station building, railway court, and reservation counter. He identified his signatures on the original panchnama (Exh. 6537). However, he failed to identify the accused persons in court, stating he could not recognize them after the many years that had passed since the event.

14.4.287. In his cross-examination, the witness admitted he was a worker at the railway parking lot and did not know the other panch witness or the accused previously. He conceded that he cannot read or write Gujarati (the language of the panchnama) and only knows how to sign in Hindi. He admitted he did not see the accused give specific details while the panchnama was being written and had no experience in how such documents are prepared. He further noted that the parking area is a busy public place surrounded by hotels and shops and that no long-term

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records are kept of parked vehicles or their owners.

14.4.288. The Court finds that as per the say of accused Mobin and Amin, they have parked two wagonR cars, one was of black colour car and the other was silver colour car at Surat Railway Station. Both cars were parked in the parking lot. The cars were already recovered by the investigation from the scene of offence. At the time of preparing the panchnama, the fact that the cars were stolen by the accused from Mumbai was known to the police, therefore, incriminating part of the panchnama i.e. “We have stolen cars from Mumbai" is not admissible evidence as per Sec.25 of the Indian Evidence Act. But the fact that two cars were parked in the Railway station parking lot is not known to anyone before voluntary disclosure by the accused themselves, therefore, this fact amounts to discovery of fact, therefore, only for those parts, the evidence sufficiently proved the fact stated in panchnama. The material that comes out in cross examination does not create any doubt regarding the discovery of the fact that cars were parked by the accused in Car parking. Therefore, the facts stated in the panchnama are sufficiently proved to the extent mentioned above.

14.4.289. Exh.6540 is discovery, search and seizure panchnama regarding the discovery of the house (hideout) situated at Sherpura, Bharuch. Police had searched the house and seized some material from the house. It was carried out on 02.09.2008 to 03.09.2008 at 19:00 (02/09/2008) to 03:00 (03/09/2008) before Mr.M.J.Chavda, Assistant Commissioner of Police, Investigation Team, Crime Branch, Ahmedabad City. The panchnama records the discovery of a bungalow at Sherpura Bharuch by the accused, Mohammad Sajid @ Salim @ Ajmad @ Sad S/o Gulam Khwaja Mansuri (accused No.14), was in police custody for the offence registered in Maninagar police station vide CR No. 203/2008. The

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accused led the police and panchas to a locked bungalow near Sherpura village, Bharuch, where he claimed to have met with the accused Abdul Subhan @ Taukir. Bunglow was in locked condition. After calling the owner, Gulamhusain Pathan, police had opened the premises, a search was conducted with an FSL team. Recovered items included a piece of blue tape, small metal and plastic pieces, a book titled "Integrated Electronics," and several newspaper clippings from June and July 2008. FSL experts also collected cotton swab samples from suspicious "fluorescent spots" found in different rooms.

14.4.290. In this connection, the prosecution examined panch witness Pinkesh Naginbhai Desai (PW No.917, Exh.6539). This witness deposed that he was called to the Crime Branch office where the accused volunteered to show a house in Bharuch. He described the trip to Bharuch and the subsequent search of the bungalow. He confirmed the seizure of the electronic-related materials and the book. The witness identified his signatures on the panchnama (Exh. 6540) and various seized articles (muddamal) shown in court. However, he failed to identify the accused via video conferencing, stating that their appearances had changed significantly (longer beards, caps, or glasses) over the nine-year period.

14.4.291. In his cross-examination, the witness admitted he only knows how to read and write Gujarati and could not verify the English titles of books or technical documents. He conceded that he did not know the accused or the other panch witness prior to the event. He admitted he did not see any official ownership or rental documents for the bungalow during the process. He also admitted the area was public and surrounded by other buildings. It is admitted that as per the owner, the house was rented to Mr. Rafiq, but Rafiq was not called by the police at the time of

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proceeding.

14.4.292. The Court finds that so far the house discovered at the instance of the accused Mahmmad Sajid @ Salim @ Ahmad @ Sad (accused No.14), the panch witness has confirmed the procedure followed by the police. Search and Seizure are also proved by the deposition. Further, the process was held in the presence of the owner Gulambhai and also in the presence of Scientific officers from FSL. Therefore, the procedure is not conducted in isolation but in the presence of independent persons.

14.4.293. The Court also finds that it was revealed in cross examination that a panch witness was not able to read English Language. It is required to be noted that knowing the language is not of much importance so far the proceeding of panchnama is concerned. Mr. Pinkesh, the panch witness has corroborated the material part of the panchnama, therefore, his evidence cannot be discarded.

14.4.294. Exh.6544 is discovery panchnama regarding discovery of room No.21 (hideout “Master House”) used by the accused Fazulrehman Durani (accused No.45) as his residence. It was carried out on 28.11.2008 between 11:00 to 12:15 before Mr.N.B.Parmar, Assistant Commissioner of Police, 'C' Division, Surat City. The panchnama records the voluntary disclosure by the accused Fazlur Rehman @ Salauddin Durani showing the rented room by the accused, who was in the custody of police in connection with the offence registered at Kapodara Police Station, Surat vide CR No.175/2008. The accused stated he had stayed in a rented room in Surat and offered to show it to the police. He led the police and panchas to a building named "Master House" located near the Syedpura pumping station. On the third floor of this building, he pointed out Room No. 21, which was found locked and situated next to a common toilet and Room No. 20.

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14.4.295. In this connection, the prosecution examined panch witness Amar Sureshsinh Rajput (PW No.918, Exh.6543). This witness deposed that that he was called to the DCB Police Station, Surat where the accused volunteered to show his former residence. He described the route taken through Variyali Bazar and Syedpura to reach the location. He confirmed that the accused identified "Master House" and the specific room on the third floor. The witness identified his signatures on the original panchnama and verified the document's contents in court. But he could not identify the accused before the trial court.

14.4.296. During cross-examination, the witness admitted the room was locked. The lock was not opened by calling the owner of the room or by breaking open the lock. Police had not inquired at the time of panchnama who was the owner of the shop. The witness has not tried to inquire about the physical and mental condition of the accused. Also, not trying to know from how many days the accused was in the custody of police.

14.4.297. The Court is of the opinion that It is proved by panchnama and also by the deposition of the witness that the room was pointed out by the accused saying he has taken it on rent. Therefore, the pointing out of a place used by the accused is proved.

14.4.298. Exh.6656 is discovery, search and seizure panchnama regarding the discovery of the house situated at House No.10, Al-Mahmadi Society, Juhapura, Ahmedabad. Police had searched the house and seized some material from the house. It was carried out on 19.09.2008 between 18:15 to 23:15 before Ms.Usha Rada, Assistant Commissioner of Police, Investigation Team, Crime Branch, Ahmedabad City. The panchnama records the discovery of a bomb-making hideout in Al-Mahmadi Society, Juhapura, Ahmedabad, by the accused, Jahid Kutubuddin Sheikh. After

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the police broke the lock, a massive cache of incriminating material was recovered, including which are as under:

- Electronic Components and Tools:
  - Orange digital multi-meter (UNI-T label) used for checking battery voltage and circuits.
  - Electric soldering machine with white wire.
  - 9V batteries: 24 HW-Hiwatt batteries and 6 Duracell batteries.
  - Power cells: 30 "Shakti" brand pencil cells and various empty battery packets/boxes.
  - Wires: Multiple bundles of red-black wires and 48 thin red, white, and blue wires intended for connecting battery timers.
  - Tools: Large scissors (brass and iron handles), screwdrivers, pliers, and an iron bicycle carrier.
  - Tape: 5 rolls of "Sony Wonder" transparent tape and rolls of red and blue small tape.
- Other Materials and Literature:
  - Spiral-bound diary containing hand-drawn maps in black ink and writing in Urdu.
  - Newspapers: Copies of *"Gujarat Vaibhav"* and *"Sambhav Metro"* dated July 26, 2008.
  - CDs: One labeled "MAX-9" and "Sony Music" with a film booklet, one broken CD labeled "ISLAND 700MB/80min," and one labeled "Columbia Aerosmith Greatest Hits".
  - Adhesives: "STARFIX" synthetic rubber adhesive and "New Lion Solvent".
  - Projectiles: A plastic bag containing 8 iron pellets.
  - Other: Two pieces of black plastic with blue tape and a bag containing an ash-like substance.

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- Household and Personal Items:
  - Clothing: 11 new shirts, 3 tracksuits, 6 old shirts, and a pair of blue pants.
  - Bedding: Two mattresses, old quilts, bedsheets, towels, and pillows.
  - Kitchenware: A variety of steel and aluminum utensils including pots, plates, lids, glasses, spoons, and a tea strainer.
  - Miscellaneous: Digital wristwatches (Adidas brand), a black mesh table fan, various plastic buckets, school bags, and a steel bucket used for fingerprint collection

14.4.299. Notably, an "Indian Mujahideen" symbol and markings made with a black marker were found on the walls.

14.4.300. In this connection, the prosecution examined panch witness Baldevbhai Kasturchand Prajapati (PW No.953, Exh.6655) This witness deposed that he was called to the Crime Branch office where the accused volunteered to show the location where bombs were manufactured. He described the journey to the Al-Mahmadi Society and confirmed that the police had to use a "tommy" to break the lock of the house. He verified the discovery of various electronic components, tools, and jihadi literature. The witness identified his signatures on the original panchnama (Exh. 6656) and identified several seized articles (muddamal) produced in court. But he could not identify the accused. He has given explanation that due to the long interval between the proceeding of panchnama and deposition and also due to the physical appearance of the accused being changed, he could not identify the accused.

14.4.301. In his cross-examination, the witness admitted that he is a rickshaw driver with very limited education up to the 3rd standard and cannot read or write English. It had taken 20-25 minutes to reach the

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house. He admitted that before broken open the lock police had not inquired about the owner of the house or tried to prepare a new key instead broke it. No people from the public were present at the time of the panchnama proceeding. Finger print on the lock was not collected. He has not signed on all the seized articles. He could not say which article was found from which part of the house. He did not remember that after completion of the seizure proceeding, police had taken photographs of the door or not. The door was locked by police.

14.4.302. It was not verified on the spot that the batteries collected were in working condition or not. He admitted that footwears were lying in the house but was not seized by police. The size of clothing was not noted by police. The materials seized from the house were put in the police vehicles. All articles were seized as per the instruction of FSL officers.

14.4.303. No samples were collected by scratching the wall or floor of the house. No videography made of the panchnama proceeding. It did not reveal during the panchnama that on whose name electric connection was given.

14.4.304. The witness was confronted with one word "ઉલ્લેખ" from the panchnama and asked the meaning of that word, but he could not answer it. He admitted that before the panchnama proceeding, he did not know what materials are used in manufacturing bombs. He admitted that he could not surely say that the electric equipment was new or used. He admitted that he had never seen accused Jahid before panchnama. Description of the accused was not noted in the panchnama.

14.4.305. The Court is of the opinion that it is purely a discovery panchnama, where a house situated in Al Mahmadi society was shown by the accused Jahid and according to his direction the house was

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searched and the materials found were seized by the police. Material that came in cross examination would not create any doubt regarding the discovery of a place at the instance of accused Jahid.

14.4.306. It is proved in cross examination that the witness was having education up to 3rd standard only and he could not read and write English. It has also proved that the witness was not knowing the word "Ullekh" in Gujarati language. In this regard we are saying again at the risk or repetition that panch witnesses are there to watch what is going on during the proceeding. They are not supposed to dictate the panchnama to the police official. Therefore, educational qualification of the witness and limited English knowledge would not make the proceeding doubtful. Further, the witness has narrated most of the things mentioned in the panchnama and also identified his signature on the documents. He has also identified muddamal articles seized at the time of panchnama. Considering all these in a juxtaposition the Court is of the opinion that proceeding of panchnama is proved by the prosecution. Discovery of the house, search and seizure of articles from the house is also proved.

14.4.307. Exh.6742 is discovery panchnama of the place from where the accused Mohammad Jakir @ Ayub Abdul Sheikh, volunteered to lead the police and panch witnesses to a location in Surat from which he claimed to have made phone calls in July 2008 to co accused Raju @ Tanvir. It was carried out on 17.11.2008 between 11:00 AM to 12:00 PM before Police Inspector Mr.K.N. Patel, D.C.B., Surat City. The contents of the panchnama show that accused Mohammad Jakir was in the custody of police in connection with the offence registered at Kapodra, Surat police station vide Crime register number 176/2008. Mohammad Jakir volunteered to show a place from where he called

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Raju @ Tanvir before panch witnesses and led the party towards the STD PCO situated near Bhaga Talav Surat.

14.4.308. In this connection, the prosecution examined panch witness Abbasbhai Ismailbhai Multani (PW No.960, Exh.6741). The witness deposed that he was called to the DCB office where the accused, Mohammad Jakir, was present. The accused stated he wanted to show the place from where he called his co-accused Raju @ Tanvir. Mohmmad Jakir led the police and panch in a government vehicle to "Ajwa Sweets" on Bhagatalav Main Road. The witness confirmed that the accused identified the shop as the place from where he called Raju. Panch witness has identified his signatures on the panchnama. But could not identify the accused due to the long interval of 9 years.

14.4.309. In his cross-examination, the witness admitted he was a laborer and did not maintain a diary of his work. He claimed he was at the location where police found him only because his motorcycle had a puncture. He denied being a regular police informant or having testified in numerous cases. He acknowledged that during the visit, he did not see any PCO/STD boards at the shop and that the shopkeeper, Husenbhai, did not provide any documents regarding the discontinued phone service.

14.4.310. The Court finds that the panchnama concluded that the accused successfully pointed out "Ajwa Sweets", where STD PCO was working. It was noted that the shop previously had PCO facilities, these services had been discontinued as of September 1, 2008, and the equipment had been returned. True it is that the police has not collected any document of closing of PCO centre from the owner of the shop, still it is satisfactorily proved that PCO centre was previously working at that place, which was used by the accused Mohammad Jakir to call Raju. Further, the defence raised an objection during examination in chief that

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incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of IEA. As we have discussed in the very beginning, even the confessional statement of the accused can be admissible if it is a kind of discovery of a fact, distinctly related to the fact discovered. Therefore, the voluntary disclosure of the place is proved. To the extent that this place was used for the purpose of co-accused to keep in contact without being traced.

14.4.311. Exh.6808 is a discovery panchnama of the places. The accused volunteered to identify the specific locations in Ahmedabad where he, along with associates, parked three bicycles used in the July 2008 serial bomb blasts. It was carried out on 11.11.2012 between 16:00 to 17:30 hours before Ms.Usha Rada, Assistant Commissioner of Police, Kalol Division, Gandhinagar and Serial Bomb Blast Investigation Team, Crime Branch, Ahmedabad. The contents of the panchnama show that accused, Mujib @ Akram @ Javed @ Nitin @ Yusuf @ Abid @ Faizan, was in the custody of Khadiya Police Station in connection with Crime Register No. I-71/08. The accused voluntarily declared that he, Alamzeb Afridi, and Ayaz had parked three bicycles provided by Kayamuddin Kapadia at specific locations for the bomb blasts and expressed willingness to point out those spots before panch witnesses Gordhanbhai Ambalal Parekh and Chetanbhai Govindbhai Prajapati.

14.4.312. In this connection, the prosecution examined panch witness Chetanbhai Govindbhai Prajapati (PW No.974 Exh 6707). He admitted that was called to the Crime Branch office with his uncle. The accused stated he would show where he parked the bicycles. The accused led the police and panch to Amber Tower parking. He then pointed out a spot near Hanumanji Temple at Narol Circle. The witness confirmed his signatures on the discovery panchnama. Panch Chetan also said that he

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could identify the accused, but the accused had died, when the deposition was recorded.

14.4.313. In his cross-examination, the witness admitted to trading sand and bricks without a license. He denied being a regular informant for the police. He claimed police stopped them while they were traveling for business. He stated he did not read the panchnama before signing it. He admitted that they were not informed by police regarding when the accused was arrested, from where he was arrested, and how he was arrested. He admitted he did not personally know the police official who called them as panch witnesses. He did not have personal talk with the person writing the panchnama. He has not noted the details of panchnama in his personal diary. 6 years have passed between the panchnama and deposition. The place shown by the accused is an open place, where anyone can park a vehicle. He denied that he read the panchnama repeatedly before deposition and he was taught by police how to depose in the court.

14.4.314. The Court finds that the accused made a voluntary disclosure statement while in police custody. The panchnama was recorded under Section 27 of the Indian Evidence Act. The accused successfully pointed out the parking spot at Amber Tower, Block 'A'. A second parking spot was identified near Hanumanji Temple, Narol Circle. The locations identified relate to the movement of materials used in the serial blasts. No physical objects were recovered or seized during this specific procedure. No reasonable doubt is created in the cross examination regarding the voluntary statement of the accused before the panch witness and the trustworthy deposition of the witness. Further, the version given in the voluntary disclosure is also very much supported by the version of a Witness particularly the “Approver” which the court has

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already discussed in the chapter of "Issues". Therefore, the discovery of the place from where the accused collected the bicycles i.e. Ambar Tower and the place i.e. Narol Circle, Hanumanji temple where accused has parked the bicycles is satisfactorily proved.

14.4.315. Exh.6819 is a discovery panchnama of the place where accused Mobin & Amin had parked the stolen cars. It was carried out on 30.11.2011 between 13:50 to 14:20 hours before Mr.P.G.Vaghela, Police Inspector, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Mobin and Amin were in the custody of the Ahmedabad City Crime Branch in connection with Maninagar Police Station I. CR No. 203/08. The accused, Mohammed Mobin (alias Mubin alias Irfan) and Amin (alias Raja), voluntarily declared they would show the specific spot near Indian Oil Nagar Colony, Mumbai, where they parked stolen cars (WagonR) before being brought to and used in the Ahmedabad and Surat blasts, before panch witnesses Badal Rameshbhai Thapar and Soeb Shafiq Sheikh.

14.4.316. In this connection, the prosecution examined panch witness Soeb Shafiq Sheikh (PW No.976, Exh.6818). This witness deposed that that he was called by the Crime Branch from near his home in Mumbai. He stated the accused pointed out a parking area near Kinjal Building where they had parked a silver and a black stolen car. The witness identified his signature on the panchnama, marked as Exhibit 6819. But could not identify the accused due to the long interval and the change of appearance of the accused.

14.4.317. In his cross-examination, this witness was questioned about the location of his business in Shivaji Nagar and its distance from the panchnama site. He admitted he could not identify the accused in court via video conference, noting they now had long beards unlike the short

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beards he remembered. He admitted that it is not mentioned in the panchnama that the place was near Kinjal Building. It is also admitted that the place was open and so many cars were parked in it. There was a compound of Indian Oil Nagar. He replied that the accused present before him would be 30 t0 35 years of age. He has not been informed when the accused had been arrested and in the custody of police. The defence suggested the witness was never present at the scene and that the panchnama was a fabricated document created at the police's behest to which the witness disagreed.

14.4.318. The Court finds that this panchnama records the discovery of a place of consequence based on the accused's statement. The witness has categorically stated that it was a voluntary statement of the accused. Further, the witness has referred Kinjal Building near the place, which was not there in the panchnama, but it would make it more reliable to believe that the witness was actually present when the discovery of the location took place, otherwise he may have given the description according to what is written in the panchnama only. The explanation given by the witness for not identifying the accused is also trustworthy. Further, the defence raised an objection during examination in chief that incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of IEA. As we have discussed in the very beginning, even the confessional statement of the accused can be admissible if it is a kind of discovery of a fact, distinctly related to the fact discovered. Therefore the circumstance of in transit cars used in the offence being parked at a location identified by the accused more particularly the car being stolen is established by the prosecution through this point out panchnama.

Exh.7053 is a discovery panchnama, where accused Abbas Umarbhai Sameja led the police and panch witnesses to a forest near

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Halol-Pawagadh, Vadodara to identify where he had taken training in January-2008. It was carried out on 28.08.2008 between 11:00 hours to 18:30 hours before Mr.M.J.Chavda, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused, Abbas Umarhai Sameja, was in the custody of the Ahmedabad City Crime Branch in connection with Maninagar Police Station I. CR No. 203/08. The accused voluntarily declared that on January 14, 15, and 16, 2008, he attended a training camp in the forests of Halol and Pavagadh with his associates. He offered to show the police the specific places where they stayed, prayed, and conducted training before panch witnesses Laxmanbhai Popatbhai Bharwad and Maheshbhai Karshanji Solanki.

14.4.319. In this connection, the prosecution examined panch witness Laxmanbhai Popatbhai Bharwad (PW No.1039, Exh.7052). This witness deposed that he was called by the police to be a panch witness in the proceeding. The accused had voluntarily declared before the panch that he wished to show the places where he had taken training near Pavagadh along with the other accused. He led them in a government vehicle to several spots, including Shalimar Hotel, a petrol pump, and the Khundpir Dargah and other spots where training was done. The accused pointed out a specific training ground near a pond and a mosque where they had prayed. The witness identified his signatures on the panchnama, which was marked as Exhibit 7053. But he could not identify the accused.

14.4.320. In cross-examination, the witness was questioned about his business of supplying water via tankers and his location when summoned by the police. The witness admitted he could not recall specific details like the name of the petrol pump or exact distances

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between locations. The witness fumbled regarding the fact whether the accused had stated the location of all places, which wanted to lead the team, before proceeding from the crime branch. The mosque is situated a half a km away from the main road. Police have not collected any material from the places shown by the accused. No signs of erection of tents on the place found when they visited. The witness did not delve into the lake to check the depth of the water. The witness was not keeping a daily diary. He did not know the meaning of "Jahadi". He had never been a panch witness before the panchnama proceeding. He did not know how to dictate the panchnama. There were no guards in the mosque.

14.4.321. The Court is of the opinion that this panchnama was used to record the discovery of relevant facts and locations under Section 27 of the Evidence Act. Though the police had the knowledge of the place where the training was conducted, the discovery is regarding the knowledge attributed to the accused that at which place he had taken the training. Therefore, discovery of what is there in the mind of the accused is admissible as per the provisions of the Indian Evidence Act. Further, by cross examination of the witness, nothing adverse or contrary comes on record, to what is stated in the panchnama. Therefore, the deposition in examination in chief remains intact. It is not the case of the prosecution that the police have seized any articles from the place and there is no circumstance on the record which leads us to believe that the police should have seized something which they had not. The case record shows that the police had inquired about the place earlier along with the forensic science expert, and seized articles like pellets, parts of balloons etc. from the place. So, the cross examination in this regard is also not of any help to defence. The prosecution aimed to link the

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accused to the conspiracy and illegal training activities. Therefore, what is in the mind of the conspirator is also a relevant fact, which is proved by the discovery. Further, the defence raised an objection during examination in chief that incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of IEA. As we have discussed in the very beginning, even the confessional statement of the accused can be admissible if it is a kind of discovery of a fact, distinctly related to the fact discovered which the mental fact of the knowledge of the locations where the terror camp took place in isolated place in the forests of pavagadh in Halol.

14.4.322. Exh.7252 is a discovery panchnama, where accused Mohammad Shafiq @ Dadabhai @ Thakur @ Rafiq @ Ali Abdul Bari Ansari led the police and panch witnesses to a forest near Halol-Pawagadh, Vadodara to identify where he had taken training in January-2008. It was carried out on 24.11.2008 between 08:00 to 16:00 hours before Mr.M. J.Chavda, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused, Mohammad Shafiq (alias Dadabhai, Thakur, Rafiq, or Ali), was in the custody of the Ahmedabad City Crime Branch in connection with Maninagar Police Station I. CR No. 203/08. The accused voluntarily declared that in January 2008, he and his associates traveled from Indore to attend a training camp in the Pavagadh/Halol forests. He volunteered to show the police the specific places where they stayed (Dargah), prayed (Masjid), and conducted training activities such as rope climbing and firing practice with airguns and balloons, before panch witnesses Mr. Pragneshbhai Govindbhai Rajput and Mr. Khemjibhai Ratanjibhai Patel.

14.4.323. In this connection, the prosecution examined panch witness Pragneshbhai Govindbhai Rajput (PW No.1068, Exh.7251. This witness

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deposed that he was called to the Gaekwad Haveli Crime Branch office and then traveled with the police and the accused to Halol. The accused pointed out various locations, including the Ek Minar Masjid, the Hazrat Khundpir Dargah, and a training ground near Helical Vav where ropes were used for climbing exercises. He supported mostly all the details mentioned in the panchnama. The witness identified his signatures on the original panchnama, which was produced and marked as Exhibit 7252. But he could not identify the accused.

14.4.324. In cross-examination, the witness was questioned about his auto garage business and the circumstances of being summoned by the police. It is also admitted that the police had not told the witness that he had to spend the whole day with police. The witness did not convey to his home that he was going with the police for the whole day. The witness did not know the officers of the Crime Branch. He had not kept note of what had happened during the whole day. He further admitted that he was not informed when the accused was arrested by the police and for how many days the accused had been in the custody of police. He admitted that he had not inquired from the accused about police did any torture with him during the custody or not. He admitted that the accused was identified by police. The witness had not seen any documents to verify the identity of the accused. He admitted that they spent 4-5 minutes at every place shown by the accused. He did not have any experience of dictating the panchnama to the accused. He is not sure about the distance between the Halol cross road and Pavagagh forest. He said that they first visited the Dargah and then the Mosque.

14.4.325. The Court finds that the panchnama records the discovery of relevant facts and locations under Section 27 of the Evidence Act. The panchnama was not dictated by the panch witnesses. But it was written

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by the police official.

14.4.326. It seems from the record of the case that the police had the knowledge of the place where the training was conducted prior to this panchnama proceeding. But the discovery made in this panchnama is regarding the knowledge attributed to the accused of the places where he had taken the training. So, discovery of what is there in the mind of the accused is admissible as per the provisions of IEA. Further, by cross examination of the witness, nothing adverse or contrary comes on record qua the facts stated in the panchnama. The deposition in examination in chief remains intact.

14.4.327. By the discovery panchnama, what is in the mind of the accused as one of the conspirators is brought on record.

14.4.328. The witness could not identify the accused, due to the long gap between the proceedings of panchnama and the deposition. The explanation given by the witness is also reasonable. Hence, the discovery of facts i.e. places near Halol forest is proved by the prosecution.

14.4.329. Exh.7370 is a discovery panchnama regarding the discovery of the place where the accused Amin and Mobin delivered stolen cars (Maruti WagonR) to other accused near Surat Railway Station. It was carried out on 02.10.2010 between 15:00 hours to 16:00 hours before Mr.V.V.Rathod, Assistant Commissioner of Police (ACP), 'F' Division, Surat City. The contents of the panchnama show that accused were in the custody of the DCB Police Station, Surat, in connection with 'F' Division Police Station I. CR No. 176/2008 (regarding offenses under the IPC, UAPA, and Explosive Substances Act). The accused, Amin (alias Raja) and Mohammad Mubin (alias Mubin alias Irfan), voluntarily declared that in 2008, they and associate Afzal Usmani brought stolen

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cars from Mumbai and parked them at the Surat Railway Station parking lot for delivery to be used in the blasts before panch witnesses Mr. Ramkumar Ramnath Dubey and Mr. Alambhai Ansari.

14.4.330. In this connection, the prosecution examined panch witness Alambhai Mohammad Salim Ansari (PW No.1080, Exh.7369). This witness deposed that he was summoned to the traffic police station near the railway station. He stated the accused led the team to the parking lot and pointed out the specific spot where the vehicles were delivered. He confirmed that the police recorded the events in a panchnama, which he then signed. The witness identified his signatures on the original panchnama, marked as Exhibit 7370. But could not identify the accused.

14.4.331. In his cross-examination, the witness admitted he works at a shop near the Central Bus Depot and is originally from Bihar. He could not identify the accused in court, explaining that eight years had passed. He stated he cannot write Gujarati but can read it, and he denied being a "police witness". He admitted that there are other shops and hotels near the Railway Station. He admitted that there are two parking spaces, one of four wheelers and another was for two wheelers. Police did not inquire with the contractor working the business of parking.

14.4.332. The Court finds that this panchnama records the discovery of a location which was within the special knowledge of the accused to be the place where delivery of cars were given was in the minds of the accused, and the accused voluntarily showed the place to the police in presence of panch witnesses. Therefore, the contents of the panchnama are proved by the deposition of the panch witness. Though witnesses could not identify the accused, it was due to the long interval between the panchnama and deposition. So, it would not create any doubt regarding the truthfulness of the deposition.

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14.4.333. Exh.7385 is a discovery panchnama regarding discovery of the place where the accused Toshifkhan @ Atiq Sagir Ahmed Pathan attended the meeting with Simi workers, near Dariyapur, Ahmedabad. It was carried out on 05.05.2017 between 13:30 hours to 14:30 hours before Mr.R.N.Zhala, Additional Police Commissioner, Crime Branch, Ahmedabad. The contents of the panchnama show that accused, Toshifkhan (alias Atiq), was in the custody of the Shahibaug Police Station in connection with I. CR No.236/2008 regarding the bomb blasts. The accused voluntarily declared that before the July 2008 Ahmedabad blasts, he had attended a meeting with SIMI members and offered to point out the specific house in Dariyapur where the meeting and discussions took place before panch witnesses Mr. Anand Dawoolal Srivastav and Ashok Amratlal Patel.

14.4.334. In this connection, the prosecution examined panch witness Anand Dawoolal Srivastav (PW No.1081, Exh.7384). This witness deposed that he was called to the Crime Branch office where the accused volunteered to disclose a meeting location. He stated the accused led the team in a government vehicle through various landmarks to a two-story house in Dariyapur. The witness identified his signature on the primary panchnama, marked as Exhibit 7385, but he could not identify the accused.

14.4.335. In his cross-examination, the witness deposed that he is a barber by profession, and was questioned about his shop's location and the time he was summoned. A description of the crime branch office was also asked but he could not explain it. He admitted that he is having education qualification up to 7th Class. He had never seen the accused before panchnama. He did not know the date of bomb blast in Ahmedabad. He admitted he and the police officer did not enter the

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house pointed out by the accused and did not know who lived there.

14.4.336. The Court finds that the panchnama records the discovery of a place of conspiracy under Section 27 of the Evidence Act. The defence raised an objection regarding the confessional statement of the accused, but the law on the point is very clear that if the fact is discovered, then even the confessional statement of the accused can also be proved. The witness has supported every fact of the panchnama and stated that the house was shown by the accused Toshifkhan. True it is that police had not entered the house and inquired inside the house, but it would not affect the discovery of location of the house at the instance of the accused. How far the fact of not entering the house would affect the prosecution case, depends upon the oral evidence. But so far the evidence of the Panch witness is concerned, the contents are proved. Moreover, there is other set of evidence where the very house was searched in presence of different set of panch witnesses and also presence of FSL officers and the seizure made of various articles does connect the house to the conspiracy.

14.4.337. Exh.7387 is a discovery panchnama regarding discovery of the place where the accused Mohammad Rafiq @ Javid @ Alamjeb Afridi and other accused had parked four bicycles and the place at which they were delivered to Kayamuddin. It was carried out on 23.04.2016 between 12:00 hours to 16:30 hours before Mr.K. N.Patel, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused, Mohammad Rafiq (alias Alamzeb Afridi) (accused No.75), was in the custody of the Ahmedabad City Crime Branch in connection with Khadia Police Station I. CR No. 71/08. The accused voluntarily declared that in July 2008, he and his associates (including Kayamuddin Kapadia (A-37)) placed bicycles at

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various spots for the blasts and offered to point out these locations, before panch witnesses Mr. Kalpesh Kishorkumar Ojha and Nalin Jayantilal Jadawala.

14.4.338. In this connection, the prosecution examined panch witness Nalin Jayantilal Jadawala (PW No.1082, Exh.7386). This witness deposed that the accused led the team in a government vehicle to Unique Apartment in Juhapura, pointing out where a bicycle was parked. The accused then pointed out a parking area under 'A' block of Amber Tower where three other bicycles were placed. Finally, the accused pointed out a spot near a Hanumanji Temple near Narol Circle where he had delivered bicycles to an associate Kayamuddin. The witness identified his signatures on the original panchnama, marked as Exhibit 7387. He stated that he would try to identify the accused, but the accused was not present before the court on that day.

14.4.339. In cross-examination, the witness was questioned about his business in Dariyapur and his familiarity with the locations. He admitted that he did not know specific details like the number of floors in the buildings and the distance of parking from the road etc. He admitted the accused did not state on which date the bicycles were given to park at Uniq Apartment & Amber Tower. Also did not know the date on which the bicycles were delivered to Kayamuddin (A-37) near Hanumanji Temple, Narol Circle. He admitted that the accused did not mention at which places he will lead the team before parting from the police station.

14.4.340. The Court finds that this panchnama records the discovery of relevant places as a result of voluntary disclosure made under Section 27 of the Evidence Act. The prosecution used this evidence to link the accused to the logistical preparation or the serial blasts. The witness has supported the facts of the panchnama and it is proved that the accused

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has voluntarily stated before the panch witness and what was there in the mind of the accused conspirator was revealed before the panch witness and it was tallied with other evidence. Further, it was admitted by the witness that the accused had not disclosed at the Crime Branch at which places he would lead the team. For that admission, it is required to mention here that it is not the preposition of law that the accused has to state the whole story which is undisclosed fact and thereafter to lead the team. It is only sufficient that the accused voluntarily disclose before the witness any undisclosed fact.

14.4.341. Exh.7392 is a discovery panchanama, where accused Toshifkhan @ Atiq Pathan led the police and panch witnesses to a forest near Halol-Pawagadh, Vadodara to identify where he had taken training in January-2008. It was carried out on 01.12.2017 between 08:15 hours to 13:30 hours before Mr.R.N.Zhala, Additional Deputy Commissioner of Police, Crime Branch, Ahmedabad. The contents of the panchnama show that accused was in the custody of the Ahmedabad City Crime Branch in connection with Shahibaug Police Station I. CR No. 236/08. The accused, Taufiqkhan (alias Atiq) (A-78), voluntarily declared that in January 2008, he and his associates attended a training camp in the Pavagadh-Halol forests. He offered to show the police the location where they stayed, prayed, and conducted terrorist training activities, before panch witnesses Mr. Mahendrabhai Vishnubhai Patil and Mr. Rashmikant Parshottambhai Parmar.

14.4.342. In this connection the prosecution examined panch witness Mahendrabhai Vishnubhai Patil (PW No.1083, Exh.7391). This witness deposed that the accused led the team to the Khundpir Dargah, where they stayed in a dharamshala-like structure. The accused pointed out the Ek Minar Masjid and a nearby well used for prayers and bathing. The

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accused identified a hilly area near Helical Vav where they lived in tents and practiced air-gun firing at balloons and swimming in a pond. The witness identified his signatures on the original panchnama (Exhibit 7392) and identified the accused via video conference.

14.4.343. In cross-examination, the witness was questioned about his location and when summoned by the police. He admitted that on the day of panchnama he did not have a driving licence and Badge. He admitted that he talked with the manager at Khundpir Dargah. He also added that there was one register on the Dharmashala and the police officer had checked it. He further admitted that Dargah and Majar were near to the Ek Minar mosque. The Vav at the place was like Adalaj Vav, there were steps for going down into it. He admitted that during the journey he was seated on the last seat of the vehicle. He did not dictate anything to the police during the journey. He did not check the depth of the water, the area of the lake was also not measured.

14.4.344. The Court finds that this panchnama was used to record the discovery of relevant facts and locations under Section 27 of the Evidence Act. Though the police had the knowledge of the place where the training was conducted, the discovery is regarding the knowledge attributed to the accused that at which place he had taken the training. Therefore, discovery of what is there in the mind of the accused is admissible.

14.4.345. In cross examination of the witness, nothing adverse or contrary comes on record, to what is stated in the panchnama. Therefore, the deposition in examination in chief remains intact. The prosecution aimed to link the accused to the conspiracy and illegal training activities. Therefore, what is in the mind of the conspirator is also a relevant fact, which is proved by the discovery.

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14.4.346. Further , the witness has also identified the accused. Some questions regarding what was the actual situation at the Dargah Mosque and the distance from the road were asked, and the witness could not answer them exactly.

14.4.347. The object of requiring the presence of the person as a panch is with a view that the proceeding be conducted in presence of an independent person. So, the witness is required to depose what is happening in his presence. He is not supposed to dictate the panchnama to police officials. Thus, the Court is of the view that the contents of panchnama is proved.

14.4.348. Exh.7597 is a discovery panchnama, whereaccused Mujib @ Akram @ Naved led the police and panch witnesses to a place where co-accused Kayamuddin delivered a bicycle to him and led at the place where he parked bomb- laden bicycle. It was carried out on 21.08.2012 between 16:30 hours to 17:30 hours before Mr.V.R.Toliya, Deputy Superintendent of Police, D.G. Vigilance Squad, Gandhinagar (Investigating Officer for Serial Bomb Blast cases). The contents of the panchnama show that accused, Mujib Sheikh (alias Akram, Naved, Nitin, Yusuf, Aabid, or Faizan), was in the custody of the Bapunagar Police Station in connection with I. CR No. 220/2008. The accused voluntarily declared that on July 26, 2008, he obtained bicycles from Kayamuddin Kapadia (A-37) and placed them at specific spots. He offered to point out these locations near Shital Talkies and the Diamond Market, before panch witnesses Mr. Trikamlal Muljibhai Nathani and Mr. Gordhanbhai Ramjibhai Kakadiya.

14.4.349. In this connection, the prosecution examined panch witness Trikamlal Muljibhai Nathani (PW No.1088, Exh.7596). This witness deposed that the accused led the police team in a government vehicle to

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the main gate of Shital Talkies in Gomtipur, where Kayamuddin had delivered a bicycle to him. The accused then directed them to a spot between Dhanvantari Hospital and Sardar Patel Diamond Market in Bapunagar where the accused had parked a bomb-laden bicycle. The witness identified his signatures on the original panchnama, which was marked as Exhibit 7597.

14.4.350. In cross-examination, the witness admitted he is a small-scale vendor (selling papad) and has a limited education. He did not keep account of his business. He met the police when he was going toward Jagannath Temple. He acknowledged being familiar with the Bapunagar area as he lives nearby but denied being a regular "police witness". He admitted that he could only sign in Gujarati language. He could not dictate panchnama to the police. He did not keep a daily dairy and did not keep noting of his daily routine. He had not kept a note on the day of the panchnama.

14.4.351. The Court finds that this panchnama records the discovery of relevant locations of exchange of bomb laden cycles. Though police had the knowledge of where bomb-blast happened in Bapunagar, it was not known to the police who had parked the bomb-laden bicycle; how the accused got the bicycle; which route the accused used to reach at the place of blast. These all facts are undisclosed facts which were discovered at the instance of the accused Mujib, who had voluntarily disclosed first hand information (fact) which is exclusively within his knowledge. Therefore, it is the discovery of fact of the location and the act of change of hands of bomb laden cycles , is satisfactorily proved by the prosecution.

14.4.352. Exh.7798 is a discovery panchnama. By this panchnama, accused Mohammad Rafiq @ Javid @ Alamjeb Afridi (A-75) led the

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police and panch witnesses to a forest near Halol-Pawagadh, Vadodara to identify where he had taken training in January-2008. It was carried out on 01.05.2017 between 13:00 hours to 17:00 hours before Police officer: Mr.K.N.Patel, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused was in the custody of Khadia Police Station in connection with I. CR No. 71/08. The accused, Mohammad Rafiq (alias Javid alias Alamzeb Afridi), voluntarily declared that he and his associates stayed and trained in the forests of Pavagadh-Halol in January 2008. He offered to point out the specific spots used for staying, praying, and training. He voluntarily declared this fact before panch witnesses Mr. Santoshsingh Vishramsingh Rajput and Mr. Jyotisingh Ramsevaksingh Tomar.

14.4.353. In this connection, the prosecution examined panch witness Santoshsingh Vishramsingh Rajput (PW No.1102, Exh.7797). This witness deposed that the accused led them to the Khundpir Dargah, where they had stayed in a dharamshala. The accused pointed out a nearby hill near Helical Vav where they conducted activities such as rope climbing and air-gun firing at balloons. The accused also identified a pond where they practiced swimming. The witness identified his signatures on the original panchnama, marked as Exhibit 7798.

14.4.354. In his cross-examination, the witness admitted he has limited education and works as a security guard. He acknowledged he could not recall details about the second panch witness or his profession. He admitted that the public prosecutor had read the panchnama before deposition. He admitted that he did not keep a daily diary. He had not taken note of the events on the day of panchnama. He said that he made a last signature on the panchnama at 5 o'clock in the evening. He had never been to any Dargah or Mosque. On the day of Panchnama he had

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not entered into Dargah, Mosque or Dharmshala. He admitted that they have spent 2-3 minutes at each place shown by the accused. It is said that there was no lake but a pit filled with water. He deposed that Dilipbhai was a writer of police, who had written the panchnama. He had no experience of dictation. He had not asked Dilipbhai to write the panchnama as per his instruction. He deposed that police officer instructed the driver to take the car to Pavagadh. The panch witness had not signed at the place of Dargah or Mosque.

14.4.355. The Court is of the opinion that as discussed earlier, this panchnama is with regard to discovery of the fact that what is the state of mind of the accused so far the place of training is concerned. Police had the knowledge regarding the place of training near Pavagadh. But it would not affect the admissibility of the evidence of the panch witness. Further, the questions asked in the cross examination did not shaken the trustworthiness and reliability of the evidence. Merely because the contents of the panchnama were read over by public prosecutor would not ispo facto make the panch witness a tutored one. The law on the subject of proving the panchnama is very clear that if a panch witness could not recollect the contents of the panchnama, his memory can be refreshed as per Sec.159 of IEA. Hon'ble Supreme Court has held in the case of Shahaja's case (supra) that the contents are required to be read over before the panch witness to prove it.

14.4.356. One significant fact deposed by the panch witness in examination in chief that at the place of Dharmashala, the person in charge and taking care of the place has got the signature of the Police officer, panch witnesses and the accused. This fact is not challenged by the defence. So, the proceeding of the panchnama carried out at the place in the presence of the witness is proved and cannot be doubted.

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For the above reason, the contents of panchnama are proven.

14.4.357. Exh.7939 is a discovery panchnama, where accused Anik S/o Shafik Saiyad (A-43), while in custody, led the police and panch witnesses to various locations in Surat to point out where he had purchased petrol and plastic cans used for the 2008 serial blasts. It was carried out on 20.11.2008 between 13:30 to 14:30 hours before Mr.S.J.Tirmizi, Police Inspector, S.O.G. (Special Operations Group), Surat City. The contents of the panchnama show that accused, Anik was in the custody of the DCB Crime Branch, Surat, in connection with Kapodra Police Station II. CR No.176/2008. The accused voluntarily declared before panch witnesses Mr. Abhishek Rushikesh Shukla and Mr. Tejasbhai Ashokbhai Marchawala, that he would point out the specific shop where he bought 5-6 plastic containers (cans) and the two petrol pumps where he purchased petrol used in the offense on July 25, 2008.

14.4.358. In this connection, the prosecution examined panch witness Abhishek Rushikesh Shukla (PW No.1108, Exh.7938). This witness deposed that the accused had voluntarily led the team in a government vehicle to Rampura Auto Sales & Service to identify where petrol was bought. He then pointed out a small shop near Delhi Gate from where he purchased plastic cans from a person named Pravinchand Palsanawala. Finally, the accused pointed out Neelam Petroleum near an orphanage where he purchased another 10 liters of petrol. The witness identified his signatures on the original panchnama, which was marked as Exhibit 7939, But he could not identify the accused, due to the long interval.

14.4.359. In his cross examination, the witness admitted that the accused had not given the details of petrol pump and shop at the Crime branch police station before proceeding towards the places. He admitted that he does not maintain a daily diary. He never met Anik before the

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panchnama proceeding. He did not inquire regarding when Anik was arrested and whether police had tortured him or not. He admitted that no document was collected from Rampura Petrol Pump and Nilam Petrol Pump, regarding purchase of petrol by Anik. No document was collected from the vendor who sold plastic cans to Anik.

14.4.360. The Court finds that looking at the deposition of witness, he has proved the voluntary disclosure of the facts by the accused Anik. The admitted facts in the cross examination does not create any doubt regarding the discovery of the places at the instance of the accused Anik. Accused Anik is a person who had purchased petrol and plastic containers, and he had shown the places to the police. It transpires from cross examination that police did not collect any document of purchase at the time of their visit. We are of the view that even if we believe it as true, it depends upon the other evidence that comes on record. It has nothing to do with the discovery of the places. Further, the witness has not stated the date of the panchnama but supported the proceeding of panchnama. By this voluntary disclosure, it has come on record the containers which were found in the vehicles packed with explosives and parked at prominent places from where the vehicles were seized. The panchnama drawn of the scene of offence referred elsewhere has also brought on record that these containers were seized during course of investigation and therefore, there is a connect between disclosure made in this panchnama with the seizure made previously.

14.4.361. Exh.7946 is a discovery panchnama, where accused Anik S/o Shafik Saiyad (A-43) and Mohammad Akbar Iqbal Chaudhary (A-44) while in custody, voluntarily disclosed the facts and led the police and panch witnesses to the house where they stayed during the period of conspiracy. It was carried out on 28.11.2008 between 16:30 to 17:45

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hours before Mr.N.B.Parmar, Assistant Commissioner of Police (ACP), "C" Division, Surat City. The contents of the panchnama show that accused Mohammad Akbar Ismail Chaudhary and Anik Shafiq Sayed, were in the custody of the DCB Police Station, Surat, in connection with Kapodra Police Station II. CR No.175/2008. They voluntarily declared before panch witnesses Mr.Jignesh Himmatlal Shah and Mr. Ratansinh Surajsinh Rajput that they would voluntarily disclose the premises in Surat where they had stayed on rent and used as hideout. Accordingly, the team went to the place as per the direction of the accused and reached at the house no. D-34, River View Society.

14.4.362. In this connection, the prosecution examined panch witness Jignesh Himmatlal Shah (PW No.1110, Exh.7945). This witness substantially supported the contents of panchnama and said the accused persons have voluntarily disclosed regarding the house they had resided during the conspiracy and accordingly the house was pointed out by the accused. The witness Mr. Jignesh had identified his signature on the panchnama, but could not identify the accused.

14.4.363. In his cross examination, the witness admitted that except asking the name of the accused, no further talk was made with the accused. He admitted that the house consists of two floor; i.e. ground floor and first floor. The team stayed at the house for 5 minutes and thereafter they returned to the DCB police station.

14.4.364. The Court finds that by this panchnama, discovery of the house is proved by the deposition. No circumstances brought on record through cross examination which makes the version of the witness doubtful. It transpires from cross examination that the team waited at the house only for 5 minutes. The panchnama is for the discovery of the fact, which place the accused would show to be the place of their

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residence during the conspiracy, which needs no requirement to stay at a place more than 5 minutes. The panchnama does not contain that police have searched the place and seized anything. The Court is of the opinion that discovery of the mental fact of knowledge connecting the accused with the house and in turn, with the conspiracy.

14.4.365. Exh.8000 is a discovery panchnama, where accused Mohammad Rafiq @ Javid @ Alamjeb Afridi (A-75) while in custody, voluntarily disclosed the facts and led the police and panch witnesses to the places from where he received two bombs; the place from where he received bicycle; and, the place where he parked one bomb-laden bicycle and the other place where he put bomb. It was carried out on 29.04.2016 between 11:30 to 17:00 hours before Mr.K.N.Patel, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Mohammad Rafiq (alias Javid alias Alamzeb Afridi), was in the custody of the Khadia Police Station in connection with I.CR No.71/08. The accused voluntarily declared before panch witnesses Mr. Dinesh Vinodbhai Nayak and Mr. Rajeshbhai Jadavbhai Chauhan, that on July 26, 2008, he obtained bombs and bicycles from associates Kayamuddin (A-37), Abdul Rajik (A-27), Ayaz (A-23), Mujib and others at the house no.10 of Al Mahamadi Society and also led them to the place. One gray colour Maruti WagonR car was parked outside that house, where Kayamuddin had given some money to Abdul Rajik and Ayaz. He further led the team to specific spots near Shital Cinema, where he and Mujib received bicycles from co-accused Abdul Rajik. He also pointed out the place near the post-office where he parked a bomb-equipped bicycle. He, then, led the team near Khodiyarnagar Vegetable Market where he planted another bomb beneath one Pakodi Lorry.

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14.4.366. In this connection, the prosecution examined panch witness Rajeshbhai Jadavbhai Chauhan (PW No.1114, Exh.7999). This witness supported the contents of the panchnama qua the house situated at Al Mahammadi Society; the places where accused received the bicycle; the places where he parked the bicycle and planted the bomb near Khodiyarnagar. But he has not deposed regarding the names of the co-accused who were present at the house, who has given the bombs and bicycles. He identified his signature on the panchnama. Also deposed that other panch witness Dineshbhai was also present in the proceeding. He said that he could identify the accused, but the accused was not available at Ahmedabad Jail.

14.4.367. In cross-examination, questions regarding his business and the reason for his presence near Crime Branch Police station were asked, which is satisfactorily answered. He admitted that he had never met the police official and Dineshbhai (panch) and accused before the panchnama proceeding. He had not inquired regarding when the accused was arrested and whether police had given torture to the accused or not. He admitted that he doesn't have a habit of maintaining a daily diary. He had not made a note of what had happened on the day of panchnama. He admitted that it is known to him before Panchnama where the bomb blast happened in 2008, by which vehicles. He admitted that before proceeding from the police station, the accused had not given the details of the places where he wanted to lead the police and panch witnesses.

14.4.368. The Court is of the opinion that in the first part of the panchnama, the full disclosure is not required to be made but only the voluntariness of the accused to point out something or some place connected with the crime is recorded. Thereafter, in the second part of the panchnama, the location led to by the accused is recorded. In the

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present panchnama also, this process has been followed where the disclosure has led the team to a location of which, the accused had a knowledge where as a part of conspiracy, the exchange of bomb laden cycles took place or where the bomb laden cycle was parked. It is sufficiently proved by the witness that the accused has voluntarily stated that he wishes to show the places and want to describe facts which are exclusively in his mind, and the accused has disclosed those facts. There is nothing on record which shows that the accused had been subjected to torture. Merely, the witness had not asked to accused regarding torture allegedly done by police does not stand at all. Though the witness has not deposed as to the role of other accused in his deposition, the discovery of the places are proved.

14.4.369. Exh.8254 is a discovery panchnama, where accused Hafij Hussain @ Adnan S/o Tajuddin Mulla (A-13), Resi. of Bijapur, Karnataka, while in custody, led the police and panch witnesses to several locations in Vaghmon, Kerala, to point out sites where a terrorist training camp was conducted, including areas for firing practice, rock climbing, swimming and rope crossing. It was carried out on 19.11.2008 between 12:00 hours to 16:30 hours before Mr.M.J.Chavda, Deputy Superintendent of Police (Dy.S.P.), Crime Branch, Ahmedabad. The contents of the panchnama show that accused Hafij Hussain was in the custody of the Maninagar Police Station, Ahmedabad, in connection with I. CR No.204/08. The accused, Hafij Hussain (alias Adnan), voluntarily declared before panch witnesses Mr. Sunny Thomas and Mr. Joseph Joyson that he would show the locations in Vaghmon where they organized a camp in December-2008. He offered to point out where they stayed, practiced firing, conducted rock climbing, swimming and performed rope-crossing exercises.

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14.4.370. In this connection, the prosecution examined panch witness Joseph Joyson (PW No.1148, Exh.8253). This witness deposed that he was summoned by the police at Kolabelmedu T-point. He stated the accused Hafij Hussuin was there in the custody of police. Another panch witness was Mr. Sunny. The accused led the team to a Kabar (Mazar) and other 2-3 places. The witness identified his signatures on the original panchnama, marked as Exhibit 8254, but he could not identify the accused Hafij, due to a 10 years time gap.

14.4.371. In his cross-examination, this witness admitted that he did not have a conversation with Gujarat police. He had never seen Hafij before the panchnama proceeding. He did not know the language of the accused Hafij. The place of Kabar(Mazar) was open to the sky. He does not know other panch witnesses Sunny. He was with Gujarat Police and Kerala Police from Thangardh. Panchnama was written at every place they visited. He admitted that he signed the panchnama at the end.

14.4.372. The Court finds that though the witness has admitted that he did not know the language of the accused and he had no direct conversation with the accused, still in his deposition it is categorically said that the places they had visited with the police, and places were shown by the accused. Team was led to the places as per the directions of the accused. The witness has not described the location of all the places but only described one place i.e. Kabar. The contents of the panchnama are substantially proved by the deposition.

14.4.373. Exh.5545 is a discovery panchnama, where accused Mohammad Ismil @ Abdul Rajik(A-27) while in custody, led the police and panch witnesses to his residence and a nearby location in Gomtipur, Ahmedabad, to recover a bicycle and a lock-key used in the 2008 serial bomb blasts. It was carried out on 25.10.2008 between 2:00 hours to

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14:00 hours before Mr.V.R.Toliya, Deputy Superintendent of Police (Dy.S.P.), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused, Mohammad Ismail (alias Abdul Razik alias Musab), was in the custody of the Shahibaug Police Station in connection with I. CR No. 236/2008. The accused voluntarily declared before panch witnesses Mr. Mayur Rameshbhai Patel and Mr, Sanjaykumar Shyamjibhai Dhamecha that he and associate Kayamuddin Kapadia had hidden a bicycle and other materials used in the crime at Al-Aman Flats, Rajpur Gomtipur, and he offered to point out the exact location. Accordingly, the bicycle and its key was retrieved from the place.

14.4.374. In this connection, the prosecution examined panch witness Sanjaykumar Shyamjibhai Dhamecha (PW No.824, Exh.5544). This witness deposed that the accused led the police team to the Al-Aman Flats. The accused pointed out a black Hercules bicycle parked near a wall. It was locked. The key was found from the flat owned by the accused, situated on the first floor of the Al Aman Flats. The witness has identified the bicycle and the Key before ld. Trial court and also identified his signature on the panchnama Exh.5545, but could not identify the accused.

14.4.375. In cross-examination of this witness, nothing adverse to the contents of panchnama and examination in chief come on record during cross examination. The witness remained firm to the fact he stated in the panchnama and deposition. He admitted that he did not know what the I.O had done with the muddamal. He was confronted with the panchnama and asked him to read, but he could not read the panchnama. He gave an explanation that he is not comfortable in reading Gujarati Language. He studied up to 7th class only.

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14.4.376. The Court is of the opinion that it is not the law that the witness should dictate the panchnama to the police. It is also not the law that the witness must be literate having ability to read the contents of panchnama. Though the witness could not read the contents of the panchnama, the statement given by him in the examination in chief is in tune with what is written in the panchnama. So, though the witness has not read the panchnama, it contains what is stated by the panch witness. Therefore it becomes more trustworthy. The witness had admitted that he does not know what I.O has done with the muddamal. But this is not creating any doubt. Because the description of the cycle in the panchnama and identification of the cycle by the witness, proves that the cycle was seized by the police. Therefore, the discovery of the bicycle is proved by the evidence of the panch witness and the panchnama.

14.4.377. Exh.5587 is demonstration panchnama, where accused Mohammad Arif(A-31) while in custody, provided a live demonstration of assembling a timer circuit for bombs and drew a technical circuit diagram in the presence of FSL (Forensic Science Laboratory) experts. It was carried out on 13.12.2008 between 13:00 hours to 14:00 hours before Mr.M.J.Chavda, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad. The contents of the panchnama show that accused Mohammad Arif (alias Arif Badar alias Lallan) was in the custody of the Ahmedabad City Crime Branch in connection with Sarkhej Police Station I. CR No. 181/08. He voluntarily agreed to demonstrate before panch witnesses Mr. Hitesh & Mr. Nimesh, that he knew how to fix timers into the live bombs used in the Ahmedabad serial blasts and offered to demonstrate the process and draw the circuit diagram.

14.4.378. In this connection, the prosecution examined panch witness Nimesh Bhanuprasad Brahmbhatt (PW No.988, Exh.5586). This

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witness has supported the contents of the panchnama. He stated the accused used a table clock, a 9V battery, and wires to demonstrate how to set a timer to trigger a bulb. The accused drew a circuit diagram on paper showing the positive and negative connections. The witness identified his signatures on the panchnama (Exhibit 5587) and the diagram. But could not identify the accused due to the long time gap.

14.4.379. In cross-examination, questions regarding occupation of panch witness and the reason for being present near the Crime Branch are asked, but it is not creating any doubt to what is stated by him in examination in chief. He admitted that he does not have technical knowledge of the devices and its function.

14.4.380. The panchnama, which is recorded in one part is based on voluntary disclosure made in front of one panch witness by this accused to demonstrate the making of a timer device, which was found from the unexploded bomb in Ahmedabad City. This exercise was carried out in presence of FSL Officer, where the accused called for materials like (1) alarm table clock, (2) 9W battery, (3) 3.6 bulb, (4) adapter and with the help of paper and pen, the accused had proceeded to draw the diagram. This diagram was also identified by the witness during the deposition. In the panchnama thereafter, with the help of the diagram, started assembling the articles and after completing the assembling, as a part of testing, the timer was set after five minutes. At 11:55 and when the hands of the watch reached to the particular time, the bulb attached to the system glowed indicating that the detonator had set the explosive, resulting into bomb-blasts. This entire experiment was voluntarily shown by the accused in the presence of an expert. Thereby, disclosing the special knowledge of the accused in assembling from various articles, a timer circuit for detonator.

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14.4.381. Exh.5628 is a discovery panchnama, where accused Kayamuddin (A-37) while in custody, given discovery of a place from where he resided on rent (hideout) during the conspiracy of the crime and also disclosing the place where he received a bicycle from co accused and also the place where he parked a bomb-equipped bicycle. It was carried out on 19.01.2009 between 13:00 hours to 14:30 hours before Mr.R.V.Asari, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Kayamuddin (alias Asfaq alias Rizwan), was in the custody of the Ahmedabad City Crime Branch in connection with Ramol Police Station I. CR No. 321/08. The accused, voluntarily declared before panch witnesses Mr. Mahendrabhai Babubhai Raval and Mr. Arvindbhai Kantibhai Vaghela that he would point out the house in Ahmedabad where he stayed with associates to manufacture bombs and the specific site where he parked a bicycle carrying a bomb on July 26, 2008.

14.4.382. In this connection, the prosecution examined panch witness Mahendrabhai Babubhai Raval (PW No.834, Exh.5627) This witness has supported what is stated in the panchnama. He stated the accused led the team to Al-Mohammadi Society, House No. 10, identifying it as the place where bombs were made. The accused then pointed out a spot near Kamadar Medam Bas Station, where he received cycle and lastly Janata Pan House at Sarangpur Bridge where a bicycle bomb was placed. The witness identified his signatures on the original panchnama, marked as Exhibit 5628. But could not identify the accused, due to the long interval.

14.4.383. In cross-examination, some questions regarding the presence of the witness near the police station and regarding the occupation were asked, which do not create any doubt. Further, he admitted that the hand writing on the panchnama is of police. He admitted that he knew before

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the panchnama proceeding that there were bomb blasts in Ahmedabad City. But he denied that he knew the place shown by the accused. The Court finds that this witness is not supposed to write the panchnama himself or not supposed to dictate the panchnama. He has only to witnesseth what is happening in front of him. He has substantially supported the contents of panchnama. Further, this is discovery of the mental fact of knowledge exlusive to the accused. Though the Police knew where the blast had taken place, however, it is only when the accused while drawing the second part of the panchnama led the panch witnesses to the very same location of the blast site that the exclusive knowledge of the accused came on record by way of this panchnama. Therefore, as discussed, in the Chapter of "Panchnama under Section 27 of Indian Evidence Act" under the Chapter "Issues", this will have to be treated as a disclosure panchnama. Moreover, there is other independent evidence also to which, this panchnama would act as corroboration.

14.4.384. Exh.6070 is a discovery panchnama, where accused Saifur Rehmaan (A-50), while in custody, led the police and panch witnesses to a house in Al-Mohammadi Society where he and his associates reportedly stayed and used as hideout and assembled bombs for the 2008 serial blasts. It was carried out on 08.08.2009 between 14:10 hours to 17:00 hours before Mr.V.R.Toliya, Assistant Commissioner of Police (ACP), Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Saifur Rehman was in the custody of the Ahmedabad City Crime Branch in connection with Shahibaug Police Station I. CR No. 236/08. The accused, Saifur Rehman (alias Saif), voluntarily declared before panch witnesses Nitesh Mohanbhai Vaishya and Bhavanisingh Harisingh that he had arrived from Delhi via train in July 2008 with associates like Atiq Bashar. He

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stated they stayed in a house where they prepared bombs and offered to point out the location starting from the Ahmedabad Railway Station. The accused being an outsider, could only identify the location from the same route which he was aware of from the railway station.

14.4.385. In this connection, the prosecution examined panch witness Nitesh Mohanbhai Vaishya (PW No.869, Exh.6069). This witness deposed that he was called to the Crime Branch office where the accused expressed a desire to show a house. The accused led the team from the railway station through various areas to Al-Mohammadi Society near Chandola Lake. The accused pointed out a house, stating he and his associates lived there and that two cars (a silver WagonR and a white Santro) used for the blasts were parked there. The witness identified his signature on the panchnama, marked as Exhibit 6070. But could not identify the accused.

14.4.386. In his cross-examination, this witness admitted that he did not know the art of dictating panchnama. It was written by the police. He did not know the English language. He did not enter the house shown by the accused. Police had not inquired from the residents of the society. He did not know the house number. Second signature of the panchnama was made at the society.

14.4.387. The Court finds that the contents of the panchnama is proved by the deposition. Despite the accused being an outsider, was still able to lead the panch witnesses to the very hideout which was earlier discovered through the co-accused. The fact of the accused leading to this very hideout being recorded in the second part of the panchnama, and co-incidentally leading to the same location would connect the accused with the location of the hideout and the knowledge of the accused in this regard. Though, it has been argued time and again, that

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the hideout was within the knowledge of the investigating officer, would not lead this Court automatically to conclude that the details of the location have been put/dictated by the Investigating Officer in the panchnama. There are no questions posed to the Investigating Officer in his cross examination in this regards.

14.4.388. Exh.6318 is a discovery panchnama, where accused-Ziyaur Rehmaan (A-40) led the police and panch witnesses to locations in Maninagar, Ahmedabad, to identify the specific spots where he and his associates placed bicycle bombs during the 2008 serial blasts. It was carried out on 04.11.2008 between 10:30 hours to 12:30 hours before Mr.M. J.Chavda, Assistant Commissioner of Police (ACP), Investigation Team, Crime Branch, Ahmedabad. The contents of the panchnama show that accused, Ziya-ur-Rehman Abdul Rehman Muslim, was in the custody of the Ahmedabad City Crime Branch in connection with Maninagar Police Station I. CR No. 203/08. The accused voluntarily declared before panch witnesses Mr. Narendrabhai Bechardas Kahar and Mr. Pramodbhai Narayanbhai Chauhan that on July 26, 2008, he and his associates (Mirza Sadabbeg, Jishan Ahmed, and Mohammad Shakil) placed bicycles equipped with bombs in the Maninagar area and he offered to point out the specific locations.

14.4.389. In this connection, the prosecution examined panch witness Narendra Bechardas Kahar (PW No.885, Exh.6317). This witness deposed that was called to the Gaekwad Haveli Crime Branch office. He stated the accused led the team to Maninagar Railway Station and then to a spot near Shivani Avenue and Laxmi Jewellers. The accused pointed out and led the team to the locations where the bicycle bombs were placed. The witness identified his signatures on the original panchnama, marked as Exhibit 6318. He could not identify the accused.

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14.4.390. It is revealed in the cross examination of this witness that the witness was called as a panch witness many times by the police. Questions regarding the ways to reach Maninagar Railway Station and other places are replied as if the witness did not know it. He admitted that police came to him at the Opera house to be a witness in the matter. He did not remember the name of Jewellers. He admitted that he did not know what police had written in the panchnama and whether the information given by the accused was written by police or not. He deposed that due to illness and due to paralysis stroke, he is suffering from memory loss.

14.4.391. The Court finds that this witness has deposed partly in support of the prosecution. Some part of the panchnama he could not recollect, therefore, ld. PP has asked leading questions and witnesses have answered in affirmative. Even during the cross examination due to medication, the witness felt drowsy, therefore, cross examination was to be adjourned. Still however, the deposition remains untainted so far the accused has shown the place of bomb blast i.e. opposite Laxmi Jewellers. This panchnama is therefore a recording of disclosure made by an accused about the mental fact of knowledge of the location where he had planted the bomb laden bicycle and it is the very location where the bomb blast has taken place and the scene of offence panchnama makes it clear that the location is identical. The police officer in whose presence the whole proceeding is conducted may also prove the facts of panchnama and it is accordingly proved by the investigating officer.

14.4.392. Exh.6370 is a discovery panchnama, where accused-Usman Agarbattiwala (accused No.7), while in custody, led the police and panch witnesses to his uncle's house in Vadodara to recover hidden illegal weapons (air gun, pistol, knife), jihadi CDs, and a pipe bomb. It was

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carried out on 19.08.2008 between 20:00 hours to 22:45 hours before Mr.M.J.Chavda, Deputy Superintendent of Police, Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Mohammad Usman was in the custody of the Ahmedabad City Crime Branch in connection with Shahibaug Police Station I. CR No. 236/08. The accused, Mohammad Usman (alias Agarbattiwala), voluntarily declared before panch witnesses Mr. Dharmendrabhai Morlibhai and Mr. Prakash Manoharlal Tolani that he had hidden illegal weapons, jihadi materials, and a pipe bomb at his uncle's house in the Bavamanpura area of Vadodara and offered to recover them. The witness deposed that the accused led the team to a house where, from a wooden bed-box (peti palang) in an upstairs room, he produced a bag containing an air gun, a Rampuri knife, and a country-made pistol with live cartridges. The bag also contained 19 jihadi CDs, rubber balloons, and a pipe bomb; FSL experts neutralized the bomb on-site using water. List of which are as under:

1. Mark - "A": One Air gun, described as approximately one foot long with "SISCO TARGET MASTER" and a lion symbol on the barrel, placed in a long plastic bag and sealed.
2. Mark - "B": One country-made pistol (with an acrylic handle and a 3-inch steel magazine) along with two live cartridges marked "KF 7.65," placed in a small plastic box inside a larger transparent box and sealed.
3. Mark - "C": 19 CDs/DVDs containing jihadi propaganda material, placed in a plastic box and sealed.
4. Mark - "D": One pipe bomb (approximately 7 inches long with couplings at both ends) that was defused by FSL experts, placed in a box and sealed.

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5. Mark - "E": One plastic water bottle containing the water-mixed explosive material (including pellets/shrapnel) that was removed from the pipe bomb during the defusal process

14.4.393. The witness identified the recovered articles in court and confirmed his signatures on the original panchnama, marked as Exhibit 6370. But he could not identify the accused.

14.4.394. In this connection, the prosecution examined panch witness Prakash Manoharlal Tolani (PW No.895, Exh.6369). This witness supported the prosecution case and deposed before the court in accordance with the contents of panchnama. He also identified the muddamal articles seized from the place and his signature on the panch slips as well as the panchnama vide Exh. 6370. But he could not identify the accused, due to the long interval between the panchnama and deposition.

14.4.395. In his cross-examination, the witness admitted that he did not have knowledge regarding arms & firearms, pellets, Rampuri Chaku, Pipe Bomb etc. He did not inquire from the accused whether police had tortured him or not. He admitted that he did not know the police officials. He admitted that police had not collected any document for identification of the person present in the house i.e. Mohammad Shakur. Police had not collected the ownership documents of the house. He admitted that police had not played the DVD at the place.

14.4.396. The Court finds that he is a witness in whose presence the articles are seized. He might have got the knowledge about the names of arms as written by police. What is important is seizure of the muddamal at the instance of the accused Mohammad Usman and not the usage. Further, the articles are identified by witness, which does not require knowledge of the usage. Identification is only by physical appearance.

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The witness has stated before the ld. Trial court that the accused has voluntarily stated to show the arms kept at a place. There was nothing proved regarding the accused being tortured by the police. The panchnama was regarding the discovery at the instance of the accused Mohammad Usman, from the place shown by him as his uncle's house. Whether police have collected or verified the identification or ownership document is altogether a different issue. Whether the DVD found from the place contains any incriminating material, other evidence needs to be looked into and depends upon the other evidence. The personnel from the FSL were also present at the place.

14.4.397. There seems no doubt regarding the search and seizure of the articles at the instance of the accused Mohammad Usman, therefore the contents of panchnama is proved by prosecution.

14.4.398. Exh.6443 is a discovery panchnama, where accused Rafiyuddin Sarfuddin (A-35) led the police and panch witnesses to a forest near Halol-Pawagadh, Vadodara to identify where he had taken training in January-2008. It was carried out on 17.11.2008 between 12:30 hours to 14:30 hours before Mr.P.G.Vaghela, Police Inspector, Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused Rafiuddin Sarfuddin Kapadia was in the custody of the Ahmedabad City Crime Branch in connection with Shahibaug Police Station I. CR No. 236/08. The accused voluntarily declared before panch witnesses Mr. Gulabsinh Himatsinh Solanki and Mr.Himesh Pravinchandra Mehta that between January 13 and 15, 2008, he and his associates (including Taufiq, Mujib, and others) organized a jihadi training camp in the forests of Pavagadh where they engaged in trekking, swimming, and firing practice. He offered to point out the specific places where they stayed, prayed, and trained.

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14.4.399. In this connection, the prosecution examined panch witness Himesh Pravinchandra Mehta (PW No.900, Exh.6442). This witness deposed that he was called by the police to be a panch witness in the proceeding. The accused had voluntarily declared before the panch that he wished to show the places where he had taken training near Pavagadh along with the other accused. He led them in a government vehicle to several spots like Khundpir Dargah, Dharmashala, Ek Minara Mosque, Vav and other spots where training was done. The accused pointed out a specific training ground near a pond and a mosque where they had prayed. The witness identified his signatures on the panchnama, which was marked as Exhibit 6443. But he could not identify the accused.

14.4.400. In cross-examination, the witness was questioned about his occupation and occupation of other panch witnesses and his distance from the places. The witness was not keeping a daily diary. No person present when they went to Dargah.

14.4.401. The Court finds that this panchnama was used to record the discovery of relevant facts and locations under Section 27 of the Evidence Act. Though the police had the knowledge of the place where the training was conducted, the discovery is regarding the knowledge attributed to the accused that at which place he had taken the training. Further, by cross examination of the witness, nothing adverse or contrary comes on record, to what is stated in the panchnama. Therefore, the deposition in examination in chief remains intact.

14.4.402. The case record shows that the police had inquired about the place earlier along with the forensic science expert, and seized articles like pellets, parts of balloons etc. from the place. So, the cross examination in this regard is also not of any help to defence. Further, the defence raised an objection during examination in chief that

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incriminating part of the panchnama cannot be admissible in evidence under Sec.25 of the Indian Evidence Act. The objection is not sustainable as there is clear provision in Sec.27 of the Indian Evidence Act.

14.4.403. It appears that the witness could not identify the accused. However, the Court is mindful of the fact that the human mind has its own limitations and it varies from person to person. There is a long gap between the proceedings of panchnama and the deposition. It might be the reason that the witness could not identify the person.

14.4.404. Exh.6477 is also a demonstration panchnama, where accused Mubin @ Salman @ Sallu S/o Kadarbhai Sheikh (A-33) provided a live demonstration of hacking into unsecure Wi-Fi networks to send threatening emails on behalf of "Indian Mujahidin". It was carried out on 11.11.2008 between 16:00 hours to 18:30 hours before Mr.V.R.Toliya, Deputy Superintendent of Police, Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchnamas show that accused, Mohammad Mansur (alias Munavar alias Munnu), was in the custody of the Shahibaug Police Station in connection with I. CR No. 236/2008. The accused voluntarily declared before panch witness Dhaval Niranjanbhai Shah and Mahesh Manubhai Prajapati that he and his associates used hacked unsecure Wi-Fi networks in Mumbai (Sanpada and Chembur) to send threat emails regarding bomb blasts on behalf of Indian Mujahidin. He offered to demonstrate how he searched for and utilized these networks using a laptop. Another panchnama was made on the very next day regarding the another accused Mubin @ Salman @ Sallu S/o Kadarbhai Sheikh regarding the same event of using unsecured Wi-Fi network.

14.4.405. In this connection, the prosecution examined panch witness

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Dhaval Niranjanbhai Shah (PW No.903, Exh.6475). This witness deposed that police provided a laptop for the demonstration to the accused Mohammad Masoor @ Munavar @ Munnu Asgar Pirbhoi. The team went with the accused in the car to search unsecured wi-fi and after reaching CG Road, Ahmedabad, where the accused identified an unsecure Wi-Fi network named "Linksys" near a shop called Fortune Sport. The accused logged into a Yahoo Mail account (alarbi_testing@yahoo.com) and successfully sent test emails to various addresses provided by the police. The witness identified his signatures on the panchnama, which was marked as Exhibit 6476.

14.4.406. In the same way on the next day accused Mubin @ Salman @ Sallu S/o Kadarbhai Sheikh and where the accused identified an unsecure Wi-Fi network named "Choose the network +" near a Vishal Megha Mart, S.G. Highway. The accused logged into a Yahoo Mail account (alarbi_testing@yahoo.com) and successfully sent test emails to various addresses provided by the police. The witness had identified the signature on the panchnama which was marked as Exhibit 6477.

14.4.407. In cross-examination, this witness deposed that he software diploma holder. He was also questioned about his technical understanding of hacking and Wi-Fi security. He acknowledged that he did not record the physical description of the accused in the panchnama. He admitted that he did not know who owned the identified Wi-Fi network. Other technical questions were asked, which does not affect the proceeding of the panchnama.

14.4.408. The Court finds that first of all, the evidence of the witness and the proceedings of the panchnama are done only with a view to understand how the emails are sent by the accused. The proceeding was not done at the place, the accused had actually hacked the network of

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someone. It is just for the understanding of the investigating officer that how the emails are sent using someone else's network. The evidence of the witness is only regarding the method used by the accused for sending the email and nothing more than that. To prove, whether the accused before the police had sent threatening emails or not required to be proved by other evidence.

14.4.409. Exh.6502 is a discovery panchnama, where accused Fazal Rehman (A-45) led the police and panch witnesses to an LPG gas station in Surat to identify where he had filled fuel in a stolen car used in the 2008 serial blasts. It was carried out on 21.08.2008 between 11:00 hours to 13:00 hours before Mr.N.B.Parmar, Assistant Commissioner of Police (ACP), "C" Division, Surat City. The contents of the panchnama show that accused, Fazal Rehman (alias Salauddin alias Rafiq), was in the custody of the DCB Police Station, Surat, in connection with Kapodra Police Station II. CR No. 176/2008. The accused voluntarily declared before panch witnesses Brijesh Bhupendra Dudhwala and Ishan Maheshbhai Champaneriya that prior to the bomb blasts, he and his associates filled LPG worth Rs. 515 in a silver WagonR (GJ-6-CD-9719) and offered to point out the specific gas station. Police have seized the bill book also.

14.4.410. In this connection, the prosecution examined panch witness Brijesh Bhupendra Dudhwala (PW No.909, Exh.6500). This witness deposed that the accused led the team to the "Vanaj Roshani Auto LPG" gas station. A staff member, Kalpeshbhai, produced a bill book from which a carbon copy of bill No. 18654 (dated July 10, 2008) for the car was recovered and seized. The witness identified his signatures on the bill (Exh.6501) and the original panchnama (Exh.6502). He is unable to identify the accused, due to a time gap.

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14.4.411. To this witness, the questions asked in the cross examination were regarding the occupation of the witness, the presence of the witness near DCB police station etc. which do not help the defence. Nothing revealed in the cross examination creates any doubt regarding the truthful deposition of the witness. It only came on record in cross examination that when the team reached the Gas station, the witness did not notice who prepared the bill collected by the police, which was there in the panchnama.

14.4.412. The Court is of the opinion that proceeding of panchnama is proved by the evidence of the witness. Police reached to the place as per the direction by the accused, and also found the bill which indicated the car no, and the date of filling the Gas, which tallied with the case of the prosecution. Further, the witness has identified his signature on the bill as well as panchnama.

14.4.413. So far the identification of the accused is not identified through the witness, but satisfactory explanation is given, which seems trustworthy. Therefore, the discovery of the place from where the gas was filled in the Maruti Wagon R car is proved by the prosecution. This establishes the circumstance connecting the accused to the vehicle Wagon R, which was ultimately used in the offence.

14.4.414. Exh.7939 is a discovery panchnama, where accused Mohammad Rafiq @ Javid @ Alamjeb Afridi, while in custody, led the police and panch witnesses to a place from where gas cylinders were obtained for use in the 2008 Ahmedabad serial bomb blasts. It was carried out on 27.04.2016 between 11:30 hours to 14:30 hours before Mr.K.N.Patel, Assistant Commissioner of Police (ACP), Crime Branch, Ahmedabad City. The contents of the panchnama show that accused was in the custody of the Khadia Police Station in connection with I. CR

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No. 71/08. The accused, Mohammad Rafiq (alias Javid alias Alamzeb Afridi), voluntarily declared before panch witnesses Nitesh Bhikhabhai Rajput and Kunal Pankajbhai Bhatt that on July 25, 2008, he and associates (including Mujib Sheikh and Abdul Razik) purchased gas cylinders used in the blasts from a shop near Kalupur Tower and offered to point out the location. Mohammad Rafiq waited at a place near Municipal Gujarati School No. 2-17. Abdul Rajik went to Delux Stove shop and Mujib went toward Kalupue Tower and after some time they both came with Gas cylinder which were brought to Al Mahamadi Society House no.10, ultimately used in the bomb blast.

14.4.415. In this connection, the prosecution examined panch witness Nitesh Bhikhabhai Rajput (PW No.1107, Exh.7936). Looking at Examination in chief, it appears that this witness has substantially supported what is stated in the panchnama. It is stated that the accused led the team to a spot near Kalupur Municipal Gujarati School No.2-17. The accused pointed out "Deluxe Stove Centre" as the shop where the cylinders were obtained by Abdul Rajik, and other cylinders obtained by Mujib from Kalupur Tower. The witness identified his signatures on the original panchnama, marked as Exhibit 7937. But could not identify the accused due to the accused was not available in the custody.

14.4.416. To this witness, questions regarding his occupation, residence, his reason to come at the place where police stop them, the situation of road traffic at the place were asked, which were satisfactorily answered. This witness admitted that police did not go to the Deluxe shop to verify the fact. He did not know the accused before the panchnama proceedings. He did not inquire from the accused whether he was subjected to torture by police or not. He admitted that he did not know at the police station where the accused would lead them at Kalupur.

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14.4.417. The Court is of the opinion that it is not the duty of the witness to inquire about the torture to the accused or not. Further, the witness has stated in his examination in chief that the accused had voluntarily declared to lead the team to the place. Therefore, the question of unwillingness of the accused does not arise. The Court also finds that it is proved in the cross examination that Mohammad Rafiq did not go to any shop to purchase the cylinder. Therefore, by the evidence produced on record, it only proves the place where Mohammad Rafiq waited and the fact that Abdul Rajik brought a cylinder from Deluxe Stove Shop, and Mujib brought a cylinder. The Court has found that the disclosure made may act as corroboration to the other evidence which is already on record to connect the accused with the procurement of the gas cylinder.

14.4.418. Exh.8093 is a discovery panchnama, where accused Mohammad Sadik Israr Ahemad Sheikh (A-30), while in custody, led the police and panch witnesses to a shop in Mumbai to point out where he and an associate purchased the timer clocks used in the 2008 bomb blasts. It was carried out on 27.01.2009 between 13:30 hours to 14:45 hours before Mr.N.B.Parmar, Assistant Commissioner of Police (ACP), 'C' Division, Surat City. The contents of the panchnama show that accused, Mohammad Saidik Israr Ahmed Sheikh (alias Sadiq), was in the custody of the DCB Police, Surat, in connection with Kapodra Police Station II. CR No. 175/2008. The accused voluntarily declared before panch witnesses Mr. Deepak Harishchandra Soni and Mr. Sunil Rasiklal Shah that he would point out the specific shop where he and his associate, Arif Badaruddin Sheikh, bought the timer clocks used to assemble the bombs.

14.4.419. In this connection, the prosecution examined panch witness Sunil Rasiklal Shah (PW No.1128, Exh.8092). This witness deposed

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that he was traveling to Mumbai by train for business when police requested his assistance as a panch. He stated the accused led the team to Abdul Rehman Street in Mumbai and pointed out a shop located named Zaveri House. The accused identified the shop as the place where co accused Arif purchased the clocks while he waited outside. The witness identified his signatures on the original panchnama, which was marked as Exhibit 8093. But could not identify the accused due to the long time gap.

14.4.420. In cross-examination, questions regarding where police met the witness; the occupation of the witness; the frequency of the witness to visit Mumbai; where he dropped off the train and how he reached the office of Mumbai Crime Branch were asked to the witness, which he replied satisfactorily. He admitted that he did not keep a daily diary and also not noted the events that happened on the day of Panchnama. He did not go into the shop to inquire.

14.4.421. The Court is of the opinion that not keeping a diary or noting of the proceedings and deposing in the court regarding the panchnama is not an impossible thing. Ordinary people who are not used to visiting any police station or rarely went to police station, would definitely remember what had happened when he was supposed to be a witness. Particularly in a serious case like a bomb blast, a person may have proper recollection. It is not in the panchnama that the police had visited the shop with the accused and in presence of panch witnesses. The objection raised by the accused regarding the incriminating part is not sustainable, as Sec.27 provides. The Court is of the opinon that the contents of panchnama are proved by the witness. Through this document, a very important circumstance of purchase of an important article of the explosive device namely, the timepiece is established. Of

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course, this circumstance is not a standalone as there is sufficient evidence in the form of deposition of a witness, and his identification of the accused from whom the accused has made the purchase.

14.4.422. Exh.6816 is a discovery panchnama, where accused-Fazalerehman (A-45), while in custody, led the police and panch witnesses to locations in Bharuch to identify a house (hideout) he used and the residence of an associate Sajid Mansuri where meetings took place prior to the 2008 serial blasts. It was carried out on 2.12.2008 between 15:00 hours to 16:30 hours before Mr.M.J.Chavda, Assistant Commissioner of Police, Investigation Team, Crime Branch, Ahmedabad City. The contents of the panchanama show that accused, Fazal Rehman (alias Salauddin), was in the custody of the Ahmedabad City Crime Branch in connection with Sarkhej Police Station I. CR No. 181/08. The accused voluntarily declared before panch witnesses Mr. Kamleshbhai Jaswantbhai Modi and Mr. Rizwan Yasin Sheikh that during the time of the serial blasts, he had a rented house at Bharuch and had also visited the house of associate Sajid Mansuri. He offered to point out these specific locations.

14.4.423. In this connection, the prosecution examined panch witness Rizwan Yasin Sheikh (PW No.975, Exh.6815. This witness deposed that he was called by the police near the A.B.C. Chowkdi at Harimangala Hotel in Bharuch. The accused voluntarily declared that he wished to show the house used by him and the house of Sajid Mansuri. He led the team in a government vehicle to a bungalow in Sherpura with a compound wall marked "General Electric Works." The accused then pointed out House No. 33 in Lukman Society. The witness identified his signatures on the original panchnama, which was marked as Exhibit 6816. But he was not able to identify the accused due to the long time

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gap.

14.4.424. It appears that nothing fruitful came out in cross examination which can create any doubt on the statement given in examination in chief.

14.4.425. The Court finds that this panchnama is regarding the discovery of a house which was used by the accused for conspiracy. Further, the accused had also given discovery about the residence of Sajid Mansuri (A-14). But police had not inquired into either house in connection with the offence. Therefore, the fact that Accused Fazal Rehman and Sajid Mansuri residing at a place in Bharuch is proved. However, how the residence of both the accused is helpful in proving the offence depends upon the other evidence.

14.4.426. The Court is of the view that this panchnama has to be read with another panchnama Exh.6540 wherein the search and seizure in presence of the F.S.L. officers had led to seizure of incriminating material connected to bomb making.

14.4.427. Exh.7950 is a discovery panchnama, where accused Ahemadbava @ Abbu S/o Abubakar Barelavi (A-47), while in custody, led the police and panch witnesses to specific locations in Ahmedabad to point out where he and an associate Yasin arrived from Pune and the house where they stayed to prepare bombs for the 2008 serial blasts. It was carried out on 17.02. 2009 between 15:15 hours to 16:40 hours before Mr.V.R.Toliya, Deputy Superintendent of Police, Crime Branch, Ahmedabad City. The contents of the panchnama show that accused was in the custody of the Shahibaug Police Station in connection with I. CR No. 236/2008. The accused, Ahmedabawa (alias Abbu), voluntarily declared before panch witnesses Mr. Satish Vamanrao Pauvanikar and Mr. Mohammad Iqbal Abdul Gafar Sheikh that on July 14, 2008, he and

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an associate named Yasin arrived from Pune in a luxury bus. He stated they were met by a person in an auto-rickshaw who took them to a house where they stayed for two days and prepared bombs, and he offered to point out these locations. It is further mentioned that the auto rickshaw driver was Kayamuddin @ Rizwan Kapadiya (A-37).

14.4.428. In this connection, the prosecution examined panch witness Satish Vamanrao Pauvanikar (PW No.1111, Exh.7949). This witness deposed that the accused led the team to the parking area behind the Paldi AMTS bus stand near Sardar Patel Bridge, where they had initially arrived. The accused then directed the team to Al-Mohammadi Society, House No. 10, identifying it as the hideout where he and his associates stayed. The witness identified his signatures on the original panchnama, marked as Exhibit 7950. He deposed that he will definitely identify the accused. But the accused was sent to Bangalore, therefore, the accused could not be shown to the witness.

14.4.429. In cross-examination, questions regarding where police met the witness; the occupation of the witness; why he only was called as a panch and not someone else, were asked to the witness, which he replied satisfactorily. He admitted that he did not keep a daily diary for noting events or noting any special event.

14.4.430. It is required to be noted first that in the examination in chief the witness has only deposed regarding the place where the accused dropped off at Ahmedabad and the place where they stayed for two days i.e. Al Mahammadi Society House no.10. The witness has not given evidence regarding the incriminatory statement of the accused that Kayamuddin Kapadiya came to receive the accused at Paldi. Further, the witness had not deposed that they prepared bombs during 2 days time. Therefore, the discovery of places only are proved by the evidence. The

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objection raised by the accused regarding the incriminating part is not sustainable, as Sec.27 provides. This document establishes the presence of this accused at the hideout in the proximate days of the incident. The accused though belongs to Azamgarh, U.P., there is no explanation of his presence in Ahmedabad at the relevant time.

14.4.431. Exh.8529 is a discovery panchnama, identifying and pointing out of a rented residential premises (House No. D/34, Riverview Society) by the accused in Surat. It was carried out on 07.01.2009 between 08:15 to 09:45 before Mr.N.B.Parmar, Assistant Commissioner of Police, 'C' Division, Surat City. The contents of the panchnama show that accused Mohammad Naushad Mohammad Irshad Sayyed (A-46) and Ahmed Bawa @ Abu (A-47) were in police custody in connection with the crime registered at Kapodra Police Station, CR No. II-176/2008. The accused have voluntarily disclosed before panch witness Mr. Deepak Ramchandra Mali that before July 26, 2008, they had stayed in a rented house (hideout) in Surat and offered to point out the said location. They subsequently led the police and panchas to House No. D/34, Riverview Society, identifying it as their residence.

14.4.432. In this connection, the prosecution examined panch witness Deepak Ramchandra Mali (PW No.458, Exh.2813). This witness deposed that on 07.01.2009, he was called to the DCB Police Station where the two accused were present. He testified that the accused led the police and panchas in a government vehicle to Riverview Society. The accused pointed out a specific house (D/34) and stated they had previously rented it. The witness identified his signatures on the original panchnama. But could not identify the accused.

14.4.433. In his cross-examinatiom, this witness admitted he did not record the personal details or backgrounds of the accused in a diary at

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the time. He did not inquire from the accused whether they had been tortured by police or not. Other details of the society like how many houses were there in the society; the situation of the houses; floors of the houses were asked in the panchnama.

14.4.434. It is a joint panchnama for pointing out the hideout where the accused voluntarily disclose3d to lead the panch team to that hideout. Asboth the accused were jointly taken in same vehicle, it appears from the panchnama that halfway to the place where the accused had led together, one of the accused was made to sit in a Police Chowki while the team proceeded as per the direction of one of the accused who led the team to the hideout of D-24 Riverview Society. After recording this, the team had returned to the Chowki and repeated the same exercise with the next accused who also led the team to the same location of D-34, Riverview Society thereby confirming that both the accused had pointed out the common hideout. It is already on record that by a separate panchnama drawn much prior in point of time, the very house was searched and incriminating articles connected with bomb making activity were discovered.

14.4.435. The Court finds that this witness proved the voluntary disclosure on part of the accused and showed the house which they had taken on rent. Though police knew about the house, the mental fact of knowledge of the accused regarding the house was actually discovered. The facts stated on oath remain intact in the cross examination. Non-identifying the accused at the time of deposition is also satisfactorily explained by the witness. Therefore, the Court of the opinion that discovery is proved.

14.4.436. Exh.2814 is a seizure panchnama regarding seizure of nut-bolt from shop owner Jayeshbhai. It was carried out on 29.08.2008 between

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12:45 to 13:15 hours before Mr.N.B.Parmar, Assistant Commissioner of Police, 'C' Division, Surat City. The contents of the panchnama show that Police has called one Hardware shop owner Mr. Jayeshbhai, who was running hardware “Kamala Hardware". Police has seized a Nut-bolt from the shop owner mentioning the description of it.

14.4.437. The panchnama is executed at behest of Accused No.63-Mohd. Tanvir who has voluntarily disclosed to point out a shop from where the nuts and bolts which form the part of explosive device were procured.

14.4.438. In this connection, the prosecution examined panch witness Deepak Ramchandra Mali (PW No.458, Exh.2813). This witness deposed that on 29.08.2008 he was called to the DCB Police Station where one hardware shop owner Jayeshbhai was present. Jayeshbhai has produced 3 nut-bolts and 1 bolt before police, which was seized by police in his presence. He identified signatures on the panchnama vide Exb.2814. The witness has deposed that on 23.07.2008 the purchase of nuts and bolts were made, the sample of which were produced by the witness Jayesh Manubhai Patel. The witness has given specific marks and description of the nuts and the bolts which are available from this shop. The sample nuts and bolts with specific marking were seized from the shop for comparison.

14.4.439. This document establishes the connection of this accused with the shop pointed out by him from where procurement of the nuts and bolts were made and there is a separate set of evidence in the form of panchnama from the scene of offence where such nuts and bolts have been recovered and another evidence of the FSL report to establish such nuts and bolts to be part of the explosive device.

14.4.440. In cross-examination, the witness admitted that nut-bolts are easily available everywhere. The Court finds that nothing comes in cross

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examination which creates doubt regarding the seizure procedure. Therefore, this panchnama goes on to establish an important circumstance connecting the accused No.63 with the nuts and bolts which are part of the explosive device.

14.4.441. Exh.8592 is a demonstration panchnama wherein accused Sarfuddin @ Sharif (accused No.49) demonstrated the preparation of an electronic timer circuit, and seizure was made of the timer circuit and circuit diagram prepared by him. The said panchnama was drawn on 04.05.2009 between 14:30 hours and 17:30 hours at D.C.B., Ahmedabad in presence of panch witnesses and F.S.L. officers namely; Shri A.V. Hingrajya and Shri H.J. Trivedi.

14.4.442. The contents of the panchnama show that accused Sarfuddin @ Sharif was in police custody on remand in connection with the offence registered at Maninagar Police Station I-C.R. No.206 of 2008 and he voluntarily disclosed to demonstrate the preparation of electronic timer chips which were used in the serial blasts in Ahmedabad in July, 2008 as well as in the unexploded bombs which were recovered from Surat. The accused stated that he knew English and Malayalam but did not know Gujarati or Hindi and therefore, he has made the disclosure in English. Various components such as, microcontroller, diode, disc capacitor, resistor, capacitor, transistor, printed circuit board (PCB), chip on board, connector, socket, soldering rod, soldering lead and wires were supplied on being demanded to the accused. Thereafter, the accused prepared a circuit diagram on a blank sheet and then assembled the supplied components in accordance with the circuit diagram and prepared an electronic timer circuit. The accused also stated that similar timer circuits had been earlier prepared by programming the Integrated Circuit (I.C.) and such programmed I.C. was used in such timer circuits. The

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said timer circuit and the circuit diagram prepared by this accused came to be sealed and taken into possession under the said panchnama.

14.4.443. In this connection, the prosecution has examined panch witness P.W. No.1162-Jay Harshadrai Panchal at Exh.8590 who has deposed that on 04.05.2009, he was called to the Crime Branch Office where another panch witness namely; Amirbhai and F.S.L. officers and the accused were present, wherein the accused voluntarily disclosed that the timer chips which were used in the bomb blasts had been prepared by him alongwith his father Abdul Sattar and two other persons namely; Abdul Rahim and Umar Haji. He has deposed that the accused asked for articles which were required for preparing the timer chip, including wires of various colours, solder, soldering lead and diode and thereafter the accused also asked for an A4 sized paper, ruler and pencil. He has deposed that the accused had first prepared the circuit diagram and thereafter combined the articles in accordance with the diagram which was prepared by him and stated that a timer chip of the same type had been prepared by him for the blasts. The witness further deposed that the timer circuit was examined by the F.S.L. Officers and was thereafter sealed in a transparent plastic box which bore the signatures of both the panch witnesses and the Investigating Officer. The witness has identified his signature on the panchnama at Exh.8592, the panch slip at Exh.8593 and the circuit diagram at Exh.8594 and has also identified the muddamal timer circuit and the circuit diagram to be the same which had been prepared by the accused in his presence.

14.4.444. In the cross examination, this witness has admitted that he had no technical knowledge with respect to electronics or electrical instruments and that no testing had been carried out to ascertain the functioning of the timer circuit. He has also admitted that the panchnama

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was not recorded in English although the accused was speaking in English and that no person who knew Malayalam had been called. He has also deposed that he did not know each and every electronic component nor the source from which the police had procured it. However, the witness has denied the suggestions that the timer circuit or the circuit diagram had not been prepared by the accused in his presence and that a ready-made circuit and diagram was shown to the panch witnesses in order to obtain their signatures

14.4.445. Upon perusal of the panchnama, it establishes the fact that accused No.49-Sarfuddin had demonstrated the preparation of a timer circuit and had also prepared the circuit diagram based on which the timer circuit came to be assembled, in the presence of the panch witnesses, F.S.L. Officers and that the same came to be seized during the course of the panchnama. The Court finds that nothing substantial has come out in the cross examination so as to discredit the witness or the execution of the panchnama. Although in the cross examination, it is coming out that the witness did not possess the requisite technical knowledge, it does not affect the case of the prosecution with respect to the preparation of the timer circuits and circuit diagram which came to be seized during the course of the panchnama. Moreover, this becomes an important circumstance against accused No.49 as it establishes that he possessed the requisite knowledge which was required for preparation of the timer circuit which came to be used in the offence. The Court may observe that there is another set of evidence in the form of seizure panchnama where the type of circuit demonstrated by the accused has already been seized from the scene of offence and is part of the investigation. Therefore, the knowledge of the accused is a fact of mental condition which has come on record through the panchnama,

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thereby connecting him with the preparation of timer chips forming part of the explosive device.

14.4.446. Upon the aforesaid analysis of the panchnamas, which the Court has accepted to be read as evidence the application and reference of these panchnama as evidence is made by the Court in Chapter No.16- 'Accused-wise discussion of the evidence', where the Court has undertaken the accused-wise evidence.

14.5. Section 300 Cr.P.C. and issue estoppel

14.5.1. It has been argued by defence that in case of some of the accused tried in this case, that the trial is impaired by Section 300 of Cr.P.C. and also by the principle of 'issue estoppel'.

14.5.2. The facts which emerge in general are that, many of the accused who are being tried by this Court, were also arraigned as an accused in the previous trial arising from Crime Register No.257 of 2008 regarding the terror camp organized at Vagamon. Some of the accused herein were tried as accused before the Sessions Court at Ernakulam. Some of the accused herein were tried and convicted whereas, some of the accused have even been acquitted.

14.5.3. According to defence in both the cases, whether resulting in conviction or acquittal, the accused herein cannot be made to face the present trial again in view of the principle of 'issue estoppel' and Section 300 of Cr.P.C.

14.5.4. In this connection, defence has relied on ***Manipur Administration, Manipur. v/s. Thokchom Bira Singh reported in AIR 1965 SC 87*** and has drawn attention to para 8 of the judgment to contend that where the Court at Ernakulam has tried the accused for the camp at Vagamon, the trial Court in this case is precluded from receiving

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evidence on the same facts amounting to an offense. The defence has actually pleaded 'issue estoppel' by citing this judgment.

14.5.5. Another judgment cited at Bar is the case of ***Ashwani Kumar Alias Ashu and Another, reported in, (2015) 6 SCC 308*** again on the point of 'issue estoppel'. It is submitted that the rule relates to admissibility of evidence in subsequent proceedings which is designed to upset a finding of fact recorded on the previous occasion.

14.5.6. The Special Public Prosecutor has vehemently opposed application of both the principles by submitting that both the offences are distinct and cannot be ever tried together at the same time and that this serious offence of bomb blast cannot be left without trial. In fact, the conviction before the Ernakulam Session Court strongly establishes the fact of terror camp at Vagamon which according to prosecution, was one of the initial step to the nation-wide larger conspiracy to cause terror attack. This camp was thus only one of the circumstances, but not the entire trial for the offenses for which the accused were tried by Ahmedabad Additional Sessions Judge and convicted.

14.5.7. The Court may deal with both the contentions of bar under Section 300 of Cr.P.C. and 'issue estoppel' simultaneously as the same have been argued as such by almost all counsels even if this is not applicable to the accused they represent.

14.5.8. Some factual background as to which of the accused can claim under Section 300 of Cr.P.C. or 'issue estoppel' is as under.

i) List of common accused tried in both, the Ernakulam trial by Special NIA Court and in the present trial by the Trial Court:

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Sr. No.	Accused no. in present case	Name of Accused	Accused no. in Ernakulam trial	Ernakulam trial (Acquitted/ Convicted)	Present case -Trial Court (Acquitted/ Convicted)
1	A-1	Jahid S/O Kutubuddin Shaikh	A-18	Acquitted	Convicted
2	A-2	Imran S/O Ibrahim Shaikh	A-21	Acquitted	Convicted
3	A-5	Gyasuddin @ Gyasu S/O Abdulsalim Ansari	A-17	Acquitted	Convicted
4	A-6	Mohammad Aarif S/O Mohammad Iqbal Kagzi	A-19	Acquitted	Convicted
5	A-7	Mohammad Usman S/O Mohammad Anis Agarbattiwala	A-8	Acquitted	Convicted
6	A-9	Kamruddin S/O Chandmohammad Nagori	A-26	Convicted	Convicted
7	A-10	Aamil Parvaz S/O Kaji Saifuddin Shaikh	A-7	Convicted	Convicted
8	A-11	Sibli @ Sabit S/O Abdul Karim Muslim	A-4	Convicted	Convicted
9	A-12	Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori	A-3	Convicted	Convicted
10	A-13	Hafiz Hussain @ Adnan S/O Tajuddin Mulla	A-2	Convicted	Convicted
11	A-14	Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri	A-16	Acquitted	Convicted

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Sr. No.	Accused no. in present case	Name of Accused	Accused no. in Ernakulam trial	Ernakulam trial (Acquitted/ Convicted)	Present case -Trial Court (Acquitted/ Convicted)
12	A-15	Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh	A-15	Convicted	Convicted
13	A-18	Javed Ahmed S/O Sagir Ahmed Shaikh	A-25	Acquitted	Convicted
14	A-26	Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari	A-9	Acquitted	Convicted
15	A-27	Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/Omohammad Isaak Mansuri	A-20	Acquitted	Convicted
16	A-37	Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya	A-22	Acquitted	Convicted
17	A-52	Mohammad Yasin Faridkhan @ Mohammad Yasin @ Gulrez S/O Abdul Hamidkhan	A-12	Acquitted	Acquitted
18	A-53	Mohammad Irfan @ Vakib @ Karim S/O Mohammad Nakib Mansuri	A-27	Acquitted	Acquitted
19	A-54	Nasir Ahmed S/O Liyakatali Patel	A-28	Acquitted	Acquitted
20	A-55	Shakil Ahmed S/O Abdul Salim Mali	A-29	Convicted	Acquitted
21	A-56	Nadim S/O Abdul	A-14	Convicted	Acquitted

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Sr. No.	Accused no. in present case	Name of Accused	Accused no. in Ernakulam trial	Ernakulam trial (Acquitted/ Convicted)	Present case -Trial Court (Acquitted/ Convicted)
		Naim Saiyed			
22	A-57	Dr. Asadullah H.A. @ Aslam @ Asad S/O Abubakr H.	A-24	Convicted	Acquitted
23	A-58	Mohammad Sami @ Abdul Sami S/O Raj Ahmed Bagewadi	A-11	Convicted	Acquitted
24	A-59	Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim	A-5	Convicted	Convicted
25	A-60	Saduli @ Haris S/O Abdul Karim Muslim	A-1	Convicted	Convicted
26	A-61	Dr. Ahmedbeg @ Mubarak S/O Khwajabeg Mirza	A-30	Convicted	Acquitted
27	A-62	Kamran @ Fazilat Husain S/O Haji Sahid Siddiqui	A-10	Acquitted	Acquitted
28	A-65	Mohammad Yunus @ Umar @ Khalid S/O Mohammad Shabir	A-23	Acquitted	Acquitted
29	A-68	Mohammad Habib @ Habib Falahi S/O Abuljais Shaikh	A-32	Acquitted	Acquitted
30	A-72	Abdulsattar P @ Mansur S/O Abdulrazak Muslim	A-6	Convicted	Acquitted
31	A-73	Afaq Iqbal @ Iqval @ Danish Riyaz @ Saki S/O Nurulhoda Saiyed	A-33	Convicted	Acquitted

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Sr. No.	Accused no. in present case	Name of Accused	Accused no. in Ernakulam trial	Ernakulam trial (Acquitted/ Convicted)	Present case -Trial Court (Acquitted/ Convicted)
32	A-75	Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed	A-38	Convicted	Convicted
33	A-76	Manjarimam @ Alam @ Jamil S/O Aliimam	A-34	Convicted	Acquitted

ii) In the Ernakulam trial by the Special NIA Court:

Total number of accused tried : 38

Total number of accused convicted : 18

Total number of accused acquitted : 20

iii) In the present trial by the trial Court:

Total number of accused tried : 78

Total number of accused convicted : 49

Total number of accused acquitted : 28 (+1 approver)

14.5.9. Section 300 lays down that anyone convicted or otherwise, cannot be tried again for the same offence. This is barred on the maxim 'Nemo debet bis vexari' (a person cannot be tried twice for an offence with which he is previously charged), a principle which is recognized by Article 20 of the Constitution of India.

14.5.10. The Court has extensively perused the charge vide Exh.122 as also the judgment rendered by the Ernakulam Sessions Court in Sessions Case No.02/2011/NIA, which has been exhibited vide Exh.9421.

14.5.11. According to this Court, the offences are distinct on facts. What is sought to be canvassed as an independent previous offence vide C.R.

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No. 257 of 2008 at Mundakkayam Police Station is, in fact, only one of the circumstances forming part of the larger conspiracy to cause 'Terror Attack' with some motive behind it and as a step to garner support from people across India. Resultantly, the gathering of the accused persons there and the offence committed therein were tried with respect to that particular act.

14.5.12. As seen earlier, many accused have been convicted thereby, confirming the taking place of a 'Terror Camp'. Reportedly an Appeal against that judgment by Ernakulam Sessions Court is filed by both sides and pending but this fact may not affect the present case.

14.5.13. Post the factual circumstance of 'Terror Camp' at Vagamon, there were successive factual circumstances which ultimately led to the offence of serial blasts. The rest of the acts constituting the crime were committed within the territory of Gujarat. Therefore, in any case, the Kerala Court totally lacked territorial jurisdiction to try the offence relating to serial blasts and bomb planting at Ahmedabad and Surat.

14.5.14. An argument by the defence emphasizing on the phrase 'or were not known to the Court' in Section 300 (3) of Cr.P.C cannot be accepted. According to defence, when Kerala Court was trying the offence of Vagamon 'Terror Camp', it was aware of the proceedings commenced for Ahmedabad Serial Blasts. However, such an argument cannot be countenanced in view of the territorial jurisdiction and also the incidents being completely distinct, which have been investigated by a different Investigating Agency over whom the Kerala Court had no control. By such logic, the entire trial of Serial Blast in Ahmedabad and Surat ought to have been conducted in Kerala as the trial before the Sessions Court, Ernakulam was in progress; or the subsequent offence which took place much later ought to have been investigated by Kerala

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Police. Such consequences are not envisaged anywhere and therefore, such submission is required to be outrightly rejected.

14.5.15. The facts examined in this case would clearly fall under Section 300(3) of Cr.P.C. and can be covered under illustration (b) and (d) to Section 300 of Cr.P.C. The effect of Section 300 (3) of Cr.P.C along with illustration (b) and (d) is that, the fact and circumstances must be such so as to indicate a different kind of offence, of which there could be no conviction at the first trial. In this case, the evidence brought on record constitute a different kind of offence for which the accused could not be tried at first trial. The issue therefore, may not detain us any further as the facts constituting the two offences are completely distinct and different. Therefore, the claim of the accused to deflect the present trial as being a person who has faced the previous trial for some offences hereby stands rejected.

14.5.16. With the same factual background that offence tried at Ernakulam Sessions Court only being one incident of holding camp and the present offence being serial bomb blasts later in point of time (seven and half months later) in Ahmedabad and bomb planting in Surat, the Court may examine this argument of 'issue estoppel'.

14.5.17. One of the argument is that the Sessions Court was prohibited from receiving evidence on the facts which are tried and decided and that the evidence in the form of a statement under Section 164 of Cr.P.C recorded in trial of Ernakulam Court was exhibited in this trial vide Exh.9021. The Court may in this regards refer to the evidence of an independent witness Anilkumar P.D. Ex 6950 as P.W. No.998 has deposed to the very fact of holding a terror camp at vaghmon independent of the 164 statement of an accused vide Ex9021 accused Manzar Imam. There is no bar in receiving the evidence of this

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independent witness to the circumstance.

14.5.18. This Rule relates to admissibility of evidence in subsequent proceedings which may upset a finding of fact recorded in a previous trial. Firstly, the principle has no applicability if the previous order has not attained finality and is a subject matter of Appeal. In this case also, reportedly Appeals being Crl.A. 354/2020 and Crl.A.1261/2018 are filed and pending. The Apex Court in case of ***Dalip Kaur Brar Versus Guru Granth Sahib Sewa Mission (Regd.)*** **reported in 2017 (14) SCC 159.** Though the judgment is rendered in a civil case, however, the ratio of applying the principle of "issue estoppel" would as much be applicable in this case as well, wherein in Para-13/16, the Apex Court has also held that the principle of issue estoppel cannot be attracted for the reason when the legality of the order is a subject matter of statutory appeal.

14.5.19. "The Law of Evidence" by Ratanlal and Dhirajlal, 26th Edition published by LexisNexis in Chapter VIII-Estoppel, states as under:-

> *"...Principle of issue estoppel is simply that, where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or resjudicata against the prosecution nor as a bar to the trial and conviction of the accused for a different and distinct offense but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offense which might be permitted by law. Not only the parties in the two trials must be the same but also fact in issue proved or not in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial...."*

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"....Where a Magistrate acquitted the accused on a minor offence and it was set aside and later the accused was committed for a major offense, it was held that the principle of resjudicata would not apply."

14.5.20. Reliance is placed on ***Ashwani Kumar (supra).*** However, a closer reading of the judgment particularly Para-20, makes it clear that the contention of learned advocate raised therein that the subsequent (sic.) judgment will operate as an 'issue estoppel' was rejected, and the Court referred to the correct principle laid in case of **S*angeetaben Mahendrabhai Patel Versus State Of Gujarat reported in 2012 (7) SCC 621***, where Para-23 reads as under:

"23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial.

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Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue..."

14.5.21. Accordingly, here also as the Court finds that receiving of an independent evidence for the offence predominantly on Terror Attack will not have any bearing on the evidence recorded and the finding arrived by the Ernakulam Sessions Court.

14.5.22. Therefore, an accused tried for attending Terror Camp is facing altogether a different charge in present trial.

14.5.23. Even the case of **Thokchom Bira (supra)** does not apply as the factual circumstances of this case are different. In that case, the accused was charged under Section 188 of I.P.C. for being part of an unlawful assembly and in the earlier proceedings, the Court had recorded a finding that the accused person was not present at the scene of offence. However, in the subsequent proceedings, the prosecution sought to lead evidence to establish the presence of the accused at the scene of the offence, which directly contradicted the earlier finding of fact and it is in this context that the principle of estoppel was applied. However, in the facts of the present case, the Ernakulam trial is with respect to the holding of terror camp at Vagamon camp whereas, the present trial is in respect of the serial blasts at Ahmedabad and planting of bomb at Surat which has occurred after almost seven and half months and therefore the principle of estoppel as observed in the case of **Thokchom Bira (supra)** does not apply to the facts of the present case.

14.5.24. In view of the forgoing discussions, the principle of 'issue estoppel' has no application to our case.

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14.6. Grant of Sanction

14.6.1. On the Issue of Grant of Sanction for the prosecution under the provisions of UAPA, learned Advocate Shri Yug Chaudhry has made fundamental submissions that the grant of sanction to the prosecution, is a basic requirement to sustain the prosecution and without there being a valid sanction, the prosecution is vitiated and consequentially, the trial also stands vitiated. It is submitted that in the facts of the present case, there is no valid sanction to prosecute.

14.6.2. It is submitted that the offences are dated 26.07.2008, wherein periodically charge-sheets have been filed and according to learned Advocate, the charge-sheet on 20.12.2008 being charge-sheet No.298 of 2009 was filed in connection with C.R. No.365 of 2008 against various accused and thereafter on 31.12.2008, sub-section(2) to Section 45 was introduced vide Amendment Act No.35 of 2008, which provided for grant of sanction upon considering the report of Reviewing Authority, which is obliged to make an independent review of the evidence collected during the course of investigation and make recommendation to the sanctioning authority. According to learned Advocate, there is a binding statutory obligation on the prosecution to secure recommendation of Reviewing Authority prior to grant of sanction to prosecute.

14.6.3. According to learned Advocate, prior to 31.12.2008, the charge-sheets have been filed against 29 accused and thereafter, the charge-sheets have been filed against 18 accused after 31.12.2008, but the same is to be treated as without sanction, as there was no report of the Reviewing Authority and that only qua accused No.75- Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/o Maskur Ahmed and accused No.78-Tausifkhan @ Atiq S/o Sagir Ahmedkhan Pathan, the Reviewing

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Authority has given its report, based on which, the sanction has been given. By pointing out the aforesaid chronology, learned Advocate has submitted that there is no sanction to the prosecution.

14.6.4. It is submitted that even if the report of the Reviewing Authority is taken into consideration, the process adopted does not reflect an application of mind to entire investigation case before submitting the report by Reviewing Authority.

14.6.5. According to learned Advocate, the jurisdiction of Sanctioning Authority is to commence only after recommendation of the Reviewing Authority is given and in absence of recommendation of the Reviewing Authority, the sanction, if any, is non-est. Submitting on the requirement of such procedure by the Legislature, according to learned Advocate providing for safeguarding provision before applying the provisions of serious Act of UAPA, consequences of which are very serious.

14.6.6. Learned Advocate has submitted that the trial Court has committed an error on three occasions in accepting three contentions of the Public Prosecutor, which are completely against the provisions. In doing so, he has pointed out to an error committed on Page Nos. 6093, 6097 to 6119 of the impugned judgment.

14.6.7. Learned Advocate has thereafter relied upon the decision of the Apex Court in case of ***Hitendra Vishnu Thakur and others v/s. State of Maharashtra and others*** reported in ***(1994) 4 SCC 602*** to submit in support of his submission that the Amendment of Section 45 has to be given retrospective effect, for which he has submitted that the Apex Court was considering the amendment caused in the provisions of TADA with reference to days provided to complete investigation under Section 167 of Cr.P.C. and while examining such amendment and its retrospective/prospective applicability, has drawn attention of this Court

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to Para-25, which is as under:

> *"25. We have already noticed that clause (b) of sub-section (4) of Section 20 was amended by the Amendment Act No. 43 of 1993 with effect from 22-5-1993. Besides reducing the maximum period during which an accused under TADA could be kept in custody pending investigation from one year to 180 days, the Amendment Act also introduced clause (bb) to sub-section (4) of Section 20 enabling the prosecution to seek extension of time for completion of the investigation. Does the Amendment Act No. 43 of 1993 have retrospective operation and does the amendment apply to the cases which were pending investigation on the date when the Amendment Act came into force? There may be cases where on 22-5-1993 the period of 180 days had already expired but the period of one year was not yet over. In such a case, the argument of learned counsel for the appellant is that the Act operates retrospectively and applies to pending cases and therefore the accused should be forthwith released on bail if he is willing to be so released and is prepared to furnish the bail bonds as directed by the court, an argument which is seriously contested by the respondents."*

14.6.8. Though, the Court is of the opinion that decision of the Apex Court in case of ***Hitendra Vishnu Thakur and others (supra)*** is pertaining to applicability, the principle which according to the Apex Court are culled out from various decisions making it a settled law, has held in Para-26, which is as under:

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"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be

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prospective in operation, unless otherwise provided, either expressly or by necessary implication."

14.6.9. Of the aforesaid principles laid down, in the opinion of the Court, clause (4) and clause (5) would be relevant and applicable.

14.6.10. As is also held in clause (3) of the aforesaid, which says that litigant has vested right in substantive law, but no such vested right would exist in so far as procedural law is concerned. The amendment in general are broadly pertaining to substantive provision and also for the procedural aspect. It is being argued that the amendment caused in Section 45 creating one step of Reviewing Authority, is procedural step and therefore, has to be given retrospective effect. Unlike the amendment in substantive law, the effect would always be prospective. Considering this argument and considering the facts of the present case, for which the relevant date, according to the Court is commission of offence on 26.07.2008 and coming into effect the amendment to Section 45 of UAPA is clearly covered under clause (4). Clause (4) specifies that the procedural statute generally is not to be applied retrospectively, where the result would be to create new disability or obligation in respect of the transaction already accomplished**.** In the facts of the present case, the date of offence being much prior to the amendment and the prosecution having been launched upon cognizance having been taken upon filing of the charge-sheet qua arrested accused and thereafter, giving retrospective effect would create disability on the prosecution with regard to offence, which has taken place prior to amendment.

14.6.11. Clause (5) also provides that where the Amendment Act while changing the procedure also creates new rights and liability, will have to apply prospectively. Meaning thereby, the right which now the defence

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claims that prior to grant of sanction by the Sanctioning Authority, report of the Reviewing Authority is sine qua non amongst to creation of new rights and liabilities and therefore, according to the Court, application of amendment to Section 45 has to be prospective in nature and only relevant date for applying this amendment, should be treated as the date of the offence.

14.6.12. Learned Additional Advocate General submits that they would rely on time of commission of offence i.e., 26.07.2008, which is much prior to coming into force of Sub-section 2 of Section 45 of the UAPA hence, the amended provision would not be applicable, as date of offence is prior to amending provision and therefore, sanction for offence committed on 26.07.2008 would be required as per existing provision of Sub-section 1 of Section 45.

14.6.13. It is further submitted by the prosecution that, insofar as chargesheets filed prior to 31.12.2008 and all the subsequent chargesheet till the last chargesheet are concerned, sanction of this charge sheeted offence are obtained in accordance with the provision of Sub-section 1 of Section 45, and all these sanctions are proved through PW No.792-Purushottambhai Nathabhai Patel vide Exh.4866, Exh.4870, Exh4879 and PW No.780-Nalinbhai Dhirubhai Nisarta vide Exh.3597 and Exh.4039 (Rules of Business 1962 relevant Rule 13).

14.6.14. It is further submitted by the prosecution that the opening note of Sub-section 1 of Section 45 states that 'no court shall take cognizance of any offence', which would mean, court is to take cognizance of the offence which in the present case is committed prior to introduction of amended provision i.e., the offence was committed on 26.07.2008.

14.6.15. It is further submitted by the prosecution that therefore, whenever issue of granting sanction is considered whether under Sub-

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section 1 or even under Sub- section 2 of Section 45, relevant would be to consider the term 'offence'. In the instant case, as offences are committed prior to 31.12.2008, relevant would be to grant sanction under Sub- section 1 of Section 45 which has been obtained and proved through above referred prosecution witnesses and documents. Hence, it is submitted that there is legal and valid sanction obtained to prosecute accused persons for the offences which they committed on 26.07.2008.

14.6.16. It is further submitted by the prosecution that insertion of Sub-section 2 cannot be termed as procedural amendment as reading of Sub-section 2 of Section 45 creates a substantive right in favour of accused and therefore, it cannot have retrospective effect. To understand this, prosecution has relied on a simple example by referring to the present case that as offences committed is on 26.07.2008, if some of the accused persons are arrested prior to 31.12.2008, prosecution will have to adhere to the provisions of Sub- section 1 of Section 45 and for other accused who are arrested subsequent to 31.12.2008, prosecution will have to adhere to the provision of Sub-section 2 of Section 45. This itself will create an anomalous situation which would lead to differentiating and categorizing accused persons in two classes, where by one class of accused needs sanction under Section 45(1) and other class would need sanction under Section 45(2). Bare reading of statutory provisions would never create such anomaly and therefore, classification of accused as classified by defence in different categories as per charge sheet laid against them and requirement of sanction under Sections 45(1) and 45(2) would be reading these statutory provisions inappropriately and wrongly.

14.6.17. It is further submitted by the prosecution that even otherwise, more than one chargesheet in Ahmedabad F.I.Rs and Surat FIRs were submitted prior to 31.12.2008, and Court has taken cognizance of the

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offences alleged in the chargesheet which would include offences under UAPA as well, and based on it, sanction is obtained under Section 45(1). Therefore, as per the requirement of law as well as statement of law, cognizance of offence is to be taken, and not cognizance of an offender. In support of this submission, the prosecution has relied on the judgment of the Apex Court in the case of ***Pradeep S. Wodeyar v/s. State of Karnataka*** reported in ***(2021) 19 SCC 62***, wherein it is laid down that, always cognizance of offence is taken and not of an offender. It is submitted that even in the present case, the prosecution has laid as many as six different chargesheets prior to 31.12.2008, which would include offences falling under the UAPA, and cognizance of it is taken, which is not disputed by defence hence, even otherwise relying on this judgment, cognizance of offence is already taken.

14.6.18. Lastly, with respect to the reliance placed by the defence on the judgment of ***Fuleshwar Gope v/s. Union of India***, reported in, ***2024 SCC OnLine SC 2610***, which mandates strict compliance of Section 45(2) of UAPA, the prosecution has submitted that, this judgment would not be applicable in the facts and circumstances of the present case as offence of present case is committed on 26.07.2008 and this judgment does not deal with offences prior to amendment and subsequent to amendment.

14.6.19. It appears that charges have been framed against all accused persons for the offences falling under UAPA, which had been committed on 26.07.2008. And insofar as conclusion of investigation and filling of charge sheets are concerned, in all 6 different chargesheets in 6 different F.I.R proceedings including Ahmedabad as well as Surat F.I.Rs are submitted before 31.12.2008.

14.6.20. Subsection 2 of Section 45 was introduced in UAPA on

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31.12.2008. The newly introduced Sub-section 2 mandates report of authority appointed by the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within the mandated time period and only after the recommendation of such authority, State Government would consider granting of sanction.

14.6.21. On the same day i.e. on 31.03.2008, Unlawful Activities (Prevention) (Recommendation and Sanction or Prosecution) Rules, 2008 also came into force and as per Rule 2(b) "authority" means the authority to be appointed by the Central Government (w.e.f. 31.03.2009) or as the case may be the State Government under Sub-section 2 of Section 45.

14.6.22. Reliance is placed by the defence upon the decision of the Apex Court in case of ***Ramesh Kumar Soni v/s. State of Madhya Pradesh, reported in, 2013 (14) SCC 696*** to support the contention of retrospective effect of an amendment. The Court may consider the question which arose before the Supreme Court with regard to the offences punishable under Sections 408, 420, 467, 468 and 471 of the Indian Penal Code which is triable by the Judicial Magistrate First Class. Post the amendment of Madhya Pradesh by its Amendment Act, 2017 had made 467, 468 and 471 of the Penal Code to be triable by the Sessions Court and therefore, the issue was post amendment which forum had the jurisdiction to try such offenses. The Sessions Court at Jabalpur had held that after the amendment, the trial could be conducted only by the Court of Sessions even if the offence may have been committed prior to the amendment, which view was affirmed by the High Court. It is in this factual background, the Apex Court emphasizing on the shifting of forum of trial, the principle of retrospectivity was

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applied in absence of any indication to the contrary in the amendment. The Court also held that the appellant could not claim a vested right to forum for his trial as no such right is recognized. It is therefore, pertinent to point out that the principle of retrospectivity was made applicable with due regard to the change in the forum for trial. In the present case, the amendment of Section 45 by introducing Sub-Clause-2 was only with regard to the providing of an additional safeguard and has no relation with the jurisdiction for trial. Hence, the principle of retrospectivity cannot be applied on the strength of the decision of the Apex Court in case of **Ramesh Kumar Soni (supra)**.

14.6.23. Another judgment referred to is in case of ***Fuleshwar Gope v/s. Union of India, reported in, 2024 SCC OnLine SC 2610*** to substantiate the argument that a violation of Section 45(2) of UAPA Act read with Rules 3 and 4 would vitiate the proceedings. The Court had considered the violation of statutory timeline and for requirement of an independent reviewing which would include application of mind as a necessary aspect of procedure without which the sanctity of the sanction can be rendered questionable. In case of ***Fuleshwar Gope (supra)***, the Court was considering the case of an accused who was an associate of the People's Liberation Front of India and was associated with the terrorist and Chief of PLFI collecting money through extortion. The other questions which were considered by the Court were with regard to the validity of sanction which can be challenged at any stage and other two questions, which may not be relevant for the facts of this case. ***Fuleshwar Gope (supra)*** was therefore, examining the issue of raising the challenge to the validity of sanction at any stage of trial and statutory timeline and requirement of independent review. The Court was examining the issue, particularly, on the fact that the first sanction was

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granted more a year after the recommendation was moved and that there was no independent review on the part of the authority, whereas in the facts of the present case, considering the date of incident and the chronology, the reviewing authority under the amendment to Section 45 will have no application.

14.6.24. Another judgment importantly relied upon in case of ***Seeni Nainar Mohammed v/s. State Represented by Deputy Superintendent of Police, reported in, (2017) 13 SCC 685*** and learned advocate has drawn attention of this Court to para-29 of the judgment, wherein the Court has quoted para-44 of a previous judgment in case of ***Ashrafkhan v/s. State of Gujarat, reported in, (2012) 11 SCC 606***, wherein the Court has lamented on the attempt by the Investigating Agency charged with the duty of preventing terrorism and securing conviction has been frustrated by a technical error and that the gravity of the evil to the community from terrorism can never furnish an adequate reason for invading personal liberty, except in accordance with the procedure established by the Constitution and the laws.

14.6.25. Learned advocate has then drawn our attention to an unreported decision of the Single Judge of the High Court of Judicature at Madras in case ***Vaiko v/s. The State of Tamilnadu in Cr.O.P.No.20417 of 2018*** and drew out attention to para-12, wherein it was held that the reviewing committee was constituted under Section 45(2) in the year 2011 however, in that case the final report was filed in the year 2009 and at that time there was no independent authority in existence and the sanction was granted by the letter dated 31.08.2009. Therefore, when the sanction was granted, the committee which was constituted under Section 45(2) of UAPA on 25.03.2011, obviously had not given any report and thereby the sanction was held to be vitiated. According to learned advocate, a

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similar situation had arisen in the facts of our case, where admittedly reviewing authority was constituted at a later stage and such reviewing authority had given its recommendation in case of two accused later on.

14.6.26. Last judgment relied upon is in case of ***Lt. Col. Prasad Shrikant Purohit v/s. State of Maharashtra in Criminal Appeal No.664 of 2016, neutral citation 2017-BHC-AS:12222***. The issue in the aforesaid case was completely different and pertain to the validity of the sanction on the ground as to whether the State Government had the power to grant the sanction or the Central Government had power to sanction. Therefore, in para-75 of the judgment, it is observed that till 31.03.2009, there was no reference to the 'State Government' in the definition of 'Authority' as well as in Rules 3 and 4, which prescribes the time limit for recommendation of the sanction. The State Government had no authority to grant sanction under Section 45(2) prior to the amendment in Rules which came into effect only on 31.03.2009, whereas the sanction was accorded on 17.01.2009. It is in this background, that the validity of the sanction was scrutinized by the Bombay High Court. On facts, the aforesaid case is clearly distinguishable from the facts of the present case.

14.6.27. At this stage, the issue may now be examined in the light of settled principles governing statutory interpretation and the presumption against retrospectivity. It is within the powers of the legislature to legislate in the field assigned, subject to certain restrictions. If an act is passed falling outside the competence, then a subsequent act to cure invalidity may be given retrospective effect.

14.6.28. There is a presumption of prospectivity for which the legal maxim is 'nova constitutio futuris formam imponere debet non praeteritis'' which means 'a new law ought to regulate what is to follow,

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not the past'.

14.6.29. Therefore, unless there are express words within the statute sufficient to show the intention of the legislature to effect existing rights, it is to have prospective effect only. In case of ***Monnet Ispat and Energy Ltd. v/s. Union of India reported in 2012 (11) SCC 1*** applied the presumption of prospectivity and held that as there is no indication in the amending act of 1987 pertaining to Section 17A of the The Mines and Minerals (Development and Regulation) Act, 1957, the provision was made effective prospectively from 1987 only.

14.6.30. The leading judgment of Apex Court in five Judge Bench in case of ***K.S.Paripoornan v/s. State of Kerala reported in 1994 (5) SCC 593***, where the question of applying an amended provision to pending proceedings was in question and the correctness of ratio in case of ***Union of India v/s. Zora Singh reported in 1992 (1) SCC 673*** was questioned. In ***Zora Singh (supra)***, it was held that additional amount is payable on market value under Section (1-A) inserted in Section 23 of Land Acquisition Act, 1894 by Amendment Act 1984. In the majority decisions, 4:1 the Supreme Court went on to decide in Para-55 of the majority judgment as under:-

> *"55....In this context it is also necessary to bear in mind the rule of statutory construction that even where a a statute is clearly intended to be to some extent retrospective, it is not to be construed as having a greater retrospective effect than its language renders necessary. (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 924.) There is, therefore, no scope for extending the ambit of retrospective operation of Ss. (1-A) of Section 23 beyond the limits specified in Section 30(1) of the*

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amending Act so as to apply it to all proceedings initiated prior to the date of coming into force of the amending Act which were pending before the civil court on reference under Section 18 of the principal Act irrespective of the date on which the award was made by the Collector. For the reasons aforementioned we are unable to subscribe to the view taken in Zora Singh that Ss. (1-A) of Section 23 would apply to all proceedings pending in the reference court on the date of commencement of the amending Act irrespective of the date on which award was made by the Collector. In our opinion, the provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act have been correctly construed in Filip Tiago to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by clauses (a) and (b) of Ss. (1) of Section 30 of the amending Act and we endorse the said view.."

14.6.31. By aforesaid, judgment in ***Zora Singh (supra)*** was overruled.

14.6.32. A logical application of the general rule is that the retrospective operation is not taken to be intended unless the intention is manifested by express words or even by an implication. A statute or a section is not to be construed so as to have larger retrospective operation then its language renders necessary (see Reid v/s. Reid, (1886) 31 Ch D 402).

14.6.33. An argument is advanced that amendment to UAPA introducing Section 45(2) as on 31.12.2008 is merely procedural amendment and therefore, has a retrospective effect. So, even if the offense is committed in July, 2008, the amendment subsequently in December, 2008 is

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applicable. The argument is a desperate attempt to fit in the requirement of the Reviewing Authority in the process of sanction.

14.6.34. The granting of a sanction is not a procedural step but a substantive provision affecting the prosecution of the accused. It is a right of the accused to deflect prosecution in absence of valid sanction. It is trite that absence of valid sanction vitiates the trial. It is also bone of argument of defence on issue of sanction that if no report of Review Authority then there is no valid sanction and therefore, trial gets vitiated. Thereafter arguing that Section 45(2) is procedural, is an argument of convenience, not of substance.

14.6.35. "Principles of Statutory Interpretation" by Justice G.P. Singh, 15th Edition published by LexisNexis in Chapter 6-Operation of Statutes, while dealing with the operation of penal statutes states as under:-

> *"If an Act creates a new offence it will bring into its fold only those offenders who commit all ingredients of the offence after the Act comes into operation. The same principle has been applied while dealing with a law which affects the power of grant of pardon or remission. Section 433A of the Code of Criminal Procedure, 1973 (Cr PC, 1973) which requires that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments, such person shall not be released from prison unless he had served at least fourteen years of imprisonment, has been held to be applicable to sentences imposed after the coming into force of the section and not to person convicted before its coming into force. Similar principle has been applied to cases where an offence compoundable when committed was*

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later made non-compoundable. Offence of voluntarily causing hurt by dangerous weapons punishable under section 324 of the IPC, 1860 was compoundable with the permission of the court before 23 May 2006 when it was made non-compoundable by the Code of Criminal Procedure (Amendment) Act, 2005. In construing this amendment it was held by the Supreme Court that an offence committed before 23 June 2006 could yet be compounded with the permission of the court and the accused acquitted.

It is a settled principle of interpretation of criminal law that such provisions have to be strictly construed and cannot be given a retrospective effect unless the legislative intent and expression is clear beyond ambiguity."

14.6.36. Therefore, it is well settled that a procedural enactment cannot be applied retrospectively in cases where it affects the vested rights, or creates new obligations or disabilities, or affects the safeguards available to the parties. Even the commentary on "Principles of Statutory Interpretation" by Justice G.P. Singh, 15th Edition, while dealing with the concept of 'retrospective operation' states that a statute which changes not only the procedure but also creates new rights and obligations, is said to be prospective unless there is a clear legislative intent to the contrary. Also, "Halsbury's Laws of England", 4th Edition, Vol.44, para 925 states that 'a procedural enactment will not be applied retrospectively without plain words if the effect would be to deprive a person of a vested right'.

14.6.37. The defence has cited with great emphasis, the judgment of the

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Apex Court in case of ***Gian Singh v/. State of Punjab reported in AIR 1999 SC 3450***, where the accused was convicted for the offence under section 3(1) of the TADA Act, 1985 for commission of a terrorist act resulting in death of a person for which the only punishment was death sentence under section 3(2) of the Act. The TADA Act, 1985 expired by efflux of time on 22 May 1987 but the proceedings were continued by a saving clauses under the Act. The Act of 1985 was replaced by the TADA Act, 1987. In this Act in the corresponding section 3(2) the harshness of the sentence was diluted and the accused could be sentenced to death or life imprisonment. The question before the Supreme Court, where the appeal of the accused and the reference for confirmation of death sentence were pending, was whether the benefit of the dilution of the harshness of death sentence in section 3(2) of the 1987 Act could be given to the accused and his sentence of death could be replaced by sentence for life imprisonment. The Supreme Court in these circumstances gave the benefit of section 3(2) of the 1987 Act to the accused and sentenced him to life imprisonment. The Supreme Court gave two reasons for applying section 3(2) of the 1987 Act. The court first applied a general principle in the case which was stated as follows:

If any subsequent legislation would downgrade the offence, it would be a salutory principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.

14.6.38. The second reason that the Supreme Court gave was that the continued operation of the 1985 Act after expiry under a saving clause for continuance of criminal proceedings in respect of offences

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committed when the Act was in force became inconsistent, in so far the sentence part of section 3(2) was concerned, with section 3(2) of the 1987 Act and could not be given effect to in view of section 25 of the 1987 Act which gave an over riding effect to the Act over any enactment in case of inconsistency."

["Principles of Statutory Interpretation" by Justice G.P. Singh, 15th Edition published by LexisNexis]

14.6.39. This view is therefore strictly for the sanctioning policy and cannot be stretched to apply to the issue of sanction to prosecute.

14.6.40. Lastly, in the opinion of the Court, the amendment which introduced Section 45(2) of the UAPA cannot be considered as a mere change in procedure as it requires an independent review and recommendation by the authority appointed by the Central Government or State Government before grant of sanction. This is a substantive statutory obligation upon the sanctioning authority and an additional safeguard which has been introduced by the Parliament for carrying out prosecution under anti-terror legislation which has serious penal consequences. This requirement directly affects the legality and validity of the sanction itself and consequently affects the competency of the Court to take cognizance. In absence of any express words or necessary implication which would indicate retrospective operation, the amendment is to be applied prospectively to offences committed after the amendment to this Act, particularly when additional obligations or conditions are created which affect the prosecution.

14.6.41. The Court is of the opinion that the Sanction under the provisions of UAPA is appropriately granted and no illegality to vitiate the trial is visible. With regards to the sanctio under the provisions of other Acts viz. Explosive Act no issue has been raised before this Court.

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The Special Court having given sufficient reasons for accepting the sanctions under various Acts which are proved by examining the relevant witnesses the issue of Sanction is held to be in the favour of the prosecution.

14.7. Approver

14.7.1. In support of the arguments that the evidence of approver; PW No.1141-Aiyaz Razakmiyan Saiyed cannot be treated as an admissible evidence and cannot be treated as an evidence, as if it is confession of accused against co-accused.

14.7.2. Though each of the Ld Advocates for the defence made their respective submissions but by and large have adopted the submissions made in details by Shri Nagamuthu Sr, Advocate, as lead arguments.

14.7.3. It is submitted that application given by approver; PW No.1141-Aiyaz Razakmiyan Saiyed to become approver is greatly delayed and is made after a period of almost 11 years. It is argued that ordinarily, evidence of approver; PW No.1141-Aiyaz Razakmiyan Saiyed is to be recorded at the beginning of the trial, but in the present case, evidence of approver; PW No.1141-Aiyaz Razakmiyan Saiyed has been recorded at the fag end of the trial, thereby creating suspicion as to whether such approver; PW No.1141-Aiyaz Razakmiyan Saiyed is a genuine approver or to fill up lacunae of the prosecution case.

14.7.4. It is also argued that the order of granting pardon does not satisfy the requirement of Section 306/307 of Cr.P.C. because, the purpose of pardon is always for receiving evidence, which otherwise is not available with the prosecution. Else, it may give rise to situation where the person, who is the main culprit, will find an escape route by becoming an approver and shifting entire burden upon the co-accused.

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14.7.5. It has been argued by learned Advocates representing the accused that granting of pardon and procedure undertaken by the Sessions Court, in purported exercise of Section 307 of Cr.P.C., is actually without jurisdiction, and even if it is held to be within jurisdiction, it does not satisfy the test of Section 307 of Cr.P.C., which puts condition essentially required to be fulfilled. But in the present case, such condition has remained unfulfilled.

14.7.6. To elaborate on the point of jurisdiction, it is argued that Section 9 of Cr.P.C. provides for the Court of Session, and that the State Government shall establish a Court of Session for every Sessions Division, which shall be presided over by a Judge appointed by the High Court, whereas the High Court may appoint Additional Sessions Judges to exercise jurisdiction in the Court of Session.

14.7.7. It is submitted by referring to Section 307 of Cr.P.C. that there is a purpose for receiving the evidence of an approver. The purpose is to elicit an evidence of such a nature which the prosecution is unaware of. It is submitted that though the evidence of an approver is recorded at a very later stage of trial, there is no additional or further evidence coming on record except for what already is there on record. It is submitted that the prosecution is usually slow in supporting grant of pardon as it is the accused against whom they have gathered evidence will go scot free. However, in the present case, the prosecution has readily agreed to grant of pardon.

14.7.8. It is submitted that the examining of the approver as a witness at a later stage of trial is also strategy of prosecution by which the prosecution wanted to fill up the gaps in the prosecution theory, which has remained despite large number of witnesses being examined and large number of documents being exhibited.

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14.7.9. Due to aforesaid circumstances, it is submitted that the evidence of the approver be discarded altogether and may not be read in as evidence.

14.7.10. Submissions are made thereafter on the procedure adopted where after 10 and ½ years of custody on the ground of remorse accused No.23-Ayaz Razakmiyan Saiyed gives an application for pardon. The cause therefore to confess is not genuine and appears to be inspired by getting immunity from prosecution.

14.7.11. It is further submitted that there is also doubt as the timings regarding accused No.23-Ayaz Razakmiyan Saiyed making an application to Jail authority and received by the Court on 11.03.2019, that such an application is engineered.

14.7.12. Therefore, it is submitted that the procedure adopted by the Sessions Judge is also unknown to law as the Judge proceeded to record the question/answer regarding such application to the jail. As the place of sitting of Sessions Judge is fixed and any evidence has to be lead in the Court, the entire procedure by Sessions Court in jail premises should not be recognized and any consequential step also be discarded.

14.7.13. It is then submitted that defence did challenge the grant of pardon application to the extent it can by filing revision till this High Court, but when it was decided to examine accused No.23-Ayaz Razakmiyan Saiyed as witness, the defence was entitled to the previous statement of accused No.23-Ayaz Razakmiyan Saiyed recorded during the investigation to exercise their rights under Section 145 of the Indian Evidence Act. The statements under Section 161 were not provided, thereby prejudicing the defence and due to this defect, the trial cannot be termed as fair trial.

14.7.14. It is thereafter submitted that the language of the application for

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pardon does not fulfill the requirement of Section 307 of Cr.P.C. where the condition is of full disclosure. Whereas here the application and the proceedings recorded by Sessions Judge speaks of disclosure as per the content of application and not full disclosure.

14.7.15. Therefore, on all the aforesaid grounds, it is urged that the evidence lead pursuant to pardon should not be treated as evidence at all.

14.7.16. The Court may now refer to some of the judgments cited on the issue.

14.7.17. Reliance is placed in case of ***A. Devendran v/s. State of T.N. reported in, (1997) 11 SCC 720*** to submit that as the Sessions Judge did not have jurisdiction, it is an irregularity which cannot be cured. Here the Judicial Magistrate had granted the pardon in a case which was committed to Sessions Court (see para-9). However, the Court was examining the contention that the Court to whom committal has been made could exercise power under sub-section (3) of Section 10 of the Code of Criminal Procedure and, therefore, could direct a Chief Judicial Magistrate to deal with the question of tender of pardon notwithstanding the delegation of the said power in Section 307 of the Code and in this regard, the Apex Court has observed in para-8 that unambiguous language of Section 307 of the Code makes it explicitly clear that after the committal of a case the power to tender pardon lies, under the Code, with the court to which the committal is made and not with any other Magistrate including the Chief Judicial Magistrate. Once a committal is made the committing Magistrate no longer retains jurisdiction over the proceedings and that apart the unambiguous language of Section 307 of the Code does not confer such power on a Magistrate to tender pardon after a case is committed to the Court of Session.

14.7.18. The expression "trial" used in sub-section (1) of Section 306

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would, therefore, convey the meaning those cases which are triable either by a Magistrate or the Chief Judicial Magistrate. In other words, in respect of those cases which are triable by a Magistrate, while the Magistrate of First Class inquiring into or trying the offence can tender pardon at any stage of inquiry or trial, the Chief Judicial Magistrate can tender pardon at any stage of investigation, or inquiring into or the trial. Further a Magistrate, First Class, who is in session of the case can tender pardon in course of inquiry or trial of the said case while the Chief Judicial Magistrate or Metropolitan Magistrate can tender pardon even though the trial is pending before another First Class Magistrate. But by no stretch of imagination can it be construed that under Section 306(1) of the Code a Chief Judicial Magistrate or Metropolitan Magistrate has the power to grant pardon even after the committal of the proceedings to the Court of Session.

14.7.19. In the very judgment, the Apex Court has also observed as to whether corroboration is required to the approver's evidence and to what extent such corroboration is necessary. In para-14, the Apex Court has observed that what is the extent of corroboration that is required before the acceptance of the evidence of the approver would depend upon the facts and circumstances of the case. The corroboration required, however, must be in material particulars connecting each of the accused with the offence. In other words the evidence of the approver implicating several accused persons in commission of the offence could not only be corroborated generally but also qua each accused. But that does not mean that there should be independent corroboration of every particular circumstance from an independent Source. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true. Corroboration also could be both by

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direct or circumstantial evidence.

14.7.20. The Court may now consider decision of the Apex Court in case of ***Central Bureau of Investigation v/s. Ashok Kumar Aggarwal and another, reported in (2013) 15 SCC 222***. In this, the Apex Court has considered two previous decisions of the Apex Court in case of ***Lt. Commander Pascal Fernandes vs/. State of Maharashtra, reported in AIR 1968 SC 594*** and ***Laxmipat Choraria v/s. State of Maharashtra, reported in AIR 1968 SC 938***. The Apex Court quotes para 14 and para 15 respectively of aforesaid judgments essentially to observe that before acting on the pardon, the Judge must know the nature of evidence the person seeking pardon wants to give and whether if affects the public policy. Learned advocate submits that the public policy is to secure conviction of the accused if involved in offense and not to pardon him. Such arguments can be immediately rejected as the provisions of Section 306/307 of Cr.P.C. are also the part of the public policy where the very purpose of these sections are well defined.

14.7.21. Therefore, in the very judgment in para-20, the Apex Court holds as under:-

> *"20. In Prithipal Singh v. State of Punjab & Anr., this Court considered a case where an accomplice who had not been put on trial was examined as a witness who deposed in the court after taking oath; and after considering earlier judgments particularly Rameshwar v. State of Rajasthan, Sarwan Singh v. State of Punjab, Suresh Chandra Bahri v. State of Bihar, K. Hashim v. State of Tamil Nadu, and Chandran v. State of Kerala, held that (SCC p.26, para-39)*

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> *"39.. An accomplice is a competent witness and (that) conviction can lawfully rest upon his uncorroborated testimony, yet the court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless the evidence is corroborated in material particulars, which means that there has to be some independent witness tending to incriminate the particular accused in the commission of the crime."*
>
> *The deposition of an accomplice in a crime who had not been made an accused and put to trial can be relied upon, however, his evidence is required to be considered with care and caution. Such a person is a competent witness as he deposes in the court after taking oath and there is no prohibition in law not to act upon his deposition without corroboration*."

14.7.22. The object of this section is to obtain true evidence of offences by the grant of pardon to accomplices so as to prevent the escape of the offenders from punishment for lack of evidence in grave offences. Therefore recording the statement of a person who is to be pardoned before granting him pardon is not illegal.

14.7.23. It has been held by the Supreme Court that direct or indirect involvement of the person in the offence or he being privy to the offence is the basis for grant of pardon and not the extent of his culpability. Thus, the evidence of the person pardoned can be the basis of conviction.](*Commentary Code of Criminal Procedure by Ratanlal & Dhirajlal, 22nd Edition, published by LexisNexis).*

14.7.24. To answer the issues raised by the defence regarding Court of

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committal having jurisdiction, delay in making application for pardon, the Court may refer to the decision of the Apex Court in case of ***Narayan Chetanram Chaudhry and another v/s. State of Maharashtra, reported in AIR 2000 SC 3352***, where specifically the Court has dealt with such issues. In para-25 after quoting, both Sections 306 and 307, the Apex Court has proceeded to hold as under:-

> *"...A perusal of both the Sections clearly indicates that Section 306 is applicable in a case where the order of commitment has not been passed and Section 307 would be applicable after commitment of the case but before the judgment is pronounced. The provisions of sub-section (4)(a) of Section 306 would be attracted only at a stage when the case is not committed to the court of Sessions. <u>After the commitment, the pardon is to be granted by the Trial Court subject to</u> the conditions specified in sub-section (1) of Section 306, i.e. approver making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. It may be noticed that under the old Code, only the District Magistrate had the power to tender pardon, at any stage of the investigation, enquiry or trial even though he himself might not be holding such enquiry or trial. Pardon could be granted by the District Magistrate even during the pendency of the trial in the Sessions Court. By Criminal Law Amendment Act, 1952, old sections 337 to 339 were substituted by sections 306 to 308 of the Code of Criminal Procedure conferring the power to tender pardon only to Judicial*

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Magistrates and the Trial Court. Section 307-in its present form-does not contemplate the recording of the statement of the approver twice as argued. Accepting the submissions made on behalf of the appellant would amount to legislate something in Section 307 which the Legislature appears to have intentionally omitted."

14.7.25. Similarly, for delay also, the wordings of Section 307 itself provides the period between which the application can be made and that is after the committal and before the judgment. Consciously no specific mention of time period is made. Hence, in **Narayana (supra**), the Apex Court, in para 28 and 29, it was held as under:-

"28. It has been further argued by the learned counsel for the appellants that as the statement of the Approver was recorded after an unexplained prolonged delay, the same could not be made the basis for conviction of the accused. In support of his submissions he has relied upon a judgment of this Court in Lal Chand & Ors.v. State of Haryana [1984 (1) SCC 686. In Lal Chand's case this Court while dealing with the peculiar facts and circumstances of the case found that the prosecution version of the fradulent transaction was extremely doubtful. In that context it was observed that the evidence of the Approver could not improve the prosecution case. The testimony of the Approver is required to be viewed with great caution inasmuch as he was self- confessed traitor and his earlier statements have been kept back by the prosecution which gave rise to the adverse inference that the earlier statements did not support

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the prosecution. Keeping in view the fact of the Approver's statements made after 20 months, while exercising due care and caution the court found that his evidence was not reliable to be made the basis for returning the finding of guilt against the accused persons.

29. Such is not the position in the instant case. Otherwise the words of the section "at any time after commitment of the case but before judgment is passed" are clearly indicative of the legal position which the Legislature intended. No time limit is provided for recording such a statement and delay by itself is no ground to reject the testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating the evidence of the accomplice. Human mind cannot be expected to be reacting in a similar manner under different situations. Any person accused of an offence, may, at any time before the judgment is pronounced, repent for his action and volunteer to disclose the truth in the court. Repentance is a condition of mind differing from person to person and from situation to situation. In the instant case PW2 appears to be repenting upon his action from the very beginning as is evident from the two notes (Exhs.84 and 85) recovered from his pocket at the time of his arrest. It appears that the apprehension of his colleagues being convicted and sentenced prevented him from taking a final decision at an early stage to make a truthful statement. The defence has not put any question to the aforesaid witness which could suggest that the delay in PW2 becoming the Approver by itself was fatal

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to the prosecution case. In one of the notes Exhibit 84 dated 11.10.1994 addressed to his parents and brother he is shown to have stated: "I am not worth calling your son. I have committed gruesome crime for which I could not be pardoned by God also. I was instigated by my friend Jeetu and Narayan and due to which I help them in the murder and robbery which took place in the Rathi family in Pune. I have no guts to face after this incidents. I have tremendous repentance over it for which I have decided to commit suicide. Please do not be sad after my death."In Exhibit 85 he is reported to have informed the police: "I have not committed murder of anyone during the crime of robbery and murder of Rathi family of Pune. I was only involved in the conspiracy of robbery and murder with my friends Narayan and Jeetu. I only assisted my friend Jeetu and Naryana in committing those seven gruesome murders on that faithful days. I had not assaulted any one but committing murder and helping to commit the same are both sine. I am burning in that sine. I have dependence over my act and I want get rid of this feeling that is why, I am thinking of committing suicide. I request you that my family should not be harassed after my death. They have no fault of any kind. 11.10.94."

We, therefore, do not find any substance in the submissions of the learned defence counsel that as the statement of the Approver was recorded after a prolonged delay, no reliance could be placed upon it. The delay in granting the pardon may be a just criticism, where it is found that the pardon had been tendered at the end of the trial and in effect was intended to fill up the lacunae in the prosecution case. Such is not the present

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case."

14.7.26. The Court may now deal with the contention of defence regarding the lack of jurisdiction of the trial Judge to exercise Section 307 of Cr.P.C. and that the jurisdiction was required to be exercised by the Court to whom the committal is made. For this, the Court will have to consider relevant provisions of Cr.P.C. being Section 9, Section 209 and Section 194.

14.7.27. Section 9 provides for establishing a Court of Session for every Sessions Division. Section 9(2) provides every Court of Session shall be presided over by a Judge. Section 9(3) provides for appointment of Additional Sessions Judge and Assistant Sessions Judge to exercise jurisdiction in a Court of Sessions. The word used in this is 'to exercise jurisdiction', which means the appointment of Additional Sessions Judge is to exercise jurisdiction of a Sessions Court.

14.7.28. If Section 10 is seen, the Assistant Sessions Judge in Section 9(3) is made subordinate to the Sessions Judge, but Additional Sessions Judge is not mentioned in Section 10.

14.7.29. Chapter-XIV of Cr.P.C. is for condition requisite for initiation of proceedings and provides for stage of taking cognizance and in this Chapter, Section 194 is relevant for our purpose. Under this Section, the Additional Sessions Judge to 'try' such cases as the Sessions Judge of the Division 'makes over to him for trial'.

14.7.30. The committal is made under Section 209 of Cr.P.C. and reading of Sub-clause (a) and (b) will indicate that the committal of a case to Court of Session, when the offence is triable by Sessions Court exclusively, the committal is both of the case as well as the custody of the accused. So, for the purpose till conclusion of 'trial' and when under

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Section 194 of Cr.P.C., the case is made over by Sessions Judge to Additional Sessions Judge, which is again for 'trial'.

14.7.31. The provision of Section 307 of Cr.P.C. starts with the phrase 'at any time after commitment of case' 'with a view to obtaining at the trial', evidence of any person. The common thread running in all the three connected provisions is the word 'trial' and therefore, only the Additional Sessions Judge before whom the trial is ongoing pursuant to the committal order and making over of the trial will gain the jurisdiction to exercise the power under Section 307 of Cr.P.C. and grant pardon.

14.7.32. Therefore, in the opinion of this Court, the proceeding under Section 307 of Cr.P.C. undertaken by the Additional Sessions Judge is not without jurisdiction.

14.7.33. There is one more justification to our view that the action of the trial Court in granting pardon under Section 307 is not without jurisdiction and for this the Court may refer to the definition of word 'Court' under the Evidence Act and also 'Judge' and 'Court of Justice' in I.P.C.

14.7.34. Section 3, the interpretation clause of the Evidence Act defines 'Court' to include all Judges and Magistrate therefore the word in 'Court of Commitment' in the Section 307 of Cr.P.C. necessarily takes within its fold all the Judges which include the Additional District Judge, who is undertaking the trial.

14.7.35. Again Section 20 of I.P.C. defines 'Court of Justice' as under and Section 19 of IPC defines 'Judge' as under:

"19. "***Judge***".—The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person.

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who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body or persons, which body of persons is empowered by law to give such a judgment."

"20. ***"Court of Justice"***.—The words "Court of Jutsice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially."

14.7.36. Considering the above definitions, concerning Criminal Justice Dispensation System of our Country a broader meaning is required to be given to the phrase 'Court to which the commitment is made' especially referring to the stage at which the Section 307 can be brought into operation. Accordingly, the Court is of the view that the trial Court which is undertaking the trial post committal will be the Court competent under Section 307 of Cr.P.C.

14.7.37. One contention raised by defence against considering of approvers' evidence is the long time gap after which the approver made an application for becoming one. Also, according to defence, an application was made at the stage of the end of trial after almost 10 years. In this connection, the Court may consider the provision of Section 307 itself. The Section itself provides for a stage by which an application is to be made, this itself defines the time period. Therefore, no other time period is prescribed within which an approver can make application. In

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present case, the approver has made such application within the two stages prescribed i.e. after the commitment and before the judgment. When no time is prescribed, it is not open to consider a delayed application with suspicion. In any case, upon pardon being granted, the approver is examined as a witness and the defence has enough opportunity to question him even on the issue of suspected reasons for which he has made an application for pardon.

14.7.38. The Court may also refer to the decision of the Apex Court in case of ***Gopi Chand @ Pappu v/s. State (NCT of Delhi) reported in, 2026 INSC 598***, wherein the Court has given a summary of legal principles regarding the necessity of corroboration of an approver's testimony and while laying down the legal principles has gone on to record that even an uncorroborated evidence of an approver can be the basis of conviction. Of course, in the facts of the present case, not only the Court has found the evidence of the approver to be reliable as it is meeting with the requirement of the provision. It is also inculpatory and upon cogent reason being assigned, the pardon has been granted. Moreover, the Court has also found sufficient corroboration to the version of the approver. Therefore, as is held in para-29 of the aforesaid judgment, where the principles are summarized and would read as under:-

> *"29. In our view, the legal principles regarding the necessity of corroboration of an approver's testimony could be summarised as under:*
>
> *(a) It is not an inviolable rule of law that testimony of an approver must be independently corroborated in material*

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particulars before it could form the basis of conviction. The requirement of corroboration is not mandated by law but is a rule of prudence. Therefore, the Court may convict an accused even on an uncorroborated testimony of the approver provided it is satisfied, and record reasons for its satisfaction, that it is safe to rely on such testimony even in the absence of corroboration.

(b) Corroboratory evidence, if required, may be either direct or circumstantial, or both.

(c) However, where corroboration is considered necessary, it must come from independent sources. Ordinarily, the testimony of one approver is not to be used to corroborate the testimony of another approver.

(d) Corroboration, when required, must be such that it renders the testimony of the approver believable in the facts and circumstances of the case. However, it is not the requirement of law that every material circumstance against the accused is independently confirmed."

14.7.39. The Apex Court having observed legal principles and having discussed various decisions on the issue in para-36 has concluded in so far as testimony of an approver is concerned. Para-36 would read as under:-

"36. Having regard to the decisions discussed herein above, in our view, what is settled is that the creditworthiness/reliability

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of the testimony of an approver is not dependent on any one factor. There are several factors which must be considered cumulatively to determine whether the testimony is credible and reliable. The first and foremost is that the approver must not appear to be a planted witness. Once that hurdle is crossed, the testimony of an approver is to be tested as any other witness, though with greater care and caution. One of the necessary tests is that his testimony must be inculpatory and not exculpatory. However, if his testimony is not entirely exculpatory and makes a full and complete disclosure of the events qua commission of the crime, which inspires confidence i.e., appears truthful in the context of proven circumstances, his testimony cannot be discarded as one lacking credibility merely because he does not implicate himself to the extent he implicates the other co-accused."

14.7.40. The aforesaid decision of the Apex Court also lends credibility to the evidence of an approver and therefore, in the facts of the present case also, the evidence of the approver will have to be viewed as an evidence and cannot be discarded as is argued by the defence.

14.7.41. In continuance to the issue of approver as considered hereinabove, the Court may immediately proceed to appreciate the evidence of the approver accused No.23-Ayaz Razakmiyan Saiyed, who was examined as PW No.1141 vide Exh.8191. The witness has deposed that he was arrested in connection with the serial bomb-blast on 26.07.2008 and thereafter tried for various offenses including Section 302, 307 etc. of IPC and various Sections of Explosive Substances Act and UAPA.

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14.7.42. This witness has deposed that in the year 2000 when he was arrested in Shahibaug area, he had occasion to visit Shahpur Bahai Centre, at that time, he came across the board of SIMI and other posters which were placed around the building with the poster of Babari Masjid. Because of which, he entered the office located on the first floor and met one person from whom he had inquired about the working of SIMI. At that time, the person present there introduced himself as Arif Kagji (Accused No.6) of Shahpur, who explained to him the meaning and objective of SIMI which was to take revenge for the atrocities of Indian Muslims and to prepare the Muslim youth for establishing of Islamic Rule in India. The witness was also explained about the demolition of Babari Masjid at Ayodhya and to take up Jihad under the excuse of Babri Masjid. When the witness wanted more information he was informed that he has to regularly attend and visit the SIMI office, where at large scale the discussion of Jihad and Islamic rule took place, where other people and members of SIMI also remained present.

14.7.43. In the year 2001, he came to know that as anti-nation activity of SIMI is being activated, the Government of India at any time may ban SIMI. Upon hearing this, the witness went to the office of SIMI, where again he met Arif Kagji, who confirmed that such news are doing rounds and therefore, told him not to visit the office anymore and also told him to be alert for any information pertaining to SIMI activities. Accordingly, the witness stopped visiting to SIMI office. After some days, through news the witness came to know that SIMI has been banned on account of anti-national activity and inciting of Muslims youth for rebuilding of Babri Masjid. The witness also came to know that from Surat several workers of SIMI who were holding illegal meeting have been arrested and amongst them, name of Arif Kagji was also there. The witness

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thereafter, refers to communal violence following the Sabarmati train incident of February 2002, wherein several karsevaks were burnt to death. Because of the communal violence that followed, the witness saw with his own eyes, dead bodies of victims being brought to the Kabristan for burial, and he started having anti Hindu sentiments.

14.7.44. He deposed that in the year 2002 everything was over and thereafter, in the year 2005, while he was passing through Shahpur area he came across Arif Kagji and approached him. The witness was also informed by Arif Kagji that as there was a ban on SIMI, the activities are not being undertaken openly, but the same SIMI operatives are meeting secretly either in some shops, houses, factories and are propagating the Jihadi philosophy and if he is interested, he may join such SIMI program. Thereafter, whenever such secret meeting was being organized, Arif Kagji used to inform the witness either by phone or in person about the place, where program was to take place.

14.7.45. In the meeting, the discussion was with regard to communal violence in Gujarat and the preparation of the SIMI operatives to prepare Muslim youth to take revenge.

14.7.46. After this, the witness had attended one meeting in Shahpur area. In this meeting, various other youngsters were present, who were introduced by Arif Kagji to the witness as Samsuddin Shahbuddin Shaikh (accused No.4) of Dariyapur, Alim Zakir and Mohammad Ismail Alias Abdul Rajik of Gomtipur. There were two persons from Juhapura, one was Yakub and other being Mujib. During this meeting, Samsuddin Shaikh and Arif Kagji used to deliver lectures and debates explaining to the other members about the various Jihadi activities being undertaken at various places in the World and other Jihadi organizations who were involved in Jihad against their respective States in the Country and

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accordingly, in India also, it is necessary to undertake Jihad. These programs continued from the year 2005 to 2008 and in this program, Takrir (speeches) [the meaning of word 'Takrir' in Islamic contexts is the delivery of lecture in religious gatherings] were undertaken by Samsuddin Shaikh and Arif Kagji.

14.7.47. In these meetings, it was conveyed that they have to prepare for taking revenge of riots in Gujarat and work for Islamic rule in India. For that, they have to be physically and mentally strong. During these programs, if there is any confusion amongst the participants, then they used to ask questions and Samsuddin Shaikh and Arif Kagji would give answers in the context of Jihad. It was during this period of 2005 to 2008, majority of the programs used to take place and such programs also used to take place at the house of Ibrahim, Alim and Yakub of Juhapura.

14.7.48. The witness thereafter, refers to one big program which took place in the beginning of the year 2008 at the resident of the maternal grandfather of Samsuddin Shahbuddin Shaikh. By program, the witness meant to be meeting, which according to Arif Kagji, was a very important meeting, where the guests from outside were also going to remain present in the meeting and therefore, the witness was also invited to the meeting. When he attended the meeting, he found many other people were present, to whom Arif Kagji had introduced this witness as Safdar Hussain Nagori (accused No.12), Sibli (accused No.11), Abdul Subhan @ Taukir, Kayamuddin Kapadia (accused No.37), Mufti Abubasar (accused No.15), apart from these many other were also present in the meeting whom the witness knew from beginning like Zakir, Mohammad Ismail @ Abdul Rajik, Arif Kagji and Samsuddin Shaikh. In this meeting, mainly Safdar Hussain Nagori, Abdul Subhan

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Taukir, Samsuddin Shakih and Arif Kagji delivered the lectures and in their lectures they mentioned about various violent activities undertaken by organizations in different countries in different parts of the world for the purpose of bringing Islamic rule and accordingly, even in India for bringing Islamic rule, it is necessary to undertake practical jihadi activity. Such program continued for two to three days and during the daytime, such lectures were being delivered and on one day in the evening, Samsuddin Shaikh took the participants in one room of the house, where they found colour T.V. and VCD Player and with the help of the VCD Player, video was being shown which pertained to Taliban, Al-Qaeda, Hamas and other organizations, who were resorting to violent activities like suicide bombing, gorilla warfare, bomb explosion. In the video apart from above, bomb making activity was also taught and the demonstration of the preparing explosive was also shown.

14.7.49. The text which was written under the video was in Arabic and English language and the audio was also in Arabic and English language which was being translated and explained in Hindi by Samsuddin Shaikh. After sometimes of the meetings, through newspaper the witness came to know that several SIMI operatives have been arrested in Madhya Pradesh, Indore and therefore, the witness went to Arif Kagji to ask about the detail to which Arif Kagji explained that the people who were arrested were SIMI workers of Safdar Nagori group and now they have to be ready to undertake practical activity. Arif Kagji also raised apprehension that after the arrest, the people will interrogate them and during interrogation, their meetings would also be exposed and therefore, for some time, they should not meet and whenever in future any meeting will be conducted, then Arif Kagji would inform him. He was warned that he should not participate or meet unknown people and get involved

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in any kind of activity and thereafter, the witnesses have stopped meeting Arif Kagji.

14.7.50. In May-2008, the witness received phone call from Abdul Rajik and called the witness outside his society, who was accompanied by two persons who were the members of SIMI and they were finding it difficult to find residence and therefore, informed the witness to find a rented premises. He called those two persons of SIMI to the nearby Tea Kitley and the witness was able to identify them as Kayamuddin Kapadia and Taukir @ Abdul Subhan, whom they had met in the SIMI meeting at Samsuddin Nana's residence. The witness was informed that Abdul Rajik tried to find out a residence around his area but did not succeed and therefore, has brought two persons to this witness. The witness inquired about their business to which Taukir informed that he was doing computer work and Kayamuddin was doing printing work and when he inquired about the family, both of informed that they will come with the family later on.

14.7.51. After this meeting, when he went to Masjid for Namaz, the witness informed one Saiyadu Rehman to look for house in the locality and he was informed that in his neighborhood there is one house which is available and accordingly, there was a meeting with the owner with regard to the rent and deposit. On the next day, the witness called up Abdul Rajik informing about the availability of house on rent and therefore, Abdul Rajik alongwith Kayamuddin Kapadia and Taukir Abdul Subhan came to the witness and Abdul Rajik left while the witness alongwith Kayamuddin Kapadia and Taukir Subhan went to Saiyadu Rehman for having a look at the residence. Saiyadu Rehman took them to the house, where one Firoz Shaikh was present, who took all of them to the upper floor which was to be given on rent and asked

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for deposit of Rs.5,000/- and rent of Rs.900/-. Instructions were given for constructing of a bathroom there, as it was not yet constructed.

14.7.52. The witness thereafter, has deposed that approximately on 10th to 15th of May, Kayamuddin and Abdul Taukir started residing in that house which he came to know through Saiyadu Rehman at the time of Namaz in Masjid and therefore, the witness went to meet tenants at the place and inquired about their family members to which Taukir and Kayamuddin informed that they would stay alone for some time and later on called their family members. The witness as and when he used to find time would visit the house and many a times he would find both of them and some time only one of them and whenever they used to meet them, they would discuss about taking revenge of Gujarat riots. Once when he had gone, there was one third person also present whom he knew as he was present in the program at Samsuddin Nana's place and his name was Mufti Abubashar and everybody used to address him as Mufti Sab. Again there was a discussion amongst all about taking revenge of Gujarat riots. The witness was not aware since how long Mufti Abubashar was to reside there, but he was informed that the landlord Firoz Shaikh had objected to a third person; Mufti staying in that house and therefore, he was informed that being a guest he would reside with them only for a few days.

14.7.53. The witness thereafter, referred to Kayamuddin calling for two swimming pool forms and informed the witness to fill up the form with wrong address of Danilimda and wrong name as Shaikh Asfak. Thereafter, Kayamuddin and the witness went to Abdul Rajik at Gomtipur and from there to Naroda Patiya, Naroda Gam and Gulbarg Society where Kayamuddin and Abdul Rajik informed the witness that these are the places where the rioting had taken place and many Muslims

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were killed and therefore, there was a discussion of taking revenge of these killings of Muslims and thereafter, all of them went to the rented house, where Taukir @ Abdul Subhan was present and again there was a discussion of rioting. Accused-Abdul Subhan asked about the date being 11th July and laughed out that on this very date there was a train blast in Bombay and after sometime, Gujarat will also see bomb-blast and therefore, the witness inquired from Taukir as to who is going to cause to which Taukir answered that at the right time, he would come to know. When they met, Taukir and Kayamuddin in the Masjid at the time of Namaz, they informed that after two-three days they would vacate the rented premises. Upon asking for the reason, they said that they are not bringing their family to the house and thereafter, the witness was informed by Saiyadu Rehman at Masjid that both Taukir and Kayamuddin have left the rented house alongwith their belongings. Thereafter, the witness had no occasion to meet either of them. However, on 22nd July they received a call from Kayamuddin and informed him to come at Vatva bus stand and therefore, the witness went to meet him, at that time, both Kayamuddin and Abdul Rajik were there and all three of them proceeded to Narol and again there was a discussion about the Gujarat riots and the revenge. Kayamuddin inquired from the witness that if a chance is given to take revenge, would he be ready to help to which, the witness answered that he was ready to help. Upon which Kayamuddin informed the witness that there is a plan to cause bomb blast in which he should also participate. The witness inquired for other details about the bomb-blast to which Kayamuddin answered that he should not make inquiry of all the details and only the instructions which are given, which he has to follow and remain present when called for. After this, all of them parted.

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14.7.54. Approximately on 23rd July, Kayamuddin once again called the witness on phone and asked him to come to Laldarwaja bus-stand and the witness proceeded to from his office to Laldarwaja bus-stand, where he met Kayamuddin. Kayamuddin informed him that they have to go to Naroda gam, where the Muslims were killed to see the location. Thereafter, they went to Kalupur in bus and from Kalupur to Naroda and walked down to the Bazar in Naroda, where they had something to eat and drink. Kayamuddin showed him the exact location and instructed him that whenever bomb is to be placed, he has to place the same at this location. Kayamuddin further informed to keep his phone number and make a call on 25th for further plan. The witness from his home went to Gita Mandir bus-stand, from there he made a call on PCO on Kayamuddin's number, Kayamuddin asked him to wait for some time and Kayamuddin arrived at Gita Mandir and informed that the day decided for the bomb blast is 26th July and therefore, the witness must reach at Sarangpur at 4:00 p.m. and once again give a call on the same number.

14.7.55. On 26.07.2008, at around 4:00 o'clock the witness reached Sarangpur bridge and using the hotel PCO nearby called up Kayamuddin, and Kayamuddin instructed him to take a shuttle Auto Rickshaw and reach Ajit Mill cross roads. Accordingly, the witness reached Ajit Mill cross roads and was again informed to make another call upon reaching there and therefore, from another PCO box, the witness made a phone call to Kayamuddin which was answered by Abdul Rajik. The witness was instructed to wait at Ajit Mill cross roads and that he will join him in a short time. Accordingly, after a short time, he came in one Auto Rickshwaw and Abdul Rajik came out of the Auto Rickshaw with four plastic and cloth bags which were very heavy and contained bomb.

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14.7.56. He placed the bags near the foot of the witness and paid rent to the Auto Rickshaw. Abdul Rajik asked witness to keep watch on the bags and that he would return in a while. When he left, the witness inquired as to where he was going, to which Rajik answered that he is just going across and coming back and from there he went to the opposite side in a complex, where several vehicles and cycles were parked and he picked up one cycle and came back which was a big black coloured gents' cycle and he hanged one bag on the handle of the cycle and informed that do not make any change in the bag and he picked up another bomb bag and placed it on the carrier of the cycle.

14.7.57. The witness inquired from Rajik that Kayamuddin had asked him only to put one bomb then why second bag is also kept, to which Rajik instructed the witness that there is a great hurry and therefore, he has to place the cycle with the bomb which is on the handle at the place identified to him by Kayamuddin and the second bomb is to be placed at any appropriate place like a city bus and he has to complete the placing of bomb before 6 o'clock. After that, Abdul Rajik left to the place which is not known to the witness and thereafter, at approximately 4:45 to 5:00 p.m. the witness went alongwith cycle and reached Naroda Gam through Naroda Road and Soni ni Chawl and reached the place which was identified by Kayamuddin. He took three-four rounds around the market area and thereafter, at the exact location identified by Kayamuddin, he parked the cycle where it was a market like area which was crowded. He locked the cycle and took the key and removed the second bomb from the carrier and walked towards Naroda AMTS bus-stand. He saw AMTS bus No.66/3 waiting there and some passengers getting inside the bus. He alongwith the bag climbed into the bus and went to the two seats near the door, sat there and put the bag consisting of bomb below the

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seat. He took ticket from the conductor and got down at Saijpur-Memco bus-stand and threw the cycle lock key near the footpath and returned back to his home. After some time, he switched on the T.V. and came to know about the blast in Ahmedabad and he read about the bomb-blast at Naroda village in the morning newspaper. He also came to know that people were injured, but the bomb in bus No.66/3 did not explode, but was found from near Arvind Mill.

14.7.58. The witness has thereafter, proceeded to explain why he participated in this activity by stating that under the guise of religious sentiments on account of the incident of Babri Masjid, Gujarat riots, the people of SIMI organizations were instigating against the Indian Government. The witness was also emotionally drawn into the say of these people and started participating in the SIMI programs and meetings. The witness was shown Exh.8056 which the witness has identified to be his own application and identified the signature as his own which he had made from the jail on account of remorse for participating in such criminal activities and with an intention to convey to the Court truthfully the facts and therefore, when he made up his mind, he had made such an application. He has also deposed that he was aware of the order passed on such application and had shown willingness to accept any condition that would have been imposed in such order. He was informed about the passing of such order and he has signed for accepting such order.

14.7.59. The witness has thereafter proceeded to identify the accused in identification by video conferencing. He has identified one Safdar Nargori by name. He has also identified Sibli Abdul Karim. He has identified Mufti Abubashar and Mohammad Ismail Alias Abdul Rajik, Kayamuddin Kapadia, Kagji Mohammad Arif, Samsuddin Shahbuddihn

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Shaikh, Mujib Shaikh with names. He has deposed that out of the names mentioned by him in his deposition, one Mujib Shaikh, Taukir Alias Abdul Subhan, Zakir, Yakub and Alim and Ibrahim were not seen. The witness has clarified with regard to the identification of Saduli whom he had identified from Bhopal jail and both of them being real brothers were having similar face.

14.7.60. The prosecution had shown Exh.3234, which was a form of municipal corporation swimming pool in which name Sheikh Asfak Iqbal is written alongwith date of birth, age and profession which were in his own hand writing and the photo affixed on the form was that of Kayamuddin Kapadiya, whereas the signature was that of Kayamuddin Kapadiya.

14.7.61. In the cross-examination, this witness is asked about his family and education. He is asked about his knowledge about the Godhra riots and the Sabarmati train burning incident. He is also asked about Barbri Masjid demolition and how he felt and what were his views about it as he was a Muslim. He was specifically asked about his wish to which he replied that the Babri Masjid was wrongly demolished and that as a Muslim he also wished that the Babri Masjid must be constructed there only.

14.7.62. He was thereafter, asked questions about his knowledge about ban of SIMI, to which he answered that when he met Arif Kagji, SIMI was not banned but later on it was. He deposed that during that period, he used to frequently visit SIMI office. He states that SIMI office was located near Shahpur Police Station. He replied in negative to the questions as to whether he received any receipt for membership form of SIMI. He states that during 2000-2001, when he used to meet Arif Kagji, there was no training program of SIMI in which he participated. He had

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no personal knowledge of any such camp. He deposed that he used to attend many SIMI programs between 2005 to 2008 and many programs he did not attend, but he did not maintain any noting of such meetings. A specific question was put that in the meetings, Aalim and speakers used to give lecture to which he answered that no Aalims were there, but SIMI workers used to give lecture.

14.7.63. He deposed that SIMI workers coming from outside of Ahmedabad were from Madhya Pradesh, Kerala, Karnataka etc. He gave names of Safdar Nagori from Madhya Pradesh, Sibli from Kerala, Kayamuddin from Baroda, Mufti Abubashar from Uttar Pradesh.

14.7.64. There were others, but to keep their identification secret, purposely they were not introduced to each other. He was questioned about the program conducted at the residence of Samsuddin Nana to which he was given the period of two-three days, but program would last which used to be between Assar Namaz to Magrib Namaz. To a specific question whether program continued from Magrib to Isa Namaz, to this specific answer was that when he used to reach there in morning all SIMI members were present and in evening he used to leave at time of Magrib while others continued. He has answered that he did not know the exact time when the program would end.

14.7.65. The nature of questions put in cross and the answers given in fact confirmed that the meeting did take place. Further, question put in this regard what used to transpire in these meetings to which the witness answered that the program started with reading of Quran and thereafter, speakers used to speak on subject. This witness never delivered any speech in the meeting or maintained any written diary about it.

14.7.66. He has answered in affirmative to the question on location of the house of Samsuddin Nana, located in the gully opposite to

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Panjrapole Police Station. He answered in negative that in his presence, in the ongoing meeting there was obstruction by Dariyapur police. This line of questioning and the answers given by this witness in facts confirms that the meeting did take place.

14.7.67. The witness is extensively questioned about the incident of communal riots after Godhra train and where he resided during that period and the riot-like situation prevailing in the vicinity to which this witness appears to have answered correctly. He is also questioned about damage suffered by him or any of his relatives and/or neighbors due to communal riots and at that time he did not join any Muslim organization.

14.7.68. He was questioned about the nearby areas to his residence, particularly, about the Masjid and Kabrastan. However, all the questions put to him as mentioned herein do not directly concern the offense or fact leading to offense and therefore, is not discussed in detail. He was also questioned about his job, its area of office and the timings and the fact that on 26.07.2008 he had not taken leave from his job.

14.7.69. The witness was questioned about his arrest and his remand period and the investigating officer. He answered in affirmative to the question that by and large his head was covered by cloth, but both hands were not handcuffed but answered in negative that during remand he was physically tortured.

14.7.70. He has denied that when taken before Magistrate he was threatened not to say about the torture else he would be encountered. He has stated that during initial days of arrest, his statements were recorded with his signature on them. However, this line of question also does not relate in any manner to the offense of incidents leading to offense, at best it can be for the purpose of questioning the investigation and the procedure during trial to which the witness has no concern.

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14.7.71. Specific questions were asked regarding the secret witnesses and his assessment that these secret witnesses were against him and that when he has deposed secret witness Zakir was examined and total 1130 witnesses were examined. The answer given to such questions are not relevant at all for the purpose of commission of crime, but perhaps in an attempt to prepare a background for challenging the very status of this witness as an 'Approver' witness as if the witness is deliberately examined at the later stage of trial. In the preceding paras of this very chapter, the Court has answered that issue on the basis of the provisions of Section 307 of Cr.P.C. itself not specifying any chronology. Also it is only when the witness had feeling of remorse that he made an application as per due process of law. In this regard, the Court may refer to a very specific answer given by the witness where he denied that he had heard all the evidences given by panch witnesses given against other accused. He also stated specifically that during deposition of Firoz Shaikh and Zakir Kureshi, he was not present continuously and that the panch witnesses have deposed truly against the accused including against himself.

14.7.72. The witness admitted that in his application Exh.8056 as the case was at an important stage, he felt like that he must convey complete true facts to the Court. He also admitted that within next three months the evidence in case would be over, but denied that only after reading evidence of all the witnesses and other evidences he decided to confess to the crime and that he would be released. He also did not answer in affirmative to the question that other accused would be released and that all the depositions were available with all the accused and that he has read all the depositions connecting to him. He denied that the deposition read by him were borrowed from co-accused and the depositions were

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sent in jail by defence advocates. He admitted that in jail the co-accused discussed about the depositions but he used to hear them, but has not necessarily participated.

14.7.73. The witness admits that before making an application on 11.03.2019, he has not contacted his advocate or had taken opinion from any co-accused however, one month prior thereto he had a discussion about it with Jahid Shaikh(accused No.1), Kayamuddin and Mohammad Ismail @ Rajik. He states that after such discussion, he did not receive any threats from co-accused for which he made a complaint to the jail authority. He deposed that Exh.8056 application for confession was written one day prior to 11.03.2019. The application was made on the papers given by the jail and on 11.03.2019 at approximately 3:00 p.m., he had given such application in open pages and this application was written by him during the entire day of 10.03.2019. According to him he had written in parts, in morning, afternoon and in the evening however, he had not given this application to Jahid, Kayamuddin and Mohammad Ismail for reading. This line of question is to create doubt on the application Exh.8056 being written by the witness himself. However, from the answers provided by the witness, it is established that the application Exh.8056 was a genuine application by the witness without there being any influence or threat and that such application was given out of remorse. The Court has already discussed this aspect in the preceding paras of this chapter.

14.7.74. The witness was thereafter, questioned about the ongoing trial of Sessions Case No.38 of 2009, where 80 accused of different States were being tried. He has answered in affirmative that none of the accused have been enlarged on regular bail and that many accused were tried, but failed in getting regular bail. However, he himself had not

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preferred any bail. He has assigned the reason for not making bail application to his inability due to his capacity. He was thereafter, questioned about his financial capacity, his family and their source of income to which he has mentioned that his younger brother is in paramilitary force.

14.7.75. He has answered in affirmative that in connection with Exh.8056, the Court had assembled at 4:30 p.m. on 14.03.2019 however, he has denied that for this reason, he was called in the office of the Jail Superintendent, but was called in the Court premises located within the jail. In a specific question as to whether reflection period was given by the Court, the witness has answered that he had made the application on 11.03.2019 after lot of thinking. However, the Court had not asked him to rethink for two-three days.

14.7.76. He has denied that from 14.03.2019 to 18.03.2019, any Investigating Officer or Crime Branch Officer had visited him for inquiry. He himself had also not made any attempt to meet them. He has deposed that pursuant to the notice issued by the Court on Exh.8056, no officer of the Crime Branch had visited him and that no one had visited him to carry out the verification as to whether he really wants to make the statement. In a specific question about the order dated 27.03.2019, the witness has deposed that he has received it after two-three days and such order is with him. According to him, the order of the Court was not in a sealed cover, but was an open document and no signature of the witness was taken for receipt of such order. He has however, denied that he has not received the copy of the order.

14.7.77. He was thereafter, questioned about his religion and to which category of Muslim (Barelvi, Devbandhi, Al-Ehdis etc.) to which he answered that he is ‘Sunni’ and does not believe in any other category.

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The witness was thereafter, questioned about other categories of Muslims and also about the category to which co-accused like Arif, Taukir, Rajik, Mufti Abubashar and others belonged to, to which the witness has denied any knowledge. According to the Court, this line of question was hardly relevant for the purpose of the offense and is therefore, not dealt with in detail.

14.7.78. The witness was thereafter, questioned about the educational activities of the witness himself and other co-accused while they were in jail. He was also questioned with regard to the rivalry between him and other co-accused with regard to the prize money received upon successful completion of a course and receiving reward. This line of questioning was directed towards the rivalry being the cause for giving deposition against co-accused however, the answers provided by the accused do not indicate to the fact that such rivalry could have been the reason for the witness to wrongly implicate co-accused.

14.7.79. He answered in affirmative that on 30.12.2018 onwards, he was kept separately in Kasturba Cell to which the witness has assigned reason of health problem and that he had made such application to the authorities. He has denied the knowledge of the fact that since last 12 years as and when any family member comes to visit him in jail, Crime Branch and ATS are keeping the watch over them. According to the witness, jail staff used to remain present and that while he was attending his family members he would focus on talking to them and therefore, would not be aware as to whether the person present there belongs to Crime Branch, ATS or SOG. He has denied any knowledge about the fact that the Head Constable Gopal Sharma, who is ATS Head Constable or Head Constable DCB Uday have been posted in Sabarmati jail or that Firoz of SOG is discharging his duty there. He has also denied any

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knowledge of the aforesaid three persons keeping watch when the relatives of the co-accused used to visit them in jail. He has also denied that in the year 2018, he had close conversation with one Gopal Sharma and that he has never seen Gopal Sharma. With great emphasis, questions were posed by defence on the identity of Gopal Sharma, but the witness has outrightly denied any connection with him. Therefore, the line of question continued concerning Gopal Sharma and his role in making this witness as an approver. He has denied that Gopal Sharma has made him understand that he is likely to be sentenced. He has also denied that he has become an approver upon the instructions of the said Gopal Sharma or any other Crime Branch officer. He has also denied that to keep this witness away from co-accused he was shifted to Kasturba Cell. He has also denied that he had received any assistance from any agency for writing application at Exh.8056. He has also denied that he has simply put his signature on Exh.8056. He has denied that the application and the deposition given by him in the Court was a result of his practicing and tutoring.

14.7.80. Therefore, a persistent attempt made during this cross-examination to cast doubt over the intent of this witness to confess and doubt procedure of making the application Exh.8056 has failed thoroughly and therefore, the Court is inclined to accept the genuineness of the intent and the procedural proprietary of the application Exh.8056 and the steps taken by the trial Court in ascertaining willingness of this witness to confess.

14.7.81. Once again the line of questioning by the defence has turned towards the functioning of SIMI office and the witness has denied the suggestion that during 2000, the witness has never met Arif Kagji at the SIMI office. He has also denied that the activities mentioned by him in

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his evidence in chief was never conveyed to him by Arif Kagji. The line of question was thereafter, on the riots during February 2002 and the areas affected by such rioting. He has denied that the SIMI meeting had never taken place after the year 2001 and that he has not attended the meetings with Samsuddin and Arif Kagji and other speakers. He has also denied that there were no instigating lectures or discussion regarding violence out of Jihad. He has also denied that there was no program at the place of Samsuddin's Nana. He has denied that he has not made any attempt to find on rent premises for Kayamuddin and Taukir. He has also denied that rented house of Firoz was never occupied by them. He has also denied that he has not brought the swimming pool forms for Kayamuddin and has denied that he has not entered a wrong name and other details in the form. He has denied that he has not filled up any detail in the form Exh.3234.

14.7.82. Advocate Shri M.M.Shaikh for various accused has thereafter, proceeded to cross-examine the witness by putting him the questions with regard to the democracy prevailing in India, religious freedom, Hindu fanaticism and the spreading of misinformation about Muslim fanaticism. He is also put question about religious scriptures and religious persons, which in the opinion of the Court, were directed towards the case of the prosecution regarding efforts to establish Islamic rule and the understanding of this witness of the history of Islamic rule within India and other parts of the World however, the questions put in this connection not being relevant are not discussed in detail. Thereafter, the witness has been questioned about the ill-health that he suffered, as a result of which he was shifted to Kasturba Cell. This issue is also not relevant and therefore, not dealt with in detail. The witness was questioned about one particular accused Naved Kadri, who had suffered

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with some mental illness and that though he was ill, he was kept with other co-accused, whereas for a simple coughing complaint, this witness was put in Kasturba Cell. He has denied that on the instruction of one Gopal Sharma he was put in Kasturba Cell. He has denied that he was suffering with any illness.

14.7.83. The witness has thereafter been cross examined by this counsel with regard to the communal violence in the year 2002 and under what circumstances the witness had to change his place of residence and the establishing of relief camps for the victims of the violence. He has however denied that anybody closely related to him were the victims in the relief camp. The witness was thereafter, questioned about his relationship with his advocate Javedkhan Pathan and whether he had taken his assistance for making any application for bail. The questions were thereafter put with regard to his meeting with Arif Kagji in the year 2000, and that the meeting with Arif Kagji was not by some pre-planning and prior thereto, he was not knowing who Arif Kagji was and he had no information about the parents of Arif Kagji and their occupation. He did not remember the exact date on which he met Arif Kagji, but his first meeting lasted for approximately 50 minutes. The counsel has thereafter, questioned him about his service and the location of his office and proximate time required for travelling by public transport, AMTS bus to Laldarwaja and the route which he has to take for reaching Laldarwaja during peak hours and off peak hours. This line of question was to create doubt on the story of the witness about his reaching the place as decided with co-accused after leaving his office and going to various places. However, the witness has satisfactorily answered and does not create any doubt on the version given by this witness about the timing by which he had left his office and reached

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various places like Ajit Mill cross roads, Naroda Gam etc. To a very specific question about him reaching at Ajit Mill cross roads on cycle, the witness has specifically answered that he has taken time of half an hour to 45 minutes in reaching place by riding the bicycle. A question was thereafter put regarding him reaching the bus-stand from where he boarded the bus. The answers given by the witness in this regard infact confirms the fact that he has indeed carried two bombs, one which was placed on cycle and parked at a place indicated to him by co-accused and the other in the bus which he had boarded.

14.7.84. Thereafter, the cross was continued by advocate Nainaben Bhatt on behalf of various accused. The witness was questioned about his remand period and the fact of him being an accused in Surat cases and investigation undertaken in connection with Surat cases. He was also questioned with regard to Exh.8056 application. However in this line of questions, the version given by the witness with regard to the offense has remained intact. The witness was thereafter, cross-examined with regard to the years on which various incidents took place like demolition of Babri Masjid and the riots taking place thereafter and therefore, the time gap between such incidents of rioting and the incident of present offence, there being a long time gap, could not be the reason connecting the present offence. He has denied that there were no religious lectures delivered and that all such incidents are creation of his own. With regard to the constitution of SIMI, the witness has answered that he has general information on the constitution of SIMI. He has answered in affirmative that he has seen a material belonging to SIMI and a Hindi Magazine 'Movement' was released by SIMI and Gujarati Magazine named 'Iqra' was being released. He has read this material especially material pertaining to the year 1992 when the Babri was

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demolished and the situation prevailing in Court. He has also been questioned with regard to the content of such material which mentioned about the Hindu organizations alongwith international Checheniya and Palestine areas where the atrocities were done over Muslims. However, he has not preserved such material with him. He has denied the suggestion that after the ban of SIMI in the year 2000, there are no activities of SIMI being conducted. He has denied that he had accessed to the information of Checheniya and Palestine through internet. He also denied any detailed knowledge about this issue through other Magazine.

14.7.85. The witness was thereafter, questioned with regard to his stay in judicial custody and various cells which are forming the Ahmedabad Central jail which consisted of high security zone, Kasturba Cell etc. He was questioned with regard to the co-accused who were made to stay in high security zone and the period during which such co-accused have stayed in high security zone and also the facilities which are available to the accused while they are in jail and the comparative facilities available to the accused who are kept in Kasturba Cell. In the opinion of the Court, the answer provided by the witness to such questions does not have any impact on the version given by the witness on the offense. He was also questioned about days fixed for meeting the family members of his own and that of the co-accused. Majority of the questions through this counsel were pertaining to the ongoing trial and the attendance of this witness during such trial which appears to have been posed to indicate the extent of knowledge of the accused pertaining to the ongoing case however, none of the answers given by the witness to such line of question has made any impact on the version of the witness in connection with the offense.

14.7.86. He has denied that after 31.12.2008, he was continuously in

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contact with the police and thereafter, when he was confident about his preparation to confess, he had made an application for confession however, the witness has specifically denied this and has answered that he has given such application out of his own volition and had decided voluntarily and when he was questioned that why such need arose after 10 years, he has categorically answered that on account of remorse he had taken this step. He has also denied that he has got up the ground of remorse, but the real fact is that he wanted to escape the sentence. He has denied that he has wrongly deposed in examination-in-chief about seeing of video demonstration of bomb making, but has admitted that he has not mentioned about demonstration of video for bomb making in his confession.

14.7.87. Thereafter, the witness has been cross-examined by Shri L.R.Pathan for other accused and he has been questioned with regard to his stay in Kasturba Cell and on many occasions, he has been brought in and out of Kasturba Cell. He was also questioned about his stay in high security zone alongwith co-accused and that other accused from other offenses were also kept with them all. The line of question was with regard to stay and knowledge about the Anda Cell to which the Court is of the view is of any relevance to the present offense. The witness was thereafter, questioned about his education, his age and his exposure to happening in the World to which, according to Court, the witness has answered satisfactorily, but the same does not affect the version of the witness with regard to the offense. The witness was thereafter, questioned with regard to the SIMI office and the material like pamphlets distributed and whether he has studied Quran or not, to which he said that he has studied Quran in vernacular language and he has denied that the meaning of Jihad is to fight against injustice. However,

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he has admitted that to fight against injustice is not an offense. This line of question was put to the witness apparently to justify the act of the accused person being a protest against perceived injustice caused to them. The witness was thereafter, cross-examined about the detail of his remand period in connection with various offenses and again his stay in high security zone during which he had not suffered any ill-health. The remaining questions put to the witness pertaining to his stay in various cells and barrack is not affecting or relevant for the purpose of the offense and are repetition of what has been covered in the previous questioning by other counsel and therefore, the Court may not deal with the same in great detail.

14.7.88. He has categorically denied that he has not declared in detail about the fact of his visit alongwith Kayamuddin to the place where the Muslims were killed in Naroda Gam, the place where he had fruit salad with co-accused and the place which was indicated by co-accused. Meaning thereby, this witness has clearly declared all the aspects of the aforesaid issues which pertain to identification of a place which was indicated to him for placing the bicycle. The questions were put to him to confuse him with regard to the names by which those places were known as the cross road near Ajit Mill was known as Ajit Mill cross roads because of the the proximity. However, the witness has steered clear of such questioning and has stood his ground about the identification of place by the co-accused. He was also questioned about the geography of the place so as to confuse him about what he had mentioned about such places in his evidence in chief like that the place indicated to him by the co-accused Kayamuddin, there was no complex or parking of complex from where cycle could be brought. Here also, the witness has stood his ground by denying that he has not made any clear

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statement during his evidence in chief or even in cross-examination. He was later on put forth question about the several riots which had taken place and his knowledge of such riot case. However, the Court deems it not relevant for the purpose of present offense and refrained from dealing with the same in great detail. The Court may therefore, refer to a specific question with regard to the location of placing the cycle, wherein a question was put that he is unable to clearly identify the place, where the cycle bomb was placed to which a very specific answer was given that there was an open space adjacent to the fruit salad lorry, where two other cycles were standing. Therefore, even during the cross-examination, the witness has been able to specify the exact place, where the cycle bombs were placed. He has also denied that from the description given by him in evidence-in-chief and previous part of the cross-examination does not give the exact location of the placement of the cycle bomb.

14.7.89. In response to the questions put to this witness that there was no identity mark on the bag in which bombs were placed to which the witness has answered that there was a number written on the cloth bag containing the bomb and that bag was white in colour within which a plastic bag covering the bomb was placed. A specific question was put to him as to whether he has seen the bomb after the explosion to which the witness has answered that he has not gone to the place and has no idea of what was the position of the bomb and the place around after the blast. He has deposed that the bag on which he had seen number had blasted however he has not observedwhether the other bag was consisting of any identity mark. He has denied that he has not placed the bomb in the bus and has specifically deposed that he has placed the bomb in the bus. However, he is not able to say for sure that the same

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bomb was found from Arvind Mill. He has denied that only to support the case of prosecution, he has mentioned that he had placed the bomb in AMTS bus No.66/3 to cover up the bomb which was found in open space.

14.7.90. Lastly, he has categorically denied that only after reading the evidence of several witnesses like PW No.598, 603, 810, 811, 812 etc. and after having deliberately done it with a view to support evidences of aforesaid evidences, police has recorded his admission. He has denied that in the deposition of the aforesaid witnesses, there was lack of clarity and therefore, to bring in clarity in their deposition, he has made the confession under pressure and was induced by the jail authority and prepared the confession under their supervision.

14.7.91. On behalf of several accused, the defence counsel has thereafter cross-examined this witness initially by putting him a question with regard to the set up of Sabarmati Central jail consisting of various barracks and the dimension of such barracks and the nature of security provided. However, the answers given by this witness are not relevant for the purpose of the present offense and therefore, has not been discussed in detail. However, the line of question is to suggest that confession made by him as an 'approver' is doubtful and influenced by the prevailing situation in the jail barrack, where he was being imprisoned. The Court finds that overall answers given by the witness does not put to doubt the version expressed by the witness in his evidence in chief or the answers given by him in the cross-examination.

14.7.92. The questions were also put with regard to the jail visitors as well as by letters to the outside world which are also not relevant for the purpose of offense. Thereafter, questions were put to this witness with

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regard to the application Exh.8056 however, such questions were put which are of similar nature as well as by the other counsel defence. A specific question was put with regard to the remorse, because of which he made confession by putting question to him that 56 persons who were killed in this offense, the witness was not aware of their names or address and that he has not made any attempt till date for tracing them out. This question as pointed out has been put to indicate that there was no remorse however, answer given by this witness does not touch upon the fact where he experienced remorse only upon meeting relatives of the people who were killed in the offense.

14.7.93. Thereafter, on behalf of some of the accused persons Shri D.D. Pathan has cross-examined the witness, wherein repetitive questions were put to him with regard to his family members and their source of income and their occupation. Being repetitive in nature and not in any way connected with the circumstance of the offense, the Court may not deal with the same. However, a specific question was put with regard to posting of his brother Riyaz, but apparently was working with some force, to which he has answered that after his involvement in the offense, his brother had stopped keeping any relation. He has denied that with regard to the confession he has given any information to his father or his brother Riyaz. Thereafter, the Court has proceeded to record denial on certain part of his answers given to the question put by this very counsel about his relation with the father and the brother. The witness was thereafter put question with regard to his remand period and also with regard to the bomb-blast case against one Pragya Thakor, Colonel Purohit and Asimanand to which the witness has denied any knowledge. The question put to him with regard to Quran, the witness has answered that he has read the Quran, a translated version and that it is pious for all

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the Muslims. The witness was tried to to be put on the back foot and embarrass him on the issue of taking oath by specific reference of the "Quran" however, the he has answered all such questions as the witness was under the oath as per the Criminal Manual. The witness has denied that the bag consisting of the bomb which in his evidence in chief has stated to have been handed over to him by Arif Kagji, was actually handed to him by his brother Riyaz. He also denied any knowledge during his remand, his brother Riyaz was also interrogated in this regard. Again this line of questioning was to put the witness in awkward box by involving his own brother who is in para military, the defence has made all the attempts to break this witness and went to such an extent in naming his innocent family members. He has also denied that the house given on rent to Taukir and Kayamuddin was only given by Riyaz and not by him and he has also denied that in the very rented house, his brother and other friends used to reside. The witness has categorically answered that he has wrongly deposed that he is making this confession on account of remorse and change of heart. Lastly, he has denied involvement of any of his family members and their visiting having any connection with his confession and that he has not sought any permission and consulted Investigating Agency or Government Pleader Officer, nor they have tried to meet him in connection with the confession. Other learned advocates Shri S.M. Vatsa and K.G. Shaikh have adopted the cross-examination to be verified by the defence advocates.

14.7.94. The Court has closely scrutinized the evidence given by this witness though an 'approver' who has been granted pardon, the Court is inclined to believe testimony of this witness in toto. The reason given for making such application for confessing, the procedure undertaken

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before accepting the application and the reason assigned by the Court for granting pardon having been perused by this Court, the Court finds that there is no procedural lapse in accepting the pardon. The perusal of the deposition including the cross-examination has undertaken hereinabnove the Court finds that the witness had sufficient reason for making an application for confession and has therefore, given a truthful account about his role as well the role of the co-accused in this offense and therefore, the evidence of this witness as an 'approver' is required to be admitted as a reliable evidence.

14.7.95. Over and above, the witness being reliable, there are other circumstances also which go on to support the version of this witness and hence also the Court is inclined to believe the witness.

15. Appreciation of deposition of relevant witnesses

15.1. The Court has thereafter perused the deposition of eyewitnesses and in this regard, the principles governing appreciation of evidence of eyewitnesses needs to be considered. It is a cardinal principle that even the uncorroborated testimony of the witness is sufficient to convict the appellants, if the testimony appears to be reliable and trustworthy.

15.2. As per Criminal jurisprudence and provisions of Indian Evidence act, witnesses can be classified into three categories, viz., (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, the conviction or acquittal could be based on the testimony of such a single witness. Equally, if the witness is wholly unreliable, neither conviction nor acquittal can be based on the testimony of such a witness. For witnesses who fall into the third category (neither wholly reliable nor wholly unreliable), the courts will look for corroboration in material particulars from other reliable

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evidence, direct or circumstantial, before acting on their testimony.

15.3. In ***Nirmal Premkumar v State (2024 SCC OnLine SC 260)***, it was held by the Apex court, that the Court can rely on the victim as a 'sterling witness' without further corroboration, but the quality and credibility must be exceptionally high. The sterling witness should be of a very high quality and calibre, whose version should, therefore, is unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statements made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and how so ever strenuous it may be and under no circumstances should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, and the manner of offence committed the scientific evidence and the expert opinion. The said version should consistent with other evidences. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Such a witness can be called a 'sterling witness' whose version can be accepted

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by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should be consistent with the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged. Keeping in mind the aforesaid principles, the Court may now appreciate the evidence of the eyewitnesses to various circumstances of this offence.

Witnesses to the holding of terror camp in forests of Pavagadh at Halol:

PW No.981-Pravinbhai Hamirbhai Katariya (Exh.6835)

15.4. The Court has perused the evidence of the eyewitness namely PW No.981-Pravinbhai Hamirbhai Katariya vide Exh.6835 who has deposed that at the time of the incident, he owned a Bajaj passenger jeep, which he operated for hire shuttle between Halol and Bhamariya and that one Ashwinbhai Bharatbhai Nayak was employed as his conductor. He has deposed that on 27.08.2008, the police had stopped him near Helical Vav and interrogated regarding whether any individuals were undergoing training there during Uttarayan. He informed the police that on the day of Uttarayan, his vehicle suffered a puncture while passengers were on board. Among the passengers, one was a friend, Ambalal Vechaat. While the repair work for the puncture was being conducted, he transferred the other passengers of his jeep to another vehicle. At that time, his friend Ambalal and he proceeded on foot toward Helical Vav. near Kamlesh Quarry, wherein they heard voices of certain persons speaking. Upon reaching the site, they observed a crowd of 15 to 20 individuals. Among them, two to four persons were crawling on their elbows; a rope was tied between two trees with balloons suspended from it; and these individuals were aiming and firing at targets with guns.

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These persons were unknown to them and were conversing in the Hindi language. A tent had been pitched at that location, regarding which the police recorded his statement. Subsequently, on the second or third day, the police summoned him for a Test Identification Parade (TIP). Consequently, Ambalal and he travelled to Ahmedabad, where they were directed to sit in a room within the Court premises. During that interval, Ramkabhai and Babubhai also arrived and stated that they too had been summoned by the police.

15.5. Thereafter, when he entered the Courtroom, a judicial officer was seated in a chair, and there were six rows consisting of 10 persons each. This officer inquired about his name and address and then asked if he recognized anyone from these rows, to which he replied in the affirmative. He then physically identified and pointed out 9 persons whom he recognized. The officer inquired as to their names. He had seen these individuals near Helical Vav; their names were Safdar Nagori, Yunus Mansuri, Sajid, Aamir, Agarbattiwala and Kamruddin. He does not presently recall the names of the remaining individuals. He subsequently exited the Court and reported these facts at the Crime Branch office.

15.6. The witness further stated that on the day preceding 12.09.2008, the police arrived and instructed Ambalal and him to return to Ahmedabad. Accordingly, they attended Court on the 12th, where the officer inquired about his name and address. Upon being asked if he recognized the persons standing there, he informed the officer that he had seen these men pitching a tent near Helical Vav. When asked for his name, one individual identified himself as Abbas, a resident of Kutch-Bhuj. The police recorded his statement regarding this.

15.7. Thereafter, on 16.12.2008, he was again summoned to Court.

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Ambalal and he attended the Court, where the officer inquired about his name and address. Upon the officer's instruction to identify a person from those standing there, he identified that individual. He stated that he had seen this person where the tent was pitched near Helical Vav. The police recorded his statement regarding this. Subsequently, he was summoned to Court again on 06.06.2012. Ramkabhai was also present in Court that day. After the officer inquired about his name and address, he asked me to identify one person from a group of six. He identified the person, whose name was Mohammad alias Munno, whom he had seen at the tent pitched near Helical Vav.

15.8. Thus, he identified the individuals in the identification parade whom he had seen near Kamlesh Quarry. Upon being asked if he could identify these individuals if they were brought before him again, he identified the accused persons via video conferencing, viz. Hafiz Hussain Tajuddin Mulla, Doctor Ahmed Baig Khwaja Baig Mirza, Kamran Siddiqui Haji Sahid Siddiqui, Amil Parvez Qazi Saifuddin, and Safdarhussain Jahirulhussain Nagori. Thereafter, while being shown the accused persons detained in the Central Jail via Video Conferencing, he identified accused Arif Badruddin Shaikh, Rafiyuddin Sarfuddin Kapadiya, Nasir Ahmed Patel, and Mohammad Arif Nasim Ahmed. Similarly, he identified Asif Badruddin Sheikh, Fazle Rehman Durrani, Abbas Umar Sameja and Alamzeb Afridi. Despite being shown the accused persons in the fourth, sixth, seventh, ninth, tenth, twelfth, thirteenth, and fourteenth rows, the witness did not identify them.

15.9. Learned Advocate for the accused, Mr. Pathan, conducted a detailed cross-examination of this witness. During this, the witness stated that the location where his vehicle suffered a puncture is seven kilometers from Halol. After the puncture was repaired, he proceeded to

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Halol. He have seen the Jumma Masjid, Babri Masjid, and Helical Vav. While traveling from Khundpir Dargah toward Halol, there is a Minar Masjid. The registration number of the vehicle he was driving was GJ-2-V-2614. Subsequently, the witness was questioned regarding his vehicle and the geographical topography of the site where the puncture occurred. The witness admitted that there is a fencing perimeter of approximately 10,000 square meters around Helical Vav. Kamlesh Quarry is approximately three hundred meters from Helical Vav. Thereafter, the witness was subjected to detailed questioning regarding the facts recorded in his police statement. The witness largely adhered to the facts stated in his examination-in-chief and his statement before the police. The accused asked the witness: "Did you report to the nearest police station or the Forest Department the fact that among the people gathered near the tent, some were crawling on their elbows and some were bursting balloons?". In response, the witness clarified: "I was not aware that such a report was required or that these people were engaged in such illicit activities". The witness admitted that he did not overhear the nature of the conversation between these individuals. He further admitted that during the four identification parades, he did not specify to the Magistrate what the identified persons were doing at that location. He had not provided a physical description of the accused to the police but said could identify. Subsequently, the witness was questioned regarding Court summons, Court address, Court numbers, the name of the Magistrate, and the geographical layout of the Court; however, as these questions were not relevant to the case, they are not detailed in this judgment.

15.10. Thereafter, in cross-examination by learned Advocate for the accused, Mr.Shaikh, the witness stated: "I do not maintain a diary of

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daily events in my life. I have not recorded the date or the specifics of this incident. I have social relations with Muslim friends". The witness denied the suggestion that Helical Vav is a protected historical monument where security personnel are stationed. Subsequently, the witness was questioned regarding his driving license, the birth dates of his children, the months of the Hindu Vikram Samvat calendar, and events occurring on various dates; however, these questions are not mentioned verbatim in this judgment. The witness admitted that there is significant vehicular traffic on the road from Halol to Pavagadh. He acknowledged the presence of Khundpir Bawa's Dargah and a Minar Masjid further ahead, where there is frequent movement of the Muslim community. The area surrounding Helical Vav is a forest area. The witness further stated that 20 to 25 persons were standing in a circle and a triangular tent had been pitched. The tent was 7 to 8 feet in length, width, and height, constructed of cloth, and was light yellow in color. The defence questioned the witness regarding the guns, to which the witness stated that he had heard the sound of gunshots that day. Furthermore, the witness stated that the persons bursting balloons were doing so from a distance of 50 feet, and the tent was in close proximity to them. We were standing approximately 30 feet away from these individuals. Additionally, the witness was asked various questions regarding the officer he met during the identification parade, including the officer's name, physical description, and designation. In response, the witness stated that he could not provide such details. In the cross-examination by the defence, the witness stated that during the identification of the accused in the examination-in-chief, he identified them after observing them meticulously, calmly, and after having the accused remove their glasses and caps. Thereafter, the witness denied

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most of the suggestions put to him.

15.11. Thus, considering the facts emerging from the examination-in-chief and cross-examination of witness Pravinbhai, it is established that on August 27, 2008, a crowd of 20 to 25 individuals was gathered at Kamlesh Quarry near Helical Vav. A rope was tied between two trees with balloons suspended from it, individuals were firing with guns, two to four persons were crawling on their elbows. Furthermore, the witness stated that these 20 to 25 individuals were not locals but were from outside the area and were speaking in Hindi. The witness clearly identified these individuals during the identification parades conducted at different intervals. It is pertinent to mention that the witness had not previously identified the accused by name. However, since this is not the prosecution's case, the testimony of this witness cannot be considered doubtful solely on the ground that names were not mentioned. The prosecution does not claim that the witness knew the accused by name prior to the incident. According to the prosecution's case, the witness saw these 20 to 25 individuals for the first time on August 27, 2008. When these facts came to the knowledge of the police during the investigation, and the witness reported that these individuals were engaging in such activities, the identification parade of the accused was conducted. In said parade, the witness identified different accused persons at different times and also established their identity via Video Conferencing. In these circumstances, the testimony of witness Pravinbhai is corroborated by the sworn testimony of another witness, Ramkabhai. The questions asked and answers given goes on to establish that the PW is an actual witness to what he has deposed. Therefore, there appears to be no reason to disbelieve the testimony of this witness. Furthermore, the accused failed to establish any clear defence through

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the cross-examination of this witness. Consequently, the evidence of this witness is deemed reliable and trustworthy.

15.12. This witness has identified following accused in the test identification.

i. Safdar Nagori,

ii. Yunus Mansuri,

iii. Sajid,

iv. Aamir,

v. Agarbattiwala,

vi. Kamruddin,

vii. Abbas from Kacchh-Bhuj,

viii. Mohammad alias Munno

15.13. This witness has therefore identified following accused during his deposition.

i. Hafiz Hussain Tajuddin Mulla,

ii. Doctor Ahmed Baig Khwaja Baig Mirza,

iii. Kamran Siddiqui Haji Sahid Siddiqui,

iv. Amil Parvez Qazi Saifuddin,

v. Safdarhussain Jahirulhussain Nagori,

vi. Arif Badruddin Shaikh,

vii. Rafiyuddin Sarfuddin Kapadiya,

viii. Nasir Ahmed Patel,

ix. Mohammad Arif Nasim Ahmed,

x. Asif Badruddin Sheikh,

xi. Fazle Rehman Durrani,

xii. Abbas Umar Sameja,

xiii. Alamzeb Afridi.

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PW No.1067-Ambalal Vechatbhai Bariya (Exh.7231)

15.14. The Court has thereafter perused the deposition of another eyewitness namely; PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231, who fully supported the facts of prosecution case and stated that, on 27.08.2008, while he was with Pravinbhai, the police came in a jeep near Helical Vav and inquired about any training camp in the forest area around so, he told that training was going on in Kamlesh quarry, and that day there were four to five other passengers in the jeep. During this time, when the jeep got a puncture, these passengers were put into another vehicle, and Pravinbhai and he went to Helical Vav, where they heard the voices of people inside the valley. When they went there and saw, there was a tent where about twenty to twenty-five people, some with beards and some without, appearing to be Muslims, were present, and a rope was tied between two trees with a swing hanging in between. These people were shooting at the swing with guns, and everyone was walking around while talking in Hindi .

15.15. This fact which they have witnessed with their own eyes, and that they have seen these people, in relation to which they informed the police of the facts.

15.16. Afterwards, on 30.08.2008, the police called him and also Pravinbhai, Babubhai Sharma, and Ramkabhai to the court for an identification parade, where fifty to sixty men were lined up, and the work was conducted in the presence of the Magistrate. The Magistrate instructed him to pick out the people, where he recognized among those standing and after seeing all these people, he identified them. Then the Magistrate asked him how he recognized these people and he told him that he had seen these people in Kamlesh quarry, so he recognized them. After that, he left and the identification procedure was carried out

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similarly for other people with him. Afterwards, they went to the Crime Branch office and reported this fact. He identified nine men in the court whose names he does not remember at the moment.

15.17. He further deposed that, again, on 12th September, Pravinbhai and he were called to the court and made to sit in a room and asked him for his name and address and told him to take out the six people standing in front of him whom he knew, so he took out a man named Abbas. The name of his village was Kutch-Bhuj. He had seen this man in training camp at Kamlesh quarry. He then walked out from Court and went to the Crime Branch office where he informed the police about the incident.

15.18. Then again, on 16th December, Pravinbhai and he went to the court and there he was told to take out the person whom he knew, so he took out a person whose name and address was asked and that his name was Kayamuddin Kapadiya, resident of Vadodara. He then walked out of the court room.

15.19. The witness further identified the accused kept at Bhopal Central Jail via video conference during the identification process. Among the four accused, the witness identified the current accused as the brother with a white beard. While the accused name was reported to be Safdar Nagari, on the same day, the witness did not identify the accused shown via video conference at Ahmedabad Central Jail as any of the four accused, and also stated that they could not recognize someone after ten years.

15.20. Then after, during the cross-examination by learned counsel Mr.Pathan from some the accused, the witness stated that he does not remember the number of Pravinbhai's vehicle and that many people jeeps run on Pavagadh Road apart from Pravinbhai. In the jeep in which he had gone, there were six to seven other passengers, none of whom he

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knew. The Dargah at Khundpira is about one kilometer away from Helical Vav. Subsequently, the witness was asked questions regarding the geographical location of Pavagadh, but the exact questions and answers have not been mentioned verbatim . In the cross-examination, the witness stated that the other passengers in the vehicle and the name of the vehicle owner/driver were unknown to him. This witness has stated in cross-examination that from Helical Vav, Kamlesh quarry pit is located approximately 400 to 500 meters away; at the place with the tent, there were all stones, and the tented area was level. No one was found at that place. Furthermore, this witness, when asked questions regarding the facts they stated before the police, remained consistent with the facts they had stated to the police and with the facts of the complainant's case. Additionally, this witness was asked questions about the time and the geographical location in the Court, such as which room they were seated in and how many rooms were on the ground floor, during the identification parade in court. The answers to these questions are not considered significant evidence under the provisions of the Evidence Act, and hence are not mentioned word to word .

15.21. During the cross examination of other accused by learned counsel Mr.Shaikh, witness stated that many private vehicles come and go from village to Pavagadh or Halol. He did not remember what work he went for on the day of Uttarayan. He was accidentally going in Pravinbhai's jeep as well as the police accidentally met us on the way. He don't keep any notes or diaries of my work. There is no record of the fact that from January 2008 to July 2008 the persons who met and with whom they were interacted with. He don't seem to have had any quarrels or fights with the tent owners. Further, it has been acknowledged that there is a large number of tourists in the forest near Helical Vav at Pavagadh." We

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were standing about 200 meters away near the tent and couldn't hear what these people were talking about," He admitted that, the police have not shown any photographs of the accused or given physical descriptions of the accused and on the basis of that, the police have made scratches. Thereafter, questions were asked regarding this witness about the court summons notice for the identification parade, the names of the court clerks, the physical description of the clerks, and the facts pertaining to the name, address, designation, and physical description of the witness before whom the identification parade took place. These questions are not considered significant . In this witness's cross-examination, the witness admitted that in the statement given via video conference, there were 10 people sitting on one TV screen and many others on another Television screen. Among them, the person he identified had a white beard, while all the others had black beards. (Regarding this question, judicial note is noted in the statement by the court that, 'Out of the 10 accused on the Television screen, two have white beards; one has a completely white beard, while the other has partially black beard'). Thereafter, in the cross-examination, the witness, in response to questions about important facts, adhered to the facts he deposed and stated that the identification parade conducted in court was proper It has been stated that it happened in this manner.

15.22. Considering the truth of the evidence under the oath of the witness Ambalal, it has also been successfully established that on 27/08/2008, this witness and witness Pravinbhai were at Helical Vav near Kamlesh quarry, where certain people were taking training in a tent and some people who appeared to be Muslim were breaking open with rifles, and that they were talking to each other in Hindi in a low voice. This has

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been seen by this witness and the witness Pravinbhai, and it is clearly a reason to believe that they informed the police about this fact. After becoming aware of this fact, based on the actions taken by the police, in the case filed against the current accused by the complainant, the court has also conducted an identification parade in person, and the accused identification was made during the video conference in the evidence. It is also a reason to believe that the defence of this witness was not able to bring any denial of these facts on record successfully. It is also mentioned in the cross-examination of this witness that, 'The police did not show us any photographs of the accused nor did they provide any physical description of the accused, and on that basis, the police did not make any sketches.' Considering this fact, it emerges even from the defence side in the cross-examination that the police had not given any prior hint regarding the identification of the accused or any description of them, nor were any photographs shown.

15.23. From this, it appears to be a reasonable and sufficient ground to conclude that both witness Ambalal and witness Pravinbhai was present near Kamlesh quarry, Helical Vav on the day of the incident. It has been proven on record that certain people were taking training in a tent and were secretly speaking in Hindi, and that these people appeared to be Muslims, which the defence side has not been able to bring any evidence or fact on record to refute; the complaint side seems to have sufficient and reasonable grounds to be believed. The defence has failed to impeach their credibility or establish any material contradictions. The version of the prosecution is, therefore, found reliable and trustworthy, and the court finds no reason to disbelieve the ocular account of these key witnesses.

15.24. The witness has identified following accused during the Test

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Identification Parade namely;

1. Abbas
2. Kayamuddin Kapadiya

15.25. This witness has identified one accused namely; Safdar Nagori in the course of evidence.

PW No.1105-Idrish Gulabsha Fakir (Exh.7923)

15.26. The Court has thereafter perused the deposition of PW No.1105-Idrish Gulabsha Fakir at Exh.7923 who is the Munjavar of the Khundpir Dargah where the accused person had resided when they participated in the terror camp at Pavagadh, Halol. The witness has provided his evidence in court consistent with his Section 164 statement, which the records show he was examined as PW No.1105 vide Exh.7923. Under oath, the witness stated that in 2008, he served as a Munjavar (care taker) at the Khundpir Dargah, in which there are four guest houses and three graveyards. People from various locations, including Hyderabad, Karnataka, Maharashtra, and several parts of Gujarat towns like Palanpur and Vadodara, visit there for worship.

15.27. On August 27, 2008, police arrived at the Dargah with the accused namely Jahid Sheikh. The witness identified him to the police. He informed the police that on January 13, 2008, Imran Sheikh from Vadodara arrived, and mentioned Dr. Shadab's name, and stated that around 20 to 22 people would stay for two nights for trekking in the forest. Consequently, the witness opened the tin-roofed guesthouse for them. They had 3-4 motorcycles and a white Tata Sumo. They utilized the rear gate near the road. They would leave at 9:00 AM, and the witness was unsure of their return time. On that day, Jahid Sheikh was

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seen with Imran during their stay. Later, on 15.09.2008, the witness was summoned to the Ahmedabad Court before the Magistrate, where he re-affirmed his above statement voluntarily, identifying his signature on the statement marked as Exh.7924.

15.28. The witness further deposed that on 28.09.2008, Crime Branch police brought an accused to the Dargah, whom the witness identified as having stayed there along with Imran; the police identified him as Abbas from Kutch Bhuj. In November, police brought Rafiyuddin Kapadiya, followed later by Shafiq Ansari. The witness confirmed they had stayed at the Dargah. In 2012, police brought Mohammad Abrar, in 2017 accused Tausif Pathan, and in 2018 accused Abdul Subhan Qureshi (Tauqeer). The witness provided facts regarding these accused to the police, noting that Zahid Sheikh, Mohammad Shafiq Ansari, Mohammad Abrar, and Abbas were among those who came with Imran Sheikh. During video conference identification from Bhopal Central Jail, the witness could not identify the accused.The witness also deposed that all these accused disclosed to the police places like the earlier accused person.

15.29. For identification the witness deposed that he would make attempt as long time has lapsed and there were changes in their appearances. However, via video conference from Ahmadabad Central Jail, he identified Kayamuddin Kapadiya and Rafiyuddin Kapadiya. He identified two other accused by name, though the court noted the names provided differed from the record. The witness explained his inability to identify other accused due to lapse of time by which changes in their physical appearance, such as hair/beard growth or weight changes.

15.30. During cross-examination by Advocate Mr. Shaikh for the defence, the witness admitted that he does not maintain a daily diary or

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written notes of dates and incidents. He lacks a formal appointment letter from the Trust and has no documentary proof of his employment as a Munjavar. He has not studied Islamic scriptures, the Quran, or Hadith. He admitted that when police brought accused individuals to the Dargah, he did not mention names of other staying individuals aside from those presented. No register of names or addresses was maintained at the time. He did not name Kayamuddin or Rafiquddin Kapadiya in his initial police statement. Questions regarding the geography of the Dargah and the community were deemed irrelevant to the case and not detailed. The witness admitted he had no disputes with those who stayed in the guesthouse and received no threats or pressure between August 28, 2008, and September 15, 2008. He confirmed police were not present in the room when his statement was recorded by the Magistrate on the 15th and 16th.

15.31. During further cross-examination by Advocate Mr. Pathan, the witness stated the Dargah had eight trustees and funds were managed by a treasurer. He denied issuing any receipts in January 2008. Aside from himself, two cleaners, Budhalal and Shantamasi, resided there. Most questions focused on the Trust's operations and visitors. The witness reiterated that the Magistrate was alone with him during the statement recording and confirmed no pressure was applied. Counsel for other accused adopted this cross-examination.

15.32. The Court has also perused the statement of this prosecution witness recorded under Section 164 of the Code of Criminal Procedure code, before the Metropolitan Magistrate Court. The Metropolitan Magistrate verified that the witness intended to give his statement voluntarily and confirmed that there was no threat or pressure or coercion. The witness was also asked if he required additional time to

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reflect, to which he replied that he wished to give his statement voluntarily. His statement was subsequently recorded on 16.09.2008.

15.33. In this statement, the witness stated that on January 13, 2008, at 2:00 PM, Imran Shaikh(accused no.2) came from Vadodara and met him, and stated he wanted to stay for two to three days in Dargah. Furthermore, Imran Shaikh, stated that around 20 to 22 people from the Tai community were with him and requested to stay in the tin-roofed guesthouse (Patrawali Dharmshala) as they were heading to the forest for training. The witness identified Dr. Shadab Panwala, noting that these people would leave for the forest at 9:00 AM and about 12 to 13 people would return in the evening. On the evening of January 15, 2008, Dr. Shadab and Imran gave him 100 rupees to put in the charity box. These individuals arrived in a white Tata Sumo vehicle. The witness expressed that innocent people died in the bomb blast incident and he wished a strict action against the accused.

15.34. The court having perused the statement recorded under Section 164 of Cr.P.C. vide Exh.7924, it is clear that the witness testified voluntarily without pressure. The witness remained consistent in his court testimony, emphasizing his grief over the loss of innocent lives in the bomb blast and his willingness to cooperate with legal proceedings. His evidence regarding his role as a Munjavar and the arrival of Imran Sheikh with around 20 to 22 men for "trekking" is corroborated by witnesses Ramkabhai and Pravinbhai, who observed around 20 to 25 men training in tents. These testimonies are mutually reinforcing. Despite the defence's focus on geographical and administrative details, the prosecution successfully proved the witness identified the accused and his own signature on the exhibit to Section 164 Cr.P.C. statement.

15.35. Therefore, considering the testimony of this prosecution witness

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Idrish, on that day this witness seems to have been present at the spot i.e. Khundpir Dargah. From the evidence of this witness, the presence of all accused in camp at Khundpir Dargah during the relevant period for training is sufficiently established and the aspect of this witness acknowledging them, the case of prosecution is getting sufficient support. Further, here prosecution has taken efforts to examine the very witness before learned JMFC, in which this witness has categorically deposed in court, and narrating whatever he saw and his statement under Section 164 Cr.P.C. to that extent being noted. In the cross examination, testimony of this witness has remained intact. Therefore, on the strength of testimonies of witnesses namely Pravinbhai, Ramkabhai, Idrishbhai and Ambalal, case of prosecution gets established. The evidence indicates that the accused had assembled to undergo weapons training as a part of the larger to cause terrorist acts in India. The aforesaid evidence divulges that the Appellants along with other co-accused were given the said training to equip themselves to commit terrorist acts in various parts in Gujarat, and, therefore, they were rightfully convicted for the same. In view of the entire evidence enumerated above, we hold that the Appellants were actively involved in the conspiracy to cause terror act by causing blasts in Gujarat and in consequence of the said involvement, they had committed offences.

15.36. Applying the principles which can be culled out from the principles set out above to the factual scenario, the inevitable conclusion is that a Terror training Camp was organised at Halol Pavagadh. When an accused is a participant in a larger conspiracy planned, he cannot take the advantage of being ignorant about the finer details applied to give effect to the conspiracy hatched. But the factual scenario described by the witnesses in the statements recorded u/s 164 as well as depositions

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in court during trial, shows their deep involvement and participation of all accused.

15.37. Upon perusing the deposition of this witness, it appears that he has identified the following accused in the court:

1. Kayamuddin Kapadiya
2. Rafiyuddin Kapadiya.

15.38. The Court may refer to the statement under 164 Cr.P.C., which has been produced hereinbelow in tabular format:

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW No.1105: Idrish Gulabsha Fakir Diwan	7924	16.09.2008	**A-2:** Imran S/o Ibrahim Shaikh	i) States that he has been working at the Khundpir Dargah from the past 8 years and that on 13.01.2008 at about 2 p.m., Imran Shaikh (A-2) from Vadi Taiwad had come to the Dargah and informed him that he was planning to reside there for two to three days and that there were 20 or more people alongwith him and they had to go trekking in the forest. He asked them to stay at the dharamshala and he further states that he knew no one else apart from Imran Shaikh (A-2) and Dr. Sadab Panwala. ii) States that they used to go in the jungle at 9:00 am in the morning and that 12 to 13 people used to come back in the evening; however, he was unaware of the time at which they used to come back as there was another door from which they could enter and leave. iii) States that they arrived by a

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				white Tata Sumo Vehicle and three to four bikes, the registration numbers of which he is unaware of.

15.39. This witness in his deposition has attributed a role in conspiracy to the following accused persons:

1.A-1 Jahid S/O Kutubuddin Shaikh

2.A-2 Imran S/O Ibrahim Shaikh

3.Dr. Shadab

4.A-35 Rafiyuddin S/O Sarfuddin Kapadiya

5.A-66 Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/O Abdulbari Ansari

6.A-74 Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar

7.A-16 Abbas S/O Umar Sameja

PW No.792-Ramkabhai Devkaranbhai (Exh.6802)

15.40. The Court has also perused the deposition of PW No.792-Ramkabhai Devkaranbhai vide Exh.6802. In his extensive examination-in-chief, he deposed that he was engaged in the milk trade and that on 27th August, while he was grazing buffaloes near Kamlesh quarry, Helical Vav, the police approached him. Upon being questioned whether he had observed any unusual activity like anyone pitching a tent and conducting training on the day of Uttarayan, the witness answered in the affirmative. Furthermore, it was stated that on the day of Uttarayan, he and Babubhai went to search for buffaloes as they had gone missing. During that time, they observed a pitched tent. While standing near said tent, they observed approximately 25 to 30 individuals crawling on their

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elbows and shooting balloons, which were tied to a wire inside, with a gun.

15.41. During this activity, a man came out from within the premises and confronted them, "Why are you standing here?", to which they responded that they had come to find their buffaloes. Thereafter, they returned home. The witness described these individuals as being of uniform height, having short-cropped beards, being approximately five-and-a-half to six feet tall, and of fair complexion. They were speaking in Hindi. The police recorded his statement regarding these facts.

15.42. Subsequently, the following day, the police arrived and instructed him to go to Ahmadabad for a Test Identification Parade (TIP). Accordingly, he went to the Court on the 30th, where he met the peon. At that time, the witness, Pravinbhai, Babubhai, and Ambalalbhai were present. After some time, he was summoned inside the Court. There, an officer was seated in a chair, and there were 60 other men present. Regarding the 60 men standing there, the officer instructed the witness that if he recognized anyone, he should identify them by hand and bring them forward. Accordingly, he brought out those whom he recognized. He identified seven individuals. Their names were Imran, Safdar, Mohammad, and Yunus. He stated he did not recall the names of the individuals other than these. Thereafter, he exited. Subsequently, they went to the Crime Branch office and informed the police of these facts.

15.43. Furthermore, this witness stated that in June 2012, the police arrived, served him a document, and informed him that he had to attend the Ahmedabad Court for an identification parade. Thereafter, he went to the Court on the 6th, where a Judge Saheb was presiding. The Judge first inquired as to his name and address and then instructed him to identify and bring forward any individuals he recognized from the six men

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standing there. Accordingly, he recognized one individual, caught him by the hand, and brought him forward. That individual's name was Munno. Thereafter, he exited, and after 15-20 minutes, Pravinbhai also arrived. Subsequently, they went to the Crime Branch office. There, when the officer inquired as to what occurred in Court, the witness stated all these facts.

15.44. During his examination-in-chief in Court, upon being asked to identify the individuals previously identified, the witness identified the accused Safdar via Video Conferencing (VC) on a TV screen from among groups of three individuals lodged at Bhopal Central Jail. Similarly, he identified the accused Yunus from among the accused lodged at Ahmedabad Central Jail.

15.45. During cross-examination by the learned advocate for the accused, Ms. Naiyaben Bhatt, this witness stated that at the time of the identification parade, he, Pravinbhai, Babubhai, and Ambalal arrived together. The police had summoned them for the identification parade. Thereafter, the witness responded in the negative to the majority of the questions. Furthermore, in cross-examination, he was questioned as to whether he had recorded facts regarding the description of the individuals identified by him. The witness stated that he had indeed recorded such facts. The witness also denied the suggestion that his test identification parade was not conducted properly.

15.46. Subsequently, during cross-examination by the learned advocate for other accused, Mr. Pathan, the witness stated that he previously conducted a milk business. Currently, he does not engage in the milk business. Many questions regarding the milk business were put to this witness by the defence; however, as it does not appear relevant to mention them, those questions have not been recorded verbatim. Upon

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being questioned in cross-examination, this witness admitted that the location where he observed the men is at an elevation from Helical Vav. He did not point out the specific location where the tent was situated to the police. Furthermore, upon being questioned regarding the timing and specific location of his statement, the witness stated that due to the significant lapse of time, he does not recall.

15.47. Furthermore, he denied the suggestion that he had not recorded with the police the fact that the persons he saw had short-cropped beards. Additionally, this witness was questioned regarding the geographical layout around the courtroom he entered and the doors; however, as it does not appear relevant to mention those questions at this stage, they have not been recorded verbatim.

15.48. Thereafter, during cross-examination by learned Advocate for another accused, the witness denied the suggestion that no such incident occurred on the day of Uttarayan. Subsequently, during cross-examination by the learned advocate for other accused, Mr.Shaikh, the witness was also questioned regarding the geographical situation of the Pavagadh foothills, which have not been recorded verbatim. The witness was further subjected to lengthy cross-examination regarding his milk trade, which has not been mentioned verbatim. During cross-examination, the witness admitted that Ambalal Sonalal Sharma has deceased. He stated he had no knowledge regarding his children. He stated he knows Pravinbhai Hamirbhai, though he does not know his current occupation. Furthermore, questions were put to the witness regarding the service of summons. As those questions were not relevant to the case, they were not recorded verbatim.

15.49. Furthermore, the witness was questioned regarding the travel time and route from Pavagadh to Khundpir Dargah. Similarly, questions were

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put regarding whether he had conversed with anyone regarding the tent incident or if he had recorded these facts in a diary. Regarding this, the witness stated that at the time he met the police, he did not provide any photograph or sketch. He denied the suggestion that the police had apprehended Munna and taken the witness to a specific location.

15.50. Additionally, questions were put in cross-examination regarding the physical appearance of Muslim women and men and their attire. As this was not relevant to the case, it was not recorded verbatim. The learned advocate for the defence also conducted a detailed cross-examination regarding the physical description of the Magistrate Saheb and his official duties. As this entire cross-examination was not relevant for the judgment and is already on the record, those questions were not repeated in the judgment. During cross-examination, the witness firmly adhered to the facts that he attended court for identification at the instance of the police, that Pravinbhai, Babubhai, and Ambalal accompanied him, and that he identified the accused in Court in the presence of the Magistrate via video conference, having also identified them during the prior identification parade. Throughout the majority of the cross-examination, the witness remained consistent with the prosecution's case and denied the suggestions put forth by the defence.

15.51. Thus, from the sworn testimony of this witness; Ramkabhai Devkaranbhai, it is clearly established that on August 27, 2008, there is reason to believe he observed a tent near Kamlesh quarry and saw 25 to 30 men crawling on their elbows and shooting balloons with a gun. It is clearly proven that even though these individuals were placed with dummy accused during the identification parade, the witness identified Imran, Safdar, Mohammad, Yunus, and Munno. He also identified the accused lodged in Bhopal Central Jail and Ahmedabad Central Jail in

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Court through video conference.

15.52. During the cross-examination, no contradictory facts were brought on the record by the defence that would suggest the witness, Ramkabhai Devkaranbhai, is deposing falsely under oath. It is essential to note that despite lengthy cross-examination by multiple learned advocates, the defence was unsuccessful in bringing any facts to the record that would suggest the witness was lying or maliciously involving the accused. Therefore, the evidence provided by this witness is found to be clearly credible and reliable. The defence, during cross-examination, was unable to extract any material contradictions or omissions that would undermine the substantive truth of the version of the prosecution. The mere suggestion asked in cross examination for false implication is unsupported by any evidence and is plainly a bald denial aimed at deflecting the gravity of the charges. It is relevant to note that during cross-examination, nothing material could be elicited to discredit or contradict the witness testimony regarding the acts by the accused. The prosecution evidence is cogent, corroborative, reliable, trustworthy and not shaken during cross-examination and there is no residual doubt in the case of the prosecution.

15.53. This witness has therefore identified following accused during his deposition.

1. Safdar
2. Yunus

15.54. This witness has identified following accused in the test identification

1. Imran
2. Safdar
3. Mohammad

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4. Yunus
5. Munno

Witness to the holding of terror camp at Vagamon, Kerala:

15.55. The Court has perused the evidence of P.W. No.998-Anilkumar Damodaran Pottananiyil at Exh.6950 who at the relevant time was working as a supervisor at a farmhouse in Thangalpara area of Vagamon, and has deposed about the presence and activities carried out by a group of 30 persons who were residing in tents in the said farmhouse in December 2007.

15.56. This witness has deposed that he was working as a supervisor in a farmhouse in Vagamon which was owned by Dr. Alex and that in December 2007, around 30 persons were residing in tents which was at a distance of 500 metres from the farmhouse. These persons were conducting motorcycle races and were shouting slogans such as "Allahu Akbar, Bolo Takbir". He has also deposed that he had seen those persons crawling on their knees and passing underneath a wooden piece which had been placed there. He has deposed that such activities had been carried on for two days and that he had seen flags of various colours and a board bearing the words "Extreme Adventure" at the aforesaid location. He has deposed that his statement in that regard had been recorded by the police.

15.57. In the cross examination, this witness has deposed that Vagamon is a tourist place and that many tourists from Kerala and even from different parts of India visit Vagamon. He has deposed that there were no police stations in Vagamon at the relevant time although there was an Outpost Police Chowky, and the police officers of the chowky used to patrol for the protection of the tourists. He has deposed that there is no

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road at the said place but it was an off-road area, where a vehicle like a Jeep or Bolero could come and that the said Outpost Police Chowky was seven kilometres away from his house. He has denied the suggestion that in order to go from the farmhouse to his house, he had to pass by the police chowky and has deposed that there are two routes, one by taking a 10 kilometre detour and the other route which is near the police chowky. He has depsoed that he had not lodged any complaint regarding the aforesaid and persons therein and that he had been called to Kochi, which is more than 100 kilometres away for recording his statement. He has admitted that it had not been recorded in his statement before the police that the persons were conducting motorcycle races, shouting slogans, crawling on their knees and passing under a wooden piece or that he had seen flags of various colours and a board which bore the words “Extreme Adventure”. He has deposed that he had not stated the same as he was not asked about it and that his statement had been recorded by the police, one year after the said incident had taken place and that during the said period, he had spoken about the incident at two to four places. He has deposed that he had seen the said persons for two days. He has denied the suggestion that he had not seen any persons putting up tents, residing therein or carrying out any activities in December 2007.

15.58. Upon perusing the evidence of this witness, it establishes the fact that a terror camp had been conducted at Vagamon and that there was a group of about 30 persons who were residing in the farmhouse at Vagamon in December 2007 and the activities carried out therein such as, crawling on knee, shouting slogans, motorcycle racing, etc. have been witnessed by him at the said place for a period of two days. This is an evidence which has to be seen alongwith the evidence of other witnesses

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including that of the approver-Aiyaz and the confessional statement of accused. The Court may also observe that a separate trial on holding of a terror camp at Vagamon has resulted into a conviction of some of the accused.

Witnesses related to conspiracy:

PW No.957-Zakir (Jakir) Hussain Abdul Jabbar Kureshi (Exh.6687)

15.59. The Court may undertake the appreciation of evidence of the most important evidence PW No.957-Zakir (Jakir) Hussain Abdul Jabbar Kureshi vide Exh.6687, a resident of Gomtipur and other accused came in contact with this witness through common friends and locality. His father was having business of 'Royal furniture' and at that time he came in touch with Firoz, who was his neighbor from young days. He was doing embroidery work and they used to play cricket. Alongwith Firoz, accused No.27-'Adul Rajik' was also doing embroidery work. So through Firoz, Zakir came in contact with Abdul Rajik and they started meeting.

15.60. In the examination-in-chief, the prosecution witness has deposed that in November-2007, Rajik called him on phone to reach Kamdar ground, where there is a program of Darsh-e-Quran. At 8:30, Zakir reached at Kamdar ground, where both Rajik and Firoz came in AMTS Bus and he was taken to the house of Ibrahim Ansari. At Ibrahim's residence, other persons Ibrahim Ansari, accused No.5-Gyasuddin Ansari of Gomtipur, Javed Shaikh and Aslam from Gomptipur were introduced by Rajik. Thereafter, Javed Shaikh read out Quran and talked of Jihad. Zakir was invited to join the program every Monday, but Zakir avoided as Zakir was busy in his work so though

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called, he did not attend the program.

15.61. In January-2008, again this prosecution witness called by Rajik at Ibrahim Ansari's house and there the prosecution witness was introduced to Samsuddin and Aiyaz. The prosecution witness came to know the co-accused during his two-three visits to Ibrhaim Ansari's house. He introduced to other accused and there these people means Abdul Rajik, Gyasuddin Ansari, Javed Shaikh, Ibrahim Ansari, Samsuddin Shaikh and Aiyaz. They would read Quran and Abdul Rajik delivered a discourse (Takrir). This was avenging the deaths of Muslim in the year 2002 and talked about Jihad. Thereafter, the prosecution witness left the meeting and stopped going there. Thereafter, Rajik used to meet him and encourage him on phone also to participate.

15.62. Again in March-2008, Rajik called him on phone insisting to come to Dariyapur Limbdi to participate in the program saying that since long he has not come. So in night, the prosecution witness went on motorbike to Dariyapur Limdi where Rajik met him and took him to Samsuddin grandfather's house (Nana) where may people were present. Amongst them, there were Samusddin Shaikh, Abdul Rajik, Mujib Shaikh, Yunus Mansuri, Arif Kagji, Adbdul Subhan @ Taukir and Mufti from Azamgadh and one Riyaz was also there. He would not remember names of all who were present.

15.63. In this meeting, Taukir delivered instigation speech of loss of life of Muslims in 2002 because of the anti-Muslim Government and so encouraged to undertake and spread terror activity to remove the Government and establish Islamic Rule.

15.64. Thereafter, speech was given by Mufti stating that SIMI has become strong and in all big cities there are SIMI workers and all of them have to gather and perform Jihad to remove the anti-muslim

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Government. At this time, the prosecution witness realised that these people were SIMI operatives and their talks were anti-Government and anti-national.

15.65. He deposes that about 20 days after the March meeting, he was crossing Sarangpur Bridge on his bike, where he saw Abdul Rajik. Jahid Shaikh, Mujib, Gyasuddin and Javed Shaikh were standing. So the prosecution witness also stopped and went there to find Rajik and Jahid Shaikh crying and saying that their brothers were arrested and they were blaming others for not doing anything and also stated that "Police must know our strength for that we must do explosion in public" while Mujib and Gyasuddin were pacifying. Abdul Rajik was in great anger so Javed asked this prosecution witness to drop Rajik at his home.

15.66. On the way of home, the prosecution witness inquired from Rajik about the matter to which Rajik replied that in Indore SIMI workers are arrested so such atrocities upon Muslim have to be avenged. So the prosecution witness dropped Rajik and went home. According to him, Jahid Shaikh was of Juhapura, Javed Shaikh of Gomtipur, Gyasuddin from Gomtipur and Mujib from Juhapura.

15.67. Thereafter, after 15 days prosecution witness went to meet Rajik and he came to know that Rajik has gone to Madhya Pradesh and upon his return, Rajik came to meet the prosecution witness after 15 days and informed that he had gone to Indore and met family members of the arrested SIMI workers and other SIMI workers. Rajik also informed that to get the SIMI workers released, they have to spread terror amongst public. Thereafter, Rajik left saying that he has to inform other SIMI members about his Indor visit.

15.68. It is deposed that in June 2008, Rajik called this prosecution witness to come to Ibrahim Ansari's home, and in night when

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prosecution witness reached there, he found Ibrahim Ansari, Abdul Rajik, Gyasuddin, Javed Shaikh and Mujib present and Mufti said that if SIMI workers are arrested, then no need to be afraid and that they were determined to establish Islamic Rule. Abdul Rajik asked prosecution witness to wait and then dropped Mufti at the house of Yunus Mansuri. So all the three rode on one bike to drop Mufti and on the way prosecution witness came to know that Mufti's name is Mufti Abubashar.

15.69. He further deposes that after a week he received call from Rajik that one Abdulla Mufti has come at house of Yunus Mansuri so he is called, so he and Rajik on his bike went to Yunus and met Mufti and one Alim and Mufti informed that all preparations are made and very soon Islamic Rule will be there. Thereafter, food was served and then prosecution witness left alongwith Rajik.

15.70. He further deposed that on 20th July, Rajik came to his home, at that time, the prosecution witness had changed his mobile number and taken a new mobile number. So Rajik asked for his old Sim card saying that his father needed it for some days. So he gave the old Sim card, and on 23rd July, the prosecution witness called on his old Sim number to get back the Sim card, which was answered by Rajik himself but he disconnected saying that he is busy. Later, on 24th July, Rajik called back and said that yesterday he was busy and called prosecution witness to repair his house door, as it was not closing properly. So, the prosecution witness went to repair in evening and Rajik's mother was there, so prosecution witness inquired about Rajik to which she replied that Rajik since two days receiving many phone calls and he is not staying at home. So, the prosecution witness left and again on 24th July, went to actually repair the doors at Rajik's house, when Rajik was not present, but while he was repairing the door, Rajik arrived and in the evening, Rajik took

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prosecution witness to Dariyapur Limbdi and there others were present. Imran Putthawala, Yunus Mansuri, Samsuddin Shaikh and Rajik were mocking at Muslims who were welcoming 'Rath Yatra". Thereafter, the group went away at some distance to converse which prosecution witness could not hear.

15.71. The prosecution witness on 26th July, as usual went alongwith his father on his business and in evening from Samsuddin came to know about bomb-blast and therefore, closed and went home.

15.72. Next day, the prosecution witness went towards Sarangpur and from P.C.O. called Rajik and as he was somewhere near to come to meet prosecution witness alongwith Yunus Mansuri on his bike. Prosecution witness was taken to Yunus house and there both read the newspaper and were laughing and asked prosecution witness if he knows where is Bapunagar Old Chawl. So Rajik said that his one friend Afridi who had a fight at home is staying there with his Mama Altaf. So all of them went there inquiring about Altaf's house, where Afridi was found alone in house and was frightening, while watching news about blast saying that one face at Narol Circle has been identified. Thereafter, Rajik distanced prosecution witness from there and had internal talks with Afridi. The witness left from the place.

15.73. The aforesaid sequence of incidence is according to the Court pointing towards a circumstance showing involvement of the accused in the blast incidents.

15.74. The prosecution witness deposed that after 20 minutes, he received call from Rajik and called him near Rakhial Fish Market and upon meeting him asked to drop "Afridi" and Jahid Shaikh at Dani Limbda while on the way to his business. So they left in triple ride and on the way Rajik got down saying that he has sent two guests to Baroda

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in bus and is concerned if they have reached when prosecution witness asked which guest? Rajik did not answer at all.

15.75. This circumstance point towards the involvement of the accused who are from Baroda and participated in this offense.

15.76. The prosecution witness then left 'Afridi' at shop of Jahid Shaikh, where Jahid Shaikh was present.

15.77. The prosecution witness thereafter, deposed that on 28th July, Firoz called him at Gomptipur Circle where Rajik was also present. They all walked towards bus-stand when Rajik disclosed that for doing the work like this bomb-blast, a very confident partner is needed "who are ready to wash each other's latrine" then instructed the prosecution witness to go home and wath T.V. news like a normal person and should not even get a feel that such work is done by him (Rajik).

15.78. It is deposed that on 29th July, Rajik called him on phone to come and meet and informed prosecution witness that his father has purchased tickets for Ajmer and so he is leaving for Ajmer with his family and asked prosecution witness to handover certain documents of his father for new Sim card to Jahid Shaikh, which the prosecution witness handed over to Jahid at his shop.

15.79. This conduct of the accused-Rajik shows that he had a planned to stay away from Ahmedabad immediately after the incident. The witness also recollected that Rajik had asked for documents of any Hindu friend as he wanted to prepare a "Pan Card". This also suggests the plan to hide their activities by using fake names and identities.

15.80. The prosecution witness deposed that on 1st August morning, Abdul Rajik called from PCO. Thereafter, in evening Firoz came with mobile phone of Rajik saying that it was for repair so the prosecution witness took the phone and kept with himself.

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15.81. On 3rd August, Mujib Shaikh called on phone to know about situation in Ahmedabad. So the prosecution witness replied that he is busy in his work, but when he inquired about Mujib's whereabout and he disconnected. Later on realized that both Rajik and Mujib had called from same mobile number, so they were together and it was from M.P..

15.82. The prosecution witness further deposes that on 07.08.2008, while he was on way to bring his wife from Gwalior, M.P., in evening he received a call from Rajik and when Rajik was told that prosecution witness is going to Gwalior, he inquired about the train and coach number. Thereafter, Rajik told him that he would come at Ratlam station to meet him. He further deposes that at around 2:30-3:00 a.m., when train reached Ratllam station, Abdul Rajik came to meet, he was alone. He asked about Ahmedabad friends, but the prosecution witness was in no mood to answer. However, Rajik informed that he will accompany prosecution witness till Nagda and sat with him. Rajik then informed that idea to cause blasts in Ahmedabd was of Kayamuddin and Taukir, and they had made contact with Indian Mujahideen and both were in contact and Rajik was in their contact. Rajik mentioned that to avenge 2002, bomb blats were planned and all necessary things will be provided by Indian Mujahideen. Rajik also narrated that Taukir and Kayamuddin came to stay in Ahmedabad and all were in their touch. He also mentioned to prosecution witness about the recce of certain areas to plant bomb was performed. For this Afridi, Mujib and Aiyaz were already in his touch and Taukir was in touch of Indian Mujahideen and all the materials for making bomb will be provided by Indian Mujahideen and for deficit "things' can be procured locally.

15.83. He also narrated to the prosecution witness that the cycle laden with bombs were placed at certain places identified in recce by Rajik

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himself and Afridi, Mujib, Kayamuddin and Aiyaz and other remaining places, members of Indian Mujahideen coming from U.P. had planted the cycle bombs and later returned to U.P. whereas the car Bombs plated in Civil and L.G.Hospital, the cars were procured by "Indian Mujahideen member" from Mumbai.

15.84. Rajik lamented about non-exploding of Surat saying that "he does not know that mistake made by brothers in Surat". Rajik continued and narrated that Taukir had asked all to leave Ahmedabad. Mujib and Taukir were with him only, and he was not aware about rest. Thereafter, train arrived at Nagda. Rajik got down asking prosecution witness to take care of his parents and will call for any help.

15.85. The prosecution witness deposed that Kayamuddin is from Baroda and question was posed about where and how prosecution witness met Kayamuddin to which it was answered that in March-2008, he met at Samsuddin's Nana residence.

15.86. This sequence of narration in the deposition is in the form of extra judicial confession by Abdul Rajik. The Court has discussed on the "Extra Judicial Confession' in a separate chapter of "issues".

15.87. This evidence clearly is fitting into the direct evidence of the eyewitness in his deposition and brings on record the module, which was put into operations where the part of the execution was on the Indian Mujahideen operative and part on the accused people locally stationed. The Indian Mujahideen also appears to have divided the work of planting of cycle bombs by the Indian Mujahideen from U.P. and car bombs by the Indian Mujahideen from Mumbai. Such modus can come on record as evidence only through a confession of any accused.

15.88. In this case, several accused have made confession regarding their own involvement however, the accused referred to by this

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prosecution witness, none has made any confessional statement and apparently only these set of accused were aware of such a modus. Therefore, as discussed under the sub-chapter of "Extra Judicial Confession", the Court has no hesitation to accept the version of this prosecution witness regarding the extra judicial confession in its entirety and accepting the role attributed in this by the witness.

15.89. In para-20, the prosecution witness has deposed about the manner in which he had proceeded to give his statement to the police and how he was summoned by Court on 24.10.2008, by the Metropolitan Magistrate Court No.5 and how he was subjected to scrutiny by Magistrate before recording his statement under Section 164 of Cr.P.C.. The witness identifies his signature and content of such statement and thus the same is exhibited as Exh.6688.

15.90. The witness has then proceeded to identify the accused persons on the T.V.Screen through video conferencing.

15.91. The prosecution witness identifies correctly Kayamuddin Kapadiya, Javed Shaikh, Alamzeb Afridi, Aiyaz Razak Saiyed, Mufti Abubasahr, Arif Kagzi, Jahid Kutubuddin Shaikh, Samsuddin Shaikh, Yunus Mansuri, Rajik Shaikh and Gyasuddin Ansari.

15.92. The Court observes that in the evidence of this witness recorded for the identification in Court and upon identification by name, the accused thus identified have given their names with some prefix or suffix, which appears to be a ploy to later on take up contentions of identity mistaken due to variation in name. However, the witness has deposed their respective names as they were ordinarily known. The Court finds the identification beyond any doubt in view of the fact that this witness had more than sufficient identification with these accused from close counters.

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15.93. The Special Court has also made a separate note that accused No.30-Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh, accused No.43-Anik @ Khalid S/O Shafik Saiyed , accused No.44- Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari, accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed , accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi, accused No.48- Sainuddin @ Abdul Sattar @ Abdul Salim @ Salim, accused No.49-Sarfuddin @ Sarfu and accused No.72-Abdulsattar P @ Mansur S/O Abdulrazak Muslim were not available for identification being in Taloja jail and Ernakulam prison.

15.94. This portion of evidence was recorded till Court hours on 08.12.2017 and as Court time was over, the matter was adjourned for cross-examination. Further, on 03.01.2018, defence application Exh.6715 for deferring cross-examination of witness vide Exh.6715 was allowed and cross-examination got deferred on 10.01.2018. Thereafter, the defence gave application Exh.6695 U/s 319, for arraigning witness Jakir Hussein as accused on 13.12.2017 and same was rejected on 15.12.2017. The defence challenged Section 319 Cr.P.C's order in Criminal Revision Application No. 1225 of 2017, which got dismissed on 14.09.2018. Cross-examination started on 11.10.2018. During the period when cross-examination of witness Jakir Hussein remained deferred, prosecution continued to examine witnesses and witnesses examined during this period are PW No.958 to PW No.1076.

15.95. The cross-examination was initiated by Shri M.M.Shaikh from para-36 of the deposition by putting questions regarding Darsh-e-Quran in November-2007 and what happened in those meetings. He was also questioned about his knowledge on “Hadish” and “Quran” and use of words like Jihad, Namaz, Roza, Qayamat in this scripture. He admits

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that accused (names not repeated for brevity) named in chief were participating in the meetings. On a question that after the meeting, all these persons used to go back to their work to which witness answered that he used to leave what others did, he is not aware and that all those persons were common man like himself. He has answered that it has not happened that after Darsh-e-Quran meeting, there was another special meeting to which he was invited and that he has attended such meeting. This would mean that the witness is not aware of any other meeting conducted after the Darsh-e-Quran meeting.

15.96. He has denied to the question about his participation in conducting of recce, bringing cycle, loading bomb on it or purchase of material for bomb. He was not assigned any of the duty by anyone.

15.97. He is questioned about general understanding of democracy and Hindu Rule and Islamic Rule, which he has denied having any knowledge. Thereafter, he is questioned about 2002 riots in Gujarat and damage caused to Muslims to which the witness admits that Muslims were upset on this account. He is questioned about his whereabouts between 26.07.2008 to 16.10.2008, to which he has replied that except for one week for bringing his wife, he has not left Ahmedabad. He is questioned about any notice received from Court or authority and as to how he came in contact with one Chavda Saheb through a friend, which line of question does not appear to be of any consequence and hence, not referred to in detail herein. However, he has ultimately denied that his brother Abbas is an informer of Crime Branch.

15.98. The prosecution witness is questioned about family members and about his travel to Gwalior in an attempt to create a cloud over the meeting of Rajik and prosecution witness in a train travel between Ratlam to Nagada. however, the line of question regarding submitting

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travel tickets or reservation details, in opinion of the Court, is not sufficient to doubt his travel at all.

15.99. The witness is thereafter, questioned about his knowledge about Courts in Ahmedabad in attempt to challenge his statement under Section 164 of Cr.P.C. However, no doubt is created upon the version of the prosecution witness as it is consistent with the exhibited documentary evidence, which have been prepared by following due process of law and by the Magistrate executing proper jurisdiction. The witness has denied any interference or police influence on his giving of statement during investigation or statement under Section 164 of Cr.P.C.

15.100. One issue was raised when the witness answered in denial that before the Magistrate he has not taken oath, to which the witness answered that he has taken oath of "Khuda" to argue that statement under Section 164 of Cr.P.C. was recorded on oath (para-43). However, perusal of Exh.6688 does not refer any oath being administered. However, upon further questioning, the witness in fact confirm to the procedure adopted, which in the opinion of the Court, is not creating any doubt either on procedure or version given by witness.

15.101. The witness was then questioned about his business, which is not relevant and about his mobile usage between July 2008 to October 2008 and recharged done perhaps to argue that the witness was in illegal detention so there was no recharge of mobile. However, such question does not lead to conclusion about his illegal confinement, particularly when the witness on oath has not admitted to any illegal confinement. In this line only, he has been questioned about names of certain advocates and that he had met them, but such line of question does not lead to any conclusion.

15.102. He has in any case denied about any external help including that

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from one Abhay Chudasma and other police officers of Crime Branch. He has categorically denied that he was also in police custody alongwith other accused persons like Ibrahim Ansari, Alim, Firoz with a special mention of Riyaz as it is argued at one stage that Riyaz is one witness who is declared hostile and in his cross-examination by defence counsel he has specifically answered that he has seen this prosecution witness in custody. Obviously, the hostile witness has made an attempt to help the defence in any manner and therefore, being a hostile witness, the evidence of such witness Riyaz cannot be pitched against the present witness.

15.103. He has denied of any torture method applied on him to cough out favourable statement and that only after his statement before Magistrate, he was let go. He has also denied that his customers for furniture are police and that furniture of one Mayur Chavda was made by him. He has also denied that he is under police surveillance and under constant pressure by police to depose in a particular manner only.

15.104. The witness is thereafter, cross-examined for some of the accused by Shri L.R.Pathan. He answered that with regard to the meeting prior to 25.07.2008, he is unable to give exact dates, but has given approximate period, but he deposed that details of all incidents/meetings had been conveyed by him to the police.

15.105. He denies that in June-2007 or prior when he met Rajik, the fact that Rajik talked about 2002 revenge and Jihad was stated in police statement. This means that even in police statement, witness has stated this fact. He also denies that in his police statement, it is not stated as to for what work he went to house of Abdul Rajik or why Abdul Rajik came to his place.

15.106. He denies that in police statement, he has not sated that his phone

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was not working was conveyed by Rajik to him. He admits that Rajik did not know that his old number was not working, but he has not informed the mobile company, but he had simply started using new sim card. He deposed that he has not given any statement of mobile company about phone usage to the police, but he denies the suggestion that he had not received call from Rajik to come to Kamdar ground. Meaning thereby, the witness confirms what he narrated about the phone call from Rajik for meeting near Kamdar ground.

15.107. He has put this question regarding the sequence of event of going to meet at Kamdar ground and thereafter, an admission of the prosecution witness that this sequence was not narrated in his statement before the Magistrate. The prosecution witness proceeds to depose that it was not necessary to repeat contents of statement under Section 161 of Cr.P.C. to police before Magistrate, but only the important events were to be narrated.

15.108. In para-55, denial is recorded that several details mentioned by the prosecution witness in the chief were not mentioned in the police statement. However, this witness has denied the same. However, he admits that those details are not mentioned in the statement under Section 164 of Cr.P.C., the witness has deposed at this stage also that those details not being salient in nature are not mentioned. Similarly, in para-56 and 57 also, each instance mentioned in chief and not mentioned in the statement under Section 164 of Cr.P.C. regarding the speeches in the meeting, phone calls summoning him to meetings and the religious discussion (Takrir) and participation of SIMI. Again the prosecution witness has explained those details being minor details are not mentioned in statement under Section 164. In para-58 to 72, the similar exercise is undertaken in cross-examination by contradicting the

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prosecution witness by the content of statement under Section 164. However, while doing so, the witness has denied that he has not mentioned or narrated the contents of the chief in the previous police statement recorded under Section 161 of Cr.P.C. Therefore, merely because such narration is not there in statement under Section 164 of Cr.P.C., particularly when prosecution witness has offered explanation, then it cannot be said that the contradictions are proved to affect adversely the version of the witness in the chief-examination.

15.109. Lastly, a specific question on Abdul Rajik regarding calling for document of Hindu friend for Pan Card, the witness has denied that the same was not mentioned in police statement.

15.110. According to the Court, even after the attempt by the defence to contradict the witness by referring to only statement under Section 164 of Cr.P.C. and deliberately not contradicting him with the previous statement under Section 161 of Cr.P.C., and the answers given by the witness go on to establish the witness as reliable and defence has not been able to make dent in the version of this witness. Thereafter, the remaining six advocates for various accused have adopted the cross which concluded on 11.10.2018.

15.111. The Court is inclined to believe the version of this witness as a reliable witness who has accurately narrated the incidents and participation and role of the accused persons.

15.112. Though an attempt was made to include the prosecution witnesses an accused, the same came to be rejected by a reasoned order which has attained finality. The Court also finds for the reasons already assigned by the Court elsewhere (see sub-chapter confessional statement) that the role of the prosecution witness is being there in the meeting were not at par with accused and therefore, to this Court also, the prosecution

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witness does not fall in category of "Accomplice".

15.113. The witness is wholly reliable and his version establishes the participation of the accused in the conspiracy when there is meeting of mind on the "common objective" favoured by the participating accused.

15.114. The version also establish that for executing the plan, there were meetings at various point of time maintaining the live connect with the "common object" i.e. to create terror in public with the motive to destabilize Government, being Islamic Rule, get the SIMI workers released and the anti-national effects.

15.115. It is also established that how each accused was to perform the role divided amongst them like procurement of material, role of outsider like Indian Mujahideen operatives from U.P, and Mumbai, at the same time, maintaining confidentiality that each accused may not know the other unknown accused to cut down any link in the consequential investigation following the offense. This is therefore, a deep rooted conspiracy in a structural manner where the known loop-holes of investigation are also exploited.

15.116. A statement u/s. 164 of Cr.P.C is recorded and the details is as under:

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW No.957: Zakirhussain Abdul Jaffar Qureshi	6688	05.11.2008	**1) A-1:** Jahid @Javed Kutubuddin Sheikh **2) A-4:** Samsuddin S/O Shahabuddin Shaikh **3) A-5:**	i) States that he was introduced to Abdul Rajik (A-27) by Firoz one year back and that he has attended Quran recitation programmes 2-3 times at the residence of Ibrahim Ansari wherein he used to meet Abdul Rajik (A-27), Firoz, Gyasuddin Ansari (A-5), Javed Sheikh (A-1), Ibrahim Ansari, Aslam,

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
			Gyasuddin @ Gyasu Abdulsalim Ansari **4) A-15:** Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar **5) A-23:** Ayaz Razakmiyan Saiyed **6) A-27:** Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri **7) A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya **8) A-80(deceased) :** Mujib **9) Absconder:** Abdul Subhan @ Taukir Qureshi	Samsuddin Sheikh (A-4), and Ayaz (A-23). They used to read the Quran, and thereafter delivered speeches telling that one should not take insurance, one should not vote and also spoke about jihad. They also spoke about establishment of rule of Allah. ii) States that on one occasion, Abdul Rajik (A-27) had called him to come meet at Dariyapur Limdi, where he went to Samsuddin Sheikh's (A-4) nana's house wherein he met Abdul Rajik (A-27), Samsuddin Shaikh (A-4),Yunus Mansuri (A-8), Arif Kagzi (A-6) , Riyaz (A-73), Ayaz (A-23 "approver"), Kayamuddin Kapadiya (A-37), Abdul Subhan (A-11), Taufiq [from Mumbai], Mufam [from Azamgarh], and others. iii) States that Abdul Subhan @ Taukir (absconder) delivered a speech stating that Muslim lives were lost in the year 2002 due to anti-Muslim government and in order to remove such a government, it was necessary to spread terror amongst the public and to wage jihad against the government and establish an Islamic rule. States that further, he also told that bomb blasts should be carried out in order to spread fear amongst the public. iv) States that another person (Mukrir) had also delivered a speech stating that SIMI had become strong and that they

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				would carry out Jihad. States that they also used to make unlawful statements against the government. States that thereafter, he left the place. v) States that on another occasion, when he was on the way to Kalupur, he saw Jahid Sheikh(A-1), Abdul Rajik (A-27), Mujib Sheikh (A-15), Gyasuddin Ansari (A-5) and Javed Sheikh (A-18) standing near Sarangpur bridge. States that when he went there, he saw Abdul Rajik(A-27) and Jahid Sheikh(A-1) crying and were also angry. States that they spoke about taking revenge for the attrocities against Muslims. States that thereafter he took Abdul Rajik on his scooter to drop him home during which, he was informed that their associates had been arrested in Indore and that they must carry out jihad and take revenge in order to release them. vi) States that after about 15 days, he was again called to the house of Ibrahim Ansari wherein Mufti(A-15) and others were present. States that Mufti (A-15) told that their associates had been arrested however, there was no need to worry as preparations had been made and Islamic rule would be established soon. States that after the meeting after everyone left, he was stopped by Abdul Rajik(A-27) and he dropped Mufti(A-15) at the house of

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Yunus Mansuri(A-8) on his motorcycle. vii) States that after two weeks, Ahmedabad blasts took place. States that thereafter he was called by Firoz who asked him to come to Gomtipur Circle at about 9:30 p.m. on 28th July wherein Abdul Rajik (A-27) was present. States that Abdul Rajik(A-27) took him to a bus stand and while they were sitting there, he was told by Abdul Rajik (A-27) that trustworthy associates who can coordinate with each other are required for carrying out bomb blasts and that after the said act was done, one should return home, turn on the T.V. and watch the incident. States that Abdul Rajik(A-27) also talked about the Muslims who were killed in the Naroda Patiya and Gulmarg society incident. States that he left for Ajmer the next day. viii) States that on 3rd August he received a call from Mujib asking about his friends in Juhapura and Ahmedabad however, when this witness asked about his whereabouts he disconnected the call. Thereafter, Abdul Rajik (A-27) also called him asking about the situation in Ahmedabad however; even he disconnected the call upon being asked his whereabouts. States that, upon checking he found that both the calls had come from the same

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				number which belonged to M.P. series. ix) States that at the bus stand, Abdul Rajik (A-27) had stated angrily that the blasts had brought peace to the souls of Muslims who died in 2002. x) States that on 7th August, while he was travelling to Gwalior, Abdul Rajik(A-27) called him and asked his location and upon informing him that he was at the railway station and was travelling to Gwalior and providing him with the details of the train and his seat number, Abdul Rajik (A-27) told him that he would meet at Ratlam. At about 3 a.m. when the train reached Ratlam, he met Abdul Rajik (A-27) who inquired about the situation in Ahmedabad and appeared to be frightened. States that Abdul Rajik (A-27) told that the idea of Ahmedabad bomb blasts was given by Taukir and Kayamuddin(A-37) who were in contact with Indian Mujahideen and that he himself was also in contact with Indian Mujahideen. Further, Abdul Rajik (A-27) told that after reconnaissance of various areas was conducted, the blasts were carried out to avenge the 2002 incident and that all materials had been provided by Indian Mujahideen and that that materials required for making bombs were arranged/collected by Taukir, and that several persons had

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				come from Uttar Pradesh, and that they prepared bombs in a rented house at Danilimda, and that after reconnaissance, bomb-laden bicycles were placed by Kayamuddin(A-37), Ayaz (A-23), Afridi, Mujib(A-80: deceased), and Rajik (A-27), and that in other areas bombs were planted by members of Indian Mujahideen. States that Abdul Rajik (A-27) also told him that, after the blasts, the people from U.P. returned and that the vehicles used at Civil Hospital and L.G. Hospital were brought by members of Indian Mujahideen from Mumbai and Abdul Rajik (A-27) also expressed regret that the bombs which were placed in Surat did not explode, and advised him to take care of his parents if he returned to Ahmedabad. States that the blasts were carried out as revenge for the 2002 incidents and that he has not met anyone after that.

15.117. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-27 Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri
2. A-5 Gyasuddin @ Gyasu S/O Abdulsalim Ansari
3. A-18 Javed Ahmed S/O Sagir Ahmed Shaikh
4. A-57 Dr. Asadullah H.A. @ Aslam @ Asad S/O Abubakr H.
5. A-4 Samsuddin S/O Shahabuddin Shaikh

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6. A-23 Ayaz Razakmiyan Saiyed
7. A-8 Yunus S/O Mohammad Mansuri
8. A-6 Mohammad Aarif S/O Mohammad Iqbal Kagzi
9. A-15 Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh
10. A-73 Afaq Iqbal @ Iqval @ Danish Riyaz @ Saki S/O Nurulhoda Saiyed
11. A-1 Jahid S/O Kutubuddin Shaikh

P.W. No.1115-Mohammad Umar Usman Mansuri (Exh.8002)

15.118. The Court has perused the statement of Mohammad Umar Usman Mansuri, recorded under Section 164 of the Code of Criminal Procedure before the Metropolitan Magistrate Court No. 12 on 22.12.2008. The Magistrate recorded the statement after the witness confirmed that he was giving it voluntarily and without any external pressure or coercion. In his statement, the witness identified Imran Sheikh, Kayamuddin, Usmanbhai Agarbattiwala, and Iqbal Sheikh from Taiwada, Vadodara. He stated that in March-April of that year, when the Madhya Pradesh police came to arrest Kayamuddin, he learned that Kayamuddin was an activist for the SIMI (Students Islamic Movement of India) and was being sought for organizing camps in Halol and Kerala. Kayamuddin had contacted the witness to request the phone number of Dilawar Gheewala, which the witness provided. The witness further stated that in the first week of June, Kayamuddin met him at a restaurant on Old Padra Road and proposed, **"We have to carry out blasts in Vadodara, and other parts of Gujarat, in which other SIMI activists**

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are also going to support me; so, you find a crowded place, specifically where more Hindus reside, and assist me in executing the blasts," The witness refused to participate any further out of fear.

15.119. Later, via television, the witness learned of the Ahmadabad blasts and the discovery of bombs in Surat, as well as the arrests of Usman Agarbattiwala, Imran Sheikh, and Iqbal Sheikh for their involvement with Kayamuddin in SIMI.

15.120. The witness, Mohammad Umar Usman Mansuri, having provided a voluntary statement without threats or inducements, was subsequently examined under oath by the prosecution as Exh.8002, where he reaffirmed the facts of his Section 164 statement. In his oral evidence, he stated he had known Kayamuddin Sarfuddin Kapadiya, Usman Anisbhai Agarbattiwala, and Imran Ibrahim Sheikh since childhood, as well as Iqbal Sheikh from Yakutpura. He noted that on 7.12.2008, Ahmadabad Crime Branch police recorded his statement. He recounted that while Kayamuddin was absconding, he called the witness from Vapi to speak with his brother, and on the following day, called again to ask for Dilawar Ghiwala's number. In July, Kayamuddin met him on Old Padra Road to discuss seeking revenge for Godhra and carrying out blasts at various locations in Gujarat. The witness identified his signature on the recorded statement, which was Exh.8003.

15.121. During cross-examination by Advocate Ms. Naynaben Bhatt for the defence, the witness clarified that he was alone with the Magistrate during the recording of the statement. While he initially claimed he hadn't read what was written, he subsequently clarified that the Magistrate had read it out to him. He admitted he had no knowledge of specific legal sections or the nature of offenses under them. He noted that the police did not seize his phone and he had no documentary

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evidence of Kayamuddin's call in July. He stated he learned about the Madhya Pradesh police searching for Kayamuddin through hearsay. Most subsequent questions during this phase were met with denials by the witness.

15.122. In cross-examination by Advocate Mr.Shaikh for other accused, the witness stated he lived in Vadodara between July and December 2008 and continued his daily routine even after the Ahmadabad blasts. He did not go to any police station in Ahmadabad, Surat, or Vadodara to file a complaint or give a statement voluntarily. He confirmed that both his police statement of 7.12.2008, and his statement of 22.12.2008, recorded before Magistrate, were read to him and were substantially similar. He stated that he first provided information about Kayamuddin's involvement in the blasts to the police and had not shared it with friends or relatives. He identified several friends, including Asif Mapara and Rafiq Baba, who are also witnesses in this case, and noted he had no disputes with them. Procedural questions regarding his visit to the Ahmadabad court were not detailed verbatim in the judgment. Finally, under cross examination by Advocate Mr. Pathan, the witness noted that Taiwada is a large Muslim area where many people share the same names, and he claimed ignorance regarding whether the names and photos of the arrested accused appeared in newspapers or on TV.

15.123. Upon considering the statement of Section 164 given by witness Mohammad Umar Usman Mansuri, the court observed that the witness clearly identified Kayamuddin as a SIMI activist involved in anti-Hindu activities. Given the long-standing acquaintance of the witness with the accused Kayamuddin Kapadiya, Usman Anisbhai, Imran Ibrahim, and Iqbal Sheikh, and the lack of contradictory evidence regarding their identity, the court found no reason to disbelieve the

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testimony. The facts stated in the Section 164 statement (Exh.8003) and the evidence given under oath aligns with the prosecution's allegations. As the defence was unable to bring any material on record during cross examination so as to discredit the testimony of this witness, the court held that the testimony of this witness clearly points toward the involvement of the accused in the larger conspiracy. Consequently, the evidence of this witness sufficiently proves the involvement of the accused, rendering the prosecution's case credible.

15.124. So, looking at the above evidence, the presence of the witness during the relevant period and his acquaintance with the accused persons cannot be doubted unless there are material contradictions in his deposition. Unless, it is otherwise established by the evidence, it must be believed that the witness would not allow the real culprits to escape and falsely implicate the accused. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize his evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

15.125. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

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Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

15.126. Seen in the above context, in the opinion of the Court, the prosecution has established all the links of the circumstantial evidence which would lead to the conclusion of the guilt of accused and the chain is so complete that there is no escape from the conclusion that within all human probability the crime was committed by accused and no one else and the prosecution has also established that the circumstances pointed out by the prosecution are incapable of explanation of any other hypothesis than that of the guilt of accused. In the opinion of the Court, the judgment and order of conviction and sentence passed by the trial court against the accused is based on circumstantial evidence which are cogent, reliable and trustworthy, and they rule out the reasonable possibility of innocence of the accused. The Court is required to assess the totality of the evidence and separate the grain from the chaff. Where other material on record, including the testimony of reliable witnesses and corroborative circumstances, clearly establishes the commission of the offence by the appellants.

15.127. Statement of this Witness u/s. 164 of Cr.P. C. Is in following detail:

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW	8003	22.12.2008	**1)A-2 :** Imran Ibrahim Shaikh	i) States that he knows Kayamuddin(A-37), Usmanbhai Agarbattiwala(A-7), Imran

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
No.1115: Mohammad umar Usmanbhai Mansuri			**2) A-3:** Iqbal S/o Kasam Shaikh **3) A-7:** Mohammad Usman S/O Mohammad Anis Agarbattiwala **4) A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	Sheikh(A-2) and Iqbal Sheikh (A-3) and in March-April, police from Madhya Pradesh came to detain Kayamuddin(A-37), whereupon he came to know that Kayamuddin(A-37) was a worker of SIMI and that he had attended camps that had been organised at Halol and Kerala. ii) After Kayamuddin(A-37) absconded, he received calls from Kayamuddin(A-37) from a PCO at Vapi on his mobile phone stating he wants to talk to his family and that he would call at 8 p.m. in the evening upon which, at 8 p.m. in the evening, he handed over to Kayamuddin's(A-37) brother Rafiquddin Kapadiya (A-35) however, he is not aware as to what they spoke about as he was standing at a distance. On the next day, as per Kayamuddin's(A-37) request he provided the phone number of Dilawar D. Wala after which he disconnected the call. iii) States that Dilawar told him that Kayamuddin (A-37) had called him as he wished to talk to his family, he asked him to hand over his phone at Kayamuddin's (A-37) house. Accordingly, the phone was handed over by Dilawar to his brother. Thereafter, as Rafiyuddin (A-35) came to know that his brother was staying in Vapi and as the police were constantly visiting the

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				house, he went to Vapi alongwith the police however, Kayamuddin (A-37) had absconded from there. iv) States that in the first week of July, Kayamuddin (A-37) called him near Old Pajra Road, Tadalja and that Kayamuddin (A-37) had come on a motorcycle and he is unaware of the registration number. This witness had also come on his motorcycle and they proceeded to Gotri Road and stopped at a restaurant. Kayamuddin(A-37) told him that bomb blasts were to be carried out in Vadodara with the assistance of other SIMI workers from outside, and asked him to support by identifying crowded places with a larger Hindu population and to assist him in carrying blasts at such locations. He became frightened and refused, and told about family responsibility, after which Kayamuddin(A-37) left. v) States that after the Ahmedabad bomb blasts and recovery of bombs in Surat, he learnt through television news that Usman Agarbattiwala(A-7), Imran Sheikh (A-2) and Iqbal Sheikh (A-3) had been arrested, and came to know that they were associated with SIMI along with Kayamuddin(A-37); and that he does not know anything further, though he believes these persons to be involved in the Surat and

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Ahmedabad bomb blasts.

15.128. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya
2. A-7 Mohammad Usman S/O Mohammad Anis Agarbattiwala
3. A-2 Imran S/O Ibrahim Shaikh
4. A-3 Iqbal S/O Kasam Shaikh

WITNESS Asif Usman Sheikh PW 1117 EX. 8019

15.129. The Court has also perused the statement of witness Asif Usman Sheikh, which was recorded under section 164 of Cr.P.C. by the Metropolitan Magistrate (Exh.8020), after the Magistrate ensured that the witness was providing the statement voluntarily and without any coercion. The witness stated that he and Mohammad Rafiq alias Baba were employees at Airtel. He became friends with Iqbal Shaikh, a resident of Yakutpura, Vadodara, because Iqbal frequented a shop at Gendi Gate adjacent to his uncle's shop. Two to three months before the serial bomb blasts, the witness, along with Iqbal and Mohammad Rafiq, went to a basement behind Jamnabai Hospital in Mandvi to read the Quran. Eight to ten days later, Iqbal summoned them again and declared, "Today, we have to carry out sabotage activities against the 2002 communal riots and the Babri Masjid demolition to take revenge for our Muslim brothers and sisters". Subsequently, Iqbal met them frequently, discussing Jihad and anti-Hindu sentiments.

15.130. A year prior to the blasts, Iqbal introduced the witness to

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the alleged mastermind, Kayamuddin Kapadiya. About 20–25 days before the blasts, Iqbal met them in a lane behind Jamnabai Hospital, reiterating the need for Jihad and revenge for the 2002 Godhra incident, specifically mentioning a plan to carry out blasts in Ahmadabad. At that time, Mohammad Rafiq requested the witness to arrange a scooty and a bicycle. Iqbal provided the witness with 1,200 rupees for a mobile phone and SIM card; the witness also had a license scanned at National Photo Studio and purchased a SIM card from Shreyas Gift Shop.

15.131. Fifteen days before the blasts, Kayamuddin arrived in Vadodara, and Iqbal arranged a meeting on the terrace of the witness's in-laws' house in Rumana Park. At that time, Kayamuddin discussed the 2002 riots and the plan for bomb blasts in Vadodara and Surat. Although the witness initially refused to help, he later provided Iqbal with the registration papers for his friend Ovesh Kapadiya's Wagon R and a photocopy of an Alto car's papers belonging to another friend, Irfan Malek. Iqbal later informed him of a plan to plant a bomb in a bicycle bag, the witness due to this step got scared and disassociated himself.

15.132. Rafiq also took him to a parking area near Inox Theater and stated that he, Iqbal, and their associates intended to cause explosions at Sayajigunj Civil Hospital and the Hanumanji temple opposite it.

15.133. The witness further alleged that Iqbal and Kayamuddin intimidated them, stating that a large-scale blast was planned for Ahmedabad. On July 27, 2018 (sic), Iqbal took the witness to Ahmadabad, where they met Kayamuddin at Lal Darwaja and purchased 50 shirts. **On 25.07.2008, one day before the blasts, Iqbal summoned the witness and Rafiq to Kadak Bazar Mosque, handed them a packet for Kayamuddin, and called it the "last task".** To end their association with the group, they went to Narol in Ahmedabad, delivered

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the packet to Kayamuddin, and the witness returned to Vadodara.

15.134. During the trial, this witness was examined as P.W. No.1117 vide Exh.8019, where he fairly and accurately deposed and reaffirmed the facts of his Section 164 statement. He identified his signature on Exh.8020 and identified the accused Kayamuddin Kapadiya and Iqbal Kasam Sheikh via video conference from Ahmedabad Central Jail.

15.135. During cross-examination by Advocate Mr. Sheikh, the witness stated that between July 26 and December 7, 2008, he continued his daily routine in Ahmedabad and did not visit any police station in Vadodara or file any complaint regarding the serial blasts. He did not disclose these facts to his wife or children. Police visited his house on 07.12.2008, and recorded his statement. The defence questioned him extensively on procedural details such as specific dates, the names of police officers, and why he did not report the matter sooner to which the witness replied that he did not find it necessary at the time. He denied that police had confronted him with Kayamuddin and Iqbal to verify his statement. Questions regarding the physical description of the packet delivered to Kayamuddin were deemed irrelevant to the case and not detailed. The witness confirmed he did not maintain a diary and had provided his statements to the Magistrate on 20.12.2008.

15.136. In further cross-examination by Advocate Mr. Pathan, the witness noted the business connections between his uncle and Iqbal's uncle. He admitted he did not suspect anything when Iqbal first asked to meet Rafiq. He could not recall the registration number, model, or owner details of the WagonR or Alto cars mentioned. Under cross-examination by Advocate Ms. Bhatt, the witness stated he did not remember his mobile number from 2007–2008, and the police had not seized his phone or retrieved his call records. He also did not recall Iqbal's mobile number.

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15.137. The witness has identified the following accused before the Court through video conference from Ahmedabad Central Jail:

1. Kayamuddin Kapadiya
2. Iqbal Kasam Sheikh.

15.138. In the opinion of the Court, the statement recorded under Section 164, and oral testimony given under Exh.8019 are largely consistent. The defence failed to bring any significant contradictions to the record. While the witness could not recall specific details regarding times and presence of individuals due to the long passage of time, the court found this acceptable. No serious contradictions were found that would benefit the accused or prove fatal to the case of the prosecution. Considering the background of this witness and the timing of evidence, the testimony of Asif Usman Sheikh clearly establishes the roles of Iqbal and Kayamuddin in the crime, providing substantial support to the case of the prosecution.

15.139. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the

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matter of trivial details. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

15.140. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

15.141. The evidence of those witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. The evidence of witnesses cannot be doubted on

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account of some embellishment in natural conduct or minor contradictions. If there be any exaggeration or immaterial embellishments in the evidence of witnesses, then such contradiction, exaggeration or embellishment should be discarded from the evidence, but not the whole evidence. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

15.142. Thus, the law has to be interpreted in such a manner that it develops coherently in accordance with the principles, so as to serve, even-handedly, the ends of justice. Anti social operation of the Appellants was not designed against any individual rather proved to be a security risk who imperilled a very large number of innocent persons and damage to the properties worth a very large amount. While dealing with such an issue, the court must not lose sight of the fact that meaning of "ends of justice" essentially refers to justice to all the parties. This phrase refers to the best interest of the public within the four corners of the statute. In fact, it means preservation of proper balance between the Constitutional/ Statutory rights of an individual and rights of the people at large to have the law enforced. The "ends of justice" does not mean vague and indeterminate notions of justice, but justice according to the law of the land.

15.143. The Trial Court on considering the evidence adduced by the witnesses came to a finding that the evidence of the witness was reliable and trustworthy and that the credibility of his statement was not shaken. The Trial Court, in its judgment of conviction, accepted the prosecution case and, while rejecting the contentions urged in defence, held that the chain of circumstances was duly established by the prosecution, bringing

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home the guilt of the accused-appellants.

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW No.1117: Aasif Usmanbhai Shaikh	8020	24.12.2008	**1) A-3:** Iqbal S/o Kasam Shaikh **2) A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	i) States that he knew Mohammad Rasik @ Baba for the past 3 years as they worked together. States that he knew Iqbal Sheikh (A-3) as he used to come to his uncle's shop at Gendigate and the shop of the uncle of this witness was nearby, and they used to meet frequently and eventually became friends. States that he and Rafik @ Babo used to go to work from Gendigate on a motorcycle and that during that time, Rafik also became acquainted with Iqbal and that Iqbal used to meet them frequently at Gendigate. ii) States that about 2 to 3 months prior to the blasts, he, Iqbal (A-3) and Babo went to a basement in a complex behind Mandvi Jamnabai Hospital wherein Quran classes were held and Iqbal (A-3) recited the Quran. The said programme continued for half an hour after which they left to their respective homes. States that after about 8 to 10 days, he was called again by Iqbal (A-3) and asked him to come to the same place in the basement alongwith Rafik, wherein, Iqbal (A-3) recited the Quran and thereafter told tat in respect of the Babri Masjid and the 2002 incidents, and the government,

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				destructive activities had to be carried out and that revenge must be taken for the Muslim brothers and sisters. States that, he and Rafik became frightened upon hearing this and returned to their homes. iii) States that Iqbal (A-3) used to meet them frequently at Gendigate and he used to talk about Jihad and fighting against Hindus upon which, they decided to stop meeting him. iv) States that one year prior to the blasts, he had read in the newspapers that the principal conspirator was Kayamuddin Kapadiya (A-37) who was a resident of Taiwad, and that Iqbal (A-3) had introduced him to Kayamuddin (A-37) once at a tea stall at Wadi Chokhandi and thereafter, he has met him two to three times and not thereafter. v) States that about 20 to 25 days prior to the blasts, Iqbal (A-3) called him and asked him to bring Rafik near a lane behind Mandvi Jamnabai Hospital wherein he again spoke about Jihad and fighting against Hindus, and to avenge the Godhra incident of 2002 and carry out blasts in Ahmedabad. This witness has stated that they got frightened and that they were further told by Iqbal (A-3) that he would require their assistance for that work. States that Iqbal (A-3)

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				asked him to arrange a scooter and bicycle upon which, he made an excuse that identity proof would be required for the same. Further, Iqbal (A-3) gave him Rs.1,200/- to purchase a mobile phone however, he did not purchase the mobile phone and returned the money. vi) States that Iqbal (A-3) had thereafter called him and Rafik @ Baba to Shreyas Gift shop near Sayajiganj wherein he took them for the purpose of buying a SIM card using an unrenewed licence and that Iqbal (A-3) got the license scanned and the photograph separated from "National Photo Studio" which was nearby. Thereafter, he purchased the SIM card from Shreyas Gift Shop by submitting the photocopy of license and the photograph. States that he is unaware as to from where Iqbal (A-3) had procured the license or what he did with the SIM card thereafter. vii) States that after 15 days prior to the blasts, Kayamuddin (A-37) came to Vadodara and Iqbal (A-3) called him and informed that Kayamuddin (A-37) wanted to meet him and Rafik. States that he and Rafik went to meet Kayamuddin (A-37) and Iqbal (A-3) and from there the four of them went to his in-laws'

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				residence at Rumana Park wherein Kayamuddin (A-37) talked about the 2002 riots, and stated that their brothers and sisters had been killed and atrocities had been committed for which, he intended to carry out large scale blasts in Vadodara and Surat and required their assistance for the same. States that both, he and Rafik became frightened upon hearing this and told that they would not assist in such activities, upon which, both of them left. viii) States that after two days, Iqbal (A-3) called him from a P.C.O. asking him to meet near Raopura Tower upon which he went there and he was asked by Iqbal (A-3) for the documents of one WagonR car and one Alto car. Upon asking as to why he required them, he was told that it was for some personal work. States that on account of their friendship, he falsely told one of his friends, Overa Kapadiya who owned a Wagon R car which he intended to sell that, he needed to show it to a customer and obtained the original documents and took photocopies of it. States that he also similarly obtained photocopies of documents of an Alto car from another friend named Irfan Malek who dealt in purchase and sale of vehicles. States that after two

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				days, he handed over photocopies of both the sets of documents of vehicles to Iqbal near Raopura tower and returned home. ix) States that Iqbal (A-3) had thereafter called him asking him to meet near Sardar Estate Crossroads on Ajwa Road, upon which he went to meet him and Iqbal (A-3) sat on his motorcycle and told him that they should go to Gadheda Market, Karshanwadi where they stood for around 5-10 minutes and thereafter Iqbal (A-3) told him that they should go to Karelibaug vegetable market and accordingly they went there. States that it seemed as if he was looking for something, and upon asking Iqbal (A-3), he was told that he intended to place a bag on a bicycle at that place and cause a bomb blast. States that he got frightened upon hearing this and that he dropped him back at his shop and returned home. x) States that thereafter Iqbal (A-3) called him to the S.T. Depot and that both, he and Rafik went there and Iqbal (A-3) told him that nothing would happen to him and that as he did not have a vehicle and had to inspect certain places, he should accompany him. States that they went to the parking mall situated behind INOX Theatre and Iqbal (A-3)

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				selected that place as a suitable place for carrying out blasts. Thereafter, Iqbal (A-3) told them that, he and his associates were intending to carry out blasts near Sayajiganj Civil Hospital area, and at Hanumanji Temple opposite it. Stated that both he and Rafik got frightened upon hearing that. States that Iqbal (A-3) thereafter talked about Allah and that they should fight for Islam and that revenge must be taken for the innocent brothers and sisters and that they should not be afraid as by dying, they would face Allah. States that however even after such statements, both Baba and he clearly refused and told that they would not participate in such work. xi) States that even after that, Iqbal (A-3) and Kayamuddin(A-37) contacted them and threatened them by telling that if they did not do their work, they would falsely implicate them. States that, upon hearing this, both of them became frightened. States that thereafter Iqbal (A-3) took Rafik @ Baba to meet Kayamuddin (A-37) in Ahmedabad. States that after Rafik returned to Baroda, he was informed that Kayamuddin(A-37) and his associates were planning to carry out large scale blasts in

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Ahmedabad. States that, upon hearing this, both of them decided that they would not keep any relations with Iqbal (A-3) and that they also informed Iqbal (A-3) in person that they would not keep any connection or acquaintance with him. xii) States that thereafter on 23.07.2008, Iqbal (A-3) called him and asked him to come near S.T. Depot, Vadodara upon which he went there and Iqbal (A-3) told him that they had to go to Ahmedabad as he had some personal work and therefore, he accompanied him to Ahmedabad. States that Iqbal (A-3) called Kayamuddin(A-37) from Ahmedabad S.T. Depot, however, he is unaware regarding what they spoke about. Thereafter, he was told by Iqbal (A-3) that they had to go by rickshaw to Lal Darwaja Bus Depot and accordingly they went there, wherein they met Kayamuddin(A-37). Thereafter, he, Iqbal (A-3) and Kayamuddin(A-37) went to the garden behind Lal Darwaja wherein Iqbal (A-3) stated that they ahd some work and left. Thereafter, he and Kayamuddin(A-37) went to the footpath vendors near Lal Darwaja wherein he purchased 50 packed shirts priced at Rs. 20 each from a street vendor and upon asking

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Kayamuddin(A-37) as to why he required so many shirts, he was told that there was a fucntion at the house of Kayamuddin(A-37) for which he needed those shirts for gifting. Thereafter, they boarded the rickshaw to go to C.T.M. and upon asking Kayamuddin(A-37) about Iqbal (A-3), he was told that he would meet him at C.T.M. Thereafter, on the way, Kayamuddin (A-37) got down from the rickshaw and he went to C.T.M. wherein Iqbal (A-3) arrived 10-15 minutes after him reaching there and they returned to Vadodara by bus. xiii) States that thereafter on 25.07.2008, viz. one day prior to the blasts, Iqbal (A-3) called him and Rafik to meet him near Khadkibazaar Mosque, Vadodara wherein they were told that this would be the last work which he would ask them to do and thereafter he would not harass them or use them for anything. States that Iqbal (A-3) told him he would give them one packet which had to be delivered to Kayamuddin(A-37) in Ahmedabad. States that Iqbal (A-3) wrote the number of Kayamuddin(A-37) on a chit and gave it to them. States that Rafik and he thought that by doing so, they would get rid of him and therefore, they agreed to go. Thereafter, they

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				went to Ahmedabad by bus and called Kayamuddin(A-37) from a P.C.O. who told them to come to Narol Crossroads, upon which, they went there and handed over the packet to Kayamuddin(A-37). States that neither he nor Babo had any knowledge as to what the packet contained. States that thereafter he, Rafik and Kayamuddin(A-37) came to C.T.M. after which he and Rafik left for Vadodara. xiv) States that thereafter Iqbal (A-3) came and persuaded them, asking as to why they were not assisting him and Kayamuddin(A-37) upon which, he told them that their religion does not let them take the lives of innocent persons and that they were family men with wives and children and that they should leave them alone. States that Iqbal (A-3) got angry upon hearing this and left. xv) States that on 26.08.2008 at about 8 to 8:30 p.m., they were watching news of the blasts on television upon which they became certain that the blasts had been carried out by Iqbal Sheikh (A-3),Kayamuddin(A-37) and their associates. States that it is his firm belief that the vehicle papers which were taken from him were used in connection with the vehicles used in the blasts at Civil

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Hospital and L.G. Hospital. States that he knows nothing further apart from this.

15.144. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-3 Iqbal S/O Kasam Shaikh
2. A-75 Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed
3. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

P.W. NO.1131-MOHMAD RAFIK IQBAL SHEIKH (EXH.8118)

15.145. The Court has perused the statement of P.W. No.1131-Mohmad Rafik Iqbal Sheikh (Exh.8118) which is recorded under Section 164 of the Cr.P.C. before the Metropolitan Magistrate. The Metropolitan Magistrate has recorded the statement after verifying that the witness has provided the statement voluntarily and without any kind of pressure or inducement.

15.146. The witness has deposed vide Exh.8118 that he and Asif Usman Sheikh were performing jobs at the Airtel Company in Vadodara. At that time, Asif introduced him to Iqbal. Three to four months before the bomb blasts, Iqbal came and stated, "I have work for you". Thereafter, Asif took him to a basement near Mandvi, where Iqbal had also come. Iqbal read the Holy Quran for half an hour, after which he, Asif, and Iqbal went to our respective homes. After a few days, Iqbal

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again called us to the same place to read the Quran. At that time, he initiated a conversation regarding communal riots and said, "In 2002, our Muslim brothers and sisters were killed. We have to take revenge for that. We are Muslims. Jihad is our duty". Upon hearing this, he and Asif became scared and started to avoid meeting Iqbal.

15.147. Thereafter, before the Ahmadabad bomb blasts, Iqbal called him near a tea stall behind the Mughal Restaurant along with Kayamuddin Kapadiya. He again spoke of communal riots and instructed him to make arrangements for one scooter and a bicycle. Iqbal gave 1,200 Rupees to Asif and told him to bring and provide a new mobile phone. Consequently, after two or three days, Asif returned the 1,200 Rupees to Iqbal. Furthermore, Iqbal told him to take a new SIM card, in connection with which a license and photo were scanned and submitted to Shreyas Card and Gift Shop. He does not know what use Iqbal made of that SIM card. Thereafter, 20 to 25 days before the bomb blasts, Iqbal called Asif and said that Kayamuddin Kapadiya had arrived. Therefore, both of them should come near the Gothri Complex. Accordingly, he and Asif went there, where Kayamuddin told him and Asif, "Bomb blasts are to be carried out in Ahmedabad, Baroda, and Surat cities. For that, I need you", for which they refused to do this work.

15.148. After two days, Iqbal called him and Asif to the S.T. Depot, Vadodara. He took them to the shopping mall located next to the Inox Multi-complex. He told him, "I and my men are going to explode bombs here at the Inox Multiplex, near this complex, at S.S.G. Hospital, and at the Hanumanji Temple. You people, despite being Muslims, are

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not doing our work. Jihad is a duty for us. We have to take revenge for 2002 from the Hindus". Upon hearing this, he and Asif were scared and went home.

15.149. Thereafter, 15 to 20 days before the bomb blasts, Iqbal took him near the Gita Mandir S.T. Stand, Ahmadabad. He stated that they have to meet Kayamuddin. Thereafter, Kayamuddin Kapadiya arrived with a plastic bag in his hand. At that time, Kayamuddin Kapadiya told him, "You are a Muslim boy, yet you are not ready to assist in the bomb blasts. Have you forgotten how much atrocity the Hindus committed against us in 2002?. How many Muslims were burnt alive?. How many women's modesty was taken?. Our Babri Masjid was demolished. Jihad is our duty. We give you the oath of Allah. For the sake of those Muslim men, women, and children who were murdered, support us". Due to this, he and Asif got upset and returned to Vadodara. At the time of leaving Ahmedabad, Kayamuddin Kapadiya gave approximately 10,000 to 12,000 Rupees to Iqbal. At that time, he told Asif that this Kayamuddin Kapadiya and Iqbal Sheikh are going to do very big and wrong work. We do not want to get trapped in this and do not want to keep any relations with these people.

15.150. Thereafter, Iqbal called Asif to meet under the Khadak Bazaar Mosque. At that time, Iqbal told him and Asif, "Both of you do this last work of mine". Saying this, Iqbal took a packet out of a bag and gave it to Asif, stating, "Go and give this packet to Kayamuddin Kapadiya". He and Asif did not know what was in the packet. However, with the intent that they would be rid of them, he and Asif went to Ahmadabad and, calling Kayamuddin Kapadiya near Narol Crossroads, handed the packet

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into Kayamuddin's hands. At that time, Kayamuddin again started the talk of Babri Masjid and stated that revenge is to be taken against Hindus. Furthermore, he spoke anti-national things such as making India an Islamic [state]. Thereafter, he and Asif returned to Vadodara.

15.151. The next day, between 8:00 and 8:30 in the evening, he heard news on the TV regarding the blasts in Ahmedabad, due to which he felt certain that these blasts were carried out by Iqbal Shaikh, Kayamuddin Kapadiya, and their men.

15.152. Thus, the statement was provided voluntarily and with free will by witness Mohmad Rafik Iqbal Shaikh under Section 164 of the Cr.P.C. was recorded before the Metropolitan Magistrate on 22.12.2008. In connection with this statement, the prosecution examined witness Mohmad Rafik Iqbal Sheikh at Exh.8118, during which he stated all the aforementioned facts during the examination-in-chief before the Court which is consistent with the statement under Section 164. The witness provided evidence on oath regarding all facts of the statement and stated the facts word-for-word in the evidence before the Court, the unnecessary repetition of which has not been made. Upon being shown his statement under Section 164 before the Court and being asked about his signature therein, the witness stated that the statement under Section 164 is true and proper and identified his signature. The said statement is placed on record at Exhibit 8119.

15.153. Furthermore, the witness stated in the evidence before the Court, "**I can identify Iqbal and Kayamuddin by sight**". Therefore, upon conducting identification of the accused through the medium of

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video conferencing from Ahmedabad Central Jail, witness Mohmad Rafik Iqbal Sheikh identified both these accused before the Court.

15.154. Therefore, looking at the statement recorded by Metropolitan Magistrate under section 164 of Cr.P.C. and the deposition recorded by the Special Judge, Ahmadabad, in the opinion of the Court, the statement of the witness Mohmad Rafik Iqbal Sheikh as well as evidence fully establish the involvement of accused in alleged offences.

15.155. Upon conclusion of the evidence in chief this witness has not appeared for cross examination. It appears from the record that all the attempts to bring the witness to the witness box has failed. This is an indication of a very serious case of influencing the witness by the defence. This witness was a secret witness whose identity was not disclosed thereafter once the witness has deposed in the court the identity appears to be revealed and thereafter the recording of chief deposition takes place on 4.4.2019 and after the conclusion an application Ex. 8120 is made by defence seeking adjournment for conducting the cross examination on the ground that the defence counsels want to make discussion with the accused stationed at Bhopal jail. It appears that for reasons unknown to the trial court the witness was unavailable for the cross examination,

15.156. Obviously, the arguments for the defence is to discard the evidence of this witness altogether as he was not available for the cross examination. In ordinary course, the Court would have discarded the evidence however, in the facts of this case the Court observes that the witness was in the box his chief was over the Court time was not over

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and the cross ought to have proceeded immediately but for the aforementioned application Ex.8120 by the defence and thereafter non availability of the accused, the Court only wonders that had the witness been declared hostile would the same sequence of events have occurred. The court may not enter into speculation. Suffice it to hold the witness has deposed on oath and not only on oath his statement u/s. 164 of the Cr.P.C. is also an exhibited document which the court has no hesitation to hold to be an admissible evidence. The evidence of this witness in the form of S.164 statement is in complete support of the prosecution and corroborates the evidence of another prosecution witness namely; P.W. No.1117, Asif Usman.

15.157. It is required to note that, admittedly, there being no eyewitness to the occurrence, the entire prosecution case hinges on circumstantial evidence. It is well settled in law that the prosecution in order to establish its case on the basis of circumstantial evidence has to prove the circumstances fully established, from which the conclusion of guilt is drawn. Further, the circumstance so established should be consistent with the hypothesis of guilt of the accused. The circumstances should be conclusive in nature and they must exclude every possible hypothesis, except the one to be proved. There must be a chain of evidence so complete, not to leave any reasonable ground for conclusion consistent with the innocence of the accused and must show that in all human possibility, the act must have been done by the accused only. In order to furnish a basis for conviction, circumstantial evidence requires a high degree of probability, i.e., so sufficiently high that a prudent man considering all the facts, feels justified in holding that only the accused had committed the crime with which he was charged.

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Circumstantial evidence is indirect evidence. It is an evidence of circumstances which can be relied upon not as proving a fact in issue directly, but instead as pointing towards its existence. Wherever direct evidence is not available then, it becomes necessary to appreciate circumstantial evidence meticulously. Thus, in view of the entire evidence enumerated above, we hold that the Appellants were actively involved in the conspiracy to cause blasts in Gujarat and in consequence of the said involvement, they have committed the offences for which they have been charged.

15.158. The Court may refer to the statement under 164 Cr.P.C., which has been produced hereinbelow in tabular format:

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW No.1131: MohammadRafik @ Baba Iqbalbhai Shaikh	8119	22.12.2008	**1) A-3:** Iqbal S/o Kasam Shaikh **2) A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	i) States that he and Asif Usmanbhai Sheikh worked together for 3 years and that they used to travel together on one motorcycle and that he used to go to Gendigate on motorcycle to pick up Asif, whose uncle had a medical shop there and nearby was there was a shop of uncle of Iqbal Shaikh (A-3). States that Asif introduced him to Iqbal (A-3) and that about three to four months prior to the blasts, while he and his friend Samir Saiyed were sitting near his house at Jahangirpura, Iqbal (A-3) and Asif were passing by on a motorcycle and upon seeing him, Iqbal (A-3) came near him and asked him to

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				meet him later as he has some work for him. ii) States that about two to three months before the blasts at Ahmedabad, Asif took him to the basement of an apartment behind Jamnabai Hospital, Mandvi at Vadodara wherein Iqbal (A-3) was present and Iqbal read from the Quran for about half an hour after which, they returned to their respective homes. iii) States that after 10 to 15 days Iqbal (A-3) contacted Asif and called them again to the basement behind Jamnabai Hospital wherein Iqbal (A-3) recited the Quran and thereafter, he started talking about the communal riots between Hindus and Muslims, the demolition of Babri Masjid, 2002 incident and that several Muslims had been killed in the 2002 riots for which revenge was to be taken and that as they are Muslims, Jihad is their duty. States that upon hearing this, both he and Asif became frightened and told Iqbal (A-3) that they were leaving and thereafter they stopped meeting him although he used to call them. iv) States that about one year before the blast in Ahmedabad, Iqbal (A-3) introduced them to a person whose name appeared in the newspapers in connection with Ahmedabad blast namely; Kayamuddin

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Kapadiya (A-37) near a tea stall behind Mogal restaurant. States that thereafter, they came across Kayamuddin (A-37) on the road and later Iqbal (A-3) called Asif and asked him to bring him (this witness) along. v) States that when they met Iqbal (A-3) again he started speaking about the 2002 riots and that revenge had to be taken for the Muslims who were killed in the riots and that bomb blasts had to be carried out in Ahmedabad for which they were to arrange one Scooty and one bicycle. However, they told Iqbal (A-3) that such an arrangement would not be possible upon which Iqbal (A-3) gave them Rs.1200/- to bring a new mobile phone after which they left. States that after two to three days Asif returned Rs.1200/- to Iqbal (A-3). vi) States that Iqbal (A-3) then told them to procure a new sim card and Iqbal (A-3) came to meet them near "Shreyas Cards and Gift Shop". Thereafter, they went to "National Photo Studio" and Iqbal (A-3) took an old license alongwith him which had not been renewed and also got the photograph scanned which appeared on the said license. Thereafter, Iqbal (A-3) took out a separate photograph from the same and submitted it at

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				"Shreyas Card and Gift Shop" and purchased a new idea SIM card. States that he does not know in whose name the license was or as to what use was made of the SIM card. vii) States that thereafter about 20-25 days before the blast, Iqbal (A-3) called him and Asif and told that Kayamuddin (A-37) had come and that they should meet him near Gotri Yash Complex. States that Asif took him there, and from there four of them went to the house of Asif's in-laws' at Tandalja wherein Kayamuddin (A-37) told them that bomb blasts were to be carried out in Ahmedabad, Vadodara and Surat for which he required their assistance. States that upon hearing this, both he and Asif became frightened and refused to do such work upon which Iqbal (A-3) and Kayamuddin (A-37) left. viii) States that after two days, Iqbal (A-3) called him and Asif to the S.T. Depot at Vadodara, wherein both Iqbal (A-3) and he sat on Asif's motorcycle and Iqbal (A-3) took them to the basement of large shopping complex near INOX Multiplex wherein they were told that Iqbal (A-3) and his associates were going to cause bomb blast near INOX and this complex, and also at S.S.G. Hospital and at the

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Hanumanji Temple opposite it near Kala Ghoda. States that Iqbal (A-3) told them that they were not helping inspite of being Muslims, whereas Jihad was their duty and revenge had to be taken against the Hindus for 2002 incidents upon which they became frightened and left the place. ix) States that thereafter about 15 to 20 days before the Ahmedabad blasts, Iqbal (A-3) brought him to Ahmedabad stating that he had some personal work and he made a phone call from an S.T.D. Booth opposite Geeta Mandir stand and upon asking Iqbal (A-3) as to who had he come to meet, Iqbal (A-3) told that he had come to meet a friend but did not disclose the name. Thereafter, Iqbal (A-3) took him to a vegetable market where they went around for 20-25 minutes and again made a phone call and thereafter, upon asking him to tell the name of the person who they have come to meet, Iqbal (A-3) disclosed the name as Kayamuddin (A-37). Thereafter, Iqbal (A-3) took him to Lal Darwaja bus stand wherein they remained seated for around 15-20 minutes after which Kayamuddin (A-37) came with a plastic bag in his hand. Thereafter, the three of them went to Kankaria lake wherein Kayamuddin (A-37)

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				told him that he was not assisting them in the bomb blasts inspite of being a Muslim and asked whether he had forgotten about the oppression committed by the Hindus in the year 2002 and how several Muslims were burnt alive and how they violated the honour of several women and that Hindus had demolished the Babri Masjid. States that Kayamuddin (A-37) said Jihad was their duty and talked about Allah and persuaded him to support them for the sake of Muslim man, woman and children who had been killed and also asked him to persuade Asif to support them. States that upon hearing this, he became frightened and thereafter Iqbal (A-3) and he returned to Vadodara and while they were leaving, Kayamuddin (A-37) handed over a bundle of Rs.10,000/- to Rs.12,000/- to Iqbal (A-3). x) States that on that night he met Asif and told him that they should stay away from Iqbal (A-3) and Kayamuddin (A-37) as they were going to commit a serious wrong and that they should not get implicated in it. States that he also told Asif that they were telling false things in the name of Islam and instigating on religious grounds and that they should not keep any relation with them thereafter.

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				xi) States that, 2-3 days thereafter, Iqbal (A-3) took Asif with him to Ahmedabad and that he does not know the reason for it. States that when Asif returned from Ahmedabad at night, he was told by him that Kayamuddin (A-37) and Iqbal (A-3) were going to cause bomb blasts due to which many innocent persons would lose their lives and that they would implicate them in the name of Islam and that they should not meet them anymore. xi) States that one day prior to the Ahmedabad bomb blasts, Iqbal (A-3) called Asif and asked him to come alongwith Baba to meet him near a mosque at Khadak Bazaar in Vadodara. Upon going there, Iqbal (A-3) was waiting for them and he told them that this would be the last work that he would be assigning them and that he would not harass them thereafter. States that Iqbal (A-3) thereafter took out a packet from his bag and handed it over to Asif to be delivered to Kayamuddin(A-37). States that the packet was sealed and that neither he nor Asif knew its contents. States that in order to get rid of Iqbal (A-3) and Kayamuddin (A-37), both of them agreed to go to Ahmedabad and states further that Iqbal (A-3) handed over a small chit that mentioned the

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				phone number of Kayamuddin (A-37), which he does not remember. States that he and Asif reached Ahmedabad and therafter called Kayamuddin (A-37) who asked them to come to Narol Chowkdi, wherein Kayamuddin (A-37) arrived in a rickshaw and took them both to C.T.M. Crossroads. States that Asif handed over the packet to Kayamuddin (A-37) before sitting in the rickshaw and that on their way, Kayamuddin (A-37) stopped the rickshaw midway to eat from a stall wherein Kayamuddin (A-37) started talking about 2002 incidents and the Babri Masjid demolition and that they were Muslims and that revenge must be taken for the 2002 incidents and that they had to face Allah after death and that India had to be turned to an Islamic country and that the government should be driven out. States that upon hearing this, both he and Asif became frightened and they told Kayamuddin (A-37) that nowhere in Islam it is mentioned that innocent people must be killed and that doing such things is against humanity and that Kayamuddin (A-37) should not involve him and Asif in such anti-national activities. States that thereafter they left from there and reached

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				Vadodara by 7 to 7:30 p.m. in a bus. xii) States that on the same night, Iqbal (A-3) came to them and asked them as to whether they handed over the packet to Kayamuddin (A-37) and as to why they were not supporting Kayamuddin (A-37) and that they were unaware about the oppression faced by them (Muslims) in India. Upon which, this witness said that, Islam nowhere mentions that innocent people must be killed and that they should leave them alone and that they were family men and did not want to be involved in such acts. States that Iqbal (A-3) got angry and left. xiii) States that on the next day at about 8 to 8:30 p.m., when he was watching the news related to Ahmedabad blasts on television, he became certain that the said blasts had been committed by Iqbal (A-3), Kayamuddin (A-37) and their associates and that he is very much convinced that these people committed the said act. xiv) States that when he had first met Iqbal (A-3) and Kayamuddin (A-37), they had refused to assist in such work and that while returning, Iqbal (A-3) had told him that even if they did not support them, they would still implicate their

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				name in the offence and repeatedly caused them mental harassment accordingly.

15.159. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-3 Iqbal S/O Kasam Shaikh
2. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadi

PW No.1097-Mehtab Ibrahim Shaikh at Exh.7767

15.160. The prosecution has examined PW No.1097-Mehtab Ibrahim Shaikh at Exh.7767 to establish the fact of meeting of accused at various locations and hunting for premises to meet. This witness is running academic tuition. The panch witness was a tutor to children of one Hanif Multani who was in police and also working for SIMI and through him, he came in touch with SIMI and attended a meeting in Limbayat (area in Surat). In that meeting, he found other people present and named them as Akil Deshmukh, Talibbhai, Shamsuddinbhai, Aarifbhai, Yunusbhai etc. There, they had religious discourse. He came in touch with Shamsuddin, Aarif and Yunus from the Limbayat Meeting. These people were from Ahmedabad. After being in contact with these people, he came in contact with Safdar Nagori. This contact happened in a meeting at Ahmedabad. There at Ahmedabad also there were religious talks and that these people were associated with SIMI. However, one Hanifbhai warned the prosecution witness that these people were not good, hence he disassociated.

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15.161. He then deposes that in the year 2008, Kayamuddin and Taukir came to Kosamba (area in Surat). They came for searching of a house on rent but the prosecution witness did not respond to them.

15.162. During deposition, this witness was called to identify the accused through the T.V. Screen and he identified correctly accused Shamsuddin.

15.163. He also identified one person as Kayamuddin, but the person name was Rafiyuddin (Brother of Kayamuddin). However, the witness has given an explanation for not able to identify the other accused from the T.V. screen.

15.164. In the cursory cross examination, the witness has deposed that his reason for going in the meeting was a religious purpose and that he has read translation of Quran and has knowledge of Hadish. He has deposed that he did not enjoy close relation with all who attended the meeting and many people used to attend the meeting. He admitted that during this period he was not assigned with any work which is illegal.

15.165. The witness was questioned about how he was termed a witness and in what manner his statement was recorded, however, this line of question not being relevant is not referred to here.

15.166. Thereafter, question put to the witness were in the form of expressing his opinion on religious meets. Thereafter, he was questioned for SIMI meetings to which he has answered that he is not aware who called for such meetings. He did not know full name of Taukir and that he had no direct connect with him. He had occasion to meet Taukir but only on couple of occasions. He had met Taukir at Ahmedabad and at Kosamba near the water tank near his house. He denied that he has got up the story of Taukir.

15.167. Thereafter, witness was crossed by Shri K. G. Shaikh. He

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deposed that no one had told him that the meeting at Limbayat is that of SIMI. He admits that no one by name is informed that is associated with SIMI as per his version in chief. He has denied that he has not referred to Hanifbhai in his Police Statement.

15.168. He deposed that he came to know about the Blast by news medium and similarly Ban on SIMI also, he came to know through news medium. Learned Advocate for other accused appears to have adopted the cross.

15.169. This panch witness is a reliable witness and this witness is to the fact of meetings between the accused named by him at various locations including Surat. These meetings were called in the capacity as SIMI workers or operatives.

15.170. <u>This witness in his deposition has attributed a role in conspiracy to the following accused persons.</u>

1. A-4 Samsuddin S/O Shahabuddin Shaikh

2. A-8 Yunus S/O Mohammad Mansuri

3. A-6 Mohammad Aarif S/O Mohammad Iqbal Kagzi

4. A-12 Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori

5. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

<u>Evidence for Procuring the cloth bag to carry explosive bomb</u>

<u>P.W. No.828-Vajubhai Kalyanbhai Chaurasiya Darji (Exh.5560)</u>

15.171. The Court has perused the deposition of P.W. No.828-Vajubhai

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Kalyanbhai Chaurasiya Darji vide Exh.5560 who was carrying out tailoring work in the name of "Rajesh tailor ladies and gents" and has deposed that in the year 2008, police personnel in plain clothes had come to his shop and had brought one accused person named Mohammed Ismail with them. They carried a bag with them and upon asking whether the said bag belonged to and was manufactured by them, it was informed by this witness that the said bag was manufactured by them at the rate of Rs.15 and that such bags were prepared from leftover pieces of cloth,which no other person is stitching. He also stated that such bags were only manufactured by them and his police statement came to be recorded.

15.172. In the cross examination of this witness, he has deposed that it was not true that he came to know the name of the accused through the police and that, he does not ask the name of the people who come to purchase the bag. He has deposed that he is stating the name Mohammed Ismail on the basis of his assumption. Thus, the deposition of this witness establishes that the cloth bag which was used in the blasts was manufactured at his shop bought by the accused as a part of conspiracy and then used for stuffing the explosive devise and forms a part of the chain of circumstances.

15.173. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-27 Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri

Witnesses for procurement of cycles:

P.W. No.829- Ayubbhai Hussainbhai Shaikh (Exh.5561)

15.174. The Court has thereafter perused the deposition of witnesses

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who are connected with the evidence relating to procurement of cycles. P.W. No.829- Ayubbhai Hussainbhai Shaikh vide Exh.5561 was carrying out the work of bicycle repairing and was also engaged in the business of sale and purchase of bicycles. He has deposed that on 25.10.2008, he sold a bicycle to a person and that after 3 to 4 months, police came to him alongwith the person who had purchased bicycle from him, whose name was Abdul Rajik (accused No.27). Upon the police asking him whether this was the person who had purchased the bicycle from him, he replied that he would be able to identify him if he saw the bicycle. Thereafter, on the next day, he was called to Crime Branch, Haveli Police Station wherein he identified the bicycle, which was a Hercules double bar bicycle. He deposed that his statement was recorded by the police on both the aforesaid occasions. He deposed that he can identify the bicycle if it was shown to him, and upon being shown the bicycle at Serial No.1 of Muddamal List, Article No.3227, in Sessions Case No.47/09, he has identified the same to be the cycle which he had seen at the Crime Branch and the one which was sold by him.

15.175. In the cross examination, he has deposed that he does not maintain books of accounts for such transactions although he does issue bills, however, he does not retain any copies of such bills. He has deposed that he issued a rough bill which mentioned the amount paid and that it did not contain any description of the bicycle and that, he had no documentary evidence regarding the purchase or sale of the said cycle. He has deposed that on the first day, he was not shown the cycle by the police and that it was shown to him on the next day at the Crime Branch which he had identified upon seeing its carrier, bar, company name and the bicycle number. He has admitted that there are a number of bicycle shops in Khadia and that prior to the notice which was issued

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following the blasts, there was no procedure/ formality to obtain identity proof, names and address of purchaser and seller. He has denied the suggestion that he was deposing falsely at the instance of police.

15.176. This witness has come out as a truthful and reliable witness to the fact of purchase of bicycles used for planting the bombs. The witness also identifies the accused as well as bicycles, thereby connecting Abdul Rajik-accused No.27 with the circumstance of purchase of bicycles.

15.177. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-27 Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri

P.W. No.826-Rafiqbhai Ataurrehman Ansari (Exh.5554)

15.178. The Court has perused the evidence of P.W. No.826-Rafiqbhai Ataurrehman Ansari vide Exh.5554 who was carrying out the business of bicycle repairing, renting out and repairing of bicycles in the name of 'Janta Cycle Repairing Works'. He has deposed that the Police came to him on 2nd November and brought Raju along with them and asked this witness whether he knew him, to which he replied that he has taken bicycles from the witness and that this witness is not aware of his full name. He has deposed that they had come to reside in new Al-Aman Flats and that the name of Raju's father is Ishaqbhai. He deposed that he used to give bicycles on rent to people who are known to him and that a Register was maintained in that regard, which contained entries specifying the name, time and rent. He has deposed that the Police had

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taken the said Register from him. Upon being shown a Register with red coloured binding, which is at Sr. No.2 of the Muddamal list, Exh.3227 in Sessions Case No.47/09, with an entry dated 22-07-2008 (Exh.5535), he has identified the same to be of his shop. He has deposed that it contains an entry in the name of Raju and of a bicycle of size 22 and that the register contains the time of taking and returning of the said bicycles, which was recorded in his hand writing. He has deposed that he rented the bicycle to Rajubhai as he knew him and was residing opposite to him. He has deposed that his statement in this regard had been recorded by the Police. In the cross-examination, this witness has deposed that many persons named Raju resided in Gomtipur area and that Exh.5535 only mentioned the name Raju without any further particulars and that there was no signature of Raju in the Register nor any entry which showed that the bicycle was given on rent to Mohammed Ishaq. He has also deposed that he was not aware of any other names of Raju and that he did not know that Raju was also known as Abdul Rajik, Musaf or Furkan. He has also admitted that the Register at Exh.5535 does not mention as to whether he was acquainted with the persons who had taken cycles from him on rent. He admitted that in the said Register at Exh.5535, the name of the shop owner was shown as Arif Ansari and that 'Janta Cycle Works', his name or signature does not appear. He has denied the suggestion that no person named Raju was brought to his shop by the Police, that no Register has been seized from him and that he was deposing falsely at the instance of Police.

15.179. The Court finds that the evidence of this witness is supporting the case of prosecution insofar as the circumstance of procurement of bicycle is concerned.

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P.W. No 955-Allarakha Sattarbhai Sandhi (Exh.6672)

15.180. The Court has perused the evidence of P.W. No 955-Allarakha Sattarbhai Sandhi vide Exh.6672 who used to carry on the business of repairing bicycles and used to rent out bicycles to young boys and was also engaged in the business of buying and selling of bicycles. He has deposed that on 02.01.2009, the police came to him alongwith one accused and that he was asked whether he had sold the bicycle to him to which he replied in the affirmative. Thereafter, he was asked by the police whether he had made any document in writing with respect to the same, to which he denied. He has deposed that he had an old cycle which he brought from a scrap dealer and the same was sold to a person named Mohammed, whose full name he does not know, at the rate of Rs.700/-. He has deposed that the said cycle was of Hero company and that its 'govender' was of Hercules company and it was black in colour. He has deposed that the person who was brought by the police was Mohammad Ismail Mansuri (accused no. 27).The witness upon being shown the bicycle; Article No.9 of the Mudammal list at Exh.2065 in Sessions Case No.341/09 has identified the bicycle to be the same stating that the 'govender' was of Hercules company and that its frame was of Hero company although it was in a rusted condition and was not in the same condition as when he sold it. However, this witness was unable to identify the person to whom he sold the bicycle.

15.181. In cross examination, he has deposed that he did not maintain any account regarding sale and purchase of bicycle and that he could not state as to when he had purchased the said bicycle from the scrap dealer. He has admitted that when the police came to him, they had neither shown nor brought the bicycle. He has also admitted that in the statement recorded by the police it is recorded that he came to know the

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name of the purchaser to be "Mohammad Ismail @ Abdul Rajik" only when informed by the police, and that prior to the police statement he did not know that a person named Mohammad Ismail had purchased the bicycle. Even on the date of the deposition, this witness did not know as to where the person resided. He has admitted that Mohammad Ismail is a common name and many persons bearing that name reside in areas of Sarangpur, Gomptipur, Bapunagar and Rajpur Tolnaka. He has denied the suggestion that he is deposing falsely at the instance of police.

15.182. The evidence of this witness also establishes the circumstance of procurement of bicycles used for planting of bombs. His identification of the bicycles in the Court also connects the bicycle which he sold directly with the fact of using the bicycle for planting the bomb.

15.183. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-27 Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri

P.W. No.1035-Abdulrahim Gulambhai Mansuri (Exh.7046)

15.184. The Court has perused the evidence of P.W. No.1035-Abdulrahim Gulambhai Mansuri vide Exh.7046 who was carrying on the business of cycle repairing in the name of Apsara Cycle situated at Juhapura. He has deposed that on 03.01.2009, three to four police persons alongwith one accused person and two public persons had come to his shop. The name of the accused was Mohammad Ismail Mansuri (accused no. 27), who told him that he had purchased a bicycle from his shop. He has deposed that he had an old bicycle which he purchased as scrap and had sold to that accused namely Mohammad Ismail. He has

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deposed that the police had recorded his statement in that regard.

15.185. In the cross-examination, this witness has admitted that he did not maintain any record of the customers who visited his shop or the bicycles sold and purchased by him or from whom the bicycle was purchased or sold to, or the detail with respect to the company of the bicycle or date of sale. He admitted that the accused did not show any document relating to sale of the bicycle and that he had not given any document to the police regarding the sale of said bicycle. The witness has deposed he could not state the company or model of the bicycle which was sold to the accused and that police had neither shown him the bicycle nor called him for identification of the said bicycle. He has also admitted that no identification parade of the accused was conducted before the Magistrate through him. He has also deposed that if the bicycles purchased and repaired by him were shown to him, he would not be able to identify them or remember the frame number. He has denied the suggestion that no accused was brought to his shop on 03.01.2009, that he had not disclosed about the sale of the bicycle to the accused or that he was giving a false deposition at the instance of the police. He has also denied the suggestion that he was stating the name of the accused on the date of deposition because his name had been disclosed on that day. The evidence of this witness proves the circumstance that he has sold bicycle to one of the accused.

15.186. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-27 Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri

P.W. No.1036-Khurshidbhai Ahmedbhai Kureshi (Exh.7047)

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15.187. The Court has perused the evidence of P.W. No.1036-Khurshidbhai Ahmedbhai Kureshi vide Exh.7047 who was carrying on the business of cycle repairing in the name of "Sadik Cycle Repairing Works" at Fatehwadi. He has deposed that on 03.01.2009 the police alongwith one accused person and two public persons had come to him and questioned him regarding the bicycle as to whether the accused person had bought any bicycle from him six months back. Upon which, this witness stated that he had come six months back and had inquired whether he had a bicycle, to which this witness told him that he had a bicycle and the price of it was Rs.600/-. He has deposed that upon payment of Rs.600/- this person took the bicycle and that he does not know anything else beyond that. He has deposed that the police was questioning him and two persons were writing down.

15.188. In cross-examination, this witness admitted that he did not maintain any record regarding the bicycle repaired by him. He deposed that he did not remember whether he stated before the police that the person who was shown to him, had taken the bicycle upon payment of Rs.600/-. He deposed that when the police had asked him whether he knew that person he replied that he did not know him. The witness also admitted that he did not know who the person shown to him was and that he had no conversation with him. He has deposed that he sold the cycle six months before the police had recorded his statement and has admitted that he had not told the police as to how the person who had purchased the cycle from him looked like. He has denied the suggestion that he was falsely deposing at the instance of police.

15.189. Upon perusal of deposition of the aforesaid witnesses who are dealing in the business of purchase and sale of bicycles, it appears that cycles were purchased from various such bicycle dealers and their

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evidence becomes a relevant circumstance relating to the procurement of the cycles and the identity of the accused persons connected with the procurement of such bicycles.

15.190. The combined reading of the evidence of all the aforesaid witnesses goes on to established that as a part of conspiracy, the accused had undertaken the exercise of procuring bicycles from various sources and in a manner which will not make such procurement very evident and used the same for planting of bombs at various locations.

Witnesses related to procurement of timer clocks:

P.W. No.978-Mohammadhanif Abdulkayum Roshan (Exh.6823)

15.191. The Court has perused the evidence of P.W. No.978-Mohammadhanif Abdulkayum Roshan vide Exh.6823 who was managing a shop in the name of "Vali Mohammad Roshan and Company" which dealt with wall clocks, alarm clocks, calculator, timepieces and other articles of various companies. He has deposed that in July 2008, Dashrathbhai Vishnubhai Patil (P.W. No.979) and Dharma Dadve, who were employees in the said shop and that Badrul Hasan was working as a manager. He has deposed that on 23.10.2008, an officer from Ahmedabad Crime Branch, namely Usha Rada visited his shop and inquired regarding fifty time pieces (alarm) which had been sold from his shop in July 2008, upon which he showed the bill book, in which a bill dated 04.07.2008 for 30 pieces was found. The witness deposed that the customer had demanded for 50 timepieces however, initially only 16 were available. Therefore, he contacted the distributor who informed him that the stock was going to arrive, but the quantity of it was uncertain. The customer was ready to pay for 50 pieces, however he informed him that if the stock received, he would be able to supply 50

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pieces otherwise would have to refund the money. Therefore, he accepted payment for only 30 pieces and issued a bill for 30 pieces and informed him that he would supply 14 pieces on the next day and that if further 30 pieces arrived, he would supply that as well. Thereafter, the customer came to his shop on the next day wherein employee-Dashrath was present who had already been informed that the payment for the 14 pieces had been received and that he should supply the same to the customer once it arrives. Accordingly, Dashrath handed over 14 pieces to the customer. Subsequently, the customer told him that fifty pieces were required and that only 30 had been supplied to him and so he requested that the remaining 20 pieces be supplied to him. As the stock had arrived, the remaining 20 pieces were supplied and the payment for the same was made. It is deposed that while Dashrath was preparing the bill for the said 20 pieces, the customer left the shop. The witness has deposed that he had given the description of the customer to the officer that he was dark in complexion, of medium build, aged around 35 to 38 years and was about 5 feet in height. Upon being asked by the officer as to whether he would be able to identify such a person, he answered that he would be able to identify if he were shown to him as usually, persons do not purchase such large quantity of timepieces and if he is able to recollect, he would identify him. Thereafter, this witness supplied the officer with the copy of the bill from the bill book and also signed the bill for the purpose of verification. He has deposed that his statement in that regard was recorded by the police.

15.192. He has deposed that on 02nd January police officer from Ahmedabad Crime Branch came to his shop and informed him to remain present at Gheekanta Court on 06th for the purpose of identification. Accordingly, he went to Ahmedabad on 6th alongwith the employee-

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Dashrath, who had also been instructed to attend. He has deposed that upon being instructed by the Magistrate to identify the person from the lineup of six persons, he identified one person and that upon enquiry by the Magistrate, he disclosed his name as Mohammad Arif Sheikh (accused No.31). The witness informed the Magistrate that the said person had purchased 50 timer clocks from him. Subsequently, similar proceeding was also carried out for Dashrath and thereafter, they visited the Crime Branch Office as was instructed, wherein Usha Rada read over the statement which was recorded at Mumbai and also enquired about the identification proceeding which was narrated by them. He has deposed that the bill book from which the xerox copy was supplied, as well as the carbon copy bill book containing bill number 22981 was in his possession and that he had brought the same before the Court. Upon being shown carbon copy of bill number 22981, he has identified his handwriting and signature therein. He has deposed that Usha Rada has signed on the xerox copy of bill taken from him and also upon the purchase bill relating to the clocks. The witness has clarified that "Samay" was the name of the company and "prince" was the brand name of the product. He has deposed that he was unable to identify any accused who were shown to him through video conferencing from Ahmedabad Central Jail and Bhopal Central Jail as almost 10 years had passed and there were physical changes. He has identified muddamal article No.5 (Exh.3351) and muddamal article No.10 (Exh.2078) as "Prince" alarm clocks which were manufactured by Samay Company and has stated that those were the time pieces which were sold by him.

15.193. In cross-examination, this witness has admitted that clocks of various companies are sold in his shop in wholesale and retail quantity and detailed records relating to sale purchase and stock were maintained.

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He has deposed that Samay Company has many dealers and agents throughout India including Mumbai and he has admitted that clocks which were similar to the muddamal clocks were sold by many shopkeepers and that the muddamal clocks shown to him did not bear the name of the shop, his signature or any identification mark connecting them to his shop. He has admitted that when Usha Rada visited his shop on 23.12.2008, no accused person or muddamal clock was shown to him and that between 04.07.2008 and 23.12.2008 the police had not come to him with any accused person or muddamal article. He has deposed that the police had not informed him that the purchaser was in their custody nor did they prepare any sketch after the description of the purchaser was given by him. However, he has deposed that the person who was identified by him in the Test Identification Parade was of similar description which was given by him to the police and that there was no change in his appearance.

15.194. In further cross-examination, this witness has stated that the clock manufacturing company does not mention production number, batch number or serial numbers on the clock. He has admitted that brands like Titan, Sonata, Samay etc. are standards clock companies which provide warranty although serial number is not mentioned on such warranty document. He has deposed that neither the bill received from the distributor nor the purchase record which is maintained by him contains details such as batch number, manufacturing date, serial number or year of manufacture. This witness has deposed that the bill dated 04.07.2008 was prepared on the same day and not on 05.07.2008. He has stated that when the customer collected the time pieces on the next date, he did not collect the bill which had already been prepared. This witness has deposed that the bill book containing bill number

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22981 consisted of 100 bills between the time period of 27.06.2008 to 14.07.2008 and that the bill book was maintained in accordance with the necessary compliance. He has admitted that the bills in the bill book were prepared by different persons and that ordinarily, name and address of purchaser was not recorded in the bill. This witness has deposed that the police had not obtained his handwriting specimen or signature in the bill book. He has deposed that when the police first visited him, he has supplied the police with the xerox copy of the carbon copy bill and had not handed over the original customer copy. Upon being shown the said xerox copy (Ex.6824), he identified it to be the same copy which was given by him to the police and it came to be exhibited as Exh.6826. He has admitted that bill no. 22981 did not mention about the number of clocks which had actually been delivered or any note regarding the remaining quantity which had to be supplied, and that all the bills were prepared in compliance with the laws, he was unaware of any law which required to mention the quantity which was yet to be delivered. He has denied the suggestion that he had not sold any clocks to the accused on 04.07.2008 and that Exh.6824 was subsequently fabricated at the instance of police. He has also denied the suggestion that he was falsely deposing about the identification parade at the instance of police. He has deposed that with regard to the additional 20 clocks which were supplied on 05.07.2008, a rough entry had been made in the sale records however, he has neither supplied any such copy of rough entry nor possessed any rough entry or other document relating to sale of 20 clocks as such rough entries were ordinarily destroyed on the same day.

15.195. He has deposed that after supplying 16 timepieces on 04.07.2008 he did not have sufficient stock and therefore, placed an order for remaining quantity on that day itself which was received by

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him on 05.07.2008 under a challan dated 05.07.2008. Upon being shown tax invoice numbered 02 July OB/09 he has deposed that 50 clocks were received under that invoice although it was dated 03.07.2008. The xerox copy of the bill was exhibited as Exh.6827 and that delivery of 50 timepieces were received under a challan however, upon receiving the bill he had torn the challan. The witness has denied the suggestion that bill book produced by him was subsequently prepared at the instance of police. The witness has deposed that he does not recollect whether the police statement was read over to him and that he did not read it himself as he does not know Gujarati. He has also deposed that his signature was not obtained by the police on the statement. He has deposed that Dashrath was present on 23.12.2008, when the police had came to question him. Although he initially stated that Dashrath's statement was recorded on 24.12.2008, he has then stated that Dashrath was questioned and his statement was recorded on 23.12.2008.

P.W. No.979-Dashrath Vishnubhai Patil (Exh.6828)

15.196. The Court has perused the evidence of P.W. No.979-Dashrath Vishnubhai Patil vide Exh.6828 who was working as a employee at "Vali Mohammad Roshan and Company" which dealt with wall clocks, alarm clocks, calculator, timepieces and other articles of various companies. He has deposed that on 23.12.2008 the police came to the shop and recorded his statement and informed that 50 time pieces had been sold from the shop in the month of July, upon which his employer showed the police officer Usha Rada the bill book for the month of July. He has deposed that a customer came to his shop and requested his employer to supply 50 time pieces and that only 16 pieces, which were available at that time was supplied to him. His employer prepared a bill

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for 30 time pieces and informed the customer that the remaining 14 pieces would be supplied on the next day and that if another 20 pieces arrived, those would also be supplied. He has deposed that on the next day the customer arrived at the time when the employer was not present. However, his employer had instructed him that the payment for 14 pieces had already been received and therefore, they should be handed over to the customer and accordingly, the 14 time pieces were handed over by him. He has deposed that he had also delivered additional 20 pieces to him for which Rs.1960/- was received. However, the customer left without taking the bill. This witness has also given description of the customer to the Police Officer i.e., he was dark complexioned, of medium build, around 35 years of age and about 5 feet in height. Upon being asked by the Police Officer whether he would be able to identify the customer, if shown to him, he answered that he would be able to identify him. The witness further deposed that in the first week of January, 2009, the Police Officer from Ahmedabad Crime Branch informed him and his employer that they were to attend Ghee Kanta Court on 06-01-2009 for the purpose of identification. According to both of them went to Ahmedabad and after his employer underwent the process of identification, he was called before the Magistrate to identify the person from amongst the six persons, who were standing in a line. He took out one person and brought him before the Magistrate and upon being asked, the said person disclosed his name as 'Arif Badruddin Shaikh' and stated that he was resident of Mumbai. The witness informed the Magistrate that the said person was the individual who had purchased 50 time pieces from the shop.

15.197. Thereafter, both he and his employer went to Crime Branch Officer, where Police Officer Usha Rada read over his statement and

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inquired about the process of identification, upon which he told about the same. This witness has further deposed that he was unable to identify accused persons shown through video conferencing from Ahmedabad Central Jail and Bhopal Central Jail as 10 years had passed and changes have occurred in their appearance. However, he has identified Muddamal Article No.5 (Exh.3351) in Sessions Case No.365 of 2009 and Muddamal Article No.10 (Exh.2078) in Sessions Case No.348 of 2009 as Prince brand alarm clock manufactured by Samay Company and has deposed that these were the time pieces that were sold from their shop.

15.198. In the cross-examination, this witness has deposed that Abdul Rehman Street is a crowed commercial locality having various clock shops wherein clocks are sold both in wholesale and retail and traders from all over India come to purchase goods. He has admitted that many persons purchased clocks from their shops in wholesale as well as retail quantity and that he could not state as to how many persons had visited his shop three to four months prior to the Police inquiry nor who had purchased such goods or when such purchases were made or in what quantity. He has deposed that his employer had handed over a bill to the Police, but no receipt was issued and that he had not seen any such receipt. The witness admitted that he did not maintain any record of the customers who visited the shop on a particular date, the quantity of goods supplied to them or the conversation between them. He has deposed that ordinarily he would not remember individual customer although when the customer purchases goods in bulk, he would have a memory of the same. However, upon being asked whether he could tell the name, address and description of other bulk purchasers around July, 2008, he deposed that had he been asked around that time, he could have

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told the same. He has deposed that their goods have been delivered, but had not been prepared or where cash have been received, but a bill had not been prepared, the particulars of same were entered in a daily sales paper, which were retained for about a month and were thereafter destroyed, and no permanent record of it was maintained. He has further deposed that he did not know whether particulars from such sale papers were entered into accounts.

15.199. Upon perusal of the depositions of P.W. No.978-Mohammadhanif Abdulkayum Roshan and P.W. No.979-Dashrath Vishnubhai Patil, it establishes the procurement of Prince brand alarm clock (time piece) from their shop by the accused person, who was identified by them in the Test Identification Parade. The combined reading of depositions of aforesaid two witnesses, the prosecution is able to establish the connection between the accused persons having procured the timepieces (clock) from these witnesses and the same were used as timers in explosive devices. The witnesses were shown the timepieces which were part of the explosive device which had not exploded.

Witnesses related to letting out of houses(hideouts) to accused persons:

P.W. No.943-Kukhraj Mohammedyakub Shaikh (Exh.6629)

15.200. The Court has perused the evidence of P.W. No.943-Kukhraj Mohammedyakub Shaikh at Exh.6629 who was the owner of House No.10 in Al-Mohammadi Society and has deposed that she was then residing at Royal Nawab Apartment. She has deposed that the electricity bills of the house were issued in the name of secretary of the apartment namely; Gulam Farooq and upon payment of the consideration, the house was allotted to her and was in her possession. In July 2008, as she

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intended to let out the house on rent, she informed about the same to Ibrahimbhai, who was involved in the management of the society. She has deposed that in the first week of July, Ibrahimbhai brought a person who was interested in taking the house on rent. Upon inquiring, the said person gave the details regarding the members in his family and informed that he intended to carry on embroidery work, to which, she refused to permit him from carrying on such work in the premises, whereupon he informed her that such work would be carried out elsewhere and only his family would reside in the premises.

15.201. This witness has deposed that she demanded a deposit of Rs.30,000/- however, that person agreed to pay Rs.25,000/- as deposit and monthly rent of Rs.2,500/-, with balance amount of Rs.5000/- which would be paid in installments of Rs.500/-. Out of the amount received, she handed Rs.10,000/- to Ibrahimbhai for obtaining water connection and retained Rs.15,000/- with herself. Thereafter, when she went to the premises (house) with the pipes for the water connection, she met the said person to whom she handed over the pipes. She has described the said person to be wheatish complexioned, clean shaved, and about five to five and a half feet in height. She has deposed that upon asking him to execute a written agreement, he replied that he would come after two days.

15.202. This witness has deposed that she supplied the electricity bills and allotment letter of the house to the police and that the police statement was recorded on three occasions. On 16.12.2008,k she was informed by the police officer that she was required to attend identification proceedings and accordingly she attended the office of Magistrate on 17.12.2008 and upon being asked by the Magistrate to identify the person from amongst the six persons standing in line, she identified and

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pointed out one person. Upon being asked by the Magistrate, the said person disclosed his name as "Kayamuddin Sarfussin Kapadiya" and stated that he was a resident of Vadodara. She deposed that she had met the said person on two earlier occasions, namely when he first came to rent out the house and when she went to the house to give the pipes for the water connection. This witness has deposed that in the evening on the day when Test Identification Parade was conducted, a police officer and two lady officers had recorded her statement regarding the identification proceedings.

15.203. This witness has identified the original electricity bill of the house at Exh.6630, the allotment letter of House No.10 of Al-Mohmadi Society at Exh.6631, the Society letter regarding the allotment of house and issuance of the electricity bills in the name of the Secretary of the Society at Exh.6632 and the agreement which was executed in her favour by the President of the Society; Mohammad Hanifbhai at Exh.6633. She has also identified the certified copies of the chargesheet and judgment in Criminal Case No.7219 of 2008, which was the case instituted against her for letting out the house without informing the police and the same came to be collectively exhibited as Exh.6634.

15.204. This witness has deposed that although she would attempt to identify the person to whom the house was rented and whom she identified in the Test Identification Parade, she was unable to identify the accused shown through video conferencing from Ahmedabad Central Jail and Bhopal Central Jail, as significant time had passed and the appearance of the person had changed.

15.205. In cross examination, this witness has deposed that when she met the police for the first time, she informed that she did not possess any documentary proof of the house and that thereafter, she obtained the

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documents from the Secretary of the society and had produced it before the police. She has admitted that she did not possess any proof relating to the application made to obtain such documents. She admitted that she did not obtain any proof regarding the identity, residence or the name of the person to whom she had let out the house. She has also admitted that she did not issue any receipt with regard to the deposit amount or the rent paid and that she had let out the house on the recommendation of Ibrahimbhai, She has also deposed that no sketch was prepared on the basis of the description provided by her of the said person and that the police had not brought or shown the said person to her prior to the Test Identification Parade.

15.206. In re-examination, this witness has deposed that she had preferred an appeal against the judgment passed in the case which had been instituted for letting out the house on rent without informing the police.

15.207. Upon perusing the deposition of this witness, it establishes that house No.10 situated in Al-Mohamadi Society was let out on rent and she has also identified accused No.37-Kayamuddin Kapadiya to be the person who took the said premises on rent.

15.208. When the court perused this evidence establishing the connection of this accused with the House used as a Hideout and articles seized from this house during a panchnama the connection of the house is directly established and with offence and consequently with the accused persons.

15.209. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

P.W. No.1106-Firoz Dilavar Sheikh (Exh.7929)

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15.210. The Court has perused the evidence of P.W. No.1106-Firoz Dilavar Sheikh vide Exh.7929, who deposed that in the year 2008 he was engaged in the business of selling footwear and was residing at House No.3, Siraz Bawa's Kuvo, Umraonagar. He stated that the upper floor of his house, consisting of a vacant room was intended to be let out on rent. He has deposed that his neighbour Saidur Rehman brought two persons to him and informed him that they required a room on rent. The witness deposed that a deposit of Rs.5,000/- and monthly rent of Rs.900/- were agreed upon and the arrangement was finalized on 07.05.2008. Thereafter, on 10.05.2008, the said two persons came to occupy the room. He identified them as Kayamuddin, who was short, and Subhan Touqeer, who was thin. He further stated that Saidur Rehman had informed him that they belonged to his native place in Uttar Pradesh.

15.211. The witness stated that the two persons resided in the room, used to leave at about 8:00 a.m. and return at about 8:00 p.m., and had holidays on Fridays. According to him, whenever he went upstairs, he found them engaged in card-printing work. He further stated that they belonged to the Ahl-e-Hadith sect and offered prayers separately. He also stated that while the said two persons were residing there, another short-statured person with a small beard started visiting them and also stayed there for some time. According to the witness, the said person was referred to by them as "Mufti". The witness stated that all three had come to his footwear shop to purchase footwear for the said "Mufti". When he questioned the presence of a third person, he was informed that the said person had come only for a few days and would thereafter leave. According to him, the said person left after a few days.

15.212. The witness further deposed that while the said two persons were

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residing there, another person used to visit them and merely inspect the room before leaving. Upon enquiry from Saidur Rehman, he came to know that the said person's name was Aiyaz and that he resided at Vatva. According to the witness, about two months after "Mufti" left, the original two occupants locked the room. While vacating the premises, they informed him that a portion of their belongings would be taken in an auto-rickshaw and the remaining goods in a vehicle. Thereafter, they loaded their belongings in an auto-rickshaw, informed him that they would return and left, but never returned. He stated that the police recorded his statement on 18.08.2008.

15.213. The witness further deposed that on 18.08.2008 at about 9:00 p.m., the police came along with a short-statured person whose face was covered with a mask and asked him whether he recognised him. He replied that the person was known as "Mufti", having previously stayed in the rented room. He has deposed that, there were about eight to ten police personnel, two to three other persons and laboratory personnel present. The police inspected the room and recovered a bag from behind a window containing pieces of wire, adhesive tape, nuts, bolts, blades and a small cardboard carton. The articles were noted down and the police thereafter left. His statement was recorded on that day.

15.214. The witness further stated that thereafter a police officer served a summons upon him requiring him to attend Court No.5, Ghee Kanta Court. He stated that he appeared before the Magistrate on two consecutive days, made a statement regarding the persons to whom he had rented the room, and signed the statement recorded by the learned Magistrate. Upon being shown the statement, he identified his signatures as well as those of the learned Magistrate and stated that the contents thereof were true and correctly recorded as dictated by him. The said

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statement came to be exhibited at Exh.7930.

15.215. The witness further stated that although a considerable period had elapsed, he would attempt to identify the persons who had occupied the room. During video conferencing, he did not identify any accused lodged in Bhopal Central Jail. However, from amongst the accused lodged in Ahmedabad Central Jail, he pointed out one accused as Aiyaz and another accused as Kayamuddin Kapadia. He also pointed out one accused whom he stated appeared to be Kayamuddin, though the said accused disclosed his name as Zahid Qutbuddin Sheikh.

15.216. In cross-examination, the witness stated that he had studied up to the Seventh Standard in Urdu medium and could neither speak, read nor write Gujarati. He admitted that whatever the police and the learned Magistrate asked him was asked in Hindi and that he answered in Hindi, whereas the same was recorded in Gujarati. He further admitted that he had gone before the learned Magistrate pursuant to a summons and that he had not read what had been recorded before the learned Magistrate.

15.217. The witness admitted that no receipt or rent note was prepared in respect of letting out the room on rent. He further admitted that when Saidur Rehman first brought the two persons, he did not ask their names or addresses, nor did he ask what work or business they carried on or why they required the premises on rent. He also admitted that he did not know Mufti's name and had not asked for the same. The witness admitted that the two persons to whom the room had been rented and the third person who had come there were not identified by him before the learned Magistrate. He further admitted that he had not furnished the description of those three persons either to the police or to the learned Magistrate and that the police had not shown him any sketches of those persons.

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15.218. The witness stated that he could not say with certainty how many times Aiyaz had visited the room and that he had never seen Aiyaz earlier. He further stated that he had not told the police that a third person had accompanied Saidur Rehman and the two tenants at the time the premises were taken on rent. He also stated that it was incorrect to say that he came to know the name of Aiyaz at the time when the premises were taken on rent.

15.219. The witness admitted that he had not informed the police after how many days Mufti had left the premises. He further admitted that, upon seeing the articles lying in the room, he did not suspect that the occupants were engaged in any wrongful activity. The witness stated that after the tenants vacated the room, the key was handed over to him and possession of the room remained with him. He further admitted that he had not stated in his police statement that a bag containing pieces of wire, adhesive tape, nuts, bolts, blades and a cardboard carton was lying behind the window. He stated that he was present at the time of the panchnama of the bag and admitted that he did not know who had placed the bag there or when it had been placed there.

15.220. In further cross-examination, the witness stated that the deposit amount of Rs.5,000/- remained with him and that, when the tenants vacated the room, they did not demand its refund. He further stated that they regularly paid rent during their occupation of the premises.

15.221. The witness admitted that the accused was brought before him with his face covered by a mask. He further stated that when the police came, they first prepared the panchnama and thereafter questioned him. He stated that the key of the room was with him and that he did not object to the panchnama recording that possession of the room was with him. He, however, admitted that he had not stated before the police or

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the learned Magistrate that the key was with him and that the occupants had not informed him that they would not return.

15.222. The witness stated that the bag recovered from behind the window was a plastic bag. He further stated that he was present at the time when the police inspected the room and recovered the bag.

15.223. The witness admitted that he had no knowledge about organisations such as SIMI, Jamaat-e-Islami, Dawat-e-Islami, Deoband, Barelvi or Ahl-e-Hadith and that, before recording of his police statement, he had no knowledge regarding SIMI, its workers, functioning or ideology.

15.224. The witness further deposed that he did not remember whether it was recorded in his police statement or statement before the learned Magistrate that the upper room had no toilet or bathroom and was vacant, that Kayamuddin was stout and Subhan was thin, or that Saidur Rehman had disclosed their names to him. He also stated that he did not remember whether it was recorded in his statements that the occupants did not visit dargahs, believed directly in Allah and had contacts with SIMI and similar organisations.

15.225. Upon perusing the evidence of this witness, it also establishes the fact that Kayamuddin and Subhan Taukir had occupied the room which was let out by this witness on rent and it was one of the hideouts and that another person known as Mufti had also stayed there for sometime. It also establishes the occupancy of the house and the subsequent recovery of articles from the room during investigation.

Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
(Secret Witness) PW	7930	09.09.2008	**1)A-15:** Mufti Abubasar @	i) States that he resides at Umravnagar and agreed to rent the upper floor of his house

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
No.1106: Firoz Dilavar Shaikh			Abdul Rashid @ Abdulla S/o Abubakar Shaikh **2)A-23:** Ayaz Razakmiyan Saiyed **3)A-37:** Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya	through a neighbour Shaydu to two persons introduced as Kayamuddin(A-37) and a bearded person named Subhan, on payment of Rs.5,000/- as deposit and Rs.900/- as monthly rent. ii) States that thereafter in the fifth month, the bearded person (Subhan) came along with Kayamuddin (A-37) on the tenth day and paid Rs.5000/- as deposit and Rs.900/- as monthly rent. States that he was informed by Shaydu that they were both from U.P. iii) States that they used to bring wooden trays and white paper and print English cards, stating that it was their business. They used to leave early in the morning at about 8 a.m. and returned late, and worked from home on Fridays. States that he did not make any further inquiries and that they appeared to belong to "Ahl-e-Adiz" sect, believed in Quran, had a rigid religious mindset and were associated with SIMI. States that he did not have much conversation with them and that they had kept a primus stove, tava, mats, two pillows, bags and Quran in their room. iv) States that after a few days, another bearded person came to the premises and upon inquiry, he appeared to be a short-built Maulvi and upon questioning as to why a third person was allowed when the premises had been rented out to only two

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Maker of Statement	Exh.	Date	Accused Implicated	Substance of Disclosure
				persons, he was told that the said person would leave after sometime. The Maulvi was addressed as "Mufti (A-15)". v) Stated that thereafter one person would come frequently to the house, and would leave upon finding the house to be locked. Upon asking Shaydu Rehman about him, he was informed that his name was Ayaz (A-23) and he resided behind Vatva. States that he used to visit frequently to meet them and that he does not know anything apart from that. vi) States that they stayed in the premises for about 2 months and on 10th July, they told that they were leaving to their native place an took their belongings in an auto rickshaw. Thereafter, the said persons did not return to settle the rent or collect deposit. States that he does not know when the Mufti (A-15) left. However, on one occasion, the police brought him, upon which he identified him. States that a panchnama was conducted during which, from behind the window, black and red wires, knives, bolts, tape and pieces were recovered from a plastic bag. States that the police seized the same under panchnama and apart from that, the room was empty and that he does not know anything else apart from this.

15.226. This witness in his deposition has attributed a role in conspiracy to the following accused persons.

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1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya
2. A-15 Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh
3. A-23 Ayaz Razakmiyan Saiyed

P.W. No.864-Abdul Farid Abdul Rasid Shaikh (Exh.6037)

15.227. Another witness on this issue is the evidence of P.W. No.864-Abdul Farid Abdul Rasid Shaikh vide Exh.6037 who has deposed that he owned four to five other houses and that one of such houses is situated opposite Saiyedpura Pumping Station, in Sopariwala Compound which is known as Master House containing about 22 to 25 rooms. He has deposed that in July 2008, there were several rooms on the upper floor which were vacant and that his son; Mohammed Shakib used to maintain the accounts of rent and deposit. He has deposed that on 09.07.2008, he received a call from a person who wanted to take a room on rent and he told that Mubarakbhai from Limbayat had given his name and number. He has deposed that thereafter the said person met him and selected Room No.21 and the rent was settled at Rs.3000/- per month and deposit at Rs.10,000/-. He has deposed that as one person named Udaybhai was residing in the said room, arrangements were made to shift him to another room and that on the next day, he instructed his son to accept the deposit, prepare the diary entry and hand over possession of the said room and that thereafter he went for Namaz and upon returning, he was informed by his son that the possession of the room had been handed over. He has deposed that thereafter there was no further meeting with the said person.

15.228. The witness has further deposed that during the investigation, police had called him and showed him the persons who had been

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arrested. Thereafter, he was called to the office of the Executive Magistrate at Killa Maidan for the purpose of identification wherein he was asked to identify the person who had rented out the room from amongst the persons standing there, whereupon he identified one person and pointed him out. Thereafter, he stated that the said person was the one who had rented out the room and that he had later come to know that his name was Kayamuddin.

15.229. The witness has deposed that as nine years had passed since the incident and that the said person back then was aged around 16 to 18 years and was fair complexioned. He has deposed that due to passage of time, it would be difficult to identify him and the said witness was unable to identify any of the accused upon being shown through video conferencing.

15.230. In cross examination, he has admitted that he had not produced any documentary proof before the police, showing ownership of the property which is situated at Sopariwala Compound or the transaction of renting out of the said room. He has admitted that he came to know the name of the person who met him for the first time, at the office of Magistrate and that he had not seen the said person earlier and had not seen him thereafter on any subsequent day. He has deposed that the police used to call him to the police station and showed him various persons and photographs and informed him that the Surat police were investigating the bomb blast case and were arresting accused persons. He admitted that the police did not seize any mobile phone from him, that the police did not break open the lock of any room and enter the room, that the police informed that the name of the person who came to meet him was Kayamuddin and that the said person had not disclosed his name to this witness. He has also admitted that he did not know

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Mubarakbhai and that he had not made any enquiry regarding him even though the person who took the room on rent had referred to Mubarakbhai. He has also admitted that when the person had first come to take the room on rent, no deposit was received from him and that the deposit was given on the next day. This witness has deposed that he went to the office of the Executive Magistrate upon receiving a call from the police and has admitted that he did not know as to he attended the office of which Executive Magistrate and that no police officer met him there. He has also denied the suggestion that he did not attend the office of the Executive Magistrate or that he did not identify the person who had come to meet him.

15.231. Upon perusing the deposition of this witness, it establishes the fact that a room in Master House, Sopariwala Compound, was let out on rent to the accused person who was subsequently identified by this witness to be Kayamuddin (Accused No.37) in the Test Identification Parade. Therefore, the evidence of this witness connects Kaymuddin (accused No.37) with the said rented house.

PW No.933-Shaikh Mohamad Rashid (Exh. 6602)

15.232. PW No.933-Shaikh Mohamad Rashid vide Exh. 6602 is a witness examined by prosecution to identify accused-Mohammad Saif Sadab of Delhi, who used to visit his shops and before the blast was residing in the vicinity of his shop, which is located near one of the hide outs.

15.233. The witness has deposed that his parlour shop is located near Barrel market and during the inquiry being made by the police in that locality, where the accused were using the house as hide out. The police inquired from him that if anyone from that house used to buy things

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from his shop, to which he informed that he knew the locals well and by name so if someone repeatedly came to his shop then he would know. His statement was recorded and then he was summoned to the Collector office, where he was made to undergo Test Identification Parade after following necessary procedure. He was asked to identify a person, who visited his parlor. The witness identified one person who used to visit his parlour prior to the blast. This person came to his shop to purchase ice-cream, water pouch on several occasions, so he knew him. Upon asking the identity, person gave his name as Mohammad Saif Sadab (accused No.38). The witnesses' police statement was then again recorded. The witness does not identify the accused in Court during deposition and gave an explanation that due to lapse of time, but offered to identify on the basis of the photograph of the relevant time. However, the Court did not permit it in view of the order passed below Exh.2828 and Exh.5500.

15.234. The witness was cross-examined regarding his running of the shop and its location, to which he answered that Al-Mohmadi Society is located in vicinity. However, he denied any information about the owners of the bungalows in society and that he has no knowledge as to who has played role in bomb-blast. The police had made inquiry from him even on the day of the blast and he was shown pictures of five-six accused, who were absconding to identify.

15.235. The police had made his inquiry on two occasions and after second occasion, he was called to Magistrate Court. He was also asked to describe to the police, who had come to inquire, but on first occasions, he had not given any description, but he had informed the police that if shown to him, he will be able to identify. He was thereafter, cross-examined about his visit to Magistrate fo Test identification. Several questions were put, but the perusal of the same does not raise any doubt

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about the test identification process. In fact, this line of question and answers given in fact confirms the holding of Test Identification Parade and the witness having identified the accused as a person from Delhi, but was at a proximate period of blast residing in the vicinity of the witness's shop located near Al Mohamadi Society. This established the circumstance of accused being one of the occupants of the hideout in Al-Mohmadi Society, which is taken by other independent evidence, is established to the house occupied and used by other accused.

Witness to planting of cycle bomb:

PW No.936-Sunil Shantilal Patel (Exh. 6613)

15.236. This is an eyewitness to the fact of parking of the bomb laden Bicycles at one place of the crowded spot (site of blast) at Gokhale Pan Parlour at Raipur Chakla.

15.237. This witness is doing a roadside business of selling phenyl and the witness has deposed that on 26.07.2008, while he was on his business at 11:00 to 12:00 p.m., he noticed two young persons from different regions. He again noticed the same two persons near Gokhle Pan Parlour and this time they were with cycles. This witness deposes that he saw one of the persons parking the cycle near Gokhle Pan House, while the other was parking a cycle near M.Naranayandas Medical Store, but he did not bother at that time, but later on at around 5:00 p.m., there was a bomb blast in both the cycles and immediately there was chaos and there were several injured for whom 108 Ambulance came there. He being scared and went home and when he had informed his mother about the two persons came with bicycle, which were blasted, his mother prevented him from going to police and told not to get involved

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in this case. Later on, after the arrest of the accused was made, he informed some of his elders, who advised him to go to police in Gaekwad Haveli Crime Branch. Hence, he approached the police alongwith his elders and he gave his version to the police and when police asked about their appearance, he described them that they looked like collegians and that he would be able to identify them.

15.238. He deposed that on 10.12.2008, the police summoned him to Gheekanta Court and there he was asked to undertake test identification parade. He deposes that the Executive Magistrate undertook the formality and asked the witness to identify the person and also asked how he knew the persons identified, to which the witness identified the person as the one who he had seen him on the day of incident while he was parking the cycle, which were blasted. The Magistrate then asked the details of the accused, who gave his name as Mohmamad Arif Mirza of U.P. Thereafter, again the statement was recorded by police.

15.239. The witness was cross-examined about his business to create doubt that he was not all doing business of phenyl as he had not produced any bill about his business, to which he has deposed that he was doing a roadside business by buying phenyl in wholesale and then selling it in retail for which he did not have to maintain account or pay sales tax.

15.240. He has denied that he did not convey the appearance of the accused to the police. He also denied that he has not stated before the police about his mother preventing him not to be involved in this. The policeman took him to the site of blast after his statement and even before that police did visit the place, but he did not meet the police.

15.241. He has in cross-examination replied that he had gone to police with some elders, but the police had not recorded the statement of elders.

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He also denied that he has not stated in police statement that after the blast, there was chaos and there was a blast on the cycle, which were brought by these young persons and that there were injured persons who were taken to hospital by 108 Ambulance However, he admits that in the police statement, he has not stated that he read about the arrest of accused in newspaper after four months. He has answered that near his place of business, many persons were parking bicycles and he has not mentioned to the police that how many people had parked bicycles on that day and the police has not asked him about it. He has denied that he has cooked up a story to help police and to save himself from the trouble from police as he used to commit illegality in his business.

15.242. This witness was further cross-examined on behalf of other accused by Shri Shaikh about his business, his place of business and about the geography of the location to create doubt about the visibility from his place of business to the site of blasts near Gokhle Pan and M. Narayandas. He has denied the suggestion that it is not possible to see all that is happening from his place of business, to the blast site.

15.243. He has admitted that the area of his business is busy area and always crowded during the day time and many collegians pass through the road and many of them were on cycle. This line of questions is to create doubt on witness, as to his ability to identify young persons, who plated the cycle bombs. However, the cross-examination has not been able to create any doubt on the version of this witness. The Court finds that the witness to be reliable and trustworthy about his version and also to identify the accused.

15.244. Upon perusing the deposition of the witnesses in view of the principles discussed hereinbefore, the Court is of the view that the occurrence and role of each of the accused is distinctly brought on

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record and fully established. There is no acceptable reason to discard the testimony of the witnesses which is otherwise reliable and trustworthy. The prosecution case cannot be disbelieved merely on the ground of non-joining more number of public witnesses if the deposition of the witnesses are convincing and credible. In the present case, during trial, statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973, have been duly proved by identification of their signatures, and the said statements form part of the case record. During the cross-examination of the witnesses, their attention was drawn to their previous statement recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 for the purpose of contradicting as provided under Section 145 of the Indian Evidence Act. However, the contradiction are not of such a nature so as to affect the case of the prosecution or to discredit the testimony of the witnesses.

15.245. The Court may also refer to the decision of the Apex Court in the case of **Yogesh Singh v. Mahabeer Singh (2007) 11 SCC 195** wherein it is was observed that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of prosecution case and should not be taken to be a ground to reject the prosecution evidence. It is further observed that the omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is further observed that it is only the serious contradictions and omissions which materially affect the case of prosecution but not every contradiction or omission.

15.246. Therefore, minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the

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mind of the court. There is no exaggeration in their version and even in their cross examination, they have maintained what they have said in their examination-in-chief. They are trustworthy and reliable witnesses and there are no major omissions or contradictions in the depositions of these witnesses.

Witnesses to procurement of materials for preparation of bomb:

15.247. The explosive device was assembled by using several articles as is evident from the seizures made from the scene of offence as well as the unexploded bomb. It is found that material like ball bearings, nuts and bolts were stuffed into the device which would upon explosion, act as a projectile. Therefore, the nuts and bolt though innocent hardware material, when used in the manner mentioned hereinabove as a part of bomb, would be lethal. Therefore, the procurement of nuts and bolts in bulk (15 to 16 kgs.) is an important circumstance to establish the connection of the accused with the offence. Therefore, the Court may refer to the deposition of the concerned witness.

PW No.855-Jayeshbhai Manubhai Patel (Exh.6010)

15.248. The Court has perused the evidence of PW No.855-Jayeshbhai Manubhai Patel vide Exh.6010, who has deposed that he was working in the shop of his paternal aunt's son which was in the name of "Kamla Hardware Mart" which mainly dealt in nuts, bolts and washers of different companies/marks such as SPI, LMS, BABA, CM, MOTI etc. He has deposed that he was doing the work of preparing bills, receiving cash etc. in the said shop. During July 2008, one boy had come the shop to purchase nuts, bolts and washers but did not know their size. Upon being shown different sizes, the boy purchased around 15 to 16 kgs. of

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nuts, bolts and washers. He has deposed that the boy remained in the shop for around half an hour to one hour and upon asking the boy for a visiting card so that the future transaction could be made on the same terms, the boy stated that he would provide the card on the next visit.

15.249. He has further deposed that on 27th or 28th August, 2008, the police came to him and called him to the DCB Office at Surat, whereupon, he attended the DCB Office on 29.08.2008 where he was questioned and was thereafter, asked to attend the office of the Magistrate at Killa. Upon being asked by the Magistrate, whether he could identify the boy who had purchased nuts and bolts from his shop, he identified the person by holding his hand and bringing him out from amongst the eight to ten persons standing in line. The said person disclosed his name as Tanvir Mohammad Akhtar (A-63) and stated that he was a resident of Katargam. This witness stated that he was the same boy who had come to his shop to purchase nuts and bolts. The accused was successfully identified in the Test Identification Parade being Exh.3079 proved by the concerned Executive Magistrate. The Court has already discussed the reliability of Test Identification Parade under the Chapter of "Identification" in "Issues". This witness has deposed that due to lapse of time and change in appearance, particularly due to the growth of beard, he was unable to identify the accused shown to him through video conferencing. The witness was also shown muddamal iron bolts at Sr.No.7 of muddamal list at Exh.2350, which bore SPI mark and he has deposed that the same bore the company mark of the goods sold by their shop.

15.250. In cross-examination, this witness has deposed that his work in the shop was limited to preparing bills and receiving money and that he did not maintain accounts or work as a sales man. He has admitted that

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the bill books and books of account were maintained however they were not seized by the police or produced before them. He has also admitted that he had not given the description regarding the age, height or complexion or the boy who purchased nuts and bolts to the police. He has deposed that after being questioned by the police at the DCB Office, he went to Killa on his own and was not accompanied by any police personnel. He has also admitted that he did know the name or designation of the Magistrate and that apart from himself, the Magistrate and one or two panch witnesses, there was no one else present in the office. He has deposed that he left after the same and that he was not questioned thereafter by the police.

15.251. He has deposed that at the time when the nuts and bolts were sold two other persons namely Abbasbhai and Laxmanbhai were employed at the shop and the boy was attended to by Abbasbhai. He has also admitted that he had not told the police about the size of the nuts and bolts which were sold and that even at the time of the deposition, he was unable to state the same. He has deposed that the boy had informed him that he resided at Katargam, Bharimata and that nothing further had been disclosed. He admitted that he could not state whether the nuts and bolts purchased were of the same size or of different sizes. He has further admitted that he had not been shown the muddamal articles earlier and that apart from the SPI mark, no such mark was present so as to indicate that they had been sold from the shop. Also, he possessed no documentary evidence so as to establish that the muddamal articles were sold from his shop. He has also admitted that between the dates of sale and his visit to DCB Police Station, the police was not informed that such a boy had purchased goods from him. He has also admitted that no summon had been issued to him by the DCB Police and that he was not

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informed one or two days in advance that he had to attend the Magistrate's Court. Also, he has deposed that he was not asked anything else apart from his name and address by the Magistrate.

15.252. Upon perusing the evidence of this witness, it is sufficiently established that a boy had been supplied with around 15 to 16 kilograms of nuts and bolts from Kamla Hardware Mart and even during the Test Identification Parade, this witness has identified accused No.63-Mohammad Tanvir @ Talha S/O Mohammad Akhtar Pathan to be the person, who had purchased the nuts and bolts from his shop. Therefore, the evidence of this witness connects accused No.63 with the procurement of nuts and bolts, creating an additional link in the chain of circumstances in the larger conspiracy, with a common object of causing blasts.

15.253. The Court has also perused 313 statement of this accused wherein no explanation is offered and the accused pleaded ignorance to the question with regards to Exh.6010/P.W. No.855-Jayeshbhai Manubhai Patel, which pertains to purchase of nuts and bolts in bulk quantity despite the accused not being in the business of hardware.

PW No.983-Nareshbhai Ambalal Mehta (Exh.6846)

15.254. The Court has also perused the evidence of PW No.983-Nareshbhai Ambalal Mehta vide Exh.6846 who had been carrying on the business in the name of 'Hardik Plywood and Hardware" at Bharuch and dealt in the sale of plywood, hardware articles, nails, metal sheets and other building materials. He has deposed that on 18.11.2008, police from Surat came to his shop and enquired whether any person had purchased metal sheets and nails from him, to which, he informed the police that many persons purchased such articles from his shop. The police also

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asked him whether any person named Rafik had purchased nails or metal sheets from him to which he replied that as many customers purchased such articles and cannot identify everyone however, if the concerned person was shown to him he might be able to identify him. His statement in that regard was recorded by the police.

15.255. He has deposed that on the next day he received a phone call from Surat Crime Branch and he was informed that a person named Rafik had purchased nails and metal sheets from his shop and he was to be identified and therefore, he was required to come to Killa in Surat. Accordingly, he attended the office of the Magistrate at Nana Chowk Killa, Surat. His name and address were recorded and thereafter, he was asked to sit in a separate room. After waiting for 45 minutes to one hour, he was called before the Magistrate and was taken to another room wherein his name and address was inquired. He was thereafter, asked to identify the person who had purchased nails and metal sheets from his shop from amongst the 10 persons who were standing in a line. According to the witness, he has described the said person to be tall and around 6 feet with a fair complexion and a light beard. He identified him from amongst the line of persons, and thereafter, held his hand and brought him out. Thereafter, he was directed to sit outside. The witness has deposed that he was thereafter, called by the police who asked him to state about the proceedings that had taken place, whereupon he came to know that the name of the person whom he had identified was Fazale Rehman. He has deposed that it had been eight to ten years since he identified the said person however, he would try to identify him if shown to him. This witness was thereafter, shown the accused through video conferencing from Bhopal Central Jail however he was unable to identify the accused owing to lapse of time.

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15.256. In cross-examination, he has admitted that there are other hardware and plywood shops which are nearby to his shop. He has deposed that he and another employee namely Vasant Dahyabhai Patel have been working in the shop and that both of them supplied goods to customers. He has deposed that metal sheets were kept in rolls and nails were kept in boxes and that the nails were sold by weight, were of different sizes and kept in different boxes. He has deposed that the metal sheets were kept in full size and were cut as per the requirement of the customers. He has deposed that he maintained books of accounts, purchase bills, sale bills and challans. He has deposed that he did not issue bills to every customer unless it was demanded and that he did not obtain the customer's signature on the bill. He has deposed that on 18.11.2008, when the police came to him he had not handed over any purchase or sale bill and that even the police had not inspected or signed on such bills. He has deposed that the police had not informed him on what date or time the person named Rafik had come to his shop. He has deposed that on 18.11.2008, the police had not brought Rafik to his shop or shown him any nails or metal sheets or any accused person who pointed out his shop as the place from where he had purchased the material.

15.257. He has admitted that on 18.11.2008 he had not given the description of the person who had purchased the nails and sheets, nor had the police made any sketch of such a person. He has deposed that prior to 18.11.2008, he had not informed the police that any suspicious person had purchased nails and metal sheets from his shop.

15.258. This witness has deposed that he had not maintained any record of the phone call he received from Surat and that he could not remember the details of the conversation. He had admitted that he had not been

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served with any summons or document requiring his presence at Surat. This witness has also admitted that he had not informed the police that the name of the purchaser was Rafik and that he first came to know the name to be Fazle Rehman when he went to the police office after leaving the office of the Magistrate. He has deposed that the Magistrate had neither informed him that the person identified by him was Fazle Rehman nor asked the accused about his name in his presence.

15.259. The witness has admitted that he did not have any written document which directed him to appear before the Magistrate and that except for asking about his name and address, the Magistrate had no further conversation with him. He has also deposed that from the room he was seated the Magistrate's room and the movement of persons could be seen.

15.260. The witness has deposed that the police had recorded his statement only once on 18.11.2008. He has further admitted that when the police referred to the nails or metal sheets they did not inform him about the type or quantity of the same. He has also admitted that the police had not asked him about the physical description of the person to whom he had sold the nails and metal sheets and that even he had not told about such description of the person to the police.

15.261. Upon perusing the evidence of this witness, it connects the accused Fazle Rehman (Accused No.45) with the procurement of metal sheets and nails from 'Hardik Plywood and Hardware'. It is pertinent to observe that the very nature of the ply wood or the galvanized sheet is the part of assembling of the bomb which is reflected in the scene of offence panchanama exhibited elsewhere. This evidence hereby constitutes an additional circumstance in the larger conspiracy, which was with a common object of causing bomb blasts resulting in mass

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killings.

PW No.924-Sarfaraj Abdulrahim Ajmerwala (Exh.7010)

15.262. The Court has perused the evidence of PW No.924-Sarfaraj Abdulrahim Ajmerwala in connection with the alleged purchase of plastic barrels by Kayamuddin Kapadiya (accused No.37). This witness has deposed that he carried on a business in the name of "S.A. Ajmerwala", which dealt in used plastic barrels and carboys. He has deposed that the police asked him as to whether any person had purchased barrels from his shop, to which he had informed the police that he would be able to identify such a person if he was shown to him. Thereafter, he participated in a test identification parade, which was held on 17.12.2008 at Gheekanta Court before the Executive Magistrate, wherein this witness was asked his name, business and was then asked to identify the accused person from amongst the six persons standing in line. After examining them, he brought one person out of the line and upon asking the name of the person who had been so identified, he disclosed it to be Kayamuddin Kapadia (accused number 37), whereupon this witness informed the Magistrate that he was the person who had come to his godown once or twice to purchase the barrels. After completion of the proceedings, his statement came to be recorded by the police. However, during the deposition before the court, he was unable to identify the accused due to lapse of time and change in appearance as most accused had long beards whereas earlier, the accused was clean shaved.

15.263. In cross-examination, this witness has deposed that although accounts and bill books were maintained, bills were issued only if the same was demanded by the purchaser. He has also deposed that he did

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not remember whether any bill was demanded by the purchaser (accused) or whether the police asked for the bill relating to the sale of such barrels. He has deposed that any of the three brothers who were managing the business could independently sell the barrels, and that he did not remember the exact date, time, or number of the barrels which were sold. He has deposed that the sale, to the best of his knowledge, took place on 23rd or 24th July 2008. He has deposed that before the parade he had not met anyone and that apart from the Magistrate, two other officers and six persons standing in a line were present during the test identification parade. He has also deposed that his brothers were sitting at the shop, and that the police had not made any inquiry with them.

15.264. Upon perusal of the deposition of this witness, it establishes that Kayamuddin Kapadiya (accused number 37), was identified by this witness during Test Identification Parade to be the person who had purchased the said barrels from his shop, thereby connecting Kayamuddin (A-37) with the procurement of barrels.

15.265. The investigating officer during the investigation having found the barrels/carboys recovered during the course of investigation connected with the hideouts therefore, had to make inquiry about the barrels.

15.266. <u>This witness in his deposition has attributed a role in conspiracy to the following accused persons.</u>

1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

<u>PW No.927- Mohammad Rizwan Mohammad Hanif Dudhwala (Exh.6583)</u>

15.267. The Court has perused the deposition of PW No.927- Mohammad Rizwan Mohammad Hanif Dudhwala at Exh.6583 who runs a shop in the name of “Royal Gas Stove Centre” which dealt in gas cylinders, gas

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stoves and spare parts, and has been examined in connection with the alleged purchase of two gas cylinders by accused No.37-Kayamuddin Kapadiya.

15.268. The witness has deposed that on 05.08.2008, Crime Branch officers came to his shop in connection with the bomb blasts and enquired regarding the sale of gas cylinders. He informed them that a person, who was fair, thin and about five feet in height, had come a few days earlier and purchased two gas cylinders by paying Rs.1,500/-, though normally customers purchased only one cylinder and also informed the police that he would be able to identify the said person if shown to him. He thereafter participated in the Test Identification Parade held before the Executive Magistrate, wherein he identified accused No.37-Kayamuddin Kapadiya as the person who had purchased two 5 kg gas cylinders from his shop. However, during his deposition before the Court, he was unable to identify the accused due to lapse of time and change in appearance. He also identified the muddamal burnt gas cylinder (Muddamal List Exh.461) as being of the same type as those sold by him.

15.269. In cross-examination, he admitted that similar gas cylinders were available with several dealers, that he did not maintain any bills or records regarding purchase or sale of cylinders, identity of purchasers or quantity sold, and that he did not affix any mark or identification on the cylinders sold by him. He further admitted that he possessed no documentary proof regarding the sale of two gas cylinders. However, he stated that he remembered the purchaser as he had purchased two cylinders together, whereas normally every customer purchased only one cylinder. He denied the suggestions that he had not sold the cylinders, that the police had shown him the accused before the Test Identification

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Parade, or that he was deposing falsely at the instance of the police.

15.270. Upon perusing the deposition of this witness, it establishes that accused No.37-Kayamuddin Kapadiya was identified by him in the Test Identification Parade as the person who had purchased two 5 kg gas cylinders from his shop, which came to be used in the blasts that had taken place, thereby, connecting this accused with the offence. The Investigating Officer was required to make investigation about the gas cylinders as it was part of the explosion which took place when the bomb laden cars exploded.

15.271. <u>This witness in his deposition has attributed a role in conspiracy to the following accused persons.</u>

1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

<u>PW No.1017-Vinod Sirumal Jumani (Exh.7010)</u>

15.272. The Court has perused the evidence of PW No.1017-Vinod Sirumal Jumani at Exh.7010 , who runs the shop named S.K. Electricals, and from whose shop Kayamuddin Kapadiya (accused No.37) is alleged to have purchased 50 bulbs and 13 batteries. This witness has deposed that he runs the business of selling electrical instruments, batteries, bulbs, and other electrical articles. He has deposed that on 12.12.2008, police person along with an accused, namely Kayamuddin (accused number 37) and two panch witnesses had come to his shop and informed him that the said accused had purchased 13 batteries and 50 bulbs from his shop. The witness has deposed that he had informed the police that he used to regularly sell such articles and that many customers used to purchase the same from his shop. His statement in this regard was recorded. During the course of his deposition before the court, he was unable to identify the accused due to lapse of time.

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15.273. In cross-examination of this witness, he has admitted that he does not maintain any stock register or sales account, does not issue any bill for the articles sold and that he only keeps such material as is required for repair work. He has also deposed that the accused had not told him that he had purchased the articles and that it was the police who had informed him about the said purchase and the date of the purchase. However, this accused has denied the suggestion that he had falsely deposed that the police brought the accused person to his shop.

15.274. The Investigating Officer had investigated regarding the purchase of the bulbs and batteries as the bulbs served as a testing of a complete circuit of the bomb device and batteries were found to be part of the explosive device in the timepiece (alarm clocks) used as a timer in the explosive device.

15.275. <u>This witness in his deposition has attributed a role in conspiracy to the following accused persons.</u>

1. A-37 Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya

16. Accused-wise discussion of the evidence

16.1. In case of Jahid S/o Kutubuddin Shaikh (Ahmedabad) (A-1)

(Accused No.1 in Criminal Confirmation Case No. 2/2022 and Appellant No.1 in Criminal Appeal No. 727/2024):

16.1.1. In case of accused No.1-Jahid S/o Kutubuddin Shaikh, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.1.2. Learned Advocate Mr. Somnath Vatsa on behalf of accused No.1-Jahid S/o Kutubuddin Shaikh has submitted that the case of the prosecution against this accused is that he has been associated in the

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conspiracy from the beginning, as he has been a member of SIMI, who had organized and attended the alleged terror camp at Vagamon and Halol. However, there is no evidence of the accused attending such camp or having any SIMI connections. It is submitted that there are weak and scant evidence, which the prosecution is loosely connecting the accused with the crime like connecting the accused with house No.10 of Al-Mohammadi society or some email communications.

16.1.3. The evidence largely relied upon is that of the confessional statement of co-accused Imran at Exh.8619. It is submitted that as it is the evidence of a co-accused, even if it is a confessional in nature, cannot be treated as a substantive piece of evidence. In any case, such confessional statement stands retracted within two weeks of its making. Even if the prosecution is treating such evidence, still it can only be corroborative piece of evidence, and where there is no substantive evidence, there is no question of relying upon a corroborative piece of evidence.

16.1.4. It is submitted that even if the confessional statement of co-accused Imran is taken into consideration, then also such statement was made on 14-11-2008, and therefore prior thereto, there does not appear to be any sort of evidence to implicate accused No.1-Jahid S/o Kutubuddin Shaikh, and therefore, it is argued that prosecution had nothing to implicate him as an accused.

16.1.5. It is submitted that the prosecution has also relied upon pointing out Panchnama Exh.6480 as evidence against accused No.1-Jahid S/o Kutubuddin Shaikh by considering it to be of Panchnama executed under Section 27 of the Evidence Act. However, it is argued that Exh.6480 does not meet with the requirement of Section 27, as the prosecution has not pointed out as to why the accused at all was taken to

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Halol, and what were the circumstances with the investigation, on the basis of which, accused No.1- Jahid S/o Kutubuddin Shaikh was connected with Halol. The investigating officer, who had conducted Exh.6480 Panchnama at the relevant time, had expired and has not been examined as witness and thereafter, there is no such explanation. It is also argued that in the Panchnama, the Panch witness is from Halol and therefore, the Panchnama which was drawn at Ahmedabad, how the witness of Halol was present is a question. It is submitted that as the disclosure made in the Panchnama, the police was present and therefore such voluntary disclosure is hit by section 25 of the Evidence Act as well as Section 126 of Cr.P.C.

16.1.6. Learned Advocate has argued that in the pointing out Panchnama, several articles have been recovered, which the prosecution has narrated in the Panchnama to contend that a terror camp was held at the site disclosed by this accused No.1- Jahid S/o Kutubuddin Shaikh. However, from the answers given by one of the witnesses, i.e. Idrish Munjavar, Exh. 7923, who has mentioned that it was also a site of holding of Urs and therefore, the articles recovered from the site can belong to the activity of Urs undertaken there.

16.1.7. It is argued that even if the prosecution is able to establish holding of the alleged terror camp, prosecution has not been able to establish the link between the two alleged terror camps, one at Vagamon in Kerala and another at Halol in Gujarat and as no witness has deposed that there is commonality in the camps organized and that at the camp there was any discussion or meeting of minds to carry out the bomb blast in Ahmedabad. In this regard, learned Advocate has drawn attention of this court to PW No.1115 at Exh.8002- Mohammad Mansuri to submit that this witness has already indicated that the investigating

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officer was aware of Halol and Kerala camps, as there was already some action on the part of Madhya Pradesh police, which had come in search of one of the accused Kayamuddin in April 2008, much before the incident of July, 2008 and therefore, when investigating Officer was aware of the holding of camp within exact place in Halol, the drawing of pointing out panchnama of Halol camp, cannot be said to be not within the knowledge of investigating officer. In this regard, the court may observe that the knowledge attributed about holding of Halol camp is that of the Madhya Pradesh police, as is deposed by the aforesaid witness. It is also submitted that the fact that the investigating officer was already aware of Halol camp even before accused No.1- Jahid S/o Kutubuddin Shaikh could be taken to Halol for pointing out Panchnama, is evident from the newspaper reports of the relevant time, as during the remand period, it was in public domain through the newspapers and media reports that the investigating officer has found some connection of the blast with the terror camp at Halol. It is submitted that in this regard, the application Exh.9154 was given by accused No.1- Jahid S/o Kutubuddin Shaikh to call upon the editors of such newspapers for being examined as witness to bring on record the source of their information, as the defence doubts that the source of the information was the investigating officer himself and therefore, there was no new discovery of the site of so-called terror camp.

16.1.8. The court has perused Exh.9154 which was decided on 9-10-2010. Such application came to be rejected, against which no appeal has been preferred and therefore, the court finds that non-examining of certain newspaper editors as witness has not prejudiced the case of accused No.1- Jahid S/o Kutubuddin Shaikh.

16.1.9. It is cursorily submitted that there is a correlation between

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the deposition of PW No.115 with the application at Exh.9154 and Exh.9300 for examining the editors of the newspapers, as in the newspaper the pictures of Halol site have appeared and therefore, to probablise defence on the point that the site was not in the exclusive knowledge of accused No.1- Jahid S/o Kutubuddin Shaikh, but it was also known to the police and that is the reason why the police without their being any reason had directly taken accused no.1-Jahid S/o Kutubuddin Shaikh to Halol.

16.1.10. In this connection it is observed that Exh.6480 is a panchnama, which is executed in two parts and the first part of the panchnama was executed in Halol itself from where the local panch witnesses have been procured. Moreover, in the initial investigation itself obviously upon the interrogation of the arrested accused the clue for holding of any such terror camp would have been revealed, which would lead to investigation in the direction of Halol.

16.1.11. Learned advocate has thereafter made submissions regarding the three eyewitnesses i.e. (1) Ambalal Vechatbhai Boriya- PW No.1067, (2) Ramkabhai Devkaranbhai Kesariya- PW No.972 and (3) Idrish Munjavar- PW No.1105, to the holding of the terror camp in the jungles of Pavagadh and Halol by submitting that they are chance-witnesses, who were unable to make any doc identification and therefore, the test identification of the accused through these witnesses cannot be relied upon. The presence of chance- witnesses has not been explained and therefore, are not reliable evidence.

16.1.12. Similarly, the evidence of another witness- Idrish Munjavar- PW No.1105 through him there is no test identification parade and therefore, whether he is a genuine witness is doubtful.

16.1.13. Learned advocate has submitted that the role attributed by

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witness PW No.957/ Exh. 6687- Zakir Husein, wherein in Para No.5, wherein he has mentioned a cause that Accused No.1-Jahid S/o Kutubuddin Shaikh had mentioned about arrest of his brother for which, he wanted to take revenge but the same cannot be connected or presumed that when he said that something has to be done as to really referred to causing of bomb explosion. In this regard the perusal of deposition of PW No.957 would clearly indicate that the witness mentioned the word (Dhadaka) in his deposition, which clearly means explosion. It is therefore submitted that only on the basis of an association of the accused with the other co-accused cannot lead to the presumption that he had actively participated but something more is required to be attributed to accused no.1- Jahid S/o Kutubuddin Shaikh for conviction which has a serious consequence. He has also submitted that this witness in general is not a reliable witness in view of changes in the version in his deposition, particularly, the version of the witness in section 164 statement and the deposition. It appears that learned Advocate has referred to the omissions recorded in the deposition as compared to the statement under section 164. However, it is pertinent to point out that the version of the witness was evident in section 161 statement before the police and therefore, the clarification of the witness that only with regards to the important issues that the witness has made the statement under section 164, whereas the statement before the police was in greater detail to which he has stood by during his deposition before the court. The Court may refer to the questions which were put before this witness with regards to the delay in making the statement to which in para no.41 he has stated that on 16-10-2008 after the incident on his own volition had approached the concerned police station giving his version, which was thereafter recorded on 17-10-2008. Considering

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the nature of offence and the extent of investigation, the court does not find that the statement of the witness was recorded belatedly.

16.1.14. Learned Advocate has also assailed the SDS test report on the ground that the same cannot be treated as a reliable piece of evidence, but is only an opinion, which is not sufficient to support the conviction. The court in this regard has perused the evidence of the witness Vasant Patel PW No.848 at Exh.9498 and the two reports at Exh.5900 and Exh.5901.

16.1.15. The defence has thereafter assailed the evidence of prosecution in the form of pointing out panchnama dated 19-09-2008, where he pointed out house No.10 of Al-Mohammadi society by submitting that the entire initial investigation is shrouded in doubt as the applicant was arrested on 16-08-2008, at the same time several other accused were arrested. He has referred to other accused persons, who were arrested by DCP, Gaikwad Haveli, but there is nothing on record as to how all of them were gathered and arrested at a time. According to learned Advocate, the accused was detained and was kept in illegal custody for almost period of two weeks prior to the arrest. In this connection, the court has already perused the evidence on record with regards to the remand reports and the judicial orders passed in this connection, wherein from the record, it appears that the accused was fully represented by the respective advocates and nothing has come on record, even at that initial stage that there was any incident of illegal detention.

16.1.16. Learned advocate has also raised doubts on the pointing out panchnama Exh.6656 executed on 19.09.2008 by comparing it with Exh.5913 being report of mobile FSL. This report mentions name of Shri Dahiya on behalf of FSL being present during the course of the

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panchnama. However, in the panchnama there is no mention of the presence of Shri Dahiya.

16.1.17. Moreover, with regards to mentioning of chance print of finger on the CD also there is discrepancy in the report and the panchnama. The mobile unit of FSL does not refer to taking of any chance-print nor there is any photography of such chance-print on the CD. Therefore, how the investigation has brought on the record the fingerprints on CD though not ordered by any of the FSL officers is a question mark. Therefore, as also pointed out about the discrepancy in the deposition of PW No.958 on behalf of the FSL with regards to the fingerprint and submitted that in the deposition reference is made to preserving of the fingerprint, but in the panchnama, no process in detail has been written. It is submitted that though the issue of fingerprint pertains to co-accused Mohammad Saif accused No.38, learned advocate has raised this issue to bring out unreliability of the investigation. Learned advocate has argued this point to make out the case that if accused no.1-Jahid S/o Kutubuddin Shaikh is sought to be connected to accused no.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, and the house through the fingerprint of co-accused and therefore, the process of taking of fingerprint and connecting it with accused no.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh itself being faulty will not be able to establish the connect of the accused with the house.

16.1.18. Learned advocate has thereafter assailed the evidence at Ehx.5766, which is the opinion of the FSL and submitted that the entire opinion does not refer to any explosive substance or article to connect the articles recovered from the house with the explosion and therefore, if the house is not connected with the explosive, in that case, the

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connection of the applicant with the house is also irrelevant. It would be pertinent to observe that the opinion of the FSL does mention the presence of nitrite and nitrate, which even according to the opinion of the experts is an explosive substance.

16.1.19. Learned advocate has thereafter referred to diary, which was found during panchnama containing the handwriting. However, Exh.7958- the report of FSL Department though refers to the presence of the diary with the handwriting, there is no analysis of the handwriting, which would connect Accused No.1-Jahid S/o Kutubuddin Shaikh with the diary. Therefore, when the article is seized in the panchnama does not connect any accused including Accused No.1- Jahid S/o Kutubuddin Shaikh, the pointing out panchnama not connecting the article to any accused loses its significance.

16.1.20. Learned Advocate has lastly submitted that the prosecution has tried to connect Accused No.1- Jahid S/o Kutubuddin Shaikh with the Al-Mohammadi society, however, in connection with the Al-Mohammadi house, the owner Fukhrajbanu has been examined as PW No.943. Thereafter, broker Arif has been examined as PW No.953 and even the waterman delivering the water to the house has been examined at Exh.6586 and none of these witnesses, though are good witnesses for establishing the connect of Accused No.1- Jahid S/o Kutubuddin Shaikh with the house have not mentioned anything about Accused No.1- Jahid S/o Kutubuddin Shaikh.

16.1.21. Learned Additional Advocate General for the prosecution has submitted that common charge of conspiracy was framed against all the co-conspirator-accused including Accused No.1- Jahid S/o Kutubuddin Shaikh. In addition to the principal charge of conspiracy under Section 120 (B) of IPC, Accused was also charged with the offences punishable

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under Section 302 of IPC and other offences of IPC. Moreover, accused was charged with Section 16(1)(a)(b) and other offences of UAPA as accused committed following acts.

16.1.22. It is submitted that Accused No.1- Jahid S/o Kutubuddin Shaikh attended Vagamon and Halol Training Camp. Accused No.1-Jahid S/o Kutubuddin Shaikh made disclosure and pointed out Halol Training Camp site from where incriminating articles like busted balloons (target practice), pellets, cap of pipe etc. were recovered. Accused No.1- Jahid S/o Kutubuddin Shaikh also undergone different activities of terror training camp which would include preparation of bombs etc along with other conspirators whose ultimate object was to commit mass killing and take revenge of human loss suffered by Muslims.

16.1.23. It is submitted that accused No.1-Jahid S/o Kutubuddin Shaikh is consistently involved by Accused No.2-Imran S/o Ibrahim Shaikh, accused No.21-Mehandihasan @ Vikki S/o Abdul Habib Ansari and accused No.35-Rafiyuddin S/o Sarfuddin Kapadiya in their confessional statement which are proved to be voluntary and lends corroboration to the other evidence on record, regarding conspiratorial acts of accused who were involved in terror training camp.

16.1.24. It is also submitted that moreover if the conduct, 3 of other accused no.16-Abbas S/o Umar Sameja, accused No.35-Rafiyuddin S/o Sarfuddin Kapadiya, accused No.66-Mohammad Shafiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/o Abdulbari Ansari, accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/o Babukhan Maniar, accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/o Maskur Ahmed, accused No.78-Tausifkhan @ Atiq S/o Sagir Ahmedkhan Pathan who also pointed out Halol Training Camp

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Spot and other places are taken account into then it can be said that they had a common knowledge of their participation in such camp.

16.1.25. It is also submitted that evidentiary material which would show that different objects like pellets, basted balloons etc were found from said camp side which would fully support the arrangement of such camp at such site which has been attended by different conspirators including Accused No.1- Jahid S/o Kutubuddin Shaikh.

16.1.26. It is submitted that after Accused No.4-Samsuddin Shaikh's Nana's house meeting one another, conspiratorial meeting took place which is attended by Accused No.1- Jahid S/o Kutubuddin Shaikh along with Accused No.5-Gyasuddin @ Gyasu S/o Abdulsalim Ansari, accused No.18-Javed Ahmed S/o Sagir Ahmed Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and deceased conspirator Mujib. In this meeting Accused No.1- Jahid S/o Kutubuddin Shaikh stated that we all have to show our strength to police and we should cause blast in public to condemn Government. This material is emerging from evidence of PW No.957/ Exh.6687 Jakir Hussein.

16.1.27. It is submitted that as Accused No.1- Jahid S/o Kutubuddin Shaikh made disclosure and pointed out the house 10 Al-Mohammadi Society from where incriminating articles like material for preparing bombs were recovered. This house was rented by Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya. Moreover Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri is also connected with occupying this house. Over and above, these facts the utensils found from the 10 Al-Mohammadi Society House were purchased by Accused No.8-Yunus S/o Mohammad Mansuri.

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16.1.28. It is argued that over and above, presence of nitrite and nitrate mulako (radicals) and material for preparing bombs, fingerprints of Accused No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh was also found from this house.

16.1.29. It is submitted that moreover, if the conduct of other accused nos.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, 37-Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya, 27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri, 28-Afzal @ Afsar S/o Mutallib Usmani (Musalmaan), 36-Mohammad Arif Nasim Ahmed Mirza, 47-Ahmed Bava @ Abu S/o Abubakr Barelvi, 50- Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan and 75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/o Maskur Ahmed who also pointed out 10 Al-Mohammadi Society House as well as other places are taken into consideration then all this accused are directly concerned and connected with 10 Al- Mohammadi Society House from where different articles, objects which would include articles as like material of preparing bombs, chance fingerprint of Accused no.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh etc are found, hence their conduct of pointing out this particular house would be relevant falling U/s 8 of evidence act.

16.1.30. Learned advocate for State has submitted that circumstance and conduct of Accused No.1- Jahid S/o Kutubuddin Shaikh whereby he pointed out his shop name Seema Communication Nagori Complex near Danilimda from where recoveries of articles like ball bearing balls etc were made is relevant as similar type of ball bearing balls are also found from 10 Al-Mohammadi as well as different scene of offences, also from the body of different victims and from live bombs. This circumstance against Accused No.1- Jahid S/o Kutubuddin Shaikh makes him

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principal conspirator and also connect him with all other co-conspirator who are also connected with all the above referred circumstances which are conspiratorial circumstances.

16.1.31. It is submitted that moreover, as per the evidence on record Accused No.1- Jahid S/o Kutubuddin Shaikh has also used Cyber Cafe with other accused i.e. Accused Nos.12, 16 and 37 during conspiracy.

16.1.32. It is submitted that furthermore, Accused No.1- Jahid S/o Kutubuddin Shaikh is member and associates of banned terrorist organization SIMI. As per the evidence on record other accused who also aided in terrorist act are also connected with members of SIMI and associates of SIMI.

16.1.33. It is submitted that the cumulative effect of proved circumstances against accused persons who are connected with both the training camps, conspiratorial meeting, who got on rent different houses and also got connected with preparation of bomb, used cyber cafe, associated with SIMI and involved in other conspiratorial acts should also be taken into consideration, in determining the guilt of accused instead of appreciating all such circumstances independently against each accused as argued by defence. All the circumstances together connecting all the accused needs to be taken into consideration collectively as all the accused are conspirators and are doing their acts in achieving their common object of mass killing.

16.1.34. It is submitted that as there is prima facia evidence affording reasonable ground to believe that all the accused were part of conspiracy to commit terrorist act like mass killing in reference to their common intention. Accused No.1- Jahid S/o Kutubuddin Shaikh is also one of the conspirators to commit the offences as charged.

16.1.35. It is submitted that it was argued by defence that accused

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no.1- Jahid S/o Kutubuddin Shaikh and other accused were arrested prior to 16-08-08. But if we look to 1st production report of accused no.1- Jahid S/o Kutubuddin Shaikh and others dated.17-08-08 which is on record of Shahibaug I-C.R. No. 236/08- S.C. No. 38/09, accused made no complaints when M.M. Court No.5, asked accused whether they have any complaint against police. Even on remand report though accused have signed, they made no endorsement of any illegal detention. Moreover, they were also represented by their advocates. Furthermore, from the evidence of PW No.1163/ Exh. 8638 I.O. Mayur Chavda it appears that there was sufficient material against accused No.1- Jahid S/o Kutubuddin Shaikh and other for arrest on 16-08-08. In short, there is no documentary evidence to suggest illegal detention of Accused No.1- Jahid S/o Kutubuddin Shaikh and others.

16.1.36. It is submitted that moreover, defence has argued that before pointing out of Halol Camp on 27-08-08 police had some knowledge about Halol Camp. As per defence, the knowledge of police is reflected from remand application of other accused dated. 20-08-08 in Shahibaug I.-C.R. No.236/08. Therefore, pointing out panchnama cannot be said to be U/s. 27 of evidence act. According to prosecution, Halol is the big Taluka and mentioning of name of camp, it cannot be said that police knew the site-exact spot of camp, which is as such situated in Jungle near Kamlesh Korry. So far as prior knowledge of police about Halol camp emerging on the basis of remand application is concerned defence has as such did not confront any investigating officer about they having prior knowledge of Halol camp based on remand application. Even otherwise examining remand application at the stage of final hearing before this Hon'ble Court will not serve any purpose as remand application only discloses Halol camp and not the exact place where

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actual camp was conducted as led by accused no.1- Jahid S/o Kutubuddin Shaikh which led to actual site namely inside jungle near Kamlesh Quarry.

16.1.37. It is submitted that as such Accused No.1- Jahid S/o Kutubuddin Shaikh after his arrest during the course of investigation firstly led investigator to the actual site of Halol Terror Training Camp which also led to recovery of different articles as discussed above. Thereafter, Accused No.1- Jahid S/o Kutubuddin Shaikh further led to his shop named Seema communication which also led to recovery of incriminating objects and lastly and most importantly Accused No.1- Jahid S/o Kutubuddin Shaikh also led to pointing out 10 Al-Mohammadi Society which also further led to recovery of different incriminating objects as referred above. In view of it, all the 3-disclosure statement made by Accused No.1- Jahid S/o Kutubuddin Shaikh has referred in the panchnama Exh.6480, Exh.5492 and Exh.6656 and reiterated in the evidence of panch witnesses, PW No.904/ Exh.6479, PW No.818/ Exh.5491 and PW No.953/ Exh.6655 together with evidence of concerned investigation officer PW No.1163/ Exh.8638, PW No.1163/ Exh.8638 and PW No.1154/ Exh.8340 altogether would lead statement of Accused No.1- Jahid S/o Kutubuddin Shaikh which ultimately led to above referred recoveries though are inculpatory in nature but are admissible U/s 27 of evidence act.

16.1.38. It is submitted that in addition to above referred different conspiratorial circumstances there is one more link of circumstance in the nature of forensic evidence as Accused No.1- Jahid S/o Kutubuddin Shaikh was subjected to Suspect Detection Test (SDS) and the opinion of it founds Accused No.1- Jahid S/o Kutubuddin Shaikh involved and connected with different bomb blast and is association with SIMI along

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with other accused persons.

16.1.39. This Court has carefully examined the oral as well as documentary evidence produced by the prosecution against Accused No.1 –Jahid S/o Kutubuddin Shaikh. Upon overall appreciation of the material available on record, it emerges that the prosecution has succeeded in establishing the involvement of Accused No.1- Jahid S/o Kutubuddin Shaikh in the conspiracy, training activities and other incriminating acts attributed committing the offence.

16.1.40. The Court has perused the evidence of PW No.972/Exh.6802 Ramkabhai Kesariya, who deposed that while grazing buffaloes near the jungle area, he had noticed certain persons taking training. The witness identified Accused No.1-Jahid S/o Kutubuddin Shaikh along with other accused persons during the Test Identification Parade vide Exh.3061, which came to be duly proved through Executive Magistrate PW No.571/ Exh.3051. Though the witness could not identify Accused No.1-Jahid S/o Kutubuddin Shaikh before the Court owing to lapse of considerable time and change in appearance, such circumstance does not materially affect the evidentiary value of the earlier identification made during investigation. (See sub-chapter “Identification” under the Chapter “Issues”)

16.1.41. The Court has also perused similar evidence which has been given by PW No.1067/Exh.7231 Ambalal Bariya, who deposed that while proceeding near Helical Vav after puncture of his jeep, he heard sounds from the valley and upon approaching the spot, noticed about 20 to 25 persons taking training. The witness identified Accused No.1-Jahid S/o Kutubuddin Shaikh in the Test Identification Parade Exh.3061 through Executive Magistrate PW No.571/ Exh.3051.

16.1.42. The Court has also perused the evidence of PW No.1105/

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Exh.7923 Idrish Fakir, caretaker of Khundpir Dargah, who has deposed that by reference of one Sadab, Accused No.2-Imran S/o Ibrahim Shaikh along with 20 to 22 boys had stayed at the Dargah under the guise of tracking activities. The witness further stated that police had subsequently come to the Dargah along with Accused No.1-Jahid S/o Kutubuddin Shaikh on 27.08.2008.

16.1.43. The Court may also consider the evidence of PW No.957/ Exh.6687 Zakir Hussein Qureshi. The said witness has narrated in detail regarding various conspiratorial meetings amongst accused persons.

16.1.44. Accused no.1- Jahid S/o Kutubuddin Shaikh and other accused are involved by PW No.957/ Exh.6687 Zakir Hussein, for conspiratorial meeting. He has vividly recounted in his evidence as to how some of the accused were gathered, conspired, made speeches to take revenge of loss suffered by Muslims and needs to strick terror in public, for SIMI activities, conspiratorial meeting at Accused No.4-Samsuddin S/o Shahabuddin Shaikh nana's house, meeting of accused before blast, how accused persons maintain distance with witness before blast, talk of some accused after blast and regarding extra judicial confession of Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri before PW No.957/ Exh.6687. Moreover, witness described the role of Accused No.1- Jahid S/o Kutubuddin Shaikh and other accused in his deposition and identified Accused Nos.1- Jahid S/o Kutubuddin Shaikh, 4-Samsuddin S/o Shahabuddin Shaikh, 5-Gyasuddin @ Gyasu S/o Abdulsalim Ansari, 6- Mohammad Aarif S/o Mohammad Iqbal Kagzi, 8-Yunus S/o Mohammad Mansuri, 15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, 18-Javed Ahmed S/o Sagir Ahmed Shaikh, 23-Ayaz Razakmiyan Saiyed (now approver), 27-Mohammad Ismail @

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Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri, 37-Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya and 75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/o Maskur Ahmed before court. (See Chapter - Appreciation of deposition of relevant witnesses)

16.1.45. According to defence, evidence of this witness is in the nature of an accomplice. His evidence is not reliable and cannot be the basis of conviction. If the witness is found reliable then his evidence must be corroborated in material particular by independent evidence. It is also submitted that according to defence, he has not come forward to give his statement immediately after bomb blast. His conduct is unnatural. He has not stated majority of his evidence in the statement recorded U/s 164 of Cr.P.C. Though his involvement in the offences are higher in degree then some of the accused, police has not made him accused. Therefore, treat other accused whose role are similar or less at par with the witness. Defence further argued that evidence of this witness is not reliable and not corroborated in material particular as required U/s 133 and 114(b) of the Evidence Act.

16.1.46. While perusing evidence of PW No.957/ Exh.6687 it appears that he himself reached to Crime Branch to give statement. During cross-examination, it has come on record that at the relevant time his wife was pregnant. In a crime like bomb blast witnesses are unwilling to come forward to depose fearing harassment. In such type of cases witnesses may be reluctant to give their statement due to fear also. Witness himself gave his statement to police and therefore it cannot be said that his statement was delayed in time. Looking to the evidence of the witness it cannot be said that he is accomplice and involved in conspiracy of blast and other accused may be treated at par. Some

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omission from his statement U/s 164 of Cr.P.C were brought on record but it is insignificant as on first point of time in his statement before police he has stated everything which was stated by him before court. It appears that there is no improvement to his first statement recorded by police and it cannot be said that he has not stated every fact in his previous statement. If evidence of witness is seen then, there are no material omission amounting to material contradiction from his previous statement which was first in time. Witness also explained for non-disclosure in his statement U/s 164 recorded after his police statement. From the cross-examination of witness nothing much has come on record which impeached his credit. It is submitted that looking to the whole evidence of witness, he cannot be said to be accomplice. Even if we look to Section 133 of Evidence Act then, "an accomplice shall be competent witness against accused persons and convictions is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice". If we look to Section 114 (b) of evidence act an accomplish is unworthy of credit unless he is corroborated in material particulars but this is not the case here as PW No.957/ Exh.6687 gets corroboration from the evidence and circumstances on record which strengthen his evidence and makes the witness credit worthy. The confessional statement of the accused jointly tried go on to corroborate the evidence further.

16.1.47. It appears that Accused No.1- Jahid S/o Kutubuddin Shaikh is involved by Accused No.2-Imran S/o Ibrahim Shaikh in his Confessional Statement Exh.8619, U/s 164 of Cr.P.C. As per Accused No.2-Imran S/o Ibrahim Shaikh and 1- Jahid S/o Kutubuddin Shaikh attended Vagamon Training Camp and Halol Training Camp.

16.1.48. It also appears that Accused No.1- Jahid S/o Kutubuddin

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Shaikh is involved by Accused No.21 in his Confessional Statement Exh- 8623, U/ s. 164 of Cr.P.C. As per Accused No.21, Accused No.1-Jahid S/o Kutubuddin Shaikh attended Halol Training Camp. This statement is proved to be voluntary.

16.1.49. It appears that Accused No.1- Jahid S/o Kutubuddin Shaikh is involved by Accused No.35-Rafiyuddin S/o Sarfuddin Kapadiya in his Confessional Statement Exh.8631, U/s.164 of Cr.P.C- Exh.8631. As per Accused No.35-Rafiyuddin S/o Sarfuddin Kapadiya, Accused No.1-Jahid S/o Kutubuddin Shaikh attended Halol Training Camp. Moreover, Accused No.35-Rafiyuddin S/o Sarfuddin Kapadiya pointed out Halol Camp place during Panchnama Exh.6443. This pointing out panchnama was proved through PW No.900/ Exh.6442 and I.O. PW No.1089/ Exh.7626.

16.1.50. It also appears that during panchnama Exh.8480, dated 27.08.2008, accused no.1 made the disclosure in presence of panch witness and pointed out the place of training camp from, Helical Vav inside the jungle after climbing the slope of mountain, from where recoveries of airgun pellets and other articles like cap (booch) of pipe etc were made. This Panchnama was proved through PW No.904/ Exh.6479 and I.O. PW No.1163/Exh.8638. It appears that at that time F.S.L Officer PW No.830/ Exh.5566 Shri Hingrajiya remained present and gave his Primary Report Exh.5522. Also, the articles recovered were sent to F.S.L through forwarding letter Exh.5939. F.S.L Report of same is Exh.5941.

16.1.51. It also appears that PW No.1073/ Exh.7298 Moh. Unus Sumra running Cyber Cafe at Bhuj involved Accused No.16 Abbas S/o Umar Sameja and other 2-3 who came with Accused No.16 for surfing at his Cyber Cafe. Witness identified Accused No.16- Abbas S/o Umar Sameja in court. This Witness identified Accused No.1-Jahid S/o

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Kutubuddin Shaikh in TIP Exh.3068 and Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/o Jaharul Hasan Nagori in TIP Exh.3065 but unable to identify due to lapse of time and change in body and face.

16.1.52. It appears that PW No.1063/ Exh.722 Munaf-Ali gave evidence regarding seizure of register of Infinity Cyber Cafe Exh.7223, vide panchnama Exh.7224. PW No.1069/ Exh.7256 I.O. gave evidence in respect of this panchnama at page no.3 of his deposition.

16.1.53. It also appears that during panchnama Exh.5492, dated 19.08.2008, Accused No.1-Jahid S/o Kutubuddin Shaikh made the disclosure in presence of panch witness and pointed out the shop Seema Communication, situated at Nagori Complex, Near Danilimda, from where recoveries of articles like ball bearing balls etc were made. It may be observed that ball bearing balls were one of the constituent of the explosive device. This Panchnama is proved through PW No.818/ Exh.5491 Manish Barot, and Investigating Officer PW No.1163/ Exh.8638.

16.1.54. It also appears that the said articles were sent to F.S.L through forwarding letter Exh.5955. F.S.L Report Exh.5957 proved through PW No.849/ Exh.5908. Though no presence of explosive found on the articles, it has connection with the bomb as live bomb found contain in it ball bearing balls as well as remains of ball bearing as like balls are found from different of offence and also from the bodies of different victims. That during this panchnama, F.S.L. Officer PW No.830/ Exh.5566 visited the place and gave his Primary Report Exh.5577.

16.1.55. It appears that during panchnama Exh.5517, dated 01.09.2008, after disclosure statement, Accused No.1-Jahid S/o Kutubuddin Shaikh pointed out Cyber Cafe at NID and hard disc was

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recovered. This panchnama was proved through PW No.820/ Exh.5516-Vikram Solanki and Investigating Officer PW No.1070/ Exh.7264-Vinay Shukla. That during panchnama Exh.5517, F.S.L. Officer PW No.851/ Exh.5985-Hitesh Sanghvi gave his Primary Report Exh.5835.

16.1.56. It appears that PW No.1062/ Exh.7219 Abdul Azim stated that, Accused No.37-Qayamuddin, Accused No.2-Imran Shaikh and Accused No.7 Usman Agarbattiwala have done their courses of computer through his Cyber Cafe at Vadodara witness further stated that accused Kayamuddin with one person who has a beard, used to visit his Cyber Cafe at Ahmedabad for surfing. Moreover, witness stated that, Police Officer came to his Cyber Cafe with Jahid Shaikh-Accused No.1, the same person who earlier came had a beard.

16.1.57. It also appears that PW No.1062/ Exh.7219 Abdul Azim, produced Cyber Cafe register Exh.3208 during panchnama Exh.3207 in which entry dated 24.04.2008 is in the name Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya. Panchnama Exh.3207 proved through PW-595/Exh.3206-Ashok Thakor.

16.1.58. It also appears that during panchnama Exh.6656, dated 19.09.2008, Accused No.1-Jahid S/o Kutubuddin Shaikh made the disclosure in presence of panch witness during panchnama and pointed out 10 Al-Mohammadi Society House from where recoveries of incriminating articles connecting with preparation of bombs, cycle carrier, utensils etc were made. Moreover, during this panchnama chance print was also found which is proved to be of Accused No.38. This panchnama was proved through PW No.953/ Exh.6655 Baldev Prajapati and I.O. PW No.1154/ Exh.8340. That during this panchnama, Fingerprint Expert PW No.958/ Exh.6720-Anil Prajapati, was present and photographs of chance print on object (broken Computer Disc) were

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also taken in his presence.

16.1.59. It appears that fingerprint of total 47 accused Exh.6725 were taken by PW No.1160/Exh. 8585 Rafik Ahmed Mansuri, fingerprint Operator of Crime Branch. It appears that fingerprint of Accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh and other accused were taken by PW No.1161/ Exh.8588 Bhupendrasinh Vaghela, Fingerprint Operator of Crime Branch. Fingerprint of accused no.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh is on page No. 34 of Exh.6725.

16.1.60. It appears that fingerprint of accused was sent for examination through forwarding letter Exh.6724. This Court finds that photographs of fingerprints and its negatives are Exh.6722. Enlarge photographs of fingerprint and its negative are Exh.6726. As per Fingerprint Expert opinion Exh.6728, chance print found on broken CD-mark, matches with right thumb print of accused Mohd. Saif @Rahul Sharma- Accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh. Moreover, other fingerprints experts have also agreed with this opinion and that Opinion Circulation is Exh.6727. Fingerprint photographs and crime scene visitation register is Exh.6732.

16.1.61. It appears that F.S.L. witness who gave primary report for visit is PW No.849/ Exh.5908, G.D. Sharma who gave Primary Report Exh.5913, regarding visit at 10 Al-Mohammadi Society House.

16.1.62. It also appears that muddamal received from 10 Al-Mohammadi Society were sent to F.S.L for examination through forwarding letter Exh.5764. Opinion of F.S.L- chemical examination is Exh.5766. As per opinion, on article mark J1, J2 and mark K, nitrite and nitrate mulako (radicals) were detected. This report is proved through PW No.840/ Exh.5700- Mr.J.F.Mansuri. Moreover, physics department

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report is Exh.7958, which is proved through PW No.1112/ Exh.7952 Mr. S.S Joshi.

16.1.63. It further appears that utensils were found from 10 Al-Mohammadi Society house, at the time of pointing out by Accused No.1-Jahid S/o Kutubuddin Shaikh, utensils are identified by PW No.938/ Exh.6617-Mohd. Faruq, during panchnama Exh.5538. Witness Mohd. Faruq PW No.938/ Exh.6617 identified accused No.8-Yunus S/o Mohammad Mansuri, who purchased utensils from his shop in TIP Exh.3061 and also in court.

16.1.64. It appears that Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya was rented 10 Al- Mohammadi Society house. Accused No.37 identified by House owner Fukhrajbanu PW No.943/ Exh.6629 in TIP Exh.3168. PW No.28/ Exh.6586 Mohd. Ibrahim also involved Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya. Moreover, PW No.952/ Exh.6651 Mohd. Arif also involved Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and he identified Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri in TIP Exh.3171. Accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/o Sarfuddin Kapadiya are connected with getting on rent 10 Al- Mohammadi Society House. Hence co-accused aforementioned and this accused no. 1 are all connected to the aforementioned premises which has been used as a Hide out for the purpose of carrying out the activities connected to this crime, as a part of Conspiracy.

16.1.65. It also appears that during panchnama Exh.3193, dated 09.10.2008 father of Accused No.1-Jahid S/o Kutubuddin Shaikh

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produced motorcycle. This panchnama was proved through PW No.593/ Exh.3192 and I.O. PW No.1077/ Exh.7352. This motorcycle was used as mode of transport from Baroda to Halol camp.

16.1.66. It appears that, accused no.1-Jahid S/o Kutubuddin Shaikh and other accused were sent to F.S.L for Suspect Detection Test. Moreover, F.S.L Officer inquired and performed necessary test. Thereafter, PW No.848/ Exh.5894 Vasant Hathibhai, F.S.L Officer gave his Report Exh.5901. Summary of this test which is in question answer is submitted in Exh.5900. On the basis of this SDS Test report the expert has formed an opinion that Accused No.1- Jahid S/o Kutubuddin Shaikh is connected with different bomb blast and other accused persons are also connected with different bomb blast and also with SIMI. Though it is only an opinion still the report Exh.5400 clearly go on to at least corroborate the plethora of evidence against Accused No.1- Jahid S/o Kutubuddin Shaikh connecting him with the conspiracy and the role at the terror camps.

16.1.67. The overall analysis of the evidence against Accused no.1-Jahid S/o Kutubuddin Shaikh, Court finds that is sufficient evidence and reason to uphold the conviction recorded by the Trial Court of the accused no.1- Jahid @ Javed Qutbuddin @ Mamu Sheikh for the offences charged against him in the Chapter of 'Charges framed and Sections invoked'.

16.2. In case of Imran S/o Ibrahim Shaikh (Vadodara) (A-2)

(Accused No.2 in Criminal Confirmation Case No. 2/2022 and Appellant No.2 in Criminal Appeal No. 727/2024):

16.2.1. In case of accused No. 2-Imran S/o Ibrahim Shaikh, he has been convicted for various offences by the trial Court and has been

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awarded death penalty in Sessions Case No.38/2009 and others.

16.2.2. Learned advocate for the appellant has made submissions for accused No. 2-Imran S/o Ibrahim Shaikh. Insofar as accused No.2 is concerned, upon perusal of record, it appears that he came to be arrested on 16.08.2008 in connection with Shahibaug Police Station C.R. No.236 of 2008 as is reflected in the arrest memo at Exh.9187. Thereafter, he was ultimately remanded to judicial custody on 30.01.2009. The total duration of the police custody undergone by accused No.2 is a period of 94 days, spanning over periods from 16.08.2008 to 07.11.2008, from 01.12.2008 to 06.12.2008, on 19.01.2009 and from 28.01.2009 to 30.01.2009. It is further noted that as on date, the accused has undergone incarceration for a period of more than 17 ½ years.

16.2.3. The trial Court while recording the conviction of accused No.2 has considered the various circumstances which include: (i) the participation of accused No.2 in the training camp held at Vagamon, Kerala in December 2007, (ii) the participation in the training camp held from 13.01.2008 to 15.01.2008 held at Halol-Pavagadh in Gujarat, (iii) renting of Tata Sumo car by accused No.2 to travel to Halol-Pavagadh for attending the said training camp, (iv) recovery under Section 27 of Indian Evidence Act of a first aid box from the house of accused No.2 which was used at the Halol training camp, (v) acquaintance with other accused persons and (vi) reliance upon the panchnama of the co-accused as incriminating evidence against accused No.2.

16.2.4. Learned Advocate has submitted that the circumstance of participation in Vagamon camp cannot be treated as circumstance at all as the accused No.2-Imran S/o Ibrahim Shaikh was already tried in Sessions Case No.2 of 2011 by Sessions Court at Ernakulam. This has resulted in acquittal of accused No.2-Imran S/o Ibrahim Shaikh by

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judgment dated 14-05-2018 (Exh.9421).

16.2.5. It is pertinent to observe that Sessions Case in Ernakulam was against several accused including accused No.2-Imran S/o Ibrahim Shaikh and several accused therein were convicted, whereas accused No.2-Imran S/o Ibrahim Shaikh was given benefit of doubt on the basis of evidence produced therein. However, an appeal is preferred in Kerala High Court, which is pending.

16.2.6. Attending Vagamon Terror camp is not the final offence, but only one of the circumstances in the larger conspiracy, the conspiracy which started brewing with Vagamon camp. Therefore, to establish attending Vagamon camp as an independent offence is not essential requirement, but the confessional statement of accused No.2-Imran S/o Ibrahim Shaikh is sufficient evidence. The Court has already addressed the issue of confessional statement of accused being sufficiently proved and accepted as evidence despite retracted.

16.2.7. In this confessional statement at Exh.8619, in great detail accurately mentions the entire getting together of various accused, with understanding of attending the camp, coming from various parts of Gujarat, travelling to Vagamon, assigning of fake names to hide identity and all the activities undertaken therein and period of stay. Though the uncorroborated version is sufficient, still the Court finds that this version is corroborated with other evidence.

16.2.8. With regards to the circumstance of participation in Pavagadh-Halol camp, it is submitted that again the confessional statement of accused No.2-Imran S/o Ibrahim Shaikh may not be treated as an evidence. Also, the evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya vide Exh.6802, PW No.981-Pravinbhai Hamirbhai Katariya vide Exh. 6835, PW No.1067-Ambalal Vechatbhai

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Bariya vide Exh.7231, PW No.571-Ramanbhai Senghabhai Solanki vide Exh.3051 and PW No.1105-Idrish Gulabsha Fakir Diwan vide Exh.7923 may not be treated as reliable evidence. It is submitted that there is no dock identification of accused No.2-Imran S/o Ibrahim Shaikh. Therefore, all the acts attributed by the witness is of no consequence. It is submitted that even the Test Identification Parade is also not reliable as none of the witnesses have given any description to the Police about the appearance of accused No.2-Imran S/o Ibrahim Shaikh and no specific act is attributed to accused No.2-Imran S/o Ibrahim Shaikh.

16.2.9. On behalf of the State, learned Additional Advocate General for the State submitted that there is strong evidence of conspiracy which links accused No.2 with other accused. It is submitted that PW-1115/ Exh.8002 Mohd. Umar Mansuri knew Kayamuddin Kapadia A-37, Imran Sheikh A-2, Usman Anis Agarbattiwala A-7. They were childhood friends. Moreover, he has stated that with Qayamuddin, Iqbal Sheikh-A-3 who was resident of Yakutpura played cricket together. He involved Kayamuddin for recce as well as in talk regarding blast. PW-1121/Exh.8059 Sadab Panwala, who is a hostile witness, knew A-37 and A-2. PW-940/Exh.6623 Nasir Qureshi, is a Tata Sumo owner. He rented Tata Sumo to A-2 from 13th January to 15th January 2008. PW-941/Exh.6624 Asif Bodawala, knew A-2. He took A-2 to Nasirbhai PW-940/ Exh.6623 to get Tata Sumo.

16.2.10. It is submitted that during panchnama Exh.3256, dated 27.08.2008, witness Nasir Qureshi PW-940/ Exh.6623 produced Tata Sumo which was used in Halol Camp. Also, during this panchnama, father of A-7 produced motorcycle which was also used in camp. This panchnama is proved by PW-617/ Exh.3255 Hemant Khandelwala and I.O. PW-1070/ Exh.7264 Vinay Shukla.

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16.2.11. It is submitted that PW-1105/ Exh.7923 Idrish Fakir, Munjavar and caretaker of Khundpir Dargah. He involves A-2. He stated that on 13.01.2008 by giving reference of Sadab, A-2 came with 20 to 22 boys and stayed at dargah. PW-972/ Exh.6802 Ramkabhai Kesariya who deposed that he saw, the person taking training when he was grazing his buffaloes. He identified A-2 and other accused persons in TIP Exh-3061. TIP proved through Executive Magistrate PW-571/ Exh.3051. Ramkabhai identified few other accused in other TIP. Witness identified A-12 and A-8 before court but unable to identified others including A-2 because of lapse of time. PW-981/ Exh.6835 Pravinbhai stated that when his jeep got punctured, he and his friend went at the place near helical vav. When they heard the sound of the persons from valley, they went towards valley and he saw 15 to 20 persons taking training. He identified some persons out of the persons taking training. Witness identified A-2 in TIP Exh.3061 before Executive Magistrate PW-571/ Exh.3051. Witness identified other accused in TIP and identified A-10, A-12, A-13, A-16, A-31, A-32, A-35, A-36, A-54, A-56, A-60 and A-75 during his deposition. PW-1067/ Exh.7231 Ambalal Bariya, who deposed that when Pravinbhai's jeep got punctured, they went at the place near helical vav. When they heard the sound of persons from valley they went towards valley and he saw 20-25 persons taking training. Ambalal identified A-2 in TIP Exh-3061.TIP proved through Executive Magistrate Exh-571/3051. Witness identified A-12 in court but unable to identified others, as accused have grown up beards and due to changes in body.

16.2.12. It is submitted that accused No.2 gave his confessional statement U/s 164 of Cr.P.C- Exh.8619 before Metropolitan Magistrate. As per A-2, he and other accused attended Vagamon training camp and

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Halol training camp organized by member of SIMI. Moreover, accused is a member of SIMI and connected/associates with SIMI. He involved by A-35 in his Confessional Statement Exh-8631, U/s.164 of Cr.P.C-Exh.8631. As per A-35, A-2 attended Halol Training Camp.

16.2.13. Moreover, A-35 pointed out Halol Camp place during Panchnama Exh.6443. This pointing out panchnama was proved through PW-900/ Exh.6442 and I.O. PW-1089/ Exh.7626 on page 4.

16.2.14. It is submitted that on 22/08/2008, A-2 made disclosure and pointed out his house of Vadi during panchnama Exh.6278 from where the articles used during training, as like first aid box etc were recovered. Moreover, if we look to FSL report, Exh.5938 then from first aid box injections and medicines were found which are in bulk. It would be pertinent to observe that this first aid box is one of the many articles used for the training camp at Halol (forests of Pavagadh). This panchnama was proved by PW-877/ Exh.6277 and I.O. PW-1070/ Exh.7264 in para no.5(1) of his deposition.

16.2.15. It is submitted that PW-1062/ Exh.7219 Abdul Azim stated that, A-37-Qayamuddin, A-2-Imran Shaikh and A-7 Usman Agarbattiwala have done their courses of computer through his Cyber Café at Vadodara witness further stated that accused Kayamuddin with one person who has a beard, used to visit his Cyber Café at Ahmedabad for surfing. Moreover, witness stated that, Police Officer came to his Cyber Café with Jahid Sheikh-A-1, the same person who earlier came has a beard. PW-1062/ Exh.7219 Abdul Azim, produced register Exh-3208 during panchnama Exh-3207 in which entry dated 24.04.2008 is in the name Kayamuddinbhai. Panchnama Exh-3207 proved through PW-595/ Exh.3206-Ashok Thakor. In this fashion A-2 is well connected with co accused Qayamuddin.

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16.2.16. It is submitted that during panchnama Exh-5517, F.S.L. Officer PW-851/ Exh.5985-Hitesh Sanghvi gave his Primary Report Exh-5835 and during panchnama Exh-5517, dated 01.09.2008, after disclosure statement, A-1 pointed out Cyber Café at NID and hard disc was recovered. This panchnama was proved through PW-820/ Exh.5516-Vikram Solanki and Investigating Officer PW-1070/ Exh.7264-Vinay Shukla-pg.16.

16.2.17. It is submitted that Mother of A-2 produces mobile during panchnama Exh.7356 dated 30.08.2008 which was proved through PW-1077/ Exh.7352 I.O. Ajij Ahmed Sindhi.

16.2.18. On perusal of record and considering the submissions made by learned Additional Advocate General, the Court is of the opinion that following are the proved circumstances so far as accused No.2 is concerned:

i. Accused no.37 Kayamuddin Kapadia-prime accused, A-2 and A-7 were resident of Taiwada, Vadodara and A-3 is resident of Yakutpura in Vadodara and were childhood friends as deposed by PW-1115/ Exh.8002. Moreover, A-37, A-2 and A-7 did their computer course at Shraddha communication at Vadodara A-1 and A-37 also used Icenet Cyber Café at NID, Ahmedabad for surfing during March,2008 as deposed by PW-062/ Exh.7219. These accused are involved in different conspiratorial meeting.

ii. Accused no.2 attended training camp namely Vagamon and Halol and imparted training in the camps. There is evidence on record against other accused who also attended and took training in these two camps.

iii. To attend Halol camp A-2 hired Tata Sumo car for the purpose of travelling to Halol training camp along with other

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accused during 13.01.2008 to 15.01.2008.

iv. Accused no.2 knows hostile witness Sadab, and by giving reference of witness Sadab, accused no.2 and other 20 to 22 accused have stayed at Khundpir dargah which is not too far from Halol training camp site.

v. PW-972/ Exh.6082 Ramkabhai Kesariya, PW-981/ Exh.6835 Pravinbhai Katariya and PW-1067/ Exh.7231 Ambalal Bariya, identified A-2 in TIP as a person taking training near place Kamlesh kori beyond mountain, Helical vav. These three witnesses correctly identified A-2 during TIP but failed to identified A-2 in Court due to lapse of time and as per the explanation given by the PW. It would be pertinent to state here that majority witnesses who had successfully identified concerned accused-suspect during course of TIP had failed to identify this very accused during doc examination by giving reasonable and plausible explanation that accused persons have grown up thick beard, thick eyebrows wearing cap or otherwise and changing in their facial appearance and thereby are unable to identify concerned accused during dock examination. This aspect needs to be seen in context of application dated 13.05.2015 given by prosecution at Exh.2828 with a prayer of permitting prosecution to identify accused persons base on their photographs affixed on chargesheet as all the accused persons against whom trial has proceeded have now different facial appearance as they have grown up beard, eye-brows wearing cap etc. in this application prosecution also contended about raising of adverse inference if witnesses on this score is unable to identify concerned accused during dock identification. This aspect further assumes importance as some of the witnesses who are known to

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concerned accused have also failed to identify the known accused on this very ground. Hence, explanation given by witnesses after they having successfully identified concerned accused during TIP, non-identification in court would not affect the case of prosecution.

vi. It is the case of prosecution that , IO were led to Halol training camp site for the first time by accused no.1 and during the course of drawing of panchnama and at the time when he was showing the sites of Halol camp certain objects-articles were discovered which are in the nature of busted balloons, pellets etc as stated in the panchnama, as well as panchnama drawn at the instance of accused no.2 which is Exh.6278, which further led to recoveries of objects-articles like first-aid box containing in it injections and different medicines, cotton gauze etc also together with it disclosure statement made by accused no.7 as stated in panchnama Exh.6370 which also led to further discovery of objects-articles like airgun, pistol loaded with cartridges, rubber balloons, knife, pipe bombs, gun powder etc would certainly when linked with other evidentiary material led by prosecution fully supports conducting of Halol as well as Vagamon training camp. More particularly when accused no.1, accused no.2 and accused no.7 have participated in both the camps.

vii. These circumstances would corroborate confessional statement of A-2 Exh.8619. Prosecution had relied on statement made by these accused which led to such recoveries even if are found to be inculpatory but are admissible U/s 27 of evidence act.

viii. The law of conspiracy is that, apart from it being a distinct offence, all the conspirators are liable for the act of each other's crimes which had been committed to achieve ultimate object of

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conspiracy. It is not necessary to prove and establish that all the accused came together and actually agreed to commit offence. If a conspiracy had already formed and other person joins it afterwards then person join subsequently is also liable for all the acts committed by other conspirators. Moreover, Section 10 of evidence act provides special rule of evidence followed in the case of conspiracy if conditions of Section 10 of evidence act are fulfilled. If we look to the evidence of this case, the conditions of Section 10 of evidence act are fulfilled. Therefore, what was said or done by the member of conspiracy in the present case by the accused in reference to their common intention would be evidence against other co-conspirator i.e. co-accused of the case. Hence confessional statement of A-2 Exh.8619 which gives narration of activities done and conducted in both the camps including giving of speeches, giving of dummy names to hide the identity of participants, coming to the camp sites secretly, dividing all participants in different groups for the purpose of giving training as executors of ultimate object of conspiracy and others being accessory to the executors, participants coming from across the country from different states and also staying in hotels in a dummy name and participation of different accused as well as involvement of SIMI as narrated in the confessional statement and different acts either express or expletive altogether needs to be seen within the ambit and scope of Section 10 of evidence act as discussed in the judgment of Damu reported in (2000) 6 SCC 269 and also in context of Section 2(o) of the UAPA act 1967 which defines “unlawful activity” would have full play in the facts and circumstance of the prosecution case. Considering the submission of defence which relates to implication

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of other accused by confessor A-2 would be a weak piece of evidence would fully pale into insignificance.

ix. Furthermore, in the light of confessional statement of A-2 other confessional statements more particularly of A-21 who is from Rajasthan, also supports about he being one of the participants of Halol training camp where activities like making of bomb, taking revenge of year 2002 loss suffered by Muslims and executing mass killing etc is eloquently stated. A-21 also states about participation of other accused in Halol training camp. Together with it confessional statement of A-76 Exh.9021, which also states about conducting of Vagamon training camp and participation of different accused and also activities conducted at Vagamon training camp which would include different physical activities, atrocities executed on Muslims in Gujarat and most importantly acts committed by some participants of Vagamon camp even after different blast which took place in Ahmedabad on 26.07.2008 and involvement of SIMI leaders and activist etc supports the case of prosecution about conducting of different terror training camps.

x. The confessional statements which get broad corroboration from other evidentiary material. As confessions needs to be compared with the rest of the evidence, in the light of surrounding circumstances and probability of the case. If the other evidence of prosecution is compared with confessional statements, surrounding circumstances and probabilities of the case, contains of confession appears to be a probable catalogue of events and naturally fits in with the other evidence of prosecution. Hence, the submission of defence that confessional statement is weak piece of evidence

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cannot get corroboration with the other weak piece of evidence in the nature of other confessional statements will have to be viewed with the provisions of S.10 and S.30 of the I.E. Act.

16.2.19. The Court also finds that so far as confessional statement of A-2 Exh.8619 is concerned following facts would reveal that the same is voluntary, truthful and credible:

a) Statement is recorded under the statutory provision as provided U/s 164 of Cr.P.C.

b) As per the provision, confessional statement of accused can be recorded at any time during the course of investigation but before the commencement of inquiry for trial. Statement of A-2 is recorded during the course of an investigation.

c) As per the statutory provision, such statement shall be recorded by any Metropolitan Magistrate or Judicial Magistrate whether or not he has jurisdiction in the case. Statement of A-2 is recorded by Metropolitan Magistrate hence it is recorded by competent authority.

d) On 07.11.2008, A-2 was produced before Metropolitan Magistrate Court no.11 in different F.I.R proceedings through different production report which are Exh.9190, 9188, 9189, 9191, 9192 and 9193. Production of A-2 was along with other different 11 accused and court of Metropolitan Magistrate on the basis of production before him of all the 12 accused which would include A-2 also have verified from accused persons on asking them about whether they had any complaint for ill-treatment against Police Officer and as no complaint about ill-treatment about Police Officer being made. Production of accused was accepted and they were taken into judicial custody. This production report-

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application is duly signed by all the 12 accused including A-2.

e) After that on 07.11.2008 accused gave application intending that he wants to make confessional statement and hence competent court inquired from A-2 about his intention to make confession as stated by him in his application and ordered for recording A-2's statement U/s 164 of Cr.P.C and forwarded the application to Chief Metropolitan Magistrate for doing further needful. These proceedings went to Chief Metropolitan Magistrate and on 07.11.2008 i.e. on same day, it is ordered that such statement shall be recorded by Court No.05.

f) Pursuant to it on 10.11.2008, A-2 was brought before Metropolitan Magistrate Court No.5 who inquired from A-2, whether he is under any duress, coercion etc of Crime Branch persons, whether A-2 needs services of advocates, legal aid. Metropolitan Magistrate Court No.5 also informed A-2 about there being no compulsion to give such statement and if such statement is given then the same can be used against him. All this precaution and safeguards were observed by Magistrate in his chamber after drawing police out from his chamber and on satisfaction of all these questions put to A-2 and inquiring on it, Magistrate gave 2 days' time to A-2 as cooling period for reflection about his decision and kept these proceedings on 12.11.2008 at 15:00 hours.

g) On 12.11.2008, A-2 was brought before Magistrate but because of paucity of time A-2's statement was not recorded and the proceedings were kept on 14.11.2008 at 15:00 hours. A-2 on 10.11.2008 and 12.11.2008 was sent back to judicial custody at Sabarmati Central Jail.

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h) A-2 was brought before Magistrate on 14.11.2008 at 16:50 hours and again Magistrate reiterated the same inquiry about there being any duress or coercion from Police Officer for giving such statement as also whether police came to meet him in jail or that A-2 was taken at any place for investigation to which accused said no and it was again verified that A-2 was voluntarily intends to give his statement and he was further explained about such statement would be used against him.

i) By fulfilling these aspects from A-2, Metropolitan Magistrate adhered with provisions of Section 164(2) of Cr.P.C and thereafter statement of A-2 was recorded which got completed on 18:20 hours on the same day i.e. 14.11.2008. at the foot of the statement Magistrate had put his signature as statement being recorded before him and signature of A-2 with his endorsement that he had read and put his signature there is further foot note counter signed by Magistrate of even date i.e. 14.11.2008 where Magistrate has certified that statement of A-2 is recorded before him, heard by accused in the language of A-2 and after it got completed it was read over by A-2 and thereafter A-2 put his signature. Magistrate further certifies that statement of A-2 is made voluntarily and without there being any coercion, as per the belief and understanding of Magistrate. And hence provision of Section 164(4) is also completely adhered by the recording Magistrate. If one examines provision of Section 281 of Cr.P.C as referred in Section 164(4) it relates to record of examination of accused and the same is also fully adhered with by recording Magistrate being Metropolitan Magistrate was required to adhered with Section 281(1) of Cr.P.C which states about recording of memorandum of

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the substance of the examination of accused. So far as Section 281(2) is concerned aspect of recording such examination in question-and-answer form would not be applicable to Metropolitan Magistrate who is recording Magistrate in the present case. Hence, submission of defence about examination of accused being not in question and answer form is totally misplaced.

j) It would be pertinent to note here that, recording Magistrate has adhered with safeguard and caution impose in statute about inquiring and verifying from accused that it is not compulsory to give confessional statement and if such statement is given it will be used against him. Recording Magistrate as faithfully and consciously observed this safeguard and caution as recorded in the confessional statement at the head of the statement but the statutory provision intended it to narrate and mention the same at the foot of it. As the exercise of recording Magistrate is done at the head of the statement and not at the foot of the statement, it will not even slightly or remotely make it less credible on the ground that subject exercise made at the head of the statement and not at the foot of the statement. Hence, submission of defence on this core will not take away the credibility of statement which purely sacrosanct as the same is recorded by Judicial Magistrate i.e. Metropolitan Magistrate while discharging his statutory obligation.

k) Submission of defence that recording Magistrate has failed to make a note on the foot of the statement about statement made by A-2 his full and true account made by A-2. If one examines note made by recording Magistrate on the foot of the statement which

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states about statement being recorded in the language of A-2, in presence and hearing of A-2 and after same got complete it was made to read by A-2 and then A-2 put his signature would make and fulfil requirement of putting a note in legal terms "full and true account of statement" as fully complying statutory provision. Hence, defence submission about non-compliance on this count is also misplace. Hence A-2's confessional statement is voluntary.

l) One other aspect of looking to A-2's confessional statement is that in the concluding part of his statement he stated that he was apprehended by Vadodara police on 07(intending 7th of august). If this statement was a coerce then this particular statement about, he being apprehend on 7th august by Baroda Police would never have been narrated.

m) A-2 relies on his statement of retraction which is Exh.9216 submitted by A-2 at the time of recording his further statement U/s 313 which was recorded on 08.07.2020.

n) On bare reading of this document, it is dated 25.11.2008 but produced in the proceeding of the Sessions case on 08.07.2020 much time after last witness of prosecution completed his deposition on 16.01.2019. This would mean statement of retraction saw the light of the day after one and half year of the completion of prosecution evidence. And was brought on record of Session Case after around 12 years from the date as recorded on the date of retraction.

o) Considering the statement of retraction, it is recorded in Guajarati language and signed by A-2 in English and Guajarati and the place of making of the document is Vadodara as narrated in the document.

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p) It is alleged in the statement of retraction of A-2 that he was taken by Crime Branch Police to the chamber of Judge and was intimidated and he was made to sign on a written document and he is not aware about the substance of the document. He also alleges that he was taken to the chamber of the Magistrate and Crime branch officer told him to put his signature and also write whatever Magistrate ask him to write and thereafter Magistrate also told him that he should do whatever Crime branch Officers ask him to do. Both the allegations are inconsistent and contrary to each other. So far as this allegation are concerned, they are made on Magistrate, Which the court is not ready to accept inview of the fact that document of confession has been exhibited and admitted as evidence and the Substance of retraction is also totally inconsistent with the explanation given by A-2 in his further statement. Similarly, so far as his application through which he intended to give his confessional statement i.e. Exh-8617 for which he explained in his statement of retraction Exh.9216 and while giving his further statement for the said application Exh.8617 he gave different explanation in his further statement. Relevant part of this improved version which is inconsistent with his explanation is at pg.4698 and 4699 of Exh.0124.

q) This would make statement of retraction is wholly false. Therefore, confessional statement is truthful as it gets material corroboration from other evidentiary material placed by prosecution. Hence judgment of Aloknath Datta, reported in (2007) 12 SCC 230 needs to be looked into from paragraph: 87, 88, 93, 116 and 118.

r) So far as submission of defence is concerned that A-2 and other accused could not have given application intending giving of

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confessional statements on their own and therefore this act of fabrication is unsustainable as application given by A-2 is in Guajarati and statement of retraction of A-2 is also in Gujarati and there are instances and instances so far as giving of application are concerned during the course of entire proceedings lot many applications are given by lot many accused wherein different subjects are elaborated giving head of subjects in such applications and such application would include lot many legal contention hence it cannot be said that accused persons are not conversant in giving of such application.

16.2.20. The Court also finds that some of the evidentiary material which would corroborate confessional statement of A-2 are as under:

a) So far as holding or conducting of Vagamon camp during particular period as stated by A-2 in his confessional statement is concerned, an independent F.I.R for holding such camp is registered within the state of Kerala on 19.06.2008 much before the incident of the present case which occurred on 26.07.2008. Pursuant to the registration of this F.I.R for which charges under different penal provisions falling under Indian Penal Code as well as UAPA, chargesheet was led against large number of accused including A-2 and many other accused persons were also accused in the present case. And on conclusion of this trial Session Judge at Kerala also delivered judgment on 14.05.2018 which is submitted by accused persons and his duly exhibited at Exh.9421. Large number of accused of this Sessions Trial, are convicted U/s 10, 20 and 38 of UAPA and also U/s 120(b) of I.P.C and also Section 4 of explosive substance act. Prosecution would rely U/s 54 of evidence act and also U/s 298 of Cr.P.C for placing reliance on this judgment. So far as judgment of Kerala Court is concerned convicted accused have filed

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appeal against conviction and State had file acquittal appeals for acquittals and the same is pending before High Court of Kerala.

b)Hence this aspect of holding camp at Kerala-Vagamon wherein A-2 participated along with many other accused known to A-2 and also not known to A-2 as stated by him in his confessional statement is substantially corroborated by judgment of Kerala Session's Court Exh.9421.

c)One of the accused, A-13 named Hafiz Hussein @Adnan, who is named by A-2 in his confessional statement has also led investigators of this case to the place of Kerala Camp on 19.11.2008 and this accused no.13 pointed out different places of the Vagamon camp Kerala and investigator drew panchnama for it which is Exh.8254 which is proved through panch witness PW-1148/ Exh.8253. On bare reading of this evidentiary material, it would reveal that A-13 led police to the Vagamon camp site which is at a distance place from the regular habitation area and to reach at this place one has to drop themselves from vehicle and one needs to travel at the camp site by long walk which would cover mountains, water bodies, rough area etc.

d)This accused no.13 Hafiz Hussein is A-2 in Kerala Session's Court proceeding and is convicted by Kerala Court for the offences punishable U/s 10, 20 and 38 of UAPA and Section 120(b) of I.P.C as also Section 4 of Explosive Substance act, 1908.

e)So far as A-2, Imran Sheikh is concerned he is Accused no.21 in Kerala Session's Case proceedings and his extended benefit of doubt by Kerala Court against which acquittal appeal is pending of State of Kerala in Kerala High Court.

f) In the confessional statement of A-2 confessor stated that confessor i.e. A-2 Imran Sheikh then Safdar Nagori and another Sajid Mansuri

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stayed at the bottom of hill station in a guest house for which booking was made by Safdar Nagori. This person name Safdar Nagori is accused no.12 in the present proceedings and Sajid Mansuri is also an accused in the present proceeding. These 2 people named Safdar Nagori and Sajid Mansuri are also accused in Kerala Court proceeding and they are accused no.3 and accused no.16 in that proceeding. This accused Safdar Nagori who is accused no.3 in Kerala Session's Case proceedings is also convicted for the offences punishable U/s 10, 20 and 38 of UAPA and Section 120(b) of I.P.C as also Section 4 of Explosive Substance Act, 1908.

16.2.21. The prosecution in the present proceeding have examined witness named Raju Nayak at PW-989/ Exh.6879, who was working as manager at Shree Hari Tourist Home Kerala. This witness produce Guest House register at Exh.6486 for a period between 13.12.2007 to 14.12.2007 which would record the name of Salim Shaikh as occupier of his guest house. To substantiate this entry, investigator got sample handwritings of accused no.14 Sajid Mansuri through panchnama Exh.6487 proved through panch witness PW-905/ Exh.6484 and after this sample, natural and disputed handwriting were subjected to forensic examination through Hand writing Expert opinion about it opined that disputed entry of Shree Hari Tourist Home Kerala in the name of Salim Shaikh is actually written by accused no. 14 Sajid Mansuri in the fake name of Salim Shaikh giving fake address of Kota, Rajasthan. Handwriting Expert opinion is Exh.6888 and is proved through PW-990/ Exh.6886.

16.2.22. The court has perused deposition of witness named P D. Anil Kumar resident of Vagamon Kerala at PW-998/ Exh.6950 who also supports the case of prosecution about there being camp at Vagamon

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Kerala during December 2007. This witness establishes the important circumstance of the holding of Terror Training Camp at Vagamon in Kerala.

16.2.23. The prosecution has also relied on confessional statement of accused no.76 Manzar Imam a resident of State of Jharkhand, who gave his confessional statement at Exh.9021 which fully confirms the case of prosecution as well as confessional statement of A-2 about conducting of terror training camp at Vagamon Kerala during December 2007. This accused no.76 as such has given his confessional statement before the Magistrate at Kerala on 05.03.2013 much before the incident of bomb blast on 26.07.2008. Prosecution has place certified copy of A-76 confessional statement which is Exh.9021. accused no.76 of the present proceeding Manzar Imam is also accused no.34 of Kerala Session's Case proceedings and is convicted offences punishable U/s 10, 20 and 38 of UAPA and Section 120(b) of I.P.C as also Section 4 of Explosive Substance Act, 1908.

16.2.24. In view of above there is broad and material corroboration along with other evidentiary material support in confessional statement of accused no.2 Exh.8619.

16.2.25. Confessional statement of A-2 also states about conducting of Halol camp. Prosecution has led evidence in the nature of accused no.1 Jahid Sheikh leading investigators to the place of Halol camp site which further led to discovery of objects and articles as like busted balloons, pellets, pipe ducts etc is subjected to drawing of panchnama Exh.6480 as well as articles and object discovered subjected to Forensic Science Examination which ultimately proved through Exh.5941. So far as conducting of Halol terror training camp is concerned prosecution has also examined PW-1061/ Exh.7231 Ambalalbhai, PW-972/ Exh.6802

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Ramkabhai who both have identified accused no.1 Jahid Sheikh in TI panchnama Exh.3061 which is proved through Executive Magistrate PW-571/ Exh.3051. One another witness who is Munzawar of Khundpir Dargah, where some accused persons have stayed named Idris is also examined by prosecution at PW-1105/ Exh.7923 who also identified accused no.1 Jahid Sheikh in his deposition.

16.2.26. Accused no.2 in his confessional statement as also named accused no.7 Usman Agarbattiwala, as one of the participants in Halol camp and this accused no.7 Usman also led investigator to discovered airgun, knife, pistol loaded with cartridges, rubber balloons, pipe bomb, gun powder etc for which panchnama is drawn at Exh.6370 and proved through panch witness PW-895/ Exh.6369. So far as articles objects discovered at the instance of accused no.7 they are subjected to forensic examination and as per different F.S.L opinion which are Exh.5689, 5790 and 5874 its states about objects found being airgun, pistol found to be functional, gun powder found to be potassium nitrate and pipe bomb found to be containing pellets. Confessional Statement of A-2 is also supported by PW-941/6624 witness name Asif whose evidence relates to taking on rent tata sumo vehicle by accused no.2 Imran which is also equally supported by PW-940/ Exh.6623 witness name Nasir. Accused no.2's confessional statement also gets supports from PW-942/ Exh.6625 witness name Mohd. Yunus, a person in business of Faraskhana, who gave 8 bamboo sticks on rent to one of the accused named Kayamuddin, who is accused no.37 also named by accused no.2 as one of the participants in his confessional statement of Halol terror training camp.

16.2.27. Perusal of evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya vide Exh.6802 reveals the manner in which he was present

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there in due course of his routine, his presence there is not unnatural. He has given general description of people present there and undergone Test Identification Parade and has also identified several accused including accused No.2-Imran S/o Ibrahim Shaikh along with co-accused Yunus and Safdar. Thereafter, in his deposition, he has correctly identified Safdar and Yunus in Court.

16.2.28. Test Identification Parade is exhibited and prosecution witness has deposed about holding of T.I.P. and correctly naming the accused whom he had identified. In cross-examination in Para-9, he confirms that when the Magistrate had asked for description, he had given such description. He also deposes in cross about the independent Test Identification Parade being conducted. There is no reason to disbelieve this witness.

16.2.29. Moreover, PW No.981-Pravinbhai Hamirbhai Katariya vide Exh. 6835 has also deposed about his presence at the camp site and has given a valid reason for his presence there. Also, out of curiosity he has walked in the forest like area as he could overhear voices. The prosecution witness has referred to the conducting of Test Identification Parade and the manner in which, it was conducted, does not create any doubt.

16.2.30. Moreover, the prosecution witness has also identified the accused in the Court as the persons whom he had seen at the Camp and who have been identified by him in Test Identification Parade and it appears that he has correctly identified the accused, who were in Test Identification Parade.

16.2.31. In cross-examination, the prosecution witness was put forth questions related to omission of hearing voices in Hindi language which the prosecution witness has accepted, however, such an omission is not

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such which will affect the witness deposition. In Para-27, attention is drawn to the cross-examination regarding identification to which the reply of the prosecution witness is that 15 days prior to Police inquiry, he had seen these people. However, this is a wrong reading of deposition, as the meaning of this sentence in Para-27 is that the prosecution witness does not remember, if such fact has been narrated to the Police during his statement. In Para-28, the prosecution witness has answered that before the Magistrate, he has not given details of what such accused were doing when he saw them. He also admits that when for the first time, he was investigated, he did not give details of their looks, but before the Test Identification Parade was conducted, the Police has recorded his statement regarding the looks of the accused, thereby, confirming that the prosecution witness has given description of accused during investigation, the Test Identification Parade is Exh.3061 proved through the Executive Magistrate.

16.2.32. Another eyewitness to Halol camp is PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231, whose evidence is also assailed by defence raising the same grounds. Further, it is also argued that these witnesses are only chance witnesses, they had no occasion or reason to remember the accused person in the camp, the prosecution witness had fleeting glimpses and that too from distance between 30 meters to 200 meters and that their statements were recorded almost after seven months of the incident.

16.2.33. In this regard, learned advocate for the defence has also pointed out an error of fact by learned Single Judge, wherein judgment at page no.6414, it is recorded that for PW No.981, justifiable reasons were given by PW No.981 for not identifying the accused in the Court whereas in his deposition, the prosecution witness has not given any

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such reason. With respect to PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231, he has clearly deposed about his reason for being at the camp site, which makes his presence there natural. Moreover, he has also deposed about the activity which was taking place there and the persons participating in it. He deposes that they had stood there for almost 30 minutes before they were spotted by the accused and during investigation, the police did inquire, if he would be able to identify them. Thereafter, he deposes about the Test Identification Parade conducted where he identified certain accused. In Court also, he identified one of the accused "Safdar Nagori" and then pleaded about passage of long time and change in appearance. The prosecution witness has been extensively cross-examined on identification and Test Identification Parade. However, no fault could be found in the procedure adopted for Test Identification Parade insofar as preserving confidentiality of the identification of the accused is concerned and the fact that Test Identification Parade has been exhibited by the Executive Magistrate at Exh. 3061 through PW No.571-Ramanbhai Senghabhai Solanki vide Exh.3051. The Court finds no reason to discard the evidence of this witness.

16.2.34. Learned advocate for defence has thereafter assailed evidence of PW No.1105-Idrish Gulabsha Fakir Diwan vide Exh.7923, who is Munjavar of Khundpir Dargah in Pavagadh-Halol and where the participants of the Halol terror camp had stayed. It is submitted that his evidence cannot be believed as though according to prosecution witness, he has interacted with accused No.2-Imran S/o Ibrahim Shaikh the most, still he has wrongly identified in the Court and that there was no Test Identification Parade.

16.2.35. PW No.1105-Idrish Gulabsha Fakir Diwan vide Exh.7923, in

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his evidence in chief has named accused No.2-Imran S/o Ibrahim Shaikh from the beginning during investigation and therefore, there was no reason to carry out Test Identification Parade through him. Moreover, prosecution witness has given detailed narration of his interaction with accused No.2-Imran S/o Ibrahim Shaikh and the activities during the stay. The prosecution witness also cautiously deposes his inability to identify due to passage of time and changes amongst the accused, still he has made an attempt for Dock Identification accepting what the prosecution witness has truthfully deposed on Dock Identification. Simply non-identification of accused in the Dock Identification in prevailing circumstance cannot put entire evidence to doubt especially, when the prosecution witness has stood his ground even during the cross-examination.

16.2.36. Moreover, PW No.1115-Mohammadumar Usmanbhai Mansuri in his deposition vide Exh.8002 and Section 164 statement vide Exh.8003 has identified accused No.2-Imran S/o Ibrahim Shaikh as a friend of accused No.37-Kayamuddin @ Rizwan @ Ashfak Kapadiya and appeared to him to be with accused No.37-Kayamuddin @ Rizwan @ Ashfak Kapadiya in carrying out serial blast.

16.2.37. The Court may refer to evidence of PW No.940-Nasir Aminsaheb Qureshi vide Exh.6623, who is the owner of Tata Sumo which is the vehicle referred by the other PW No.1105-Idrish Gulabsha Fakir Diwan. PW No.940-Nasir Aminsaheb Qureshi being owner of Tata Sumo has deposed that his friend had introduced Imran to him for taking on rent Tata Sumo for going to Saputara, exactly on 13.01.2008 to 15.01.2008. On those days, other prosecution witnesses have shown presence of accused No.2-Imran S/o Ibrahim Shaikh at Pavagadh. This prosecution witness has named the accused No.2-Imran S/o Ibrahim

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Shaikh since investigation time as Imran who took his car. His Test Identification Parade, therefore, is of no consequence as the prosecution witness knew him by name. Therefore, argument that in absence of Test Identification Parade or Dock Identification, the evidence of PW No.940-Nasir Aminsaheb Qureshi is of no use to prosecution is rejected. The hiring of Tata Sumo and using it to ferry co-accused at Halol-Pavagadh camp is established, further fortifying the case of the prosecution that the terror camp was held in Halol-Pavagadh.

16.2.38. This version is supported by evidence of PW No.941-Asifbhai Iqbalbhai Bodawala vide Exh. 6624, who knew accused No.2-Imran S/o Ibrahim Shaikh from beginning. This prosecution witness took accused No.2-Imran S/o Ibrahim Shaikh to PW No.940-Nasir Aminsaheb Qureshi to hire Tata sumo for period of three days. This prosecution witness is not cross-examined at all.

16.2.39. Of course, prosecution has examined PW No.1121-Dr. Sadab Rajebhai Panwala vide Exh.8059, who is a witness to the fact of accused No.2-Imran S/o Ibrahim Shaikh making arrangement for tents. However, this witness is declared hostile.

16.2.40. Thereafter, PW No.617-Hemant Kapurchand Khandelwal vide Exh.3255, the panch witness of panchnama of seizure of Tata Sumo at Exh.3256. This panchnama refers to PW No.940-Nasir Aminsaheb Qureshi. The panchnama records the version of PW No.940-Nasir Aminsaheb Qureshi to the extent of producing the Tata Sumo vehicle, which was given on hire to accused No.2-Imran S/o Ibrahim Shaikh on 13.01.2008. PW No.617-Hemantbhai Kapurchand Khandelwal vide Exh.3255 has proved panchnama Exh.3256 by reciting the gist of content of the panchnama.

16.2.41. Therefore, the Court has no hesitation in holding that accused

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No.2-Imran S/o Ibrahim Shaikh has participated in Halol terror camp at Pavagadh forest area and has also made certain arrangements.

16.2.42. The Court may refer to a circumstance about acquaintance of accused No.2-Imran S/o Ibrahim Shaikh with other accused, which gets established firstly by PW No.1115-Mohammaed Umar Usmanbhai Mansuri vide Exh.8002 (already referred in previous para). In addition, PW No.1062-Abdulajim Abdulhamid Sodagar vide Exh.7219, who is running a computer tutorial and has deposed that at approximately same time accused No.2-Imran S/o Ibrahim Shaikh has done a course of computer for one month. At that time, Usman Agarbattiwala, and Kayamuddin were also there to take course. This establishes the association. In cross-examination, this witness is asked about identification of Jahid whom he has deposed about being with Kayamuddin as a bearded person and there is no fruitful cross on the issue of association of accused No.2-Imran S/o Ibrahim Shaikh with other co-accused in learning computer course.

16.2.43. An argument is advanced that the prosecution has used a disclosure statement of co-accused; accused No.35-Rafiyuddin Kapadiya against accused No.2-Imran S/o Ibrahim Shaikh. Reference is made to Exh.6443 and error of trial Court in using the same against accused No.2-Imran S/o Ibrahim Shaikh. The Court may peruse Exh.6443. The disclosure made by accused No.37-Kayamuddin @ Rizwan @ Ashfak Kapadiya and which can be treated as admissible only to the extent of accused No.35-Rafiyuddin Kapadiya attending a camp on 13 to 15th January, which was organized and accused No.2-Imran S/o Ibrahim Shaikh was also part of it. The Court finds that the trial Court has only used it while referring to the evidence of accused No.35-Rafiyuddin Kapadiya to maintain continuity but has not used the same

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as independent circumstantial evidence, but only to limited extent.

16.2.44. It is lastly argued that even the accused No.2-Imran S/o Ibrahim Shaikh came to know about the blast through the media as per his confessional statement, which is treated to be evidence. If that be so, then it is unlikely that from the role given to accused No.2-Imran S/o Ibrahim Shaikh, he would not know about the blast on his own. In the opinion of the Court, the offence committed to conspire and cause serial blast was the common object when separate roles have been played. Therefore, it is not necessary for accused No.2-Imran S/o Ibrahim Shaikh to be conscious of each and every movement of co-accused.

16.2.45. In view of the aforesaid disclosure and appreciation of evidence, the Court finds that there is sufficient evidence to involve the accused No.2-Imran S/o Ibrahim Shaikh in the crime and the role attributed. Therefore, the Court is inclined to confirm the conviction as recorded by the trial Court.

16.3. In case of Mohammad Tanvir @ Talha S/o Mohammad Akhtar Pathan (Uttar Pradesh) (A-63)

(Accused No.34 in Criminal Confirmation Case No. 2/2022 and Appellant in Criminal Appeal No. 2106/2023):

16.3.1. In case of accused No.63-Mohammad Tanvir @ Talha S/o Mohammad Akhtar Pathan, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.3.2. Arguments of learned Senior Advocate Ms. Nitya Ramakrishnan on behalf of accused No.63; Mohammad Tanvir @ Talha Mohammad Akhtar Pathan in Sessions Case No.38 of 2009, who is the appellant in Criminal Appeal No.2106 of 2023 and accused No.34 in

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Criminal Confirmation Case No.2 of 2022.

16.3.3. By the impugned judgment, order and sentence, the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan has been sentenced to capital punishment and has preferred present Appeal. According to learned Senior Advocate for the appellant, the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan was shown arrested from Surat in connection with C.R. No.176 of 2008 registered with Kapodara Police Station being one of 15 FIRs registered in Surat Bomb Planting Cases.

16.3.4. It is submitted that arrest of the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan was not in connection with FIR registered at various Police Stations in Ahmedabad.

16.3.5. Learned Senior Advocate for the appellant has thereafter taken this Court through series of orders by which the trial of all the separate FIRs/ Sessions Cases of Ahmedabad and Surat were clubbed together and ultimately, the trial of all the FIRs/Sessions Cases arising out of 20 main charge-sheets and several supplementary charge-sheets of Ahmedabad cases and 15 main charge-sheets and several supplementary charge-sheets connected with FIRs of Surat.

16.3.6. Learned Senior Advocate for the appellant has thereafter taken this Court through operative part of the order particularly, pertaining to the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan to indicate sentences imposed upon the appellant under various Sections for which the appellant was tried and convicted. It is submitted that the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan has been gravely prejudiced by clubbing and conducting of joint trial of Surat cases along with Ahmedabad cases, as FIR registered at Surat in connection with which the appellant was arrested,

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no damage of life or death has been caused as even as per the prosecution that none of the bombs planted have exploded causing damage. Whereas in cases where FIRs have been registered at Ahmedabad, explosions have taken place resulting to mass scale damage to the life and property and therefore, by clubbing both the trials, the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan is made to answer the charge of Ahmedabad incidents, in which the appellant has no role to play.

16.3.7. In this connection, learned Senior Advocate for the appellant has referred to deposition of Investigating Officers; PW No.1136- Sujata Prakash Majmudar, Exh.8149 and PW No.1163-Mayur Jagmalbhai Chavda, Exh.8638 to submit that even as per the deposition of these witnesses, they had no evidence against present appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan regarding any role played by him in Ahmedabad blast cases. Learned Senior Advocate for the appellant has thereafter argued that there is no legal evidence to incriminate the appellant and that an error is committed in interpreting the operation of Section 27 of Evidence Act and the Special Court has acted against settled principle of law in this regard and has in fact, utilized provision of Section 27 of Evidence Act, as a device to introduce confessional statement. Similarly, it is argued that an error is committed by applying Section 8 of Evidence Act by using it as a tool of admission of conduct subsequent to arrest of the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan as a suspect and that too when such conduct was in the Police Custody. It is submitted that each fact in issue has to be established on the basis of evidence and when such fact in issue is to be established on the basis of series of relevant fact, then each of such fact is required to be established to such an extent

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to rule out any other probable inference. Such circumstances are required to be only and only on the basis of offence in question and the Court cannot take into consideration circumstance like previous history of the accused, which cannot be treated as one of the circumstances to establish the offence. It is submitted that even if the accused admits to his guilt while in custody, it is responsibility of the prosecution to establish such circumstances leading to offence independent of such admission to guilt.

16.3.8. It is submitted that in particular facts of the case, where people in locality have identified the accused to be in the locality, where purported conspiracy was hatched, then also mere establishing of presence in the locality through evidence of local public merely raises suspicion, but still cannot be treated as an evidence establishing the guilt.

16.3.9. It is submitted that even if during the course of investigation, the accused admits to guilt, the only way available is recording of statement under Section 164 of Cr.P.C., which in the present case and for the reasons best known to Investigator, has not been done for the appellant-Mohammad Tanvir @ Talha Mohammad Akhtar Pathan. It is submitted that even if statement made under Section 164 of Cr.P.C. is admissible, it would still need some corroboration, which is also absent in the present case.

16.3.10. It is submitted that wherever there is admission of offence accepting the guilt by co-accused, then such statement is to be treated as admissible only qua maker of such confessional statement, but such statement cannot be treated as admissible evidence qua co-accused. It is submitted that entire tenor of the investigation as well as impugned judgment is, as if burden is placed upon the accused to disprove what the

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Court has presumed on the basis of sketchy facts established here and there on the basis of depositions of panch witnesses and therefore, the trial Court has committed an error in relying upon such depositions of panch witnesses only on the ground that the panch witnesses are to be believed as they had no animosity against the accused. Learned Senior Advocate for the appellant has submitted that the appellant once arrested in one offence, was made to undergo the Police remand one after another sequentially in all the FIRs registered and therefore, was in long incarceration and was absolutely at the mercy of Investigating Officer, who appears to have proceeded to investigate with a predetermined mind by believing that the accused is definitely offender. In this connection, learned Senior Advocate for the appellant has drawn attention to statement under Section 313 of Cr.P.C. indicating that after arrest on 14th August, 2008, appellant continued to be under Police custody till 2009 (13-11-2009). This conduct of Investigator and long police custody, apparently, the appellant was kept away from his due role in investigation and therefore, investigation cannot be treated as fair investigation.

16.3.11. It is submitted that even if the role attributed to the appellant-Mohammad Tanvir @ Talha Mohammad Akhtar Pathan by investigation about preparing the bomb with his knowledge of technique to prepare the bomb and his motive to do so, then also, it was the duty of the prosecution to establish as to how the material to make bomb was procured, as definitely considering quantity of material involved, it is not a one day affair, particularly when some of the items used for preparing bombs were controlled items.

16.3.12. It is submitted that there is neither investigation nor discussion in the impugned judgment, or there is anything on record to

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suggest that Investigating Officer had any material to connect the appellant with the offence on the basis of which his arrest was effected. Even if, theory of prosecution regarding conspiracy and utilization of mobile phone is to be believed, then the prosecution has failed completely, as there is no CDR on record to draw connection of the appellant or nexus of the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan with other accused persons and only evidence is that of panchnama regarding mobile phone, which only indicates the place where the appellant had thrown his mobile phone in the river.

16.3.13. Learned Senior Advocate for the appellant has thereafter submitted that though according to the prosecution, there are five statements under Section 164 against present appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan cited as an evidence, however, in none of the aforesaid statement under Section 164, any reference is made to the appellant and therefore, actus reus of the appellant is even remotely established through this evidence. Moreover, contents of statement under Section 164 of Cr.P.C. cannot be read by using Section 10 of Indian Evidence Act, as any nature of confession post arrest will have no applicability of Section 10 of Indian Evidence Act.

16.3.14. Learned Senior Advocate for the appellant has thereafter made submissions on the general principle of admissibility of the evidence based on the facts narrated in statement recorded by the Investigating Officer. This submission is made as according to the appellant, the facts which are emerging on the basis of deposition of panch witnesses, have been treated as evidence in support of fact in issue and relevant fact to establish conspiracy. According to learned

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Senior Advocate, any statement that is recorded in the panchnama purportedly made by the accused, has necessarily to be treated as hearsay evidence and as such the statement is made while the accused is in the Police Custody, the same has to be treated as statement, which is recorded under Section 161 of Cr.P.C. and therefore, would be clearly hit by Section 162. In this regard, learned Senior Advocate has relied upon various decisions starting from the decision of the Apex Court in case of ***Hazari Lal v/s. State (Delhi Administration)*** reported in ***(1980) 2 SCC 390***. The decision of the Apex Court is in the case of offence of corruption and while considering the definition of "Proved" in Section 3 of Indian Evidence Act, the Court in Para-8 of the judgment has observed that Section 162 imposes a bar on the use of any statement made by any person to the Police Officer during the course of investigation except for utilizing the same, as is provided by Section 145 of Indian Evidence Act i.e. for contradicting the witness. The Court had rejected arguments advanced on behalf of the State that previous statement with which the witness is confronted for the purpose of contradiction, could be taken into consideration by the Court, as it would be covered under the definition of "Proved", while rejecting such arguments of the State holding that definition of "Proved" would not enable the Court to take into consideration statements, use of which is statutorily barred (Section 162 of Cr.P.C.).

16.3.15. On the same line, reliance is placed on the decision of ***Modan Singh v/s. State of Rajasthan*** *reported in* ***(1978) 4 SCC 435***, where again in Para-8, while discussing the facts of the case on the evidence of last seen together and discarding the fact, which emerged out of the statement under Section 162, the Court concluded that the fact that emerges in statement under Section 162, cannot be treated to be

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substantive evidence. Meaning thereby, statement that is made during the investigation to the Police, cannot be treated as substantive evidence.

16.3.16. In the opinion of the Court, position of law is crystal clear in this regard, as even in latest judgment of the Apex Court in case of ***Renuka Prasad v/s. State*** *reported in* ***2025 SCC OnLine SC 1074***, the very aspect was subject matter of consideration and in the facts of the case, acquittal recorded by the trial Court was overturned by the High Court and recorded conviction under Section 302 read with Section 120(b) of IPC. In Para-14 of the judgment, taking into consideration the discussion of the High Court regarding evidence of particular witness; PW-83; Investigating Officer referred to statements of several prosecution witnesses recorded under Section 161 and in cross examination of this witness, PW-83, there were general suggestions, which were denied by him and there was nothing to discredit testimony of Investigating Officer; PW-83. Thereby, the High Court accepted evidence of Investigating Officer, as the High Court did not find any reason to discard the same. However, the Apex Court held that the High Court had seriously erred in relying upon statements made by the witnesses under Section 161 affirmed by Investigating Officer; PW-83, as said procedure would be in clearly violation of Section 162 and specific use of Section 161.

16.3.17. According to learned Senior Advocate even the statements, which are recorded during the course of panchnama would fall in the same bracket and would necessarily be required to be discarded.

16.3.18. With regard to conspiracy where the motive is of importance, it is submitted that the prosecution has relied upon general statements regarding revenge by Muslims and these general statements cannot be treated to be evidence to construe a definite intention to commit present

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offence and such statements of general nature, cannot also establish common object. Reliance is placed in this regard on the decision of the Apex Court in case of ***Adambhai Sulemanbhai Ajmeri and others v/s. State of Gujarat*** reported in ***2014 (7) SCC 716.*** Learned Senior Advocate has particularly drawn attention to Para-200 of the aforesaid judgment, which explains as to what constitutes offence of criminal conspiracy. Referring to earlier judgment in case of ***K.R. Purushothaman v/s. State of Kerala*** *reported in* ***2005 (12) SCC 631*** that while appreciating evidence of conspiracy, each and every incriminating circumstance must be clearly established by reliable evidence and circumstances proved must form a chain of events from which the only irresistible conclusion can be drawn about guilt of the accused and no other hypothesis against such guilt is possible.

16.3.19. With regard to evidence of confession post-arrest to establish conspiracy, it is submitted that the prosecution falling back on the confessional statement cannot be treated to be concrete evidence and reading of statement under Section 164 of Cr.P.C., in the facts of the present case is not available to establish conspiracy. It is also argued that contents in the confessional statement cannot be also saved by using Section 10 of Indian Evidence Act. In this regard, reliance placed upon decision of the Apex Court in case of ***Mohd. Khalid v/s. State of West Bengal*** reported in ***2002 (7) SCC 334***, where the Apex Court has explained purpose of Section 10 of Indian Evidence Act, which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator, however, restricts it to statement made during the period, when the agency subsisted. Therefore, statement made by conspirator after secession of common intention cannot be regarded, as one made in reference to their

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common intention. Therefore, statement made post-arrest to the Police Officer touching upon involvement in the conspiracy, may not fall within the ambit of Section 10 of the Indian Evidence Act.

16.3.20. According to learned Senior Advocate for the object / reason to conspire, witnesses in their statement under Section 161 have given reasons. However, many of these witnesses have turned hostile. Specific reference is made to depositions of witnesses; PW No.83-Jayendrakumar Natwarlal Patel, Exh.881, PW No.197-Sureshbhai Ukabhai Bhayani, Exh.1099, PW No.1103-Mohammad Farooq Abdul Rashid Master, Exh.7799, PW No.1041-Talib Abdul Gaffar Maniyar, Exh.7056.

16.3.21. It is argued that despite the deposition of hostile witness will not serve any purpose, an error is committed by the trial Court in relying upon their version.

16.3.22. It is argued that statement under Section 161 is not available to the prosecution and even if, contradiction is proved, then also statement recorded under Section 161 and the facts mentioned therein, cannot be converted into evidence by deposition of Investigating Officer. Reliance is placed on the decision of the Apex Court in case of **Tahsildar Singh** ***v/s. State of Uttar Pradesh*** reported in ***AIR 1959 SC 1012***. Even otherwise, purpose of statement recorded under Section 161 is only to be utilized as provided under Section 145 of Indian Evidence Act.

16.3.23. Learned Senior Advocate has thereafter argued that PW No.1141-Aiyaz Razakmiyan Saiyed, Exh.8191, who has turned approver. His evidence also cannot be taken into consideration in so far as, the appellant- Mohammad Tanvir @ Talha Mohammad Akhtar Pathan is concerned, as in his entire statement, he never referred to present accused.

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16.3.24. It is further submitted that an attempt of the prosecution to prove the case of common intention / object of conspirators on the basis of contradictions proved by Investigating Officer, may not be taken into consideration as contradictions prove only general sentiments and resentment amongst Muslim, but does not establish or prove any act or design to commit offence and participate in it. It is argued that even if statement of witness as recorded by Investigating Officer, is proved by way of contradiction, it is still hearsay evidence and therefore, whatever is conveyed by witness, who is declared hostile and which comes on record by way of contradiction in the deposition of Investigating Officer, will still remain hearsay evidence. Therefore, according to learned Senior Advocate, the prosecution has failed to establish that present appellant along with other had shared common intention and object to commit the offence.

16.3.25. Learned Senior Advocate has thereafter narrated circumstances, which are otherwise required to be proved, but the prosecution has failed to do so against the appellant. It is submitted that arrest was made in dramatic fashion and upon his arrest, he had declared before Investigating Officer that he would like to divulge something connecting to offence. As a result of which, at 1.00 am, panch witnesses were summoned. Strong exception was submitted by learned Senior Advocate as to manner in which, arrest and carrying out of panchnama has taken place itself, is creating doubt and after all these, what was divulged by the accused-appellant-Mohammad Tanvir @ Talha Mohammad Akhtar Pathan, places where the bombs were planted all over Surat. In fact, even before the appellant could be taken to the places, Investigating Officer was well aware of such places and therefore, executing of panchnama was a mere formality and does not

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stand the test of being evidence. Learned Senior Advocate has referred to Exh-7692 being panchnama of arrest of this accused and Exh-2794 being tracking/pointing out panchnama. According to learned Senior Advocate, such panchnama cannot be treated as credible evidence and has pointed out to Section 25 of Indian Evidence Act to submit that whatever is recorded in panchnama, which is in front of the Police Officer, is not to be proved. It is argued that Section 25 is institutionalized presumption against Police action, when it comes to issue of evidence and this institutionalized presumption against Police, has its root in Article 23 of the Constitution of India. She has also referred to therefore, decision in case of ***Nandini Satpathy v/s. P. L. Dani*** *reported in* ***AIR 1978 SC 1025***.

16.3.26. It is further submitted that if at that stage, Investigating Officer was of the opinion about knowledge and participation as is disclosed in the panchnama of this accused, it was obligatory for Investigating Officer to immediately resort to record of confession under Section 164 of Cr.P.C. particularly, considering offence to be of such grave nature. It is submitted that to safeguard interest and protect sanctity of the investigation, legislature has provided for Section 164 of Cr.P.C. and only deviation was under the provisions of TADA and POTA, which today stand repealed. However, in UAPA, there is no such provision as was there in TADA and POTA in so far as recording of confession is concerned.

16.3.27. It is submitted that one of the circumstances against the appellant is Exh. 2849, which is the panchnama for search and seizure of the house of the appellant. It is submitted that the statements made while drawing such panchnama are hit by section 162 of Code of Criminal Procedure and 25 and 26 of the evidence act and therefore, the same

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cannot be treated as admissible. It is submitted the cylinder was found in the bedroom and the panchnama showed absence of usual household articles in the house except for gas cylinder. This factum cannot be treated as consistent only and only with the guilt. The prosecution has not established that the house was not accessible to other family members and that it was only appellant, who had complete control over the house so as to attribute anything and everything in the house to the appellant. In fact, there being no investigation about the use of gas cylinders, particularly in the offense at Surat with which the apparent is primarily attached, this circumstance cannot be utilized against the appellant. It would be a matter of conjecture and presumption that the cylinder, which is recovered from his house, was to be utilized for the terror attack unless something more is established in this connection.

16.3.28. Learned advocate has argued that Exh. 2757, being a panchnama of identifying a particular house being D-34, Riverfront society. The attribution to the appellant is that the appellant played a role in renting out the house to other accused persons and this information is also attributed to the appellant himself and therefore, the prosecution has to independently establish the fact that with full knowledge of the house and its use is required to be established. The prosecution has not established or corroborated by any other evidence that appellant had firstly played a role in renting out of the premises. Secondly, utilization of the same for the purpose of committing an offence like conspiracy and lastly the appellant alone had the complete and only access to such house.

16.3.29. It is further submitted that it is the case of the prosecution that the house was rented by one Sharif, who has not been examined as a witness and therefore, it is argued that the prosecution has deliberately

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kept Sharif away from being examined and has prayed for deriving adverse interference as examination of Sharif would have supported the defence.

16.3.30. The circumstance of a panch witness PW No.446 Sanjaybhai Gordhanbhai Patel, identifying the appellant in the Court as a person, who narrated during the panchnama his willingness of the appellant to show the house, which he had put on rent in itself is insufficient to conclusively establish that it was the appellant who had put the house on rent in absence of any corroboration. Moreover, the nature statement coming out from the deposition of panch itself cannot be treated as a circumstantial evidence of the circumstance of appellant having helped in renting the house, but at best has to be treated as corroborative piece of evidence.

16.3.31. In connection with the house D-34, it is argued that even if the pointing out panchnama of D-34 is accepted still renting out of a premises in itself cannot be treated as an offense and therefore, it was for the prosecution to give some evidence to show that his access to the house and access to other occupants of the house was for a wrongful activity.

16.3.32. PW No.1123-Liyakatali Gulamrasulhussain Shaikh at Exh.8078, who is the owner of the house has also mentioned a role played by one Sharif however, PW No.1123-Liyakatali Gulamrasulhussain Shaikh was not called upon by the prosecution to identify the appellant and according to this witness Sharif, who was acquainted with the happening in the house has not been examined.

16.3.33. Based on aforesaid evidence, presuming that the appellant has direct connection with accused No.44, who was living in that house is not only in the realm of unestablished presumption, but is an

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impermissible quantum leap.

16.3.34. It was for the prosecution to establish of way of cogent evidence about the relation between the appellant and occupants of D-34 and that they were in communication with each other. Though, the prosecution has relied upon purely upon the conjecture that the appellant was visiting the house at night.

16.3.35. This aforesaid circumstance in fact is an adverse inference against the prosecution coupled with the inability of the prosecution to further investigate the chance fingerprint found on the electric switch board, but calling upon the Court to presume the presence of the appellant on the basis of an established fact that there were several foot prints within the house amongst which, one of them being of the appellant. The deliberate non-investigation should be a ground for deriving adverse inference against the prosecution.

16.3.36. Learned advocate has, thereafter, submitted that the circumstance of the house D-34 also cannot be believed to be fully established as even from the prosecution's evidence there is a mismatch and variation in description of the articles recovered and as described in the panchnama and the reports of the FSL. In this connection, learned counsel has submitted that in Exh.2757, recovery panchnama item C2 is referred to as dust and dirt particles filled in plastic bag kept in a cloth bag, which is sewn with the string and sealed with a ceiling wax, whereas the dispatch note Exh.5774 refers to item C2 as cloth parcel of dust and dirt collected from the room and the report Exh.5776 refers C2 as a sealed plastic bag containing pieces of newspaper, clothes, cardboard, wooden sticks, plastic tap and plastics, whereas as the dispatch note showed total of 28 packets, Exh.5576 refers to only 27. This discrepancy would lead to doubt the investigation itself. It is

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submitted that the reference to wooden pieces in the FSL report Exh. 5576 is also inconsistent with the version given by the panch witness PW No.446-Sanjaybhai Gordhanbhai Patel or the Investigating Officer PW No.1155-Narayansinh Bhavansinh Parmar, examined at Exh.8517 or the FSL officer PW No.443-Nitinkumar Dayaram Patel, examined at Exh.2725 at spot as none of them have referred to traces of wood pieces or cardboards found in Exh.5776. In view of such inconstancy, prosecution has failed to establish any connection between the wood pieces purportedly found at the house D-34 with the wooden pieces used for assembling the bomb.

16.3.37. It is argued that the association of the appellant with accused No.44 is also not established as there is no direct or indirect evidence or any evidence to infer such association, particularly, when it is not established that accused No.44 has been the occupant of the house or that there being any evidence of appellant having entered the house, accessed the house or has met accused No.44 let alone meeting with accused No.44 and conspiring with him.

16.3.38. Learned advocate, thereafter, argued with regard to the connection of the appellant with the cloth material seized from the car at Surat. It is argued that Exh.2413 is the scene of offense panchnama, wherein the cloth fabric is shown to have been seized. The seizure is of four pieces of different coloured nylon fabrics and the prosecution relies upon Exh.6027 which is a cash memo of sale of cloth to a person named Rafik. In absence of any further description of cloth sold, the evidence of the witness, who had sold the cloth, cannot point any role of the appellant.

16.3.39. The evidence of PW No.861-Ramesh Maneklal Jindal, examined at Exh.6026 and his partner PW No.984-Radheshyam

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Madanlal Thakkar, examined at Exh.6851 is not sufficient to connect the appellant with the offense. It is submitted that though PW No.861-Ramesh Maneklal Jindal has identified the cloth belonging to his shop, but that is at the stage of his deposition and the Investigating Officer though had sufficient opportunity has not undertaken the exercise of getting the cloth identified immediately upon his recovering the same in the panchnama.

16.3.40. The evidence of PW No.984-Radheshyam Madanlal Thakkar, who had interacted with the accused at the time of sale of the cloth, the prosecution is unclear about the period by which he was investigated and though was available had taken period of two months to conduct test identification. It is submitted that test identification is unreliable as he has not identified the accused during the course of his deposition and with regard to the identification of the cloth; in cross examination itself, this witness has deposed that similar cloths are being sold from various other shops within Surat.

16.3.41. It is submitted that even the cash memo Exh.6027 is a completely unreliable piece of evidence as from the evidence of PW No.861-Radheshyam Madanlal Thakkar, who has handed over the cash memo book has admitted that there are nine pages missing in the cash memo book.

16.3.42. Learned advocate has, thereafter, argued on the point of identification of the accused through the usage of nuts and bolts which were purchased from Kamla Hardware. It is submitted that the prosecution has relied upon the evidence of PW No.855-Jayeshbhai Manubhai Patel, examined at Exh.6010, who had sold the nuts and bolts has admitted in his deposition Exh.6010 that he has not given any description of the person to whom the nuts and bolts were sold and

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therefore, the prosecution could not rely upon the identification through such a witness. Learned counsel has pointed out the inconsistencies in the version regarding description of the accused person by this witness. Reliance is placed upon the decision in the case of ***Sheikh Hasib @ Tabarak v/s. State of Bihar, reported in, (1972) 4 SCC 773***.

16.3.43. It is submitted that it was for the prosecution to establish that the purchase made by the accused was in the proximate period to the incident and therefore, though the bill book evidencing the sale and purchase of the nuts and bolts would have been available, the same is not brought on record. It is submitted that PW No.855-Jayeshbhai Manubhai Patel was questioned about the bill book, but the same has not been brought on record. Therefore, the prosecution not having brought such evidence, has once again fallen back on conjectures for the Court to presume that the purchase must have been made in the period proximate to the incident.

16.3.44. It is further submitted that the submission of defence is fortified by the fact that the prosecution did not examine two persons namely Laxmanbhai and Abbasbhai, who had actually interacted with the appellant at the time of sale of nuts and bolts. It is submitted that non-examination of these individuals as witness also should be treated as a weakness in the case of prosecution.

16.3.45. It is submitted that to make out a clear case against the appellant, the prosecution also ought to have given an answer to PW No.855-Jayeshbhai Manubhai Patel vacillations whether on nuts and bolts of SPI branch was sold only from the shop of this witness as initially the witness has deposed that this brand was sold from his shop, but thereafter, has diluted it by admitting that he does not know if other shops in Surat could be selling the nuts and bolts of the same brand. The

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witness, therefore, is rendered unreliable.

16.3.46. Learned advocate has, thereafter, submitted that the muddamal discovered particularly, nuts and bolts have been dealt with in a very casual manner in such a serious offense, when produced before the Court the nuts and bolts were found in an unsealed manner. The panchnama of the scene of offense Exh.2413 does not specify the brand name of the nuts and bolts, whereas PW No.855-Jayeshbhai Manubhai Patel identifies them in the Court to be of SPI brand demonstrates an effort on the prosecution to fill up the gaps of investigation. The fact that the matching of the total weight of the muddamal in various documents line dispatch note, panchnama and record cannot overcome the inconsistencies.

16.3.47. On the issue of car cover recovered from the scene of offense in the Kapodara Police Station FIR, it is submitted that PW No.859-Ahmadnur Abdul Rahim Tambuwala, examined at Exh.6018 claiming to have identified the car cover produced vide Exh.2336, has not identified the accused-appellant either in the Court or in T.I. Parade to connect the appellant with the car cover. It appears that this witness was acquainted with the name of the accused to be the alleged customer by the police itself. The prosecution has not established the identity of the car as well as car cover beyond doubt and consequently the connection of the appellant with the car cover.

16.3.48. It is submitted that before the Court, no bills with regard to the purchase of the car cover was placed on record. Moreover, witness PW No.859-Ahmadnur Abdul Rahim Tambuwala has admitted in his deposition that such car cover is sold commonly in the market and there is no special sign which would specifically identify the cover and connect it with the witness or the accused.

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16.3.49. Learned counsel has, thereafter, argued the circumstance of the master house, which was utilized for the purpose of conspiracy and main offense. The only connection of the house with the appellant is the knowledge of the appellant about the house, which comes on record by way of a pointing out panchnama with this thin evidence. It cannot be presumed that the appellant has an association with the house and conspiracy which was hatched within. The knowledge is attributed to the appellant that the master house was rented by one Rafik, but there is nothing on record to indicate as to how Rafik is connected with the house, particularly when the prosecution, who has examined owner of the house as PW No.864-Abdul Farid Abdul Rasid Shaikh, examined at Exh.6037 and his son PW No.1016-Mohammad Shakir Abdul Rasid Shaikh, examined at Exh.7006, who have not deposed to the extent that the person who had occupied this master house was Rafik and was occupying it at the relevant period. Relying upon the statement of the appellant himself and that too during his custody is not evidence in the eyes of law. There is, therefore, a gap in the case of the prosecution about the utilization of the master house for the purpose of conspiracy and other offense, its connection with one Rafik, the occupation of Rafik at the relevant period and the connection of the appellant with said Rafik. With regard to the conspiracy in general, it is submitted that the prosecution has miserably failed that the confession recorded under Section 164 of the Code of Criminal Procedure being Exh.8619, 8623, 8627, 8631 and 9021 are sufficient to firstly establish the conspiracy to commit the present offense and such evidence cannot be treated as an evidence against the appellant in individual as none of them are implicating the appellant or attributing a specific role. It is not even remotely established from this confession about the *actus reus* of the

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appellant in planting the bomb in Surat and Ahmedabad, it only indicates to the extent of general sentiment of a community and resorting to some kind of training but certainly does not come out as an independent evidence to conspire for preparing bombs and planting at places to create terror.

16.3.50. With regard to the identification of the appellant, it is submitted that the dock identification is the only substantive evidence. Learned advocate has in this connection relied upon the decision of the Hon'ble Supreme Court in the case of ***Tukesh Singh and others v/s. State of Chhattisgarh, reported in, 2025 SCC Online SC 1110*** and ***Rajesh Alias Sarkari and Another v/s. State of Haryana, reported in, (2021) 1 SCC 118***.

16.3.51. Specifically referring to Section 291A of the Code of Criminal Procedure Code, it is submitted that this provision does not obviate the need for direct evidence on oath in Court for identification and therefore, the evidence at the stage of test identification parade is required to be treated as a hearsay evidence even if the same is brought on record through the evidence of the Magistrate, who has performed the test identification parade. It is therefore, submitted that the test identification parade cannot be a substitute for the dock identification and the inability of the witnesses to dock identify the accused remains a missing link in the case of the prosecution. Learned advocate has broadly argued about the precautions required to be taken during the test identification parade which have not been taken in the present case. It is submitted that assembling of more than two witnesses for test identification requires special steps so that the witness do not intermingle whether such steps have been taken or not is not coming on record. It is submitted that with regard to the specific identification at

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the hands of PW No.984-Radheshyam Madanlal Thakkar, it is argued that the incident of sale which took place on 12.07.2008 and the appellant being arrested on 26.08.2008 and this witness being available in Surat at the end of August-2008, the test identification parade was conducted only on 06.10.2008, the delay therefore has increased the probability of the accused being exposed to pubic, particularly when he was taken around the city during the execution of various panchnamas and there being no reference of his identity being covered during such exercise should clearly cast doubt on identification, if any, even at the stage of test identification parade.

16.3.52. While summing up, learned advocate has referred to the statement under Section 313 of the Code of Criminal Procedure at Exh.0185 to submit that while in custody, the appellant was being tortured. It is submitted that despite the appellant being in a long period of police custody under various FIRs of the incident, the prosecution has failed to establish the manner and method in which the material which constituted the bomb especially chemicals were procured in large quantity. This in itself is a big missing link. It is submitted that the prosecution is unable to bring any cogent material showing the knowledge or agreement to the *actus reus*, to the overt act of planting of devices or framing of conspiracy. The circumstances sought to be established are based on weak pieces of evidence like pointing out panchnamas, identification through the witnesses from whom some material was procured and recovered from the scene of offense and the panchnamas of recovery from scene of offense. In all these evidence, the prosecution wants the Court to believe what has been narrated by the accused appellant during the execution of the panchnamas though the same is clearly hit by Section 162 of the Cr.P.C.

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16.3.53. In fact, circumstances were coming on record about the inaction of the prosecution leading to inability of the prosecution to bring on record the cogent evidence and therefore, adverse inference is required to be drawn when the prosecution has failed to give any explanation for not producing the call detail records of the mobile phone which was partly investigated, but not recovered, the CDR of the pay phones despite having the necessary details of the numbers dialled and the time period. In complete investigation with regard to the pipe bomb and therefore, the attempt of the prosecution is to suggest that one inadmissible circumstance be treated as corroboration or link to yet another inadmissible circumstance and creating a perfect chain of inadmissible evidence to establish such a serious offense.

16.3.54. Learned Additional Advocate General has submitted that the incidents of Ahmedabad and Surat cannot be treated as independent incidents as both are the outcome of a common conspiracy. In this connection, he has referred to PW No.1103-Mohammadfaruk Abdulrashid Master, examined at Exh.7799 to shows the basis on which the appellant-accused No.63 is arrested. He has drawn our attention to Exh.113, which is an application by all the accused arrested in Surat like the appellant and this application made by the accused persons themselves is praying for combining the trial of both Ahmedabad and Surat offenses. The appellant himself is a signatory to such application. It is submitted that though the appellant has raised issue of an illegality about his arrest at the stage of appeal, but he has not raised any issue when the opportunity was available particularly when the concerned Investigating Officer was in witness box, not even a fragile cross-examination is undertaken to question the lapse or procedural illegality in the process of arrest. It is submitted that at various stages, during the

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course of trial, such a scrutiny was undertaken by the Courts, but at no stage the issues were answered in favour of the appellant. Referring to the arguments about the promptness in taking action on the basis circumstances of conspiracy, it is submitted that on the panchnama Exh.7692 that the issue of conspiracy will emerge only at a later point of time but would certainly not be on record in full-fledged manner while the investigation is still at a nascent stage. Therefore, the situation that prevailed when the bomb devices were being located one by one, the full focus was perhaps on preventing any untoward explosion in priority to the investigation. In general, it is submitted that the pointing out panchnama is required to be treated as evidence of the fact of knowledge of the appellant about the place, where various activities in furtherance to the conspiracy had taken place.

16.3.55. It is submitted that since accused No.45-Fazle Rehmaan was connected with the circumstance of House No. D-34, Riverview House, the incriminating circumstances attributed to the concerned accused persons connected with D-34's Riverview House as also Sherpura House and Master House, would equally be applicable to accused No.63-Mohammad Tanvir as one of the conspirators like others.

16.3.56. The prosecution has relied on witness being PW No.1103-Mohammadfaruk Abdulrashid Master vide Exh.7799, who is a resident of Surat and in the business of readymade cloths. He has deposed that that accused No.14-Sajid Mansuri was his friend as they were studying together and also deposed about few other friends. The witness was interrogated by police in the month of August 2008, wherein witness has denied that accused No.14-Sajid Mansuri was being associated with SIMI and in last December, accused No.14-Sajid Mansuri came to his house and introduced a person namely Mufti. As witness did not support

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the case of prosecution, he was declared hostile and during the course of cross examination by prosecution, the witness has admitted that police has interrogated him and his statement was recorded on 17.08.2008 by ACP Sujata Majmudar as per his say. With regard to witness being called to give his testimony, witness has admitted that earlier summons was issued, which was duly served upon him. However, owing to his inability to appear on account of illness, a bailable warrant was issued against him, pursuant to which, he has now given his testimony. He has admitted that one Rafik Patel (absconder) had developed relation with accused No.14-Sajid Mansuri. The witness has denied having attended any gathering of Khidmat Group during night hours at Makaipul, where he met different persons including accused No.14-Sajid Mansuri, accused No.15-Mufti, accused No.63-Mohammad Tanvir, Rafik Patel (absconder) and some other persons who are also accused of the present case as recorded in his testimony and that accused No.14-Sajid Mansuri and accused No.15-Mufti made Takrir on Islam as their community would not believe in democracy etc**.** The witness has admitted that he was not under any duress to give a particular statement. The witness has admitted that in the month of July-August 2008, the police had called several persons of his community and had interrogated them. The witness has denied about he being continuously called for 15/20 days, prior to recording of his statement on 17.08.2008. Though witness was declared hostile, he has not denied his connection with accused No.14-Sajid Mansuri, and another person namely Rafik Patel (absconder accused No.34). The witness has also not denied that he was not being interrogated, but as a matter of fact, he has admitted that police has recorded his statement as per his own say. The evidence of this witness would also be important, as though the witness was declared hostile and

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failed to support the case of the prosecution, however, he has abstained from making any allegation of illegal confinement, torture etc. by police, unlike several other material hostile witnesses who, upon failing to support the case of the prosecution, levelled allegations against the police regarding their being subjected to torture, illegal confinement, etc. by police.

16.3.57. The prosecution has relied upon the deposition of witness being PW No.962-Abdul Rizwan vide Exh.6747, who is an employee of Metro Shoe Company, Surat. The witness was shown Xerox bill of his shop dated 13.07.2008, which was produced through list at Exh.6746, which bears his name and shows that customers were attended by him namely accused No.63-Mohammad Tanvir and accused No.45-Fazle Rehmaan thereby, establishing the relation between these two co-accused being together in a proximate period of the incident.

16.3.58. The prosecution has also relied upon the deposition of Police Officer being PW No.1136-Sujata Prakash Majmudar, Exh.8149, who has recorded statement of aforesaid witness PW No.1103-Mohammadfaruk Abdulrashid Master. In para-3 of her deposition, the witness has stated that she interrogated the witness Faruk and the relevant contents of the statement recorded by her from this witness have also been brought on record through this witness. The witness has deposed that similarly she has also interrogated other witnesses of Khidmat group on 24.08.2008 and 25.08.2008. The witness has deposed that she arrested accused No.63-Mohammad Tanvir on 26.08.2008 and following his arrest, he was interrogated. Thereafter, the relevant panchnama of accused No.63-Mohammad Tanvir was drawn up, and other document concerning the preparation of the facial identification sheet, arrest memo, etc., of accused No.63-Mohammad Tanvir, as well

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as of the other arrested accused, Jahir Patel (acquitted), were duly executed. Since sufficient incriminating material was found to justify their arrest, they were arrested, and the mandatory procedure regarding the intimation of accused No.63-Mohammad Tanvir's arrest to his family members was also complied with.

16.3.59. Though submissions have been made on behalf of accused No.63-Mohammad Tanvir's arrest and the said arrest is dramatic, nothing has surfaced from the testimony of the witness, who has actually arrested accused No.63-Mohammad Tanvir to suggest any element of any drama therein. In that view of the matter, the submissions regarding dramatic arrest of accused No.63-Mohammad Tanvir would fail.

16.3.60. The prosecution has relied on panchnama at Exh.7692 drawn on 26.08.2008 between 20:00 to 21:00hrs was drawn by Surat Police at the police station, more particularly, witness Sujata Majmudar in the aforesaid panchnama has subjected accused No.63 to panchnama of person. Further, some relevant materials were found from accused No.63-Mohammad Tanvir, one was railway ticket dated 22.08.2008 from New Delhi to Bombay Central, which was duly recorded in the panchnama. The recovery of articles from the possession of accused No.63-Mohammad Tanvir was duly recorded in the panchnama, and the said articles were subsequently returned to accused No.63-Mohammad Tanvir. There is also mention to the effect that accused No.63-Mohammad Tanvir has asked to inform his brother Mo. Salim, regarding his arrest, which was duly complied with. In this manner, provision of Section 51 of Cr.P.C. stands duly complied with.

16.3.61. It is submitted that the panchnama Exh.7692 was proved through panch witness being PW No.1094-Dilipbhai Ambabhai Patel vide Exh.7691, who has fully supported the panchnama and also

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supported the relevant fact of recovery of railway ticket from New Delhi to Mumbai dated 22.08.2008. There is nowhere mentioned in cross-examination of this witness that accused No.63-Mohammad Tanvir was brought from Bombay. It is submitted that learned Advocate representing accused No.63-Mohammad Tanvir has not at all cross-examined this witness. The aforesaid panchnama at Exh.7692 was also proved through Investigating Office being PW No.1136-Sujata Majmudar vide Exh.8149.

16.3.62. The prosecution has also relied on panchnama at Exh.2860 dated 30.08.2008, whereby accused No.63-Mohammad Tanvir has made voluntary disclosure to point out the place, where accused No.63-Mohammad Tanvir has destroyed his mobile. The aforesaid panchnama stands proved through panch witness being PW No.469-Sanjay Bhagvandas Bhandari vide Exh.2859 and Investigating Officer being PW No.1048-Kalubhai Sartanbhai Desai vide Exh.7075. It is submitted that the relevance of this mobile and pointing out of place, where the said mobile was destroyed would assume importance as witness at Exh.5479 had given a mobile of Reliance Company to accused No.63-Mohammad Tanvir. The act of destroying mobile is a suspicious circumstance has to be explained by accused No.63-Mohammad Tanvir, which he did not.

16.3.63. The prosecution has also relied on panchnama at Exh.2796 dated 01.09.2008, whereby accused No.63-Mohammad Tanvir has made a voluntary disclosure to point out a place, where he had destroyed pipe bomb. The first part of the panchnama was drawn at DCB police station and thereafter, the second part of panchnama was drawn. During the course of drawing of panchnama, accused No.63-Mohammad Tanvir led all to Singanpur Causeway near Tapi River and pointed out that he had

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destroyed pipe bomb by throwing it in the water. The Fire brigade was called to find the destroyed pipe bomb, but the same could not be found. The aforesaid panchnama was proved through panch witness being PW No.452-Sunil Ramsaheb Gupta vide Exh.2795 and through Investigating Officer being PW No.1044-Nisarmahamad Malik vide Exh.7061. It is submitted that two other witnesses, who were working in Surat Municipal Corporation in Fire department are examined and they have deposed that they had tried to find out petrol bomb, but they could not find it.

16.3.64. The Court may take into consideration evidence of PW No.1103-Mohammad Farooq Abdulraseed Master, Exh.7799, who is witness having been declared hostile and during the cross examination, he has admitted to recording of his statement on 17-08-2008 and that having been recorded several facts about his acquaintance with one Sajid Mansuri and that this witness was introduced to other persons, who were residents of Surat, who were running one “Khidmat” group. He has also deposed that in his statement, he has not recorded about meeting organized by “Khidmat” group at ‘Makkai Pool’, where Rafik Patel, Arif Patel, Ismail Shaikh, Tanvir Pathan, Jahir Patel, Adnan Gujarati, Abdul Karim were present and he had gone there with Sajid Mansuri and Mufti, where there were discussion / lectures with regard to ‘Islamic’ religion, Muslims not believing in democracy and governance of the State to be run in accordance with ‘Shariat’ and to take revenge of atrocities on Muslims, Jihad has to be undertaken. To specific question with regard to sentence recorded in the Police statement that whether he had objected that statement was not recorded as per his version. To which, this witness had replied that he had not read the statement. However, this witness has answered that there was no pressure from

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anyone to record his statement. He has also stated that he has not made any complaint against recording of his statement. In this regard, the Court may refer to evidence of Investigating Officer, who has recorded statement of this witness being PW No.1136-Sujata Prakash Majmudar, Exh.8149. Similarly, PW No.1041-Talib Abdul Gafar Maniyar, Exh.7056 is also declared hostile, who was witness, whose statement was recorded about his acquaintance with Ajimhussain and Mashiyuddin and the fact that both his friends had joined 'SIMI' from 2001 onwards. This witness has denied that his statement was recorded about meeting of 'SIMI' in Ahmedabad, which took place in a house in Ahmedabad and Ansar Yunus Mansuri, Samsuddin Shaikh were present and other 20 persons were present, where General Secretary of 'SIMI', Safdar Nagori was also present. This witness has denied that in this meeting, it was discussed about change in working of 'SIMI' and taking of training. The Court has made the aforesaid reference only to consider the allegations made about an unfair investigation. The Court, however, does not find anything to conclude that the investigation had been unfair while considering the deposition of the hostile witnesses also.

16.3.65. Insofar as the arrest of the accused, the Court may refer to PW No.1136-Sujata Prakash Majmudar, examined at Exh.8149, who in her deposition has referred to a statement recorded on 17.08.2008 of one Farooq Master, who has deposed about his contact with Sajid Mansuri and has referred to him as fundamentalist and connected with the activity of SIMI. This Sajid Mansuri had introduced him to one Mufti and contacted other members of 'Khidmat Group' and organized a meeting at one 'Makkai Pool', Vivekanand Bridge, Adajan, wherein present appellant-Mohammad Tanvir @ Talha Pathan had also participated and in this meeting, there was discussion by Mufti about

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'Islamic Rule' as per Shariat and about harassment towards Muslims and based on this, the arrest was effected on 26.08.2008. This witness also refers to drawing of arrest panchnama and deposing that she had sufficient evidence against the appellant to lead to his arrest. Para-5 onwards is the cross-examination, wherein qua the present appellant, specific questions were put in paras-13-14 referring to panchnama Exh.2794 that in the preliminary panchnama, all the places where bombs were planted were not given by the appellant. Therefore, considering the circumstances mentioned by this witness, in the opinion of the Court, the arrest at the relevant time was justified.

16.3.66. The submission that another Investigating Officer PW No.1155-Narayansinh Bhavansinh Parmar, examined at Exh.8517 had given a clean chit to the activities of NGO Khidmat, in the opinion of the Court, will be no consequences. This witness in fact has referred to his investigation in connection with CR.No. I-176 of 2008 at Kapodara Police Station and having taken remand of the appellant till 06.09.2008 has referred to the panchnama executed on 28.08.2008, wherein a voluntary disclosure of the appellant with regard to showing the premised being house D-34 and the search of this house led to recovery of mattresses, cloth sheets, scissor, cutters, hacksaw blade, nuts etc. Therefore, in cross-examination, an answer given to the question about the activity of Khidmat will not wash-off all the investigation carried out by this witness against the appellant. PW No.1155-Narayansinh Bhavansinh Parmar, if he claims to have no knowledge and circumstance about the arrest of the appellant, then also, the same is inconsequential as the arrest of the accused-appellant was effected by PW No.1136-Sujata Prakash Majmudar.

16.3.67. The submission of the appellant having absolutely no role in

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the offenses registered at Ahmedabad based on the evidence of an Investigating Officer examined at PW No.1163-Mayur Jagmalbhai Chavda, examined at Exh.8638, by referring only to couple of lines in the cross-examination, where he has deposed that it is true that the present appellant was not arrested in connection with his investigation and as during his investigation no evidence was found, hence, not arrested cannot be treated as evidence of innocence of the appellant. This witness was assigned investigation of couple of FIRs registered at Ahmedabad, out of several FIRs. The other FIRs were being investigated by the other Investigating Officers. Moreover, both the incidents being part of larger conspiracy, it is not necessary to attribute a specific act in connection with the offenses being investigated by this witness. The mainstay argument is the evidence gathered by the Investigating Agency, which is in the form of pointing out panchnamas, recovery panchnamas, wherein a narration is made by the accused person in presence of the panch, which is inculpatory in nature and that those statements which may come on record through the panch witnesses cannot be treated as admissible evidence. The reliance is placed on the decision in case of **Hazari Lal (Supra)**, the relevant para-8 pointed out is with regard to the statements of the witnesses recorded under Section 162 of Cr.P.C. during the course of investigation which obviously are the previous statements to be utilized in the manner as provided under Section 145 of the Indian Evidence Act. The Hon'ble Supreme Court was examining the same in the offense registered under Prevention of Corruption Act and at that stage the contention on behalf of the State that the earlier statement with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition 'proved' under

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Section 3 of the Evidence Act. Therefore, referring to the statutory bar, the contention was rejected. In ***Modan Singh (Supra)*** again refers to the statement recorded under Section 162 of Cr.P.C. made to the investigating officer are not to be treated as substantive evidence which can be relied upon, is a settled principle of law. The decision is also rendered on the point that if the evidence of the investigating officer regarding recovery of material during course of Investigation is convincing, then the evidence as to the recovery of the investigating officer need not be rejected even if the seizure witness/panch witness do not support or are declared hostile.

16.3.68. The discussion of judgments cited on behalf of accused No.63; Mohammad Tanvir @ Talha Mohammad Akhtar Pathan on the point of Section 27 and Section 8 of the Evidence Act.

16.3.69. Learned Senior Advocate has referred to decision of the Apex Court in case of ***Himachal Pradesh Administration v/s. Shri Om Prakash*** reported in ***(1972) 1 SCC 249*** in support of argument that fact which is required to be established, as an evidence by witness, is to be perceived by senses of human being. It is submitted that Section 3 of Evidence Act, which defines expression fact necessarily has to refer to material and not mental fact, therefore, 'pointing out panchnama', which is strongly relied upon by the prosecution, is only of mental fact, which was within knowledge of the accused, when he indicated premises, where purportedly part of offence is committed. Therefore, discovery of thing or some material is important and in the facts of this case, there is no recovery of article or thing in the pointing out panchnama. The Court may consider Para-14 of this judgment, which refers to decision of ***Privy Council in Pulkuri Kotayya*** reported in ***AIR 1947 PC 67***, which says that information leading to discovery of witness admissible, is discovery

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from him of things sold to him or hidden or kept with him, which the Police did not know, until the information was furnished by the accused. The Court has examined this issue in the context of evidence given by the Investigating Officer and panch witnesses, which had lead to PW-11 with whom the subject matter of offence was discovered and it is evidence of PW-11, which corroborated evidence of Investigating Officer and panchas making same admissible under Section 8 of the Evidence Act, as conduct of the accused.

16.3.70. In the opinion of the Court, application of Section 27 and Section 8 of Evidence Act, may not be circumscribed to lead to discovery of material (physical thing), which obviously would be leading to another person, who either may be treated as witness or accomplice depending upon the facts of the case. In the present case, leading investigation to particular place, where part of offence particularly conspiracy has taken place, means special knowledge of the accused is leading investigation to premises or the place, which therefore becomes material and recording of the fact of such disclosure leading to premises recorded in the panchnama, would therefore, be covered under Section 27 of the Evidence Act, making it admissible, since this fact has been deposed by panch witness in support of the prosecution and would not remain only hearsay evidence, with further corroboration by Investigating Officer. Therefore, by pointing out the panchnamas, disclosure is made of special knowledge of the accused person regarding premises/place, where the part of offence has taken place and leading to discovery of such place, which becomes relevant to the fact in issue and therefore, required to be treated as admissible evidence.

16.3.71. In the decision in case of ***Prakash Chand v/s. State (Delhi***

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Administration) reported in ***AIR 1979 SC 400***, is again cited for application of Section 8 of Evidence Act. The Apex Court was considering offence under the Prevention of Corruption Act and evidence of trapping witness and whether corroboration of such evidence is necessary and whether conduct of the accused, when questioned by the Investigating Officer immediately after taking bribe, if proved, can be treated as admissible evidence. In Para-8, the Court has held that the Court has taken into consideration contention of Counsel for the appellant-accused that evidence leading to conduct of the accused, when challenged by the Inspector was inadmissible, as it was hit by Section 162 of Cr.P.C. Answering the contention, the Court answered that the Court held that there is clear distinction between conduct of person against whom offence is alleged, which is admissible under Section 8 of Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to the Police Officer in the course of investigation. However, what is excluded by Section 162, is statement made to the Police Officer in the course of the investigation, but not relating to the conduct of the accused person, not amounting to statement. Citing an example of circumstance that the accused person led the Police Officer and pointed out the place, where stolen articles or weapons used in the offence, were found hidden, then such evidence of circumstance would be admissible as conduct under Section 8 of the Evidence Act. In fact, the Court in Para-9 of the judgment referring to various decisions in case of ***Zwinglee Ariel v/s. State of Madhya Pradesh*** reported in ***AIR 1954 SC 15***, has held that the Apex Court was inclined to hold that evidence to the effect that the accused showed signs of being frightened on being questioned by the Police Officer, as admissible conduct, if proved. Similarly, referring to

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decision in case of ***Rao Shiv Bahadur Singh v/s. State of Vindhya Pradesh*** reported in ***AIR 1954 SC 322*** and ***State of Madras v/s. A. Vaidyanatha Iyer*** reported in ***AIR 1958 SC 61***, conduct of the accused on being confronted by the Police Officer, was held to be admissible evidence and in fact, the Apex Court held that the Apex Court did not see any reason to rule out evidence relating to the conduct of the accused, which would lend circumstantial assurance to the testimony of PW-6. PW-6 in the facts of the case being was a trap witness.

16.3.72. Reliance is placed on decision of ***Mohmed Inayatullah v/s. State of Maharashtra*** reported in ***1976 (1) SCC 828***. This judgment is cited to argue that whether admissible portion of information taken in conjunction with the facts discovered, sufficient to draw presumption of the accused being offender. Discussing the interpretation and scope of Section 27, which starts with an expression "proved that". In Para-12 of the judgment, it is discussed that to bring Section 27 into operation, there has to be discovery of fact as a consequence of information received from the accused person. Second requirement is discovery of such fact must be deposed and third is that at the time of such disclosure of information, the accused must be in Police custody and the most important condition is that only "so much of the information", which relates distinctly to the facts thereby discovered, is admissible.

16.3.73. According to learned Senior Advocate, in the facts of the present case, disclosure made by the accused at the time of drawing of panchnamas, has not led to recovery of any article or thing, by which the appellant would be connected to the offence. However, in the very judgment in Para-13, the Apex Court has held that expression "fact discovered" is not restricted to physical or material fact, which can be perceived by senses and that it does include mental fact. Once again,

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referring to decision of ***Privy Council in Pulkuri Kotayya*** reported in ***AIR 1947 PC 67***, the Court took cognizance of the settled principle that expression "fact discovered" includes not only physical object produced, but also place from which it is produced and knowledge of the accused, as to this. As discussed in the evidence pertaining to this accused, disclosure in the pointing out panchnama is about special knowledge of the accused about the place, where the part of offence has taken place and therefore, "fact discovered" is premises and does not remain only mental fact.

16.3.74. According to this Court, meaning given to application of Section 27 by aforesaid judgment clearly applies to the facts regarding accused-appellant-Mohammad Tanvir @ Talha Mohammad Akhtar Pathan in Criminal Appeal No.2106 of 2023. As qua this accused, disclosure of knowledge of the appellant about using of particular premises to commit part of offence, was recorded at the time of drawing of panchnama, which is corroborated by independent panch witness as well as deposition of Investigating Officer.

16.3.75. Reliance is placed upon decision in case of ***Bahadul alias Ghanshyam Padhan v/s. State of Orissa*** reported in ***(1979) 4 SCC 346***, in support of their submission that the Court cannot rely upon confessional statement made before the Investigating Officer leading to premises, where part of offence was committed. However, present judgment decides point that if the accused has not made any statement during Section 27 of Evidence Act relating to recovery of weapon, then judicial confession made by the witnesses about production of weapon by the accused, cannot be treated to be admissible evidence under Section 27 of Evidence Act. Meaning thereby, the Court has directly connected discovery of fact, which has found mentioned in proceedings

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undertaken under Section 27 of Evidence Act with Section 8 of Evidence Act.

16.3.76. The appellant has relied upon decision of the Apex Court in case of ***Allarakha Habib Memon and others v/s. State of Gujarat*** reported in ***(2024) 9 SCC 546***, particularly drawing attention to Para-40 to submit that circumstance regarding identification of the place of incident at the instance of the accused is inadmissible, because the crime scene was already known to the police and no new fact was discovered in pursuance to the disclosure statement. It would be pertinent to note that the Apex Court has made aforesaid observation while considering confessions of the appellant-accused, which were recorded by the Medical Officer, while preparing Injury reports. It was these confessions, which the Court held to be inadmissible, as the accused persons were presented before the Hospital by the Police Officers after arrest being effected. In the facts of the present case, what is under consideration is panchnama, which is pointing out premises or place where the part of offence has taken place and within special knowledge of the accused person, which was disclosed while pointing out panchnama.

16.3.77. Reliance is placed upon decision of Delhi High Court in case of ***Mohd. Rahis Khan v/s. State*** reported in ***2009 SCC OnLine Del 2901*** in support of their arguments of the appellant that pointing out of place from where nothing incriminating is recovered, is irrelevant fact. Learned Senior Advocate has taken this Court through facts, which are recorded in Para-5 and Para-6 of the judgment and the observations made in Para-9 therein.

16.3.78. This Court would observe that Delhi High Court was appreciating what was observed by the trial Court in Para-16 of the

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impugned judgment of conviction, wherein it is recorded that after the appellant was arrested, he had pointed out the place, where the offence was committed to Investigating Officer and also pointed out the spot, where the Police had recovered brick with which the murder was committed. Thereafter, he led investigation to 'Nala', where he has thrown his cloths, worn by him at the time of crime. The High Court specifically observed about lack of clarity in the judgment with regard to fact of recovery of brick, pointing out by the accused person, as an evidence, as a conduct admissible under Section 8 or whether it is to be held as admissible evidence under Section 27 of Evidence Act. It is in this facts circumstance that the Court held pointing out was irrelevant. The Court is therefore of the view that observation thus made, is very fact specific to the case before the Delhi High Court.

16.3.79. For similar contention, reliance is placed yet another decision of Delhi High Court in case of ***Arun Kumar v/s. State*** reported in ***1996 (37) DRJ (DB)***, in support of contention of inadmissibility of disclosure statement. Delhi High Court had observed the fact that during the course of interrogation by the Inspector, witness had made disclosure statement regarding pointing out of the place, where the murder took place and also pointed out place, where the body was thrown in gutter. However, gutter from where the dead body was recovered, was already within knowledge of the Police before disclosure statement and therefore, part of disclosure statement was not admissible in evidence. It would be pertinent to observe that disclosure statements, which were held to be inadmissible, were in fact statements recorded by Investigating Officer, during the course of interrogation of the accused person and therefore, clearly hit by Section 162 of Cr.P.C. Such is not case in the facts of the present case and disclosure of facts with which we are concerned, are

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disclosures, which are made during the course of pointing out panchnama.

16.3.80. On the similar line, judgment of Madras High Court in case of ***Perumal alias Kuttiappan v/s. the State*** reported in ***2009 (2) MWN (Criminal) 36 (DB)***, which also is on the issue of recovery pursuant to confessional statement. Being repetitive in nature and principal submission having been taken into consideration in the earlier judgment, is not dealt with herein.

16.3.81. On the issue of identification of the accused, Counsel has relied upon various decisions to contend that identification of the appellant, cannot be treated to be relevant circumstance to connect the appellant with the offence. Main contention of the appellant being dock identification only to be substantive piece of evidence and identification by Test Identification Parade is inconsequential.

16.3.82. Reliance is placed in decision of ***Sheikh Hasib alias Tabarak v/s. the State of Bihar*** reported in ***(1972) 4 SCC 773***, relying upon Para-5 and 6 of the judgment, wherein discussion is made regarding sensitivity of such identification. It is submitted that as per this judgment, identification of not only the accused person, but also material, if any, is also required to be done and that to at the earliest possible opportunity, so as to minimize chances of fading of memory by reason of lapse of time. This judgment is particularly cited as according to Counsel, there is inconsistency in identifying materials particularly the cloths/fabrics, which were recovered from the Car, but was directly identified in the Court by the witness without there being previous Test Identification Parade and the delay of approximately two months in carrying out Test Identification Parade of the accused person. This in the opinion of the Court is judgment in the facts of the case, where the

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emphasis would always be to apply rule of prudence, while appreciating evidence of identification.

16.3.83. Another judgment relied upon in case of ***Rajesh alias Sarkari and another v/s. State of Haryana*** reported in ***(2021) 1 SCC 118***, in so far as issue of Test Identification Parade is concerned, the Court has summarized principles, which are required to be followed for conducting proper Test Identification Parade and the effect of refusal of accused to participate in Test Identification Parade. This principle was lead on the facts that what purpose Test Identification Parade would serve, where the claim of the accused is that witnesses already know the accused prior to offence and therefore, refusal to participate in such Test Identification Parade was not held against the accused person. For the benefit of this Court, principles summarized by the Apex Court in the aforesaid judgment, are reproduced herein below as under:

> *"43.1 The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime;*
>
> *43.2 There is no specific provision either in the CrPC or the Indian Evidence Act, 1872 ("the Evidence Act") which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP;*
>
> *43.3 Identification parades are governed in that context by the provision of Section 162 of the CrPC;*
>
> *43.4 A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held;*

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43.5 The identification of the accused in court constitutes substantive evidence;

43.6 Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act;

43.7 A TIP may lend corroboration to the identification of the witness in court, if so required;

43.8 As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration;

43.9 Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible;

43.10 The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case;

43.11 Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence; and

43.12 The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused."

16.3.84. In case of ***Tukesh Singh and others v/s. State of Chhattisgarh*** reported in ***2025 SCC OnLine SC 1110***, the Apex Court has explained situation, which would require dock identification and Test Identification Parade. According to the Court, eyewitnesses must identify the accused sitting in the dock, as the same accused whom they had seen committing the crime in case, where eyewitnesses knew

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accused before incident and another situation, where eyewitnesses did not know the accused before incident, then it is necessary to hold Test Identification Parade and if it is not held and if the evidence of eyewitnesses recorded after few years, in that case, identification of accused in the Court becomes vulnerable. In the facts of our case, eyewitnesses are witnesses to circumstance leading to commission of crime like circumstance of recovery of cloth fabrics at the scene of offence, which cloth fabrics were according to prosecution purchased by the appellant. Cloth fabrics, which were recovered from vehicle, which contained other material for explosive bombs and eyewitness has identified cloth fabrics and the appellant-accused as purchaser of cloth fabrics. Thereby connecting material recovered from scene of offence with the appellant. Therefore, in the opinion of the Court, identification of the appellant at Test Identification Parade, is relevant fact establishing connection between cloth fabrics at the scene of offence and purchase made by the appellant, relevant and admissible fact against the appellant. The Court also holds that explanation given by very witness about passage of long time and definite change in the appearance of the accused person. Because of which witness did not make effort for identifying the accused during his deposition, is acceptable explanation and would not affect credibility of identification by Test Identification Parade, which was undertaken at the proximate period to the incident and in fact, credibility is lent to genuineness of witness, when he gave explanation about situation of dock identification.

16.3.85. Particularly, when Test Identification Parade is also affirmed by the Magistrate himself as well as witness to Test Identification Parade and Investigating Officer. The Court finds that there is absolute consistency in all the set of witnesses with regard to Test Identification

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Parade held at the hands of witnesses, who had sufficient occasion to know the accused person and connect him with the crime on the basis of either material purchased or by connecting him with the premises.

16.3.86. Reliance is placed on the decision of ***Wakil Singh and others v/s. State of Bihar*** reported in ***1981 (Supplementary) SCC 28***, only to emphasise on proximity of carrying out Test Identification Parade, as in facts of the case in ***Wakil Singh (supra)***, it is observed in Para-2 that the High Court had ignored identification of Test Identification Parade, which was conducted about three and half months after dacoity, treating this to be long lapse of time and impossibility for any human being to remember the features of the accused and likelihood of committing of mistake. However, emphasis of this judgment was that it would be unsafe to convict the accused for serious offence on testimony of single witness.

16.3.87. In the facts of the present case, it is not a case of single witness identifying the accused person and connecting him with circumstance, which is relevant for the purpose of main issue of conspiracy.

16.3.88. Reliance is placed upon decision in case of ***Md. Sajjad alias Raju alias Salim v/s. State of West Bengal*** reported in ***(2017) 11 SCC 150***, wherein relying upon earlier decision in case of ***Subhash v/s. State of Uttar Pradesh*** reported in ***(1987) 3 SCC 331***, the Apex Court has questioned Test Identification Parade of the accused, whose description and particulars, eyewitness has never mentioned in statement during investigation.

16.3.89. This aspect does not apply to the facts of this case, where the witnesses, who have undertaken identification, have during the course of investigation, given sufficient description to support Test Identification

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Parade. The Court may observe that though the submissions made by the learned senior advocate are recorded and dealt with however, all the submissions made have also been dealt with under the chapter of "Issues".

16.3.90. Learned Sr. Advocate has cited several decisions and made submissions on the various issues arising in the present case. The submissions have been recorded as she has made such submissions in the context of A-63. These very submissions though the Court has answered to in a separate Chapter of "Issues" and therefore, to avoid repetition, not answered here.

16.3.91. In the case of A-63, the Court may refer to evidence of PW No.6855-Jayeshbhai Manubhai Patel at Exh.6010, who has identified the accused-appellant in the Test Identification Parade and has deposed that he had approximately half an hour to be with the accused at the time of purchase of nuts and bolts at his shop, which is period sufficient for any witness to later on identify.

16.3.92. The Court has perused the evidence of witness being PW No.855-Jayeshbhai Manubhai Patel vide Exh.6010, who is a running a shop in the name of 'Kamla Hardware' and selling nut bolt. He has deposed that he had sold Nut-Bolt to a person, who was identified by him as accused No.63-Mohammad Tanvir in Test Identification Parade at Exh.3079 dated 29.08.2008. Test Identification Parade is also proved through Executive Magistrate as PW No.575-Kirtanbhai Charurbhai Patel examined vide Exh.3076. The witness has also identified article i.e. bolt produced which was produced at Sr. No.7 vide Exh.2350. It is pertinent to note that the scene of panchnama at Exh.2413 in Kapodara FIR No. 176 of 2008, records the recovery of various articles from the said place, including a bolt. The witness has also produced Nut-bolt

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from his shop under the panchnama at Exh.2814. The aforesaid panchnama was proved through panch witness being PW No.458-Dipak Ramchandra Mali vide Exh.2813 and Investigation Officer as PW No.1155-Narayansinh Parmar vide Exh.8517. He has also deposed that a person who came to purchase nut-bolt from him, purchased around 15 to 16 kg. nut-bolt and wiser. The said nut-bolt were also subjected to forensic opinion, which is placed on record at Exh.5776. Exh.5834 is required to be considered through forwarding letter Exh.5774.

16.3.93. The Court has also perused 313 statements of this accused wherein no explanation is offered and the accused pleaded ignorance to the question with regards to Exh.6010/P.W. No.855-Jayeshbhai Manubhai Patel, which pertains to purchase of nuts and bolts in bulk quantity despite the accused not being in the business of hardware.

16.3.94. Similarly, PW No.984-Radheshyam examined at Exh.6851. In Para-4 of his deposition, he has given description of individuals who had come to his shop for purchase and has also deposed the manner in which he had gone to the Magistrate's Court after approximately one month and identified the accused person.

16.3.95. The explosive device was assembled by using several articles as is evident from the seizures made from the scene of offence as well as the unexploded bomb. It is found that material like ball bearings, nuts and bolts were stuffed into the device which would upon explosion, act as a projectile. Therefore, the nuts and bolt though innocent hardware material, when used in the manner mentioned hereinabove as a part of bomb, would be lethal. Therefore, the procurement of nuts and bolts in bulk (15 to 16 kgs.) is an important circumstance to establish the connection of the accused with the offence. In the preceding paras, the Court has already referred to the deposition of the concerned witness.

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16.3.96. In this background, the Court may undertake consideration of the evidence against this accused.

16.3.97. It would be pertinent to state here that native of accused No.63-Mohammad Tanvir is from U.P and one accused referred in the testimony of this witness i.e. accused No.15-Mufti, is also from U.P as well as many other accused persons of this case are also from U.P.

16.3.98. The Court finds that on behalf of accused No.63-Mohammad Tanvir, the submissions are made with regard to violation of Articles 21, 22 and 23 of the Constitution of India as well as judgment of D.K.Basu. But, considering the evidentiary material, the submissions made before this Court are entirely devoid of merit. Furthermore, arrest of accused No.63-Mohammad Tanvir was effected on 26.08.2008 and he was produced before the Court on 27.08.2008. However, accused No.63-Mohammad Tanvir has not made any complaint regarding any torture, harassment etc. that has been caused to him by police. It would be also pertinent to state in view of the fact that a railway ticket dated 22.08.2008 for travel from New Delhi to Bombay was recovered during the search of accused No.63-Mohammad Tanvir, and hence, the question of believing the allegation that accused No.63-Mohammad Tanvir was in the illegal confinement of the police since 14.08.2008 is baseless. The allegation made for harassment made by police to accused No.63-Mohammad Tanvir also has no legs to stand, as on the very day, the accused-Jahir Patel (acquitted) was also arrested alongwith accused No.63-Mohammad Tanvir and no allegations have been made by this accused with respect to any harassment made by police to him.

16.3.99. The Court has relied on panchnama at Exh.2794 drawn on 27.08.2008 from 01:15 to 07:00hrs. The first part of panchnama was drawn at DCB Police Station, Surat in the presence of accused No.63-

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Mohammad Tanvir and Investigating Officer-Ms. Majmudar and panchas. accused No.63-Mohammad Tanvir has voluntarily disclosed to point out relevant places, where bombs were planted. Pursuant to which, the accused led the police persons and panchas to various places as described in the scene of offence panchnama, i.e. (1) Motorcar No. GJ-06-CD-2908 was found loaded with 4 bombs which were disabled by bomb disposal squad and for which FIR was registered at Kapodara police station vide CR.No. I-176 of 2008. And panchnama of scene of offence is Exh.2385. (2) Motorcar No. GJ-06-CD-3569 found loaded with explosive for which FIR got registered at Kapodara police station vide C.R.No.1-175 of 2008. And panchnama of scene of offence is Exh.2413, (3) Place of scene of offence panchnama Exh.2429, (4) Place of scene of offence panchnama Exh.2441, (5) Place of scene of offence panchnama Exh.2453, (6) Place of scene of offence panchnama Exh.2491, (7) Place of scene of offence panchnama Exh.2502, (8) Place of scene of offence panchnama Exh.2531, (9) Place of scene of offence panchnama Exh.2538, (10) Place of scene of offence panchnama Exh.2566, (11) Place of scene of offence panchnama Exh.2631, (12) Place of scene of offence panchnama Exh.2666, (13) Place of scene of offence panchnama Exh.2681, (14) Place of scene of offence panchnama Exh.2694, (15) Place of scene of offence panchnama Exh.2550 and (16) Place of scene of offence panchnama Exh.2708.

16.3.100. The Court finds that the disclosure made by accused No.63-Mohammad Tanvir of pointing out the aforesaid scene of offence panchnamas would assume importance, which establish the conduct of accused No.63-Mohammad Tanvir, as accused No.63-Mohammad Tanvir was arrested on 26.08.2008 at late night and immediately panchnama of person was drawn, whereby accused No.63-Mohammad

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Tanvir has made voluntary disclosure to point out the relevant place. Needless to say, here that when any offence has been committed, pursuant to which an FIR came to be registered, and where place of offence is known to the Investigating Officer on the basis of the said FIR, the Investigating Officer would certainly visit the scene of offence and would also draw a panchnama to that effect. If the scene of offence is known, then the panchnama of the scene of offence would be drawn first. Thereafter, an FIR would be recorded; however, in any case, the scene of offence panchnama is drawn as early as possible, the first thing which any Investigating Officer would ascertain is the factum of the scene of offence. Hence, merely because a certain place is known to the Investigating Officer, the relevance of that place would not lose its significance if the accused, at a later point of time, voluntarily leads the Investigating Officer to that very place for the purpose of point out relevant place, whether it was known to the Investigating Officer or not, as the importance and significance would lie in the knowledge of the accused regarding that place. In the present case, it is the knowledge of accused No.63-Mohammad Tanvir, which he disclosed during the course of his disclosure statement, regarding his knowledge of the places, where the bombs were planted. This conduct of pointing out such places would be relevant for examining the conduct of accused No.63-Mohammad Tanvir, even though the disclosure statement include a permissible confessional statement, which is not prohibited under Section 27 of the Evidence Act and hence, as per the provision of Evidence Act, accused No.63-Mohammad Tanvir's conduct, so far as panchnama and the disclosure statement made and recorded at Exh.2794, is required to be appreciated. There is no bar to the admissibility of the statement, and so far as the question of appreciating

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the credibility of such evidentiary material is concerned, it has to be evaluated in the context of the cross-examination of the relevant witnesses to test whether the credibility of such witnesses has been impeached or not, and also in the context of the defence, either out of cross-examination or any explanation offered in respect of such incriminating circumstances. The panchnama at Exh.2794 stands proved through panch witness being PW No.451-Kalpesh Ishwarbhai Patel vide Exh.2793 and Investigating Officer being PW No.1163-Sujata Majmudar vide Exh.8149.

16.3.101. The Court has perused the panchnama Exh.2849 drawn on 27.08.2008 between 21:35 to 23:30hrs. Through this panchnama, search of the houses of accused No.63-Mohammad Tanvir was done, whereby Gas Cylinder was found however, articles related to kitchen or preparation of food etc. were not found, hence, keeping of gas cylinder is suspicious. The panchnama Exh.2894 stands proved through panch witness being PW No.463-Laxmanbhai Manjibhai Gami vide Exh.2848 and Investigating Officer being PW No.1155-Narayansinh Parmar vide Exh.8517.

16.3.102. The Court has perused the panchnama at Exh. 2757 drawn on 28.08.2008 between 12:15 to 16:40hrs. The first part of the panchnama ws drawn at DCB Police Station, Surat in the presence of accused No.63-Mohammad Tanvir, police and panchas. During the course this panchnama, accused No.63-Mohammad Tanvir voluntarily agreed to point out a rented house (hide out). Pursuant to which, the second part of the panchnama was drawn, wherein accused No.63-Mohammad Tanvir led all concerned to House No. D-34 Riverview Society, passing through Mugalsara Road, Municipal Corporation, Variyali Bazar, Palia Ground and other places. Upon reaching the said house, accused No.63-

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Mohammad Tanvir has disclosed that he has given the said house on rent, which was found closed. Upon inquiry being made, it came to know that the owner of the house is Liyakatali Shaikh. Considering the fact that the house was required to be searched, and for which the lock had to be broken open as the keys were unavailable.

16.3.103. It appears that thereafter, the house was being searched in the presence of FSL officers, whereby certain articles and objects were recovered, which is recorded in the panchnama. However, relevant would be the articles such as scissors, ball bearings, plastic sheets, bolts (moti), dust particles/trash of waste, and certain other objects which, upon forensic examination contained ammonium; so also, plastic Kerbas (barrels/carboys), which smelled of petroleum, along with other articles also smelling of ammonium nitrate. Further, the articles seized during the course of drawing of panchnama, were primarily examined by FSL officer and the opinion of the FSL Officer is placed on record vide Exh.2767 and proved through Scientific Officer being PW No.443-Nitinkumar Dayaram Patel vide Exh.2725. The Objects and articles sized during panchnama were sent for scientific examination through forwarding letter vide Exh.5774. Pursuant to which, the FSL Officer has given opinion vide Exh.5776 and relevant regarding the said opinion is that out of the articles forwarded for examination, the articles marked as A-9 and C-2 are opined to indicate the presence of high explosives such as ammonium nitrate and petroleum hydrocarbon oil. Apart from aforesaid opinion, there were two other FSL opinions, which are placed on record at Exh.5847 and Exh.5655 and stands proved through evidence of FSL officer being PW No.840-Janmahmad Mansuri vide Exh.5700.

16.3.104. It appears that the aforesaid panchnama at Exh.2757

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mentioned regarding electric switch board being a chance print (fingerprint). This chance print is also subjected to forensic examination and as per report of FSL, chance print found on electric switch board, which has not been examined. The prosecution had failed to place the expert opinion on record before the Learned Special Judge, despite being submissions made thereon and placed the relevant forwarding letter alongwith the opinion received. The submissions were made on behalf of accused No.63-Mohammad Tanvir alleging that the Investigating Officer had acted in a partisan manner for not examining the material object of chance print on electricity switch board.

16.3.105. The Court has perused the deposition of witness being PW No.853-Umeshbhai Master at Exh.6007, who is an electrician/wireman. The said witness was called at House No. D-34 for removing electric switch board and giving it to police. The case of prosecution is that the House No. D-34 of Riverview Society was one of the sequels to the conspiracy, wherein high explosive was recovered and subsequently used for preparation of bombs. Consequently, all facts and evidence relevant to House No. D-34, Riverview Society, assume importance. This house No. D-34 was pointed out by accused No.44-Mohammad Akbar, accused No.43-Anik @ Khalid, accused No.46-Mohammad Naushad and accused No.47-Ahmed Bava. It appears that the evidence regarding House No. D-34 in the context of the present accused, also implicates accused No.44-Mohammad Akbar, accused No.43-Anik @ Khalid, accused No.46-Mohammad Naushad and accused No.47-Ahmed Bava, as said accused are further connected with the Sherpura house, as well as the silver-coloured Wagon R and maroon-coloured Wagon R, so also connected with accused No.45-Fazle Rehmaan.

16.3.106. Moreover, accused No.43 has also pointed out plastic-can

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shop and Rampura auto oil sale shop, which is also considered while dealing with the case of accused No.43-Anik @ Khalid. It would be pertinent to state that plastic cans (barrels/carboys) containing petrol were also recovered from a car seized from the scene of offense during the investigation of FIR No. 176 of 2008, registered at Kapodara Police Station. It is relevant to state that the plastic cans recovered from D-34 Riverview Society were subject to forensic examination and smelled like petroleum. The FSL opinion is already discussed herein above. The said plastic cans were seized at item No.10 under panchnama at Exh.2413.

16.3.107. The Court has perused the panchnama at Exh.2806 drawn on 04.09.2008. The first part of the panchnama was drawn at a police station in the presence of accused No.63-Mohammad Tanvir, whereby accused No.63-Mohammad Tanvir has made voluntary disclosure to point out a house on rent by Rafik. Thereafter, second part of panchnama was drawn, whereby accused No.63-Mohammad Tanvir led all concerned to a place known as master house (hideout), passing through Variyali bazar pumping station and other places and also pointed out a closed room of this house No.21. As the house was found locked, the lock was broken open, and in the presence of the FSL, search of the house/room was conducted, however, no material evidence was recovered. The panchnama Exh.2860 was proved through panch witness being PW No.456-Mehulkumar Jadiya vide Exh.2805 and Investigating Officer as PW No.1155-Narayansinh Bhavansinh Parmar, at Exh.8517. The relevant fact is that the owners of this house have been examined at Exh.6037 and Exh.7006 and they have identified accused No.37-Kayamuddin through Test Identification Parade at Exh.3108. Accused No.37-Kayamuddin was identified as the individual known as Rafik, who had taken the master house (hideout), Surat on rent. Test

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Identification Parade at Exh.3108 was proved through witness being PW No.579-Dharmesh Kanaiyalal Patel vide Exh.3106.

16.3.108. The Court has perused the deposition of witness being PW No.859-Ahmednoor Tambuwala at Exh.6018, who is in business of Tadpatri (tarpaulin), has deposed that police had come to him in the month September 2008 alongwith Tanveer, to whom he had sold motorcar cover. During the course of the investigation, one such cover was recovered from a Wagon R car bearing Registration No. GJ-06-CD-3569. The said recovery was effected during the drawing of scene of offense panchnama at Exh.2385, in connection with the FIR proceedings registered at Kapodara Police Station vide C.R. No. 175 of 2008, wherein various articles were seized, including a motorcar cover, which was seized through Muddamal list Exh.2336 Sr.No.37**.** The witness has identified this car cover as belongs to his shop when shown to him, based on thread through which cover is stitched and that, bears mark word 'Wagon R'. Though the witness failed to identify accused No.63-Mohammad Tanvir but has deposed that the name of the person is 'Tanveer Pathan'. This circumstance connects the accused with the car, which was seized with unexploded bombs and explosives.

16.3.109. In view of further statement under Section 313 of Cr.P.C. of accused No.63-Mohammad Tanvir was recorded to the effect that he was interrogated on 11.08.2008 and called again on 14.08.2008 while he was alongwith his friend, he was detained on the said date and subjected to mental and physical torture until he was arrested on 26.08.2008. The same is not at all borne out from the defence of accused No.63-Mohammad Tanvir before the Court during cross-examination, nor through any other mode, except for this belated version made in his further statement, which would have no evidentiary value dehors any

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corroborative evidentiary material.

16.3.110. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.63-Mohammad Tanvir @ Talha S/o Mohammad Akhtar Pathan. The Court has therefore, no reason to interfere with the conviction recorded.

16.4. In case of Samsuddin @ Samsu Shahabuddin Shaikh (Ahmedabad) (A-4)

(Accused No.4 in Criminal Confirmation Case No. 2/2022 and Appellant No.1 in Criminal Appeal No. 1710/2022):

16.4.1. In case of accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.4.2. Learned senior advocate has, thereafter, made submissions for accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, who came to be arrested on 16.08.2008 and was in judicial custody till 02.02.2009. According to learned senior advocate, the allegation against him is having participated in the meetings at Ahmedabad and Surat. Learned senior advocate has immediately referred to the impugned judgment at page No.6428, where the Special Judge has given a finding that the appellant was present at terror camp in Halol by referring to the confessional statement of accused No.2-Imran Ibrahim Shaikh. He, therefore, took this Court to the confessional statement of accused No.2-Imran Ibrahim Shaikh at Exh.8619 to show that the confessional statement does not specifically refer to the presence of the appellant in Halol Camp.

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16.4.3. It is further submitted that insofar as the Vagamon Camp in Kerala, the appellant is not even named as an accused and therefore, obviously the appellant has not participated in so called terror camp at Vagamon. It is submitted that the appellant is not even named as one of the participants in Halol camp by any of the witnesses or confessional statement of the co-accused. Not only that even the point out panchnama executed at the behest of co-accused, of the area where the Halol camp took place, but name of the appellant has also not found any mention. It is further submitted that neither the chance witnesses have named or identified the appellant nor the Munjavar of Khundpir Dargah has named or identified the appellant. Therefore, the Special Judge has given a wrong finding of fact about the presence of appellant at Halol.

16.4.4. It is submitted that insofar as the presence of the appellant in the meetings at Surat though the prosecution has relied upon the deposition of PW No.1097-Mahetab Ibrahim Shaikh, who was examined vide Exh.7767, still the presence of the appellant in such meeting cannot be treated to be part of the conspiracy as from the evidence of aforesaid witness in the said meeting only religious discourse had taken place. The Court is of the view that though the deposition of Mehtab Ibrahim Shaikh is with regard to the religious discourse, but the presence of the appellant in the meeting alongwith other co-accused persons establishes the connection between the appellant and co-accused.

16.4.5. Learned senior advocate, thereafter, submitted that for the Surat meeting, another witness being PW No.1041-Talib Abdul Gafar Maniyar, who was examined vide Exh. 7056, but this witness has not at all supported the case of prosecution and is declared hostile. Learned senior advocate has, thereafter, once again gone back to the issue of meetings in Ahmedabad and submitted that the prosecution which has

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relied upon the evidence of PW No.957-Zakirhussain Abduljabbar Kureshi, who was examined vide Exh.6687, he has shown the appellant to be present in three meetings at Ahmedabad. However, if the evidence of this witness is to be taken into consideration alongwith the evidence of other evidence, then it is pointed out that that for this meeting, the prosecution has cited Ibrahim Ansari as a secret witness in whose house the meeting at taken place but was not examined as a witness at all. Therefore, the best witness for the meeting has not been examined by the prosecution, putting in doubt as to whether the meeting at all had taken place. Similarly, another secret witness cited in charge-sheet Yakubbhai was also not examined as a witness by the prosecution so also one Iliyas, who is referred in the confessional statement of Umar @ Ashokbhai Kalabhai at Exh.8627, though a witness, has been dropped.

16.4.6. The Court finds that the witnesses were dropped by submitting dropping purshis vide Exh.9367, wherein at Sr. Nos.27 and 22 respectively, the names of these witnesses appeared naming them to be repetitive witnesses.

16.4.7. The other evidence being that of confessional statement, accused No.24-Umar @ Ashok Kalabhai Kabira at Exh. 8627, but according to the appellant, this confessional statement may not be relied upon as it has been later on retracted. Moreover, the said accused No.24-Umar @ Ashok Kalabhai Kabira has been acquitted. According to learned senior advocate, except for the aforesaid submissions, there is no other evidence which would corroborate the taking place of a meeting and therefore, the prosecution has not established the role of the appellant in conspiracy.

16.4.8. It is submitted that even if the presence of the appellant in any of the meetings is to be believed, still it was the duty of the

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prosecution to establish as to how the appellant had participated in planning of preparation of bomb, planting of bomb etc. and the only evidence of PW No.957- Zakirhussain Abduljabbar Kureshi is not sufficient to establish the conspiracy and therefore, the evidence of accused No.24-Umar @ Ashok Kalabhai Kabira by itself cannot be believed to be an evidence for the purpose of corroborating.

16.4.9. Learned senior advocate has, thereafter, submitted that that the point out panchnama by the appellant being Exh.5452, which pertains to a meeting on 20.07.2008 in the house of one Yakub. Learned senior advocate has argued that the evidence of Umar in any case, is not reliable as he himself was present in the meeting for the first time which was so close to the incident and therefore, it is unlikely that in such meeting, the other co-accused would disclose in front of him the very serious offense that they proposed to commit. Learned senior advocate has, thereafter, assailed the evidence in the form of point out panchnama being Exh.5452 executed at the behest of the appellant on 30.08.2008, where he indicated the meeting place for the meeting on 20.07.2008 at the house of Yakub. According to learned senior advocate, to prove Exh.5452, a panch witness being PW No.809-Nasuruddin Ismail Shaikh, who was examined vide Exh.5451 was examined and from his evidence and panchnama, only the pointing out of house could be treated as admissible evidence, but rest of what has been mentioned about the activity taking place in the house could not be treated as admissible evidence.

16.4.10. Learned Senior advocate for the state on accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh submitted that he is involved by witness Jakir, as according to witness Jakir after March 2008, in continuation and in sequel of different conspiratorial meeting one

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another such meeting took place at the house of accused No.4-Samsuddin S/o Shahabuddin Shaikh's Nana which was participated by many other accused persons like accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.8-Yunus Mansuri, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.37-Kayamuddin Kapadiya, and absconder accused Taukir, who is presently facing trial. So far as this meeting is concerned, different accused persons gave speech relating to human loss being suffered by Muslims in the riots of 2002 and regime of that time was anti-Muslim and to destabilise such Government, it is required to strike and spread terror in the public and to establish Islamic regime so also to do jihad. One another conspirator-accused, also gave a speech relating to SIMI, now having become strong and activists of SIMI are active in the city. So far as other conspirator is concerned who participated in the meeting at accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana house are those accused who attended Kerala and Halol camp both or either Kerala camp or Halol camp.

16.4.11. It is submitted that PW-1097/ Exh.7767 Mehtab Shaikh stated that one SIMI meeting took place at Limbayat, Surat wherein accused No.4-Samsuddin S/o Shahabuddin Shaikh, accused No.8-Yunus Mansuri, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, and accused No.12-Safdar Hussain Nagori were present. Moreover, the witness stated that, in 2008, accused No.37-Kayamuddin Kapadiya met him and at that time Taukirbhai was with him. The witness stated that they were looking for a rented house. The witness identified accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh in court. Looking at the evidence of the witness, it appears that these accused were members of

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SIMI and were present in the SIMI meeting though SIMI is a banned terrorist organization.

16.4.12. It is submitted that accused No.2-Imran Ibrahim Shaikh's confessional statement Exh.8619, more particularly in the concluding part of it, involves accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh as according to accused No.2-Imran Ibrahim Shaikh in noon of 26.07.2008, accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/o Gulam Khwaja Mansuri called accused No.2-Imran Ibrahim Shaikh and asked for telephone number of accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh and the same was given in the same sequence, inquiry of accused No.8-Yunus Mansuri was also made. accused No.2-Imran Ibrahim Shaikh's statement involves accused No.8-Yunus Mansuri as accused No.14-Mohammad Sajid Mansuri also asked for accused No.8-Yunus Mansuri's telephone number, which was not available with accused No.2-Imran Ibrahim Shaikh.

16.4.13. It is submitted that Section 164 statement of accused No.24-Umar @ Ashok Kalabhai Kabira Exh.8627, involved accused in a meeting dated 20.07.2008, happened at Yakubbhai's house. The prosecution would also rely on accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's conduct of pointing out the house of meeting belonging to secret witness Yakub Memon. As accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh pointed out this place for which investigator has drawn panchnama and has also examined the panch witness to prove the panchnama.

16.4.14. It is submitted that the prosecution also examined Riyaz Hussein, Mohd. Hussein Siddiqui, who though declared hostile is confronted with his earlier statement before police as well as before Magistrate U/s 164 of Cr.P.C which is Exh.8266 and it has come on

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record that accused no.4-Samsuddin Shaikh along with many other accused who are co-conspirators of this case and who came from different places, some from Madhya Pradesh etc attended this conspiratorial meeting wherein speeches by different accused were given. Subject of speech relates to about there being a time when Muslims were controlling entire world but then came the downfall of Muslims and to bring back Islamic regime. There is a necessity to execute jihad in Hindustan as they are against the rule of Allah. During the course of speech jihad by Osama Bin laden in Afghanistan was referred, jihad in America is also referred, Palestine as well and then they referred to riots of 2002, referring to the ideologies of different organization existing in Hindustan and how the persons of this organization murdered, males and females of Muslim community and how the government of the day also supported them along with public and therefore, they are our culprits.

16.4.15. Learned Senior Advocate for the State pointed out that the prosecution has submitted that witness hostility to it, needs to be seen in context of his educational background, his association with accused No. 75-Aalam Jeb Afridi. It would be also pertinent to examine here that he was working as medical representative in one USA based company and his work was to visit different hospitals, meet different doctors and chemists. After doing this job somewhere in 2014 he joined another multinational company named Johnsons and Johnsons and there also he worked as medical representative and there also he used to meet 10 to 12 doctors and 10 to 12 chemists every day. While considering his hostility it would be pertinent that the person of this stature had deposed during his cross- examination that he was taken by Crime Branch police on 01.08.2008 or 02.08.2008 and was kept illegally confined detained upto

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01.09.2008 or 02.09.2008. if a person of this stature has a strong family background is detained for almost one month, has himself not made any complaint against police persons nor his family had made any complaint against police person is prima-facie sufficient to disbelieve him so far as his allegation in cross-examination by defence counsel about his illegal detention.

16.4.16. It is submitted that this witness has also given his statement U/s 164 of Cr.P.C on 01.09.2008 which is Exh.8266. It would also be pertinent to note here that he even gave his statement before the Magistrate on 01.09.2008. He did not complaint about his illegal detention to the Magistrate to whom he gave his statement U/s 164 of Cr.P.C.

16.4.17. It is submitted that the prosecution has examined one witness Talib Abdul Gafar, who is declared hostile and after confronting witness with his earlier statement it has come on record that witness is a SIMI worker and accused No.4-Samsuddin Shaikh as a SIMI worker had attended SIMI meetings alongwith other SIMI activists and general secretary of SIMI was accused no.12-Safdar Nagori. It has also come on record that, in one such SIMI conglomeration of 2001 in Bharuch accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh was arrested.

16.4.18. It is submitted that accused No.4-Samsuddin Shaikh is also implicated by prosecution in a SIMI material literature which was part of chargesheet and investigation material which was submitted by defence as defence relied on through Exh.9248. This literature Material Exh.9248, involves accused No.4-Samsuddin Shaikh as SIMI activist along with many other SIMI activists whose names are revealed through this Literature and are also accused of this case. It is submitted that SIMI material-literature submitted by accused persons at Exh-9248, also

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reveals that accused No.4-Samsuddin Shaikh as also other accused are connected with SIMI. Moreover, the accused is a member of SIMI and connected and associated with SIMI.

16.4.19. The Court finds that PW-957/Exh.6687 Jakir Hussein Qureshi, involved accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh in a conspiratorial meeting at Dariyapur Limdi in accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house with the other accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, deceased Mujib Sheikh, accused No.8-Yunus Mansuri, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, absconder Abdul Shubhan @Taukir (facing trial), accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.37-Kayamuddin Kapadiya, where there was talk of revenge, jihad and to spread terror among the public.

16.4.20. The Court also finds that PW-1141/Exh.8191 Ayaz Shaikh-approver, involved accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh in a conspiratorial meeting at accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house. During this meeting, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, accused No.12-Safdar Hussain Nagori, accused No.11-Sibli @ Sabit S/o Abdul Karim Muslim, Absconder Abdul Shubhan @Taukir, accused No.37-Kayamuddin Kapadiya, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh and other persons were present. As per witness accused No.12-Safdar Hussain Nagori, Absconder Abdul Shubhan @Taukir, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi gave a speech relating to different

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organizations which are doing violent activities. They addressed the need to establish Islamic rule and requirement of practical activities of jihad. According to this witness, these programmes continued for 2-3 days and during these days activities done by Taliban, Al-Qaeda, Hamas and other organizations like violent activities such as bomb blast, preparation of bomb and explosion etc were shown through devices like VCD player in videos. Moreover, as per witness, the audio in these CDs were in Arabic and in English, so accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi translated it in Hindi and explained it to a person who remained present in the meeting. The witness identified accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh, accused No.12-Safdar Hussain Nagori, accused No.11-Sibli @ Sabit S/o Abdul Karim Muslim, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.37-Kayamuddin Kapadiya and accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi in Court.

16.4.21. Having considered the evidence, the Court finds that for the purpose of conspiracy, one of the important circumstances is the physical presence in the meeting which took place as a part of the conspiracy. In the present case, the evidence of PW No.957-Zakirhussain Abduljabbar Kureshi establishes the presence of the appellant. Therefore, the evidence of PW No.957-Zakirhussain Abduljabbar Kureshi is a substantive evidence with regard to the meeting which took place on 20.07.2008 and this evidence can be corroborated by the evidence of an accomplice though the accomplice may have been retracted or may have been ultimately acquitted of the offense. Therefore, the Court may examine Exh.8627 which consists of a document being Yadi of forwarding the accused-Umar @ Ashok

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Kalabhai to the Magistrate for recording his statement and upon necessary formality, the statement was recorded on 12.11.2008. The document also records that his statement was being recorded by free will and without any pressure from anyone. The statement under Section 164 of the Cr.P.C. indicates that on 20.07.2008 at 8:30 hours, he received phone call from Samsuddin, the present appellant to reach the house of Yakubbhai at Juhapura and therefore, upon reaching there, he found Javed, Samsuddin, the present appellant, Razikbhai, Yunusbhai and Yakubhai sitting there performing Quran-e-Dars and thereafter, the present appellant along with other persons started referring to Jihad (Jihadi vadi kari) and also mentioned about taking revenge of atrocities on Muslims, revenge for 2002 Godhra Kand and therefore, killed people. Thereafter, performed Namaz and left the house. According to the Court, this evidence Exh.8627 is sufficient to corroborate the substantial evidence of Zakir to believe the participation of the accused in the meeting which took place on 20.07.2008.

16.4.22. During panchnama Exh.5452 dated 30.03.2008, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh pointed out the house of Yakub Memon. Panchnama proved through PW- 809/Exh.5451 Nasruddin Shaikh and I.O. PW-1070/7264. This witness in his deposition has recorded that the appellant wanted to make a disclosure by pointing out a place, where the meeting had taken place. PW No.809-Nasuruddin Ismail Shaikh vide Exh.5451 has supported the case of prosecution and in his deposition, he has stated that at time of drawing panchnama of the first part, the appellant wanted to make a declaration regarding the place where they had a meeting. This witness, thereafter, says in due course of executing panchnama following the direction of the accused they had reached the residential premises, panchnama of

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which was drawn on the spot and the accused indicated exactly the place where the meeting had taken place. Through him the panchnama was exhibited. It is found that this witness had narrated the contents of the panchnama and the cross-examination does not cause any damage to the version given by this witness in his evidence in chief. Therefore, the collective perusal of the evidence, as discussed above, will go on to establish the connection of the appellant with the location and the meeting as a part of conspiracy.

16.4.23. The other point by which learned senior advocate has assailed is the recovery of mobile phone through the wife of Samsuddin (Exh.3210). Learned senior advocate submitted that the investigating officer has deliberately not carried out any investigation with regard to this phone as accused Umar in his statement under Section 164 (Exh.8627) has referred to having received phone call from the present appellant. According to learned senior advocate, the investigation of the mobile phone would have disclosed the names of the people with whom the appellant was in contact and as to whether the actually the phone call was made by the appellant to the co-accused Umar.

16.4.24. Yet another evidence against the appellant is that of approver PW No.1141-Aiyaz Razakmiyan Saiyed, who was examined vide Exh.8191. Learned senior advocate for accused has submitted that the evidence of Aiyaz may simply be discarded as the application for becoming an approver was almost after a period of 10 years and during this, he was in custody and therefore in the lure of securing a pardon, has attempted to impleaded others and the attempt of the prosecution by using this approver is to pluck the loopholes of the case of the prosecution. It is submitted that approver Aiyaz was forced to become the approver. Learned senior advocate has also submitted that there is a

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variation in the version given by PW No.957-Zakirhussain Abduljabbar Kureshi and approver PW No.1141-Aiyaz Razakmiyan Saiyed with regard to the program which had taken place at the Nana's residence of the present appellant, where Aiyaz has said that the program was for a period of two to three days, whereas the version of PW No.957-Zakirhussain Abduljabbar Kureshi is that of one day, wherein the present appellant was also a party.

16.4.25. The Court having perused relevant evidence in this connection and finds that the application for becoming an approver was made on 11.03.2019 and was granted on 27.03.2019 at Exh.8056.The Court has perused Exh.8191, evidence of the approver PW No.1141-Aiyaz Razakmiyan Saiyed and in para-7 of the evidence in chief, he refers to his contact with co-accused Arif Kagzi and getting details about activities of SIMI through which he also came in touch with co-accused including the present appellant and his participation in a program/meeting which was held in Shahpur area, wherein present appellant had indulged in discourse and lectures by referring to Jihadi organizations and various countries across the world where Jihad is ongoing and therefore, Jihad has to be performed in India as well. He referred to several programs which took place between. The approver once again refers to the appellant whose presence was shown in all important meetings, which took place in the residence of Nana of the appellant and the appellant having played role in this three days program, where there was instigation for undertaking violent activities in the country to bring about Islamic rule. In the meeting, there was an instigation to conduct practical Jihad and thereafter, the group had resorted to activity of viewing video cassettes of Taliban, Al-Qaeda, Hamas and also violent activities like suicide bombing, Guerrilla

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Warfare and bomb explosion. All these videos being in English and Arabic, it was the present appellant who was translating the same in Hindi and communicating. In cross-examination, in response to the question put to this witness about the rivalry in the prison with inmates especially with the present appellant, the witness has answered to the questions to the extent of the studies which were undertaken and prize money received for the completion of a particular course but has clearly denied that it had resulted in rivalry because of which, he was inspired to become the approver. With regard to the question, he was isolated in jail from other persons, the witness has deposed in his cross-examination in para-39 at Exh. 8191 that it was on account of ill-health only that he was kept in ward other than the ward in which other co-accused are kept. In the opinion of the Court, putting such questions to this witness would not challenge the credibility of the approver in this regard.

16.4.26. So far as, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's House conspiratorial meeting is concerned, other two witnesses Jakir and Ayaz have also given their evidence on accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house meeting who have deposed about presence and participation of witness Riyaz in the meeting at accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house of whom witness Jakir had deposed about presence of witness Riyaz at the meeting at accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house. In view of it, the entire evidence of witness Riyaz cannot be discarded only because he is declared hostile but considering the provision of Sub-section 2 of Section 154 of Evidence Act, introduced on 16.04.2006 needs to be invoked and whatever part of witness Riyaz is evidence needs to be examined can be examined as considering the cross-examination of this

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witness by defence this witness is absolutely won over by accused, as this witness accepted each and every suggestion put to him in cross-examination. More pertinently about him also agreeing to the suggestion of defence that witness Jakir was also illegally confined as like him which witness Jakir has denied. Hence, this witness absolutely resiled over his earlier statement only because of manipulation with him and consequently won over.

16.4.27. So far as these witnesses' 164 statement is concerned, together with act of resiling the same. The Court has perused the judgment in the case of Vijya Singh and Another versus State of Uttarakhand [(2024) SCC Online SC 3510]. Relevant para of this judgment on which prosecution relied on para are 26, 27, 28 and 31 where the supreme court says "However, Section 157 of Indian Evidence Act, 1972, makes it clear that a statement U/s 164 of Cr.P.C could be used for both corroboration and contradiction. It could be used for the testimony of the other witnesses".

16.4.28. Accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh is also involved by witness Ayaz Shaikh- approver as one of the accused along with many others who attended accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's Nana's house meeting. During the course of this meeting, as per evidence of this witness many other accused persons more particularly accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, accused No.11-Sibli @ Sabit S/o Abdul Karim Muslim, accused No.12-Safdar Hussain Nagori, accused No.37-Kayamuddin Kapadiya, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh were also present. Out of these accused, certain accused have attended

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both the camps at Vagamon and Halol and some other accused have attended either of Vagamon or Halol. This witness has further deposed that, speeches made by different accused at this meeting and takrirs were made to bring Islamic regime and executing jehadi activities in India. All the participants were shown Video Cassettes which would relate to Taliban, Al-Qaeda and Hamas and how this organization are executing violent activities as like suicide bombing, gorilla attack, bomb explosion, how to prepare bombs, how to prepare explosions through demonstrating it as this Video Cassettes was in Arabi and English language accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh was translating it in Hindi and explaining same to other participants-conspirator accused. This witness has also identified accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh along with many other accused like accused No.11-Sibli @ Sabit S/o Abdul Karim Muslim, accused No.12-Safdar Hussain Nagori, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/o Abubakar Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.37-Kayamuddin Kapadiya and accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi in court during deposition.

16.4.29. One another witness, Mehtab Shaikh, also involved accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh in one another SIMI meeting which took place at Limbayat, Surat in the year 2008. This meeting was also attended by another accused like, accused No.6-Mohammad Aarif S/o Mohammad Iqbal Kagzi, accused No.8-Yunus Mansuri and accused No.12-Safdar Hussain Nagori. This witness also identified accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh in court during his deposition. Considering the evidence of this witness, accused persons including accused No.4-Samsuddin @ Samsu

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Shahabuddin Shaikh attended SIMI meeting though SIMI is a banned terrorist organization.

16.4.30. Accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh is also involved by accused No.2-Imran Ibrahim Shaikh in his confessional statement as accused No.14-Mohammad Sajid Mansuri called accused No.2-Imran Ibrahim Shaikh-confessor on 26.07.2008 and inquired from accused No.2-Imran Ibrahim Shaikh about accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh's telephone number which was given by accused No.2-Imran Ibrahim Shaikh, to accused No.14-Mohammad Sajid Mansuri.

16.4.31. Accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh is also involved by accused No.24-Umar @ Ashok Kalabhai Kabirain his confessional statement, when accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh attended one meeting on 20.07.2008 which was held at the place of one secret witness, Yakubbhai Memon. Accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh actively participated in this meeting as confessor very categorically stated that Shamshubhai and few other conspirators spoke on jihad. Confessor i.e. accused No.24-Umar @ Ashok Kalabhai Kabira had specified about the meaning of jihad and had explained, jihad means to take revenge for loss suffered by Muslims in 2002 Godhra riots.

16.4.32. The aforesaid discussion of evidence clearly makes out a case against accused No.4-Shamshuddin @ Shamshu, S/o Sahabuddin Shaikh who has participated in the offence from day one. The role attributed to accused No.4-Shamshuddin @ Shamshu, S/o Sahabuddin Shaikh right from conspiracy to execution, as discussed hereinabove, is sufficient to convict accused No.4-Shamshuddin @ Shamshu, S/o Sahabuddin Shaikh for the offences charged. Accordingly, the Court

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hereby confirms the conviction of accused No.4-Shamshuddin @ Shamshu, S/o Sahabuddin Shaikh for the offences charged.

16.5. In case of Iqbal @ Ikrar S/o Kasambhai Shaikh (Vadodara) (A-3)

(Accused No.3 in Criminal Confirmation Case No. 2/2022 and Appellant No.3 in Criminal Appeal No. 727/2024):

16.5.1. In case of accused No.3-Iqbal @ Ikrar S/o Kasambhai Shaikh, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.5.2. Learned Advocate Mr. Vats commenced his arguments qua accused No.3- Iqbal @ Ikrar S/o Kasambhai Shaikh on 07-12-2025 and submitted that he was arrested on 16-08-2008 along with 9 others. However, despite Arrest Memo at Exh.9198 showing arrest on 16-08-2008 at 12.15 in connection with FIR of Shahibaug, there is nothing to explain how he was in custody of crime branch. He has argued that prior to effecting arrest on 16-08-2008, he was under illegal detentions from 08-08-2008 to 15-08-2008 and by Exh.9217 at the time of submitting 1st Charge-sheet, he had alleged torture to procure confession.

16.5.3. In this connection, the Court observes Exh.9198 is the arrest memo which notes that the information of arrest has been given to the relative. The Court has also perused Exh.9217 given on 20-11-2008, where grievance is raised particularly about apprehension of using blank papers bearing signature of accused No.3-Iqbal amounting to confession and torturous behaviour to the accused for confessions. In this connection, it is firstly observed there is no confessional statement of accused No.3-Iqbal on record unlike confessional statement of co-

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accused. Therefore, apprehension is falsified. Moreover, in preceding chapter, the Court has dealt with the remand application heard and ordered by the Court and accused were represented by Private Advocates where no such issue was raised and also the entire process of remand to Police custody and Judicial custody has to follow the necessary procedure including medical examination and at no stage, such an issue came to the knowledge of the concerned Court. Therefore, the Court has to presume that the actions of investigation is in accordance with law unless special instances are pointed out and established.

16.5.4. According to learned Advocate, there is no evidence pre-arrest and post arrest against the accused and the only evidence is in the nature of confessional statement of the co-accused which cannot be used as evidence. Learned Advocate took the Court through evidence of Investigating Officer Shri Chavda examined in place of Investigating Officer; Shri Toliya (since deceased) to support his arguments. It is submitted that the conviction of accused is based only on confessional statement at Exh.8619 of accused No.2-Imran and that of accused No.35-Rafiuddin at Exh.8631, otherwise there is no evidence.

16.5.5. Learned Advocate submitted that he is not an accused in Vagamon case and drew attention to Exh.9241 to submit that accused No.3-Iqbal is not in array of accused in the title.

16.5.6. Going back to the confessional statement, it is submitted that firstly, the confessional statement has been retracted and therefore, cannot be relied upon. Also, the same can be used only to lend support to the substantive evidence. Where there is no substantive evidence, simply supportive evidence is of no consequence.

16.5.7. The Court has already dealt with the issue of the confessional statement, its admissibility and its applicability in a separate chapter and

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does not address here to avoid repetition, but in particular case of the accused, it will be discussed herein below.

16.5.8. Learned Advocate has then submitted that evidence of three eyewitnesses, PW No.972-Ramkabhai at Exh.6802, PW No.1067-Ambalal at Exh.7231 and PW No.981- Pravinbhai at Exh.6835 cannot be considered as reliable witnesses, as their presence at the site of Terror camp is not explained and they are chance witnesses raising suspicion about being genuine witness.

16.5.9. Learned Advocate has thereafter submitted about the inconsistencies in their identification of accused No.3-Iqbal.

16.5.10. Learned Advocate has submitted that evidence of Munjavar does not help the prosecution so far as the accused No.3-Iqbal is concerned, as he has not named him in his deposition though he is the best witness to the fact of Terror camp at Halol.

16.5.11. Learned Advocate has then assailed the evidence of Approver PW No.1141-Aiyaz at Exh.8191 submitting and adopting arguments of Shri Yug Chaudhary for challenging the evidence of 'approver' as no evidence in the eyes of law.

16.5.12. He also argued the discrepancy in the case of prosecution with regards to the incidents of handing over of the explosive bombs to the accused. It is submitted that accused No.27-Abdul Rajik went to Al-Mohmadi Society on two occasions; first to take money and then to collect Bombs (Exh.5622) and then he had collected three bombs of which two bombs were given to Aiyaz and therefore, there is no mention of accused No.3-Iqbal and as per evidence of Approver PW No.1141-Aiyaz at Exh.8191, he had collected two bombs from Rajik where one is placed by Rajik himself and two bombs by Aiyaz at a Tea Stall and a Bus. Whereas case of prosecution against accused No.3-Iqbal is on the

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basis of Exh.6311 that he received a cycle and two bombs from Rajik at near Sheetal Cinema but when Rajik has taken three bombs of which he himself placed one Bomb and two bombs by Aiyaz, there is no question of giving of two bombs and cycle to the accused No.3-Iqbal. Therefore, there is inconsistency.

16.5.13. Learned Advocate has then assailed the evidence of other eyewitness PW No.1115 and PW No.1117 due to their inability to identify in the Court. Moreover, the Investigating Officer have not explained how their names surfaced as witnesses in the present cases. Therefore, the witnesses are created witnesses by the prosecution. Moreover, these witnesses have not deposed that the accused No.3-Iqbal was in Ahmedabad on the day of the blast.

16.5.14. Learned Advocate has submitted that PW No.1131-Rafik Baba may have deposed against accused No.3-Iqbal but his evidence cannot be considered, as he was not available for cross examination.

16.5.15. It is submitted that there is no evidence that accused is member of SIMI as the only evidence on record is Exh.9248 which has come on record vide Application at Exh.9176 and that through accused No.68-Mohammad Habib @ Habib Falahi @ Mohammad Taiyab S/o Abuljais Shaikh, which was a part of charge-sheet provided to accused No.68, but such documentary evidence cannot be treated as evidence at all.

16.5.16. As against this, the State through, learned Additional Advocate General for the State has relied upon the evidence of conspiracy which link the accused No.3-Iqbal with other accused. It is submitted that accused No.3-Iqbal is involved by accused No.2-Imran Ibrahim Shaikh in his Confessional Statement Exh-8619 u/s. 164 of Cr.P.C. As per accused No.2-Imrab Ibrahim Shaikh, accused No.3-Iqbal

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attended Halol Training Camp. It is submitted that accused No.3-Iqbal is involved by accused No.35-Rafiuddin in his Confessional Statement Exh-8631 u/s. 164 of Cr.P.C. As per accused No.35-Rafiuddin, accused No.3-Iqbal attended Halol Training Camp. Moreover, accused No.35-Rafiuddin pointed out Halol Camp place during Panchnama Exh-6443. This pointing out panchnama was proved through PW- 900/ Exh.6442 and I.O. PW-1089/Exh.7626.

16.5.17. It is submitted that PW-356/Exh.2055 Dinesh Thakor panch of scene of offence, i.e. place Kuldevi Tea Stall, Thakkarnagar, for which panchnama is drawn vide Exh.2056 dated 27.07.2008. It is submitted that PW-348/Exh.1900 Intekhab is a panch of panchnama of scene of offence as well as damaged bus in which bomb exploded. Panchnama is Exh.1901 dated 26.07.2008.

16.5.18. It is submitted that accused is member of SIMI and connected/associates with SIMI. It is submitted that the accused is one of the conspirators along with many others as he is involved by accused No.2-Imran Ibrahim Shaikh as well as accused No.35-Rafiuddin in his confessional statement as referred here in above. As per these two confessional statements, accused No.3-Iqbal attended Halol terror training camp and was also given dummy name. This camp was attended by lot many other co-conspirators and this terror training camp is required to seen in sequel to the conspiracy which was hatched before December 2007. So far as fountain head of conspiracy is concerned which was held and conducted at Vagamon in Kerala the activities imparted at this camp and activities imparted in Halol camp were same.

16.5.19. It is submitted that these witnesses have involved self in the act of conspiracy along with accused No.3-Iqbal and other accused are at par with accused and they should be arraigned as accused, and

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investigator has not arraigned them as an accused but their evidence is required to be seen as evidence of an accomplice. Prosecution have submitted that statement of these witnesses are also recorded U/s 164 of Cr.P.C and they have not resiled from the statement which they gave to Judicial Magistrate. Prosecution also submitted that, in the matter of this kind i.e. in a matter where accused persons have successfully achieved their ultimate object of hatching conspiracy by striking terror and destruction which took lives of 56 innocent persons and lot many other injured victims, witnesses would be reluctant to participate and engage in investigation as they would fearsome about potential threat to them as well as their family member. Considering all this aspect together with judgment of Supreme Court in the matter of ***Chandran versus State of Kerala reported in (2011) 5 SCC 161***, where a witness who was deeply involved in the commission of crime and the defence submitted that investigator should have arraigned him as an accused or that he should have been arraigned as an accused invoking provision of Section 319 of Cr.P.C and this evidence needs to be discarded. Against this submission of defence, Supreme Court found that it is true that witness is deeply involved in the crime but it is not necessary that the evidence of this witness is required to kept out of consideration at the most, such witnesses deeply involved in crime can be treated as an accomplice and in appreciating evidence of accomplice the standard of appreciation has been decided by settled law that there should be material corroboration should be examined. In view of it, above referred three prosecution witnesses have not involved themselves in the crime committed by accused persons and therefore prosecution has stated that these witnesses are not accomplice but at the most these witnesses could be termed as witnesses who were fearsome, worried and frightened about

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them as well as their family and therefore, they honestly deposed to the facts known to them and doing it would not be sufficient to treat them as an accomplice . Hence, evidence of these 3 witnesses needs to be appreciated against accused No.3-Iqbal and all other in that context.

16.5.20. Considering the submission from both the sides, the Court finds that accused No.3-Iqbal is involved by PW-1115/Exh.8002 Mohd. Umar Mansuri as well as PW-1117/Exh.8019 Asif Usmanbhai Shaikh and PW- 1131/Exh.8118 Mohd. Rafik. All these three witnesses are from Vadodara from where accused No.3-Iqbal belongs. As per evidence of PW- 1115/Exh.8002 Mohd. Umar Mansuri, he knew accused no.3-Iqbal besides accused no.37-Kayamuddin Kapadiya, accused No.2-Imran Ibrahim Shaikh and accused No.7-Mohammad Usman Agarbattiwala. As per evidence of PW-1117/Exh.8019 Asif Usmanbhai Shaikh and PW-1131/Exh.8118 Mohd. Rafik @ Baba, it clearly reveals that, accused no.3-Iqbal was part of conspiratorial meeting in which other accused no.37-Kayamuddin Kapadiya also participated and during the course of meeting they discussed about taking of revenge for the loss suffered by the Muslims in Gujarat riots, undertaking surveillance (recce) of deciding the places suitable for striking blast, places of blast were from Ahmedabad, Vadodara and Surat, for the purpose of exploding blast requirement of cycle, scooty etc. These two witnesses state about, they having receiving parcel from accused no.3-Iqbal which they delivered to accused No.37-Kayamuddin Kapadiya.

16.5.21. The Court also finds that accused no.3-Iqbal through panchnama dated 08.12.2008 Exh.6311, pointed out different places which would include a place called Sheetal cinema road where he received cycle loaded with bomb, another place called Kuldevi tea stall where he planted cycle loaded with bomb as well as a place called Soni

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ni chali, Odhav from where he boarded AMTS bus with bag loaded with bomb which ultimately exploded at a place called Sarkhej.

16.5.22. It also appears that during panchnama Exh.6311, dated 08.12.2008, accused no.3-Iqbal pointed out the place i.e., Sheetal cinema road, near footpath and banyan tree from where he received cycle loaded with bomb from another accused. Thereafter, he pointed out the place i.e Opp. Ashapura pan parlour, near Kuldevi tea stall and pan house where he planted cycle loaded with bomb. Moreover, during this panchnama, accused pointed out the place near Odhav, Soni ni chali cross road, from where he boarded AMTS bus with bag loaded with bomb going to Sarkhej and that bomb ultimately had exploded. Exh.6311 is the pointing out panchnama proved by the prosecution by examining PW No.883, Exh.6310, Kuvarji Meruji Thakor who has deposed that what he was summoned as Panch, accused no.3-Iqbal was in custody. Accused no.3-Iqbal gave his name and made a voluntary disclosure to identify the locations where he had planted the bombs. It is deposed that the team was led by Investigating Officer as per the directions given by accused no.3-Iqbal and stopped at a place adjacent to a tea stall and identified the spot. The spot deposed by this witness and recorded in the panchnama at Exh.6311 conincided with the scene of offence panchnama at Exh.2056. The panchnama at Exh.2056 is dated 27-07-2008 whereas the panchnama at Exh.6311 is dated 08-12-2008. P.W. No.883 continued to depose that accused no.3-Iqbal thereafter guided the Police party to another place where the 2nd bomb was planted in the bus. Accused no.3-Iqbal took the party near Soni ni Chali to the spot where he boarded the bus with the bomb and also took the party to the place from where he deboarded the bus, while the bus proceeded for its onward journey. The details mentioned in the panchnama at Exh.6311 if compared with the

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independent panchnama drawn on 26-07-2008 at Exh.1900, the same would match. Therefore, the reading of these panchnama establishes the knowledge of the accused and the fact that the accused had special knowledge of this fact wherein he pointed out in the panchnama which matched with the panchnama executed earlier and independent of this panchnama.

16.5.23. PW-1115/Exh.8002 Mohd. Umar Mansuri knows Kayamuddin Kapadia accused No.37-Kayamuddin Kapadia, accused No.2-Imran Sheikh, accused No.7-Usman Anis Agabattriwala. They were childhood friends. Moreover, he has stated that with accused No.37-Kayamuddin Kapadiya, accused No.3-Iqbal who were residents of Yakutpura, played cricket together. He involved Kayamuddin for recce as well as talk on committing blast. The evidence of this witness is already discussed in detail, however, for accused No.3-Iqbal, the witness has deposed that along with Kayamuddin, this accused was also involved in SIMI activities.

16.5.24. PW-1117/Exh.8019 Asif Usmanbhai Shaikh, knows accused No.3-Iqbal before one year of blast. The witness met accused no.37-Kayamuddin Kapadiya through accused No.3-Iqbal. The witness involved accused No.3-Iqbal in conspiratorial meetings held at Vadodara. Accused No.3-Iqbal talks about atrocities committed and caused on Muslims as also to take revenge for it. Accused No.3-Iqbal talked to this witness to strike blast in Ahmedabad and asked from this witness papers of Wagon R car. accused No.3-Iqbal searched places for committing blast. Also needs cycle and scooty for the purpose of blast at Ahmedabad. This witness gave evidence for recce by accused No.3-Iqbal. Accused no.37-Kayamuddin Kapadiya told to witness for blast in Ahmedabad and Surat. Accused No.3-Iqbal gave one packet to be

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delivered to accused no.37-Kayamuddin Kapadiya. The witness identified accused No.3-Iqbal and accused no.37-Kayamuddin Kapadiya.

16.5.25. PW-1131/8118 Mohd. Rafik @ Baba, knew accused No.3-Iqbal. The Court may rely on Section 164 statement of this witness, as this witness was not available for cross examination. Before three-four months of blast accused No.3-Iqbal called witness and stated that lot of atrocities had been committed against Muslims and for that they have to take revenge. Moreover, accused No.3-Iqbal stated that, they are going to explode blast in Ahmedabad, Vadodara and Surat. Accused No.3-Iqbal gave money to Asif for purchase of new phone and told witness to arrange for cycle and scooter. Witness gave evidence regarding conspiratorial meeting in which accused No.3-Iqbal and accused no.37-Kayamuddin Kapadiya were present and accused No.3-Iqbal and accused no.37-Kayamuddin Kapadiya started talking about riots of 2002 of Gujarat, atrocities on Muslims and to take revenge for it. Moreover, accused no.37-Kayamuddin Kapadiya asked for support and told that his men are to carry out blast at Ahmedabad, Vadodara and Surat. Moreover, accused No.3-Iqbal carried out recce at different places. Witness stated that, accused No.3-Iqbal gave one parcel to Asif and one parcel to him which he and Asif delivered to accused no.37-Kayamuddin Kapadiya at Ahmedabad. At that time, accused no.37-Kayamuddin Kapadiya talked about revenge and carry out blast. All the aforesaid witnesses have also given a statement under Section 164 of Cr.P.C. which are exhibited and in the chapter on eyewitnesses.

16.5.26. In view of the aforesaid discussion and the evidence led against accused No.3-Iqbal @ Ikara, S/o Kasambhai Shaikh being sufficient to implicate the accused for the offence charged with, the role

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of the accused as discussed hereinabove and the evidence in support of such role, is sufficient to convict accused No.3- Iqbal @ Ikara, S/o Kasambhai Shaikh. In view of the aforesaid, conviction of accused No.3- Iqbal @ Ikara, S/o Kasambhai Shaikh for the offences charged with is hereby confirmed.

16.6. In case of Mohammad Aarif Mohammad Iqbal Kagzi (Ahmedabad) (A-6)

(Accused No.6 in Criminal Confirmation Case No. 2/2022 and Appellant No.3 in Criminal Appeal No. 1710/2022):

16.6.1. In case of accused No.6-Mohammad Aarif Mohammad Iqbal Kagzi, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.6.2. Learned Senior Advocate Mr. Mihir Desai has thereafter made submissions for accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi, who was arrested on 16-08-2006 and was sent in judicial custody on 09-02-2009. Learned Senior Advocate has submitted that the role attributed to this accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi is that he has remained present at all the stages of conspiracy. However, with regard to conspiracy, which begun and alleged terror camp at Vagamon, present appellant was made an accused at this stage in the trial before the Ernakulam Court in connection with the Terror camp at Vagamon and he was arraigned as accused No.19.

16.6.3. Learned Senior Advocate has drawn our attention to Exh.9421; the judgment rendered by Ernakulam Court, wherein accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi has been acquitted. According to learned Senior Advocate, acquittal is based on the benefit

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of doubt on the ground that only one of the eyewitness had identified accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi to be part of Vagamon Terror camp.

16.6.4. Learned Senior Advocate has thereafter submitted that in so far as the role of accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi in Halol Terror camp, the prosecution has relied upon the evidence of confessional statement of accused No.2-Imran Ibrahim Shaikh at Exh.8619. Learned Senior Advocate has submitted that evidence of accused No.2-Imran Ibrahim Shaikh cannot be treated to be an independent evidence of witness considering the fact that he himself was part of the camp.

16.6.5. Evidence of accused No.2-Imran Ibrahim Shaikh at Exh.8619 shows that this accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi was present in the camp and was given code name.

16.6.6. Learned Senior Advocate has thereafter assailed evidence of eyewitness, whose deposition is recorded vide Exh.3061 by submitting that these witnesses are chance witnesses. Moreover, the witnesses have not attributed any role. These witnesses also cannot be relied upon, as they cannot be treated as witness in true sense, because it was the Police, who had approached them by inquiring, whether they had witnessed any activities in the forest area, to which the witnesses have given their statements. It is submitted that though Test Identification Parade was undertaken and, in the process, accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi was identified, but such identification cannot be considered in view of the fact that this witness at the initial stage, had failed to give any description of the accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi. Moreover, Test Identification Parade was undertaken on 30-08-2008, whereas this witness had seen accused no.6-

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Mohammad Aarif Mohammad Iqbal Kagzi as a part of the group in the month of January 2008.

16.6.7. With regard to yet another witness, Pravinbhai Katariya at Exh.6835, it is again submitted that this witness is not reliable as he can be termed as chance witness and in fact, during the course of his deposition, he is unable to identify present accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi and therefore, learned Senior Advocate has taken this Court to Para-11 of evidence of this witness. Similarly, PW No.1067- Ambalal Bariya, yet another eyewitness at Exh.7231 is also required to be discarded, as there is no dock identification parade.

16.6.8. In so far as allegations of meeting at Surat is concerned, the prosecution has relied upon PW No.1097- Mehtab Ibrahim Shaikh at Exh.7767. Learned Senior Advocate has submitted that submissions made for Surat meeting in connection with accused No.4-Samsuddin @ Samsu Shahabuddin Shaikh are identical for the present accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi also and therefore, only evidence of PW No.1097- Mehtab Ibrahim Shaikh at Exh.7767 even if taken into consideration, then deposition refers to meeting where only religious discourse had taken place, but there was no discussion with regard to carry out of any terror attack.

16.6.9. The Court finds that evidence of PW No.1097- Mehtab Ibrahim Shaikh at Exh.7767 not only establishes presence of accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi in the meeting but also establishes association of accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi with other accused persons.

16.6.10. For the presence of accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi in Ahmedabad meeting, the prosecution has relied upon evidence of PW No.957-Zakirhussain Abduljabbar Kureshi

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at Exh.6687, wherein in Para-4, his presence is shown in the meeting. According to learned Senior Advocate, presence in one meeting out of alleged 10 meetings of accused persons, is not sufficient to make accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi a part of the conspiracy.

16.6.11. According to learned Senior Advocate, evidence of approver PW No.1141-Aiyaz Razakmiyan Saiyed at Exh.8191 cannot be accepted without any corroboration. According to learned Senior Advocate, this witness could not believed, as in his own deposition, this witness has admitted to being beaten in the custody to give such evidence.

16.6.12. The Court is of the opinion that in so far as role of the present accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi is concerned, this witness has elaborated upon how he came across this accused and how this accused initiated approver PW No.1141-Aiyaz Razakmiyan Saiyed at Exh.8191 into activities of 'SIMI'. This witness has also deposed about participation of the accused in the meeting at Shamsuddin's Nana's place and that he has participated in discourse and instigation.

16.6.13. Learned Senior Advocate has argued that prosecution has shown PW No.957-Zakirhussain Abduljabbar Kureshi at Exh.6687 as a witness, though he ought to have been treated as accomplice, evidence of the prosecution itself shows that this witness has remained present in the meeting, which is also attributed to present appellant and therefore, if PW No.957-Zakirhussain Abduljabbar Kureshi is not treated to be accused, present accused no.6-Mohammad Aarif Mohammad Iqbal Kagzi also deserves the benefit.

16.6.14. The prosecution has relied upon confessional statement of accused No.2-Imran Ibrahim Shaikh, accused No.21-Mehandihasan @

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Vikki S/o Abdul Habib Ansari and accused No.35-Rafiuddin Kapadiya for establishing that accused No.6-Mohammad Arif Kagzi of Ahmedabad, attended Vagamon terror training camp and Halol terror Training camp.

16.6.15. The Court finds that so far as confessional statement of accused No.2-Imran Ibrahim Shaikh is concerned, accused No.6-Mohammad Arif Kagzi attended Vagamon as well as Halol Terror Training camp. So far as participation of accused No.6-Mohammad Arif Kagzi in Vagamon camp is concerned, it is established that he was given a dummy name of Abdul Haziz. There is one more aspect with regard to accused No.6-Mohammad Arif Kagzi having attended this camp as he was arraigned as one of the accused in Kerala Session's Court proceeding in which he was arraigned as A-19. Accused No.2-Imran Ibrahim Shaikh has also involved accused No.6-Mohammad Arif Kagzi as one of the participants-co-conspirators as accused No.6-Mohammad Arif Kagzi also attended Halol Terror Training Camp. As per the statement of accused No.2-Imran Ibrahim Shaikh in this camp accused No.6-Mohammad Arif Kagzi was given a dummy name of Shabbir.

16.6.16. The Court finds that accused No.6-Mohammad Arif Kagzi is also involved by accused No.21-Mehandihasan @ Vikki S/o Abdul Habib Ansari, who is from Rajasthan, in his confessional statement as a person who participated in Halol Terror training camp. Accused No.21-Mehandihasan further states that during this meeting accused No.6-Mohammad Arif Kagzi who was given dummy name of Shabbir and he had done Takrir and exhorted that, doing Jihad is the duty bestowed under Islam and because of persons who have failed to perform such duty, they were in a situation which had made them victim of atrocities committed on them and also because of it in the year 2002, they suffered

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human loss in Gujarat riots, but now they are prepared to take revenge for the loss suffered by them and they have to discharge their duty to achieve their ultimate object. It is submitted that accused No.6-Mohammad Arif Kagzi is also involved by accused No.21-Mehandihasan in his confessional statement, as one of the participants from Ahmedabad in Halol Terror Training camps amongst many other who participated this camp.

16.6.17. It also appears that accused No.35-Rafiuddin Kapadiya also gave his confessional statement before Metropolitan Magistrate and involves accused No.6-Mohammad Arif Kagzi as one of the participants-conspirator who attended Halol Terror Training Camp. Accused No.35-Rafiuddin Kapadiya also involves accused No.2-Imran Ibrahim Shaikh as conspirator from Ahmedabad who attended Halol Terror Training Camp and accused No.21-Mehandihasan of Rajasthan who attended Halol Terror Training Camp. Accused No.35-Rafiuddin Kapadiya also pointed out the place of Halol Terror Training Camp, which is established by the evidence of panch witness as well as evidence of Investigating Officer.

16.6.18. So far as this confessional statement of accused No.35-Rafiuddin Kapadiya is concerned, Sessions Judge has found that as this statement is recorded after administering oath and as it is prohibitory statement, it should be kept out of consideration against which prosecution has submitted that considering the provision of Section 164 together with the provision of Section 281 of Cr.P.C, when such statement is recorded by Metropolitan Magistrate, the prohibition imposed of not permitting administering oath would not be applicable when such statement is recorded by Metropolitan Magistrate. In this regard, learned Additional Advocate General relied upon judgment of

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the Apex Court in case of ***Brathi Alias Sukhdev Singh Versus State Of Punjab, reported in (1991) 1 SCC 519*** in which in para-8 Supreme Court while discussing about evidence put by prosecution against two different accused of whom one got acquitted against whom no appeal was preferred and other accused who on the same set of evidence was found convicted, considering the provision of Section 386(1)(b) of Cr.P.C discussed powers of Appellate court to re-appreciate evidence led by the prosecution and while considering the same in para-8 it observed as under:

> "8 *In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. In Sunder Singh's case (AIR 1962 SC 1211) (supra), this Court has held that the provisions of sec. 423(1)(a) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are convicted. In considering the evidence as a whole, the appellate court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding-is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in*

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invoking against the convicted person his constructive criminality."

16.6.19. Learned Additional Advocate General also relied upon judgment of the Apex Court in case of ***Harshadsingh V/s. State of Gujarat, reported in AIR 1977 SC 710***, wherein it is observed that 'if some out of several accused are acquitted but the participating presence of a plurality of assailants is proved, the conjoined culpability of the crime is inescapable.' In view of the aforesaid Judgment, it appears that on conjoint reading of Section 164 and Section 281 of Cr.P.C, when the recording Judicial Officer of confessional statement of accused U/s 164 is Metropolitan Magistrate, then prohibition of not administering oath is lifted and would remain inapplicable hence, though the Sessions Judge has kept out of consideration contains of statement of accused No.35-Rafiuddin Kapadiya, but the same needs to be considered in favour of prosecution in the facts and circumstance of the present case as well as relying upon scheme of the Cr.P.C together with the statement of law enunciated in the cited judgment of ***Barathi (supra)***.

16.6.20. It also clearly appears that the three witnesses, viz. Ramkabhai Kesariya, Pravinbhai and Ambalal Bariya are natural witnesses to Halol camp. When accused No.6-Mohammad Arif Kagzi was subjected to Test Identification Parade before these three witnesses, accused No.6-Mohammad Arif Kagzi was successfully identified by all the three witnesses before Executive Magistrate and the Test Identification Report of Executive Magistrate for such identification is also proved by prosecution by examining Executive Magistrate who had testified that at the time of drawing identification report, accused No.6-Mohammad Arif Kagzi was mixed with many dummy persons and when these witnesses were called upon to identify accused No.6-Mohammad

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Arif Kagzi amongst other dummy persons, this witnesses successfully and rightly identified accused No.6-Mohammad Arif Kagzi by holding his hand and drawing him out from the line of different persons and on doing it Executive Magistrate asked the name of the person who was drawn out by all the three witnesses by holding his hand and the person on asking about his name by Executive Magistrate answered that he is accused No.6-Mohammad Arif Kagzi. This Test identification report would also be admissible U/s 291/A of Cr.P.C which is introduced in the year 2006. These three witnesses though have identified successfully accused No.6-Mohammad Arif Kagzi before Executive Magistrate but have failed to identify accused No.6-Mohammad Arif Kagzi when they were examined as prosecution witnesses on the ground of lapse of time, i.e. the time when they examined accused No.6-Mohammad Arif Kagzi during Test Identification Parade and years after when they came to depose before the court. Another reason given by these witnesses for them having unable to identify accused No.6-Mohammad Arif Kagzi also relates to differential look of accused firstly when actually witnesses identified accused No.6-Mohammad Arif Kagzi in Test Identification Parade and secondly at the time of deposition as accused persons including accused No.6-Mohammad Arif Kagzi have grown thick beard, moustaches, eye-brows and wearing cap, apart of changes in body.

16.6.21. The Court also finds that accused No.6-Mohammad Arif Kagzi is also involved by Jakir Hussein. This witness clearly implicates that the conspiratorial meeting which took place in March 2008 at the place of accused No.4-Samsuddin Shaikh's Nana's House which was attended by many accused belonging to Gujarat and even from other states, the same was attended by accused No.6-Mohammad Arif Kagzi.

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This conspiratorial meeting assumes importance and significance as the conspirators present in the meeting very clearly, candidly exhorted and declared about striking terror in the public for the loss suffered by Muslims in 2002 and also to bring Islamic rule as the then Government was against the Muslims. It was declared in this meeting about doing Jihad and that SIMI has become very strong and presence of SIMI and their activists being spread across the country and therefore, together they would do Jihad against anti-Muslim Government. This witness-Jakir has identified accused No.6-Mohammad Arif Kagzi during the course of his deposition i.e. Dock Identification.

16.6.22. The Court finds that witness, while involving accused No.6-Mohammad Arif Kagzi in the meeting at accused No.4-Samsuddin Shaikh's Nana's house, has also involved a person named Riyaz. Prosecution has examined this person Riyaz PW No.1151-Riyazhussain Mohammadhussain Siddiqui vide Exh.8265, who has not supported the case of prosecution and hence he is declared hostile but this witness Riyaz had also gave his statement U/s 164 of Cr.P.C and on confrontation of witness Riyaz by prosecution against his earlier statement including 164 statement, it has come on record that meeting did took place at Dariyapur, Shamsuddin’s house. If this evidence is read together with statement of Riyaz U/s 164 which is Exh. 8266, it would be clear that the meeting which is referred in the evidence is the meeting which has been held at accused No.4-Samshuddin's Nana's house.

16.6.23. One more aspect about the evidence of Jakir which totally absolves him from any act committed by his friend accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/o Mohammad Isaak Mansuri and all other conspirators is that on 20.07.2008, accused No.27-Abdul Rajik visited witness Jakir and conveyed to him that he has

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changed his mobile number and he needs one old sim-card for his father's use, which was given by Jakir to accused No.27-Abdul Rajik. Thereafter, on 23.07.2008 witness Jakir called accused No.27-Abdul Rajik, on the number of old Sim-card but accused No.27-Abdul Rajik did not talk with Jakir and said that he is busy in work. On the same day, witness Jakir visits accused No.27-Abdul Rajik's home but accused No.27-Abdul Rajik was not available. On the other day on 24.07.2008, accused No.27-Abdul Rajik called witness Jakir and said that he was busy in work and accused No.27-Abdul Rajik also conveyed witness Jakir about some repairing work to be done at accused No.27-Abdul Rajik's home. Hence, on the same day evening witness Jakir visited home of accused No.27-Abdul Rajik, and mother of accused No.27-Abdul Rajik was present and from inquiry by witness about accused No.27-Abdul Rajik, mother of accused No.27-Abdul Rajik informed witness Jakir that Accused No.27-Abdul Rajik is not staying in the house and lot many calls are coming for him. This witness examined the work of repairing and left the house of accused No.27-Abdul Rajik. On 25.07.2008, witness went for repairing at the house of accused No.27-Abdul Rajik and repaired the door. After the repairing work was finished accused No.27-Abdul Rajik came. On the same day night, accused No.27-Abdul Rajik took witness to Limdi Dariyapur where other two accused No.8-Yunus S/o Mohammad Mansuri and accused No.4-Samsuddin Shaikh were present and here also they started talking amongst them, keeping distance from witness Jakir. Considering all this sequence of events, along with other sequence of events, it clearly establishes that witness Jakir cannot be treated as an accomplice as submitted by defence.

16.6.24. The Court finds that accused No.6-Mohammad Arif Kagzi is

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also involved by witness named Mehtab Shaikh, and that this witness has also involved accused No.4-Samsuddin Shaikh for the same set of facts.

16.6.25. The Court finds that Accused no.6 is also implicated by prosecution in a SIMI material literature which was part of chargesheet and investigation material which was submitted by defence as defence relied on it through Exh.9248. This literature Material Exh.9248 involves accused No.6-Mohammad Arif Kagzi as SIMI activist alongwith many other SIMI activists whose names are revealed through this literature and are also accused of this case. On bare reading of this literature, it is established that accused No.6-Mohammad Arif Kagzi was the President of SIMI Gujarat Zone.

16.6.26. The Court finds that accused No.6-Mohammad Arif Kagzi is also involved by Aiyaz Shaikh-approver in different conspiratorial meetings as well as SIMI activities. This witness has stated that when he was visiting one building situated in Shahpur, he saw signature board of SIMI and upon visiting that place, he came to know that this is the office of SIMI. The said office was occupied by accused No.6-Mohammad Arif Kagzi and through him, the witness gathered about activities of SIMI and came to know that it was an association of young Muslim persons and was working to take revenge on the atrocities committed on Muslims. On further inquiry, this witness came to know from accused No.6-Mohammad Arif Kagzi about reconstruction of demolished Babri Masjid and to cultivate jihadi activities in Muslims for which SIMI is working. Accused No.6-Mohammad Arif Kagzi also informed about witness being told to visit the office regularly and also learnt from accused No.6-Mohammad Arif Kagzi about persons coming to the office of SIMI are members of SIMI and they all discussed about jihad and

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Islamic regime.

16.6.27. Upon perusing the evidence of this witness, it also appears that this witness was told that somewhere in 2001, there was a likelihood of imposing ban on SIMI and its activities and therefore witness was told to not come to the office and hence witness stopped going to this place i.e. office of SIMI. In para-4 of the evidence, witness states about Government of India imposing ban on SIMI. This witness stated that he came to know about illegal meetings etc. of SIMI activist at Surat from the newspaper. The witness also states about meeting with accused No.6-Mohammad Arif Kagzi and his role in such meeting at Surat. This witness has also stated that somewhere in 2005, witness spotted accused No.6-Mohammad Arif Kagzi in one shop situated somewhere in Shahpur chakla, and he gathered information from accused No.6-Mohammad Arif Kagzi that as SIMI is banned, activities of SIMI were conducted secretly by the SIMI activists at different places either at the house of SIMI activist, shop, factory etc. and that the nature of activities remained the same. This witness states about such activities of SIMI being continued secretly between 2005 and 2008. This witness emphasized about role played by accused No.6-Mohammad Arif Kagzi as well as accused No.4- Samsuddin during such meeting. The witness also emphasized about such meeting being conducted in the houses of Ibrahim, Alim, Yakubbhai (secret witnesses). This witness has also stated about meeting of 2008 which happened at the house of accused No.4-Samsuddin Nana at Dariyapur and attended by lot many SIMI activists from Gujarat and outside Gujarat including accused No.6-Mohammad Arif Kagzi. Witness also elaborated about participation of accused No.6-Mohammad Arif Kagzi in this meeting, where he gave speech on violent activities being done across the world by them and for

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establishing Islamic regime. Witness also elaborated about during this course of meeting at accused No.4-Samsuddin Nana's house, the VCD player was being played and all persons present there saw video cassette which would relate to Taliban, Al-Qaeda, Humas and other such associations to know how such associations are conducting violent activities like suicide bombing, gorilla attack, explosion of bomb as well as how to prepare bomb by demonstrating the same. This VCD was in Arabic and English languages which was explained by accused No.4-Samsuddin Shaikh in Hindi. He also deposed that after this meeting, he read a newspaper that some SIMI activists were arrested from Indore, Madhya Pradesh. On hearing this news, the witness contacted accused No.6-Mohammad Arif Kagzi and through accused No.6-Mohammad Arif Kagzi, the witness learnt about arrest of SIMI activist in Indore, Madhya Pradesh, where there is presence of another conspirator, viz. Safdar Nagori and they were preparing for practical activity and therefore, upon their arrest, it was decided that for some time they should not meet each other. Witness has also elaborated further in his evidence about different activities done by other SIMI activist-conspirators at different time and place and his own participation in the act of bomb blast which happened on 26.07.2008. This witness originally, was an accused and later, he turned approver, and upon examination of his evidence, it clearly appears that his statement of approver given by him is fully supported by his evidence.

16.6.28. Learned Advocate for accused No.6 has submitted about mala-fides of this original accused turning approver by alleging that he was prompted, lured etc. for turning approver through Head Constable Gopal Sharma, who was planted by Crime Branch Police inside the jail who manipulated and because of his manipulation Ayaz turned approver.

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The defence though have alleged about such manipulation at the behest of Head Constable Gopal Sharma not substantiated, in any way firstly as approver Ayaz as outrightly denied about such manipulation and secondly accepted alleging about manipulation, the defence is unable to substantiate that allegation in any way whatsoever either in cross-examination or through any other material and hence allegation about planting of Head Constable Gopal Sharma appears to be a ghost story.

16.6.29. The Court also finds that witness Ayaz during the course of his cross-examination in para-33 deposes that so far as his statement of approver is concerned, he discussed about it with other accused name Jahid Shaikh, Kayamuddin and Mohd. Ismail. He discussed with them prior to one month from giving of statement of approver. In para-60 of the cross-examination, witness reiterated that he voluntarily decided to give approver's statement and it was out of repentance.

16.6.30. It appears that in para-63 of the cross-examination, when witness was confronted with his visit at SIMI office Shahpur, witness replied that he had seen the pamphlets of SIMI and he does not know about and on further questioned, he said that he was not aware about police having collected such pamphlets. Considering the same, police as such has collected SIMI literature which is actually in the form of pamphlets and is also a part of chargesheet and the same was placed on record by defence and the same is an exhibited document vide Exh.9248. Thereafter, the defence attempted to withdraw such document from the record as they prayed for de-exhibiting it, but fact remains that it is very much on record which implicates many accused of the present case. Defence has also confronted on the same in para 66 of cross-examination. Witness is confronted further in para-66 about speeches heard and understood by him, to which witness replied about

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understanding of all and on the same issue, he was further confronted and grilled, to which he answered that after the completion of program, everyone used to discuss and everyone used to ask each other and therefore, everyone would understand same**.** This evidence of witness will take away the submission of defence that except the persons who were giving speech, all others have no role to play, and it is fully devoid of merits as evidence of this witness clearly established that there was thorough discussion and their understanding remains same.

16.6.31. During the course of his cross-examination, defence has brought on record that witness's brother is in Paramilitary Force. He further states that all throughout while witness remained in custody some or the other family members visited witness in jail. He also states that, his brother who is in Paramilitary Force also used to meet him and his brother asked him about his involvement in the present case as genuine or otherwise to which he replied that he is rightly involved and since then his brother has taken no interest in the matter so much, so that his brother informed their parents that they should not give any details about brothers job, place etc. to the witness and therefore the witness has also accepted in the cross-examination that he does not know as to where his brother who is in Paramilitary Force is presently working.

16.6.32. The Court is of the opinion that the defence thereafter, out of frustration and desperation, had tried to discredit evidence of this witness given by him in examination in chief that bomb laden bag given by Accused No.27-Abdul Rajik to witness was not given by Accused No.27-Abdul Rajik but as such was given by his brother Riyaz. Furthermore, in the same para i.e. para 87, the defence tried to discredit the evidence of this witness that he helped accused Kayamuddin and absconder Taukir to take on rent one house (Vatva house) is not correct,

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as that house was occupied by his brother (brother working in paramilitary force) and his friends. Again, in para-91, defence suggested that witness is deliberately kept inside the jail and to come out from the jail, witness has given false statement of approver. Considering the evidence of this witness i.e. evidence of approver, it is broadly supported by other evidentiary material led by prosecution and therefore, the cross-examination of defence reiterated hereinabove is termed as nothing, but frustration and desperation of defence. As such credibility of this witness is not all impeached either during cross-examination of this witness or with any other evidentiary material.

16.6.33. The Court is of the opinion that so far as delayed statement of approver is concerned, the prosecution has referred to the provision of Section 307 of Cr.P.C. where person can be considered for approver ship anytime during the course of trial. When statutory provisions are so clear any submissions otherwise to it lacks merits. Furthermore, defence has submitted arithmetical calculation with regard to examination of approver at witness no. PW-114-Aiyaz Razakmiyan Saiyed, vide Exh.8191. It would be pertinent to state here that no sooner approver gave application i.e. statement of approver and it got allowed, approver was immediately examined. Even during the course when some of the accused challenged granting of approver's application before High court. The prosecution also submitted that somewhere around 24.12.2009 through list Exh.0017 prosecution declared that there are 1718 witnesses on behalf of prosecution which further got added by 918 witnesses on filing of other chargesheet and prosecution declared through list Exh.0123 dated 09.01.2010 at now the figure of prosecution witness is 2636. It further got added by 100 witnesses and the figure reached to 2736. In view of it arithmetical answer to such submission would be that

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prosecution examined approver as PW-114-Aiyaz Razakmiyan Saiyed, vide Exh.8191 before examination of around 1595 witnesses. Prosecution would submit that there cannot be any arithmetical calculation on examining witnesses, more particularly, for approver but as defence has continued to harp on such arithmetical calculations, prosecution is left with no choice but to give arithmetical answer to such question. Both have least concerned with the facts and circumstance of the case as well as statutory provisions.

16.6.34. In addition to the above, the Court has also discussed in detail the evidence of the approver under the chapter of "Approver" in issues.

16.6.35. The defence has also submitted about the learned Judge going for private visit to meet accused turned approver. As against it, prosecution had explained by virtue of an order, the court was functioning from jail and there are orders to an effect U/s 268 of Cr.P.C that accused of this case should not be physically taken to Court and considering the roj-kam and the explanation based on the rojkam as submitted by prosecution, aspect of private visit also lacks merits.

16.6.36. In view of the aforesaid discussion, sufficient evidence is brought on record by the prosecution to support the conviction of accused No.6-Mohammad Arif S/o Mohammad Iqbal Kagzi. The conviction, therefore, recorded by the Special Judge is not interfered with and is hereby confirmed.

16.7. In case of Javed Ahmed S/O Sagir Ahmed Shaikh (Ahmedabad) (A-18)

(Accused No.17 in Criminal Confirmation Case No. 2/2022 and Appellant No.13 in Criminal Appeal No. 1710/2022)

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16.7.1. In case of accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh, he has been convicted for various offences by the trial Court and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.7.2. Learned Senior Advocate Mr. Mihir Desai has made submissions in connection with accused no.18-Javed Ahmed Sadir Ahmed Shaikh, who was arrested on 04-09-2008 and was sent to judicial custody on 29-1-2009. Learned Senior Advocate has submitted that only allegations against accused no.18-Javed Ahmed Sadir Ahmed Shaikh are to have attended Vagamon Camp and some of the meetings at Ahmedabad.

16.7.3. Learned Senior Advocate has drawn our attention to Exh.9421 and submitted that present accused no.18-Javed Ahmed Sadir Ahmed Shaikh was tried as accused No.25 in the trial at Ernakulam Court vide Sessions Case No.2/2011/NIA in the Special Court for NIA Cases, Ernakulam, Kerala, wherein the Sessions Court at Ernakulam had proceeded to hold the accused to be not guilty. Immediately, learned Senior Advocate has drawn attention to comparison with accused No.72-Abdulsattar P @ Mansur of this case, who also is accused in Kerala Vagamon camp case as accused No.6. This accused though was convicted in Kerala, has been acquitted by the Special Court in Ahmedabad case. Learned Senior Advocate has drawn attention to comparison with the accused No.76-Manzar Imam @ Jameel of this case, who is also the accused No.34 in Kerala Vagamon camp case. This accused was convicted in Kerala but acquitted in Ahmedabad case. Therefore, according to learned Senior Advocate, there is complete disconnect between the camp at Vagamon in Kerala and Ahmedabad cases and it is contended that the cases of Ahmedabad will have to be

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treated as stand-alone case. More particularly, against those accused, who have been convicted in Kerala case, but acquitted in Ahmedabad case, against whom, the State has not preferred any Appeal, meaning thereby, the State accepted the position that theory of entire planning having begun from camp at Vagamon stands abandoned.

16.7.4. Learned Senior Advocate has submitted that against present accused no.18-Javed Ahmed Sadir Ahmed Shaikh, the prosecution has put up evidence in the form of confession by accused No.2- Imran Ibrahim Shaikh at Exh.8619. According to this confession, present accused no.18-Javed Ahmed Sadir Ahmed Shaikh is shown to have travelled in train to Kerala. It is submitted that in the confessional statement, accused No.2 has narrated in great detail the activities, which had taken place in Kerala like the issuing of code names to each of the participants in the camp and other activities. However, in no other activities, except for the presence of present accused no.18-Javed Ahmed Sadir Ahmed Shaikh in the train, no role is attributed to the present accused no.18-Javed Ahmed Sadir Ahmed Shaikh. It is once again submitted that the accused No.2-Imran Ibrahim Shaikh is accused No.21 in the Kerala case and has been acquitted there. Therefore, if the accused No.2-Imran Ibrahim Shaikh has been acquitted in Kerala case then, his confessional statement regarding any activity of camp in Kerala, cannot be treated against accused no.18-Javed Ahmed Sadir Ahmed Shaikh.

16.7.5. Learned Senior Advocate has submitted the reasons for conviction of accused no.18-Javed Ahmed Sadir Ahmed Shaikh, would be his presence at Halol, for which there is no evidence and therefore, the Special Court erroneously has presumed presence of accused no.18-Javed Ahmed Sadir Ahmed Shaikh at Halol camp. Learned Senior

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Advocate has submitted that other allegations against that of accused no.18-Javed Ahmed Sadir Ahmed Shaikh is being part of meeting, which was held in Ahmedabad. According to learned Senior Advocate, 10 meetings in all had taken place in Ahmedabad.

16.7.6. Learned Senior Advocate has submitted that such meetings had taken place either at the residence of Ibrahim, residence of Shamsuddin's Nana, also a meeting under the Sarangpur Bridge. The prosecution has based their case for such meetings on the evidence of PW No.957-Zakirhussain Abduljabbar Kureshi, who was examined vide Exh.6687 and also the confessional statement of accused No.24 at Exh.8627, who is an accused named Umar @ Ashok Kalabhai Kabira. Learned Senior Advocate submitted that these evidence are weaker form of evidence as PW No.957-Zakirhussain Abduljabbar Kureshi in his deposition has stated about his own presence in such meetings, where the appellant-Javed Ahmed is also shown to be present. Therefore, in fact, PW No.957-Zakirhussain Abduljabbar Kureshi despite his presence, is not shown as an accused, then the appellant-Javed Ahmed also ought not to be treated as an accused.

16.7.7. In this connection, the Court may take into consideration the fact that the defence had preferred an application at Exh.6695 before the Special Court for arraigning PW No.957-Zakirhussain Abduljabbar Kureshi as an accused, which came to be rejected by a reasoned order dated 15.12.2017. Against such an order of the Special Court, Criminal Revision Application No.1225 of 2017 was preferred before this Court which also rejected revision application, thereby the decision of the Special Court not to implead PW No.957-Zakirhussain Abduljabbar Kureshi as accused has attained finality.

16.7.8. This Court does not find any substance therefore, in the

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argument that on the lines of PW No.957-Zakirhussain Abduljabbar Kureshi, not being an accused, the appellant is also required to be discharged from the offense or at least acquitted.

16.7.9. Learned Senior Advocate submitted that even if the version of PW No.957-Zakirhussain Abduljabbar Kureshi as well as approver-Ayaz is taken into consideration, still from their evidence also, it is not coming out on record that in the meeting there was any discussion of making of explosive device and planting it in busy area to explode. According to learned senior advocate, admittedly the crime is of huge magnitude and not a handy work of one or two individuals but is an outcome of conspiracy of several people and would involve many stages to plan such an act and for that purpose, amongst group, there has to be a decision making at various stages. According to learned advocate, at least eight to nine stages of decision making would be involved and therefore, it is incumbent on the prosecution to establish the meeting of mind on each of such stages. Learned advocate has illustrated by submitting that even at the stage of planning, assignment of work to various individuals for doing their part of the act would also be essential. Therefore, it is incumbent for the prosecution to establish as to at the stage of planning also, certain acts which are required to be undertaken like procurements of various articles for preparing the explosive including chemical, the vehicles, the cycles, the hardware etc. would be assigned to and thereby executed by the co-accused persons which also should be brought on record independently, which the prosecution has failed to do so. It is also submitted that if the confessional statement of Umar is taken into consideration, the appellant-Javed Ahmed is shown present only one meeting which took place on 20.7.2008.

16.7.10. The Court has perused the evidence of PW No.957-

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Zakirhussain Abduljabbar Kureshi, who has referred to a meeting which took place in the November 2007, where he was called to the meeting by one Abdul Rajik to come for the meeting at the place of Ibrahim Ansari in the night hours and when he reached at that place, he had found the presence of present appellant-Javed Ahmed Shaikh, who belongs to Gomtipur. A clear role is attributed to the appellant-Javed Ahmed, who not only read out Quran, but also discoursed on Kayamat and Jihad. At the end of the programme, the witness was informed that periodically such meeting would take place on Mondays. Thereafter, in January 2008, again by the same modus, the witness was informed about the meeting, where again at the place of Ibrahim Ansari, where all of them had gathered which included Javed Ahmed Shaikh, where the instigation was made with regard to incidents of 2002, where Muslims had died and therefore, to take revenge, Jihad is to be performed. Again, in the month of March, yet another meeting took place below the bridge of Sarangpur, where the present appellant-Javed Ahmed Shaikh is also shown to be present, where the present appellant-Javed Ahmed Shaikh while crying had complained about his brother being arrested and that these people are not doing anything and the police should be made aware of the strength of their group. A specific reference is made to causing explosion in public to make show against the Government. When the emotions flew very high and Abdul Rajik lost his temper, at that time, the appellant-Javed Ahmed Shaikh had informed PW No.957 to take him and accordingly, PW No.957 took Abdul Rajik to his home. Once again, the witness refers to meeting in the month of June, where again he was called to the home of Ibrahim Ansari, where the present appellant-Javed Ahmed Shaikh is also present and one of the co-accused Mufti had disclosed that some of the SIMI operatives have been arrested, but there

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is no need to worry and that they are determined to impose Islamic rule.

16.7.11. While summarizing, learned senior advocate has submitted that the Special Court has committed an error in concluding in the judgment at page No.6516 that the appellant-Javed Ahmed Shaikh is a participant in the Halol Camp, whereas no evidence is placed on record by the prosecution about his participation. Moreover, the case of the prosecution of the appellant-Javed Ahmed Shaikh having participated in terror camp at Vagamon, may not also be treated as such as the appellant-Javed Ahmed Shaikh has been acquitted of the charge of participating in Vagamon in a separate trial by the Ernakulam Court and therefore, when the sentence of capital punishment is passed on the basis that the appellant had participated in the conspiracy at all stages and as it is submitted that his presence in fact is not even shown at Halol and acquitted in Vagamon, then at least, it is not a case for imposing capital punishment. Learned senior advocate has, thereafter, referred to the impugned judgment at page No.6775 to read out the mitigating circumstances as well as his antecedents and jail offense and has submitted that he is not part of the infamous tunnel case.

16.7.12. Learned Additional Advocate General on behalf of the State has submitted that the law of conspiracy is that, apart from it being a distinct offence, all the conspirators are liable for the act of each other's crimes which had been committed to achieve ultimate object of conspiracy. It is not necessary to prove and establish that all the accused came together and actually agreed to commit offence. If a conspiracy had already formed and other person joins it afterwards, then person joined subsequently is also liable for all the acts committed by other conspirators. Moreover, Section 10 of Evidence Act provides special rule of evidence followed in the case of conspiracy, if conditions of

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Section 10 of Evidence Act are fulfilled. If we look to the evidence of this case, the conditions of Section 10 of Evidence Act are fulfilled. Therefore, what was said or done by the member of conspiracy in the present case by the accused in reference to their intention would be evidenced against other co-conspirator i.e. co-accused of the case. Hence, confessional statement of accused No.2-Imram Ibrahim Shaikh vide Exh.8619 which gives narration of activities done and conducted in both the camps including giving of speeches, giving of dummy names to hide the identity of participants, coming to the camp sites secretly, dividing all participants in different groups for the purpose of giving training as executors of ultimate object of conspiracy and others being accessory to the executors, participants coming from across the country from different states and also staying in hotels in a dummy name and participation of different accused as well as involvement of SIMI as narrated in the confessional statement and different acts either express or expletive altogether needs to be seen within the ambit and scope of Section 10 of Evidence Act as discussed in the judgment of in case of ***State Of Maharashtra V/s. Damu S/o Gopinath Shinde reported in (2000) 6 SCC 269*** and also in context of Section 2(o) of the Unlawful Activities (Prevention) Act, 1967 which defines "unlawful activity" would have full play in the facts and circumstance of the prosecution case. Considering the submission of defence which relates to implication of other accused by confessor accused No.2-Imran Ibrahim Shaikh would be a weak piece of evidence would fully pale into insignificance.

16.7.13. It is submitted by prosecution that fountain head of conspiracy is Vagamon camp, where different activities like shooting, preparation of bomb etc. are undertaken much secretly by all the participants of Vagamon camp. It is also pertinent to state here that for

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this particular terror camp, separate offence is also registered against the participants of the camp at the police station in Kerala and charges under Sections 10, 20 and 38 of UAPA Act and under Section 120 B of I.P.C as well as Section 4 of Explosive Substance Act, 1908 are framed. Prosecution's case is substantiated by this particular registration of offence, framing of charge and conviction for some of the accused. Prosecution specifies here that prosecution fully relies only on the evidence led by it in the proceedings.

16.7.14. It is submitted that also considering the sequel to this fountain head of conspiracy as like conspiratorial meeting held at Halol in the month January 2008, one another conspiratorial meeting at accused No.4-Samsuddin Shaikh's Nana's house, different conspiratorial meetings right up to the day of occurrence i.e. 26.07.2008 from which it clearly established that ultimate object for hatching conspiracy was to commit an act of mass killing, taking of revenge for loss of Muslim lives in 2002 riots, doing Jihad, giving Takrir, preparation of bomb, stealing of cars, planting of bombs, staying in hotels in dummy names also stay of some accused at Sherpura Bharuch house, stay and preparation of bomb at 10 Al-Mohammadi Society Danilimda, Ahmedabad, stay at Vatva house as well as few other places, association etc of accused with SIMI and which ultimately leads to achieving of conspiratorial objects by bomb explosion at Ahmedabad at different places on 26.07.2008 and planting of bomb at different places at Surat. All these acts done separately by different accused, but achieving common object of conspiracy clearly shows from different evidentiary material and based on it making reasonable inference makes out a probable catalogue that all the conspirators have meetings of mind implied agreement to commit an offence though all the conspirators would not be knowing each other

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or may not be knowing acts committed by each other or even known to each other but their acts by themselves makes them conspirators.

16.7.15. It is further submitted that while considering different conspiratorial acts, the prosecution would submit that evidence of PW No.957-Zakir (Jakir) Hussain Abdul Jabbar Kureshi vide Exh.6687, PW No.1141-Aiyaz Razakmiyan Saiyed (approver) vide Exh.8191, Riyaz Hussein (though hostile but relevant), PW No.1117-Asif Usman Shaikh vide Exh.8019, PW No.1098- Asif Vora vide Exh.7769, PW No.1115-Mohd. Umar Mansoori vide Exh.8002, PW No.1097- Mehtab Shaikh vide Exh.7767and PW No.1131-Mohamaadrafik @Baba Shaikh vide Exh.8118 and confessional statements of different accused which are voluntary and truthful and their statements of retraction is false, different panchnamas falling under Section 27 of Evidence Act importantly which would include disclosure statements of accused No.1-Jahid Shaikh made on 19.09.2008, i.e. Exh.6656 which led to discover some explosive substance, chance fingerprint of accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh and some pertinent objects which leads to use of this house for the purpose of preparation of bombs, stayed by different accused at this place and taking on rent this place together with disclosure statement made by accused No.63-Mohammad Tanvir on 28.08.2008 .i.e. Exh.2757 which led to discovery of certain objects from house of house D-34 River View Society, Surat, wherein from some object, discovered, explosive elements were found and different pointing out panchnamas through which places of relevance as like place of Vagamon camp, Halol camp, D34-River View Society, Surat, 10 Al-Mohammadi Society, Danilimda, Ahmedabad, Vatva house etc. all together establishes conspiracy under Section 120B of IPC and conduct under Section 8 of Evidence Act. For considering the facts and

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circumstance of the case and when considering the same as per the governing principles of rule of conspiracy as enunciated in the case of Nalini, all the standards are met and fulfilled by prosecution.

16.7.16. The Court has considered the rival submissions of the parties. In the opinion of the Court, accused No.18-Javed Ahmed is also involved by PW No.957-Zakir (Jakir) Hussain Abdul Jabbar Kureshi vide Exh.6687 in various conspiratorial meetings. Witness Jakir Hussein refers to one such meeting which had taken place in the month of November 2007 at a place called Kamdar Medan. At this place along with accused No.18-Javed Ahmed many other accused persons were present as referred by witness in para 2 of his evidence. accused No.18-Javed Ahmed who is from Gomtipur reads Quran and then he talked on Qayamat and Jihad. Witness also states about such type of program being held every Monday. It would be pertinent to state here that when such type of programs which according to prosecution are nothing but sequel to the conspiracy, conspirators present in such meeting would not only talk and discuss on Qayamat and Jihad but would also read Quran and would also do other religious activities. The prosecution would submit that just reading Quran or doing any such religious activities would not take away the facet of conspiracy as while doing that, conspirators do involve themselves in the act of Jihad and Qayamat. Likewise, in the month of January 2008, as per the deposition of Jakir Hussein, meeting was held at the place of secret witness (I) Ibrahim Ansari where along with accused No.18-Javed Ahmed many other accused persons namely accused No.27-Abdul Rajik, accused No.5-Gayasuddin Ansari, accused No.4-Samsuddin Shaikh, accused No.23-Ayaz Razakmiyan Saiyed (approver) were present and at this place accused No.27-Abdul Rajik, did Takrir and also exhorted and declared

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about loss of Muslim lives in 2002 and taking revenge for it. They also read Quran. As per witness Jakir, such meeting had happened in the house of Ibrahim Ansari who is a secret witness no. (I). Though some meetings are held at the house of witnesses like Yakub, Ibrahim Ansari, Iliyasbhai, but there is no evidence about their participation either at Vagamon camp or Halol camp and so far, as they being not examined by prosecution is concerned, prosecution has explained the same in the dropping purshis.

16.7.17. Thereafter, in the month of March, more particularly, after the meeting at accused No.4-Samsuddin Shaikh's Nana's house, according to the evidence of Jakir Hussein one another meeting took place in the month of March, and the place of meeting is corner of Sarangpur bridge, where along with accused No.18-Javed Ahmed few other accused persons as narrated in para 5 in the deposition were present and at that time, accused No.18-Javed Ahmed and one another accused were crying and were saddened on the ground of arrest of their brothers and they were exhorting and declaring about their strength be shown to Police and explosion to be made against Government. Accused No.27-Abdul Rajik was furious and as deposed by witness, the reason for doing it was arrest of SIMI activists from Indore and revenge for atrocities on Muslims must be taken. Thereafter in the month of June 2008, accused No.18-Javed Ahmed and few other accused met at the place of witness Ibrahim Ansari and few other accused were also present, one of them was accused No.15-Mufti Abubasar from UP, who exhorted that there is no need to be frightened as SIMI activists are arrested and they would establish Islamic regime. Considering the involvement of accused No.18-Javed Ahmed right from November 2007 onwards up to June 2008 in different conspiratorial meetings and

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accused No.18-Javed Ahmed's association with other co-accused named accused No.15-Mufti Abubasar, accused No.27-Abdul Rajik and many others, accused No.18-Javed Ahmed is a co-conspirator. The witness-Jakir also identifies accused No.18-Javed Ahmed during the course of his deposition i.e. dock identification.

16.7.18. The Court finds that accused No.2-Imran Ibrahim Shaikh in his confessional statement involves accused No.18-Javed Ahmed as one of the participants of Vagamon camp. He states that accused No.18-Javed Ahmed was called at Railway station and accused No.7-Usman Agarbattiwala came to drop them at Railway station. Accused No.2-Imran Ibrahim Shaikh further states that when he as well as few other accused persons including accused No.18-Javed Ahmed came to Railway station, they saw accused No.14-Sajid Mansoori and accused No.15-Mufti Abu Bashar of UP and they together i.e. accused No.14-Sajid Mansuri and accused No.37-Kayamuddin Kapadiya, accused No.6-Arif Kagzi, accused No.1-Jahid Shaikh, accused No.27-Abdul Rajik and accused No.5 Gyasuddin Ansari together boarded Marusagar Express and came to Ernakulam Railway Station. When they reached there, person named Mansoor was present and in four-wheeler, they came to a mosque which was near to Railway Station and there they saw accused No.12-Safdar Nagori, accused No.10-Amil Parvaz, accused No.13-Hafiz Hussain @ Adnan and Alam Shaikh. Other persons were also present there, but they were unknown to accused No.2-Imran Ibrahim Shaikh. Accused No.18-Javed Ahmed is also arraigned as one of the accused in Kerala Session's Case as A-25. So far as activities conducted at Vagamon camp is concerned, it is elaborately dealt with.

16.7.19. It appears that accused no.24-Manjar Imam also involves accused no.18-Javed Ahmed in his confessional statement. Accused

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no.24-Manjar Imam states that on 20.07.2008, on telephonic call from accused No.4-Samsuddin Shaikh he was called at the place of secret witness (P) Yakubbhai at Juhapura. At that place, accused No.18-Javed Ahmed, accused No.4-Samsuddin Shaikh, accused No.27-Abdul Rajik and accused No.8-Yunus Mansuri were present and these four persons i.e. accused No.4-Samsuddin Shaikh, accused No.18-Javed Ahmed, accused No.27-Abdul Rajik and accused No.8-Yunus Mansuri talked on Jihad in the words of accused no.24-Manjar Imam, 'Jehadi Wali'. Discussion on the issue of taking revenge of 2002 Godhra riots also was discussed along with atrocities on Muslims. Date of this meeting would assume importance as just before six days of the occurrence of bomb blast. This meeting is held which had discussion and exhortation by accused No.18-Javed Ahmed, accused No.4-Samsuddin Shaikh, accused No.8-Yunus Mansuri and accused No.27-Abdul Rajik on jihad as well as taking of revenge and atrocities on Muslims. Though the names of two persons are referred in the statement of accused no.24-Manjar Imam, about they are being present i.e. secret witness (P) Yakubbhai as well as secret witness (J) Iliyasbhai but accused no.24-Manjar Imam does not refer to any exhortation made by them as well as any such exhortation by accused no.24-Manjar Imam himself. Prosecution had already explained dropping of secret witness P and J.

16.7.20. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh. The Court has therefore, no reason to interfere with the conviction recorded.

16.8. In case of Mehandihasan @ Vikki S/O Abdul Habib

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Ansari (Rajasthan) (A-21)

(Appellant No.2 in Criminal Appeal No. 1917/2022):

16.8.1. Though accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari and accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan are represented by different lawyers and have made their submissions independently however, it is submitted that there is commonality in the role attributed to both the accused and therefore, the discussion of their role is also identical.

16.8.2. In case of accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari, he has been convicted for various offences by the trial Court and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.8.3. The accused No.21-Mehandihasan @ Vikki is an appellant in Criminal Appeal No. 1917 of 2022 and learned advocate Shri Buch submitted that the appellant was arrested on 09.10.2008 by a transfer warrant from Rajasthan and was in remand on two occasions between 09.10.2008 to 07.11.2008 and 25.11.2008 to 05.12.2008 and in connection with the offence being II-C.R. No.203 of 2008 registered with Katargam Police Station, he was arrested on 19.01.2009. Learned advocate submits that the role attributed to accused No.21-Mehandihasan @ Vikki is of attending the Halol camp in January 2008. However, none of the witnesses examined by the prosecution have shown the presence of the accused in Halol camp. Though accused No.21-Mehandihasan @ Vikki was in police custody for a very long time, no panchnama under section 27 of Cr.P.C. was drawn which can associate the accused with the offence, as is done with regard to the co-accused.

16.8.4. Learned advocate for the accused, Mr. Hriday Buch, submits

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that the prosecution has relied upon the confessional statement of accused No.35–Rafiyuddin Sarfuddin Kapadiya, who refers to the presence of accused No.21-Mehandihasan @ Vikki at Halol. It is submitted that even the trial Court has not accepted the statement of accused No.35-Rafiyuddin Sarfuddin Kapadiya as evidence on the ground that the purported statement of accused No.35-Rafiyuddin Sarfuddin Kapadiya under section 164 of Cr.P.C. was recorded after administering the oath.

16.8.5. Learned advocate has, thereafter, assailed the only evidence against the accused, i.e. his own confessional statement recorded under section 164 of Cr.P.C. and exhibited vide Exh.8623. According to the learned advocate, if such confessional statement is perused, in that also, it is coming out that after leaving the camp, he has never met any of the other accused, meaning thereby, accused No.21-Mehandihasan @ Vikki had completely dissociated himself and therefore also, the evidence relied upon by the prosecution itself absolves accused No.21-Mehandihasan @ Vikki from any offence. Moreover, it is submitted that the confessional statement Exhibit-8623 does not find that there is any discussion or meeting of minds for committing serial blasts nor any role has been attributed to accused No.21- Mehandihasan @ Vikki during this meeting.

16.8.6. It is submitted that the Court may take into consideration a relevant fact that accused No.21-Mehandihasan @ Vikki though had made a confessional statement, the same was under duress, as by an application Exh.8617, accused No.21-Mehandihasan @ Vikki had retracted his confessional statement and therefore, his confessional statement cannot be made the basis for convicting him. The confessional statements are, in fact, exculpatory in nature and therefore, cannot be the

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basis for conviction. It is submitted that the trial Court has committed error in relying upon the confessional statement of accused No.21-Mehandihasan @ Vikki (present accused) and accused No.35–Rafiyuddin Sarfuddin Kapadiya. The confessional statements are, in fact, exculpatory in nature and therefore, cannot be made the basis for conviction. It is lastly submitted that accused No.21-Mehandihasan @ Vikki has been arrested in the present offence by way of transfer warrant from another offence registered at Jaipur, Rajasthan where the accused No.21-Mehandihasan @ Vikki has now been acquitted.

16.8.7. Learned Additional Advocate General for the State has submitted that accused No.21-Mehandihasan @ Vikki is from Rajasthan. In his confessional statement, accused No.21-Mehandihasan @ Vikki states about his intimate relationship with accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed, and his involvement and participation at Halol camp.

16.8.8. It is submitted that in the statement of accused No.21-Mehandihasan @ Vikki, there is reference of topography of Halol camp which is surrounded by Khundpir Dargah, Minar Masjid, mountains etc.

16.8.9. It is submitted that so far as Halol camp is concerned, prosecution has examined important witness like Munjavar Idris, Ambalal, Ramkabhai and Pravinbhai, who have fully supported the case of prosecution about Halol camp being one of the sequels to the conspiracy, and these witnesses have identified many accused in Test Identification Parade and some during course of their deposition.

16.8.10. It is further submitted that there are also evidentiary material of certain objects-articles being found from the place of Halol camp, which also substantiate conducting of Halol camp as stated by accused No.21-Mehandihasan @ Vikki in his confessional statement.

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16.8.11. It is submitted that there are different pointing out panchnamas by different accused persons as they attended Halol camp which also supports the case of prosecution. The prosecution has fully established that Halol camp is the sequel to the fountain head of conspiracy i.e. Vagamon camp. There are many accused who are found to be common as they attended both Vagamon and Halol camp. They are accused No.1-Jahid Shaikh, accused No.2-Imran Ibrahim Shaimkh, accused No.6-Mohammad Aarif, accused No.7-Mohammad Usman, accused No.10-Aamil Parvaz, accused No.12-Safdar Hussain Nagori, accused No.14-Mohammad Sajid, accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari, accused No.37-Kayamuddin Kapadiya, accused No.59-Mohammad Ansar and absconder Abdul Shuban @Taukir Qureshi.

16.8.12. The Court has considered the rival submissions of the parties. In the opinion of the Court, accused No.21-Mehandihasan @ Vikki in the confessional statement (Exh.8623) states that in the month of December 2007, they had a lunch meet where accused No.22-Imran Ahmed Pathan and accused No.14-Sajid Mansuri were present alongwith three other persons whose last name was Qureshi. In this meet, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan were from Kota, Rajasthan like accused No.21-Mehandihasan @ Vikki also from Kota, Rajasthan. Other three persons whose last name as submitted earlier is Qureshi, of whom one appears to be absconder Taukir Qureshi.

16.8.13. The Court finds that after this lunch meet, accused No.14-Sajid Mansoori gave tickets (railway) to accused No.21-Mehandihasan @ Vikki, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan and on 12.01.2008, these three accused i.e. accused

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No.21-Mehandihasan @ Vikki, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan started their journey from Kota to Surat and for the reasons stated in the confessional statement, ticket was found faulty and for that they were fined. These three accused got down at Godhra and at that time, accused No.14-Sajid Mansuri called accused No.22-Imran Ahmed Pathan. After these three accused got down at Godhra, they also booked their tickets for their return journey to Kota and as they received phone from accused No.14-Sajid Mansoori, ultimately, they went to Halol for attending camp and they were received by accused No.7-Usman Agarbattiwala. The aforesaid fact therefore establishes that the Halol terror camp was indeed organized and was partipated by many persons from all over India.

16.8.14. There is also reference in the confessional statement of accused No.21-Mehandihasan @ Vikki about after they having alighted at Godhra and having received phone from accused No.14-Sajid Mansuri, they thereafter got down at the later station; Piplod and from there, they went to Halol. After reaching there, they attended camp and actively participated in the camp. So far as Halol camp activities are concerned, detailed narration has been made by prosecution earlier. The most important feature of this case is declaration of mass killing. At Halol camp all participants were given dummy names; accused No.21-Mehandihasan @ Vikki was also given a dummy name and his dummy name was Aurangzeb.

16.8.15. It appears that accused No.21-Mehandihasan @ Vikki is also involved by accused No.35-Rafiuddin Kapadiya in his confessional statement as one of the accused-conspirators, who attended Halol camp. Accused No.35-Rafiuddin Kapadiya has clearly stated that three persons by name accused No.21-Mehandihasan @ Vikki Mehndi Hasan, accused

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No.22-Imran Ahmed Pathan and accused No.20-Ateek-Ur-Rehman, all are from Rajasthan were present in the Camp. Accused No.35-Rafiuddin Kapadiya addresses this Halol camp as SIMI camp. He also refers to stay of certain persons at Dargah. The confessional statement of A-35 was recorded on affidavit, therefore, may not be relied upon as an evidence however, the point out panchnama executed at behest of A-35, establishes the holding and participation of the Halol training camp.

16.8.16. The Court has already extensively discussed about the confessional statement, its admissibility despite retraction in a separate sub-chapter of "Confessional Statement and statement under Section 164 Cr.P.C." under the Chapter "Issues" where the Court has referred to the content of the confessional statement. Therefore, the same is not repeated here.

16.8.17. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari. The Court has therefore, no reason to interfere with the conviction recorded.

16.9. In case of Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan (Rajasthan) (A-22)

(Appellant No.3 in Criminal Appeal No. 1917/2022)

16.9.1. In case of accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.9.2. Learned advocate Ms. Dwivedi appearing on behalf of accused No.22-Imran Ahmed Pathan has submitted that accused No.22-

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Imran Ahmed Pathan has been arrested by way of transfer warrant from Rajasthan on 11.10.2008 and was continued in police custody for various offences for the period between 11.10.2008 to 07.11.2008 and thereafter, again between 25.11.2008 to 05.12.2008. This period of remand was pertaining to the offence registered at Ahmedabad for the serial blasts and thereafter, in connection with the planting of bombs in Surat, accused No.22-Imran Ahmed Pathan was, initially, arrested in connection with the offence bearing II-C.R. No. 203 of 2008 registered with Katargam Police Station on 19.01.2009.

16.9.3. Learned advocate submitted that the only evidence led by the prosecution against this accused is of having attended the so-called terror camp at Pavagadh in Halol (Gujarat). However, there is no eye-witness, including the three chance witnesses examined by the prosecution to establish the presence of this accused in Halol camp.

16.9.4. It is submitted that in case of other accused persons, the investigating officer has drawn panchnama under section 27 of Cr.P.C. to connect the accused with the offence. However, in case of accused No.22-Imran Ahmed Pathan, even that evidence is not existing. Therefore, the only evidence relied upon by the prosecution is the confessional statements of co-accused, accused No.21–Mehandihasan Abdul Habib Ansari and accused No.35–Rafiyuddin Sarfuddin Kapadiya. According to the learned advocate, these are confessional statements of co-accused and the same cannot be treated as substantive evidence for convicting accused No.22-Imran Ahmed Pathan. Moreover, the confessional statement of accused No.21-Mehandihasan Abdul Habib Ansari has been retracted by him and therefore, the same cannot be treated as evidence against accused No.22-Imran Ahmed Pathan. Similarly, the confessional statement of accused No.35-Rafiyuddin

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Sarfuddin Kapadiya has been discarded by the trial Court itself, as the same is recorded on oath and hence, both the evidence cannot be treated as evidence against accused No.22-Imran Ahmed Pathan. It is further argued in connection with these two confessional statements that these statements cannot be treated as substantive evidence even on the ground that both the statements are exculpatory in nature and therefore, there is not a single evidence against this accused for sustaining the conviction.

16.9.5. Learned Additional Advocate General on behalf of the State has submitted that accused No.22-Imran Ahmed Pathan is from Rajasthan and is involved by accused No.21-Mehandihasan @ Vikki who also is from Rajasthan. In his confessional statement, accused No.21-Mehandihasan @ Vikki states about his intimate relationship with accused No.22-Imran Ahmed Pathan and his involvement and participation at Halol camp.

16.9.6. It is submitted that so far as Halol camp is concerned, prosecution has examined important witness like Munjawar Idris, Ambalal, Ramkabhai and Pravinbhai, who have fully supported the case of prosecution about Halol camp being one of the sequels to the conspiracy, but these witnesses have identified many accused in Test Identification Parade and some during course of their deposition.

16.9.7. It is submitted that there are also evidentiary material of certain objects-articles being found from the place of Halol camp, which also substantiate conducting of Halol camp as stated by accused No.21-Mehandihasan @ Vikki in his confessional statement.

16.9.8. It is submitted that there are different pointing out panchnamas by different accused persons as they attended Halol camp which also supports the case of prosecution. The prosecution has fully established that Halol camp is the sequel to the fountain head of

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conspiracy i.e. Vagamon camp. They are accused No.1-Jahid Shaikh, accused No.2-Imran Ibrahim Shaikh, accused No.6-Mohammad Aarif, accused No.7-Mohammad Usman, accused No.10-Aamil Parvaz, accused No.12-Safdar Hussain Nagori, accused No.14-Mohammad Sajid, accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari, accused No.37-Kayamuddin Kapadiya, accused No.59-Mohammad Ansar and absconder Abdul Shuban @Taukir Qureshi.

16.9.9. The Court has considered the rival submissions of the parties. In the opinion of the Court, accused No.21-Mehandihasan @ Vikki states that in the month of December 2007, they had a lunch meet where accused No.22-Imran Ahmed Pathan and accused No.14-Sajid Mansoori were present alongwith three other persons whose last name was Qureshi. In this meet, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan were from Kota, Rajasthan as accused No.21-Mehandihasan @ Vikki also from Kota, Rajasthan. Other three persons whose last name as submitted earlier is Qureshi of whom one appears to be absconder Taukir Qureshi.

16.9.10. The Court finds that after this lunch meet, accused No.14-Sajid Mansoori gave tickets (railway) to accused No.21-Mehandihasan @ Vikki, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan and on 12.01.2008, these three i.e. accused No.21-Mehandihasan @ Vikki, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed Pathan started their journey from Kota to Surat and for the reasons stated in the confessional statement, ticket was found faulty and for that they were fined. These three accused got down at Godhra and at that time, accused No.14-Sajid Mansoori called accused No.22-Imran Ahmed Pathan. After these three accused got down at

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Godhra, they also booked their tickets for their return journey to Kota and as they received phone from accused No.14-Sajid Mansoori ultimately, they went to Halol for attending camp and they were received by accused No.7-Usman Agarbattiwala. There is also a reference in the statement of accused No.21-Mehandihasan @ Vikki about after they having alighted at Godhra and having received phone from accused No.14-Sajid Mansoori, they thereafter got down at the later station; Piplod and from there they went to Halol. After reaching there, they attended camp and actively participated in the camp. So far as Halol camp activities are concerned, detailed narration has been made by prosecution earlier. The most important feature of this case is declaration of mass killing. At Halol camp, all participants were given dummy names and accused No.22-Imran Ahmed Pathan was also given a dummy name and his dummy name was Julfikar. The Court under the separate Sub-chapter of "Confessional statement of co-accused" has discussed in detail the admissibility of such evidence and the content of the confessional statement. Therefore, the Court deems it fit to act upon the confessional statement of A-21 to establish the fact of participation of A-21 and A-22 in Halol terror camp with other co-accused.

16.9.11. It appears that accused No.22-Imran Ahmed Pathan is also involved by accused No.35-Rafiuddin Kapadiya in his confessional statement as one of the accused-conspirators, who attended Halol camp. accused No.35-Rafiuddin Kapadiya has clearly stated that three persons by name accused No.21-Mehandihasan @ Vikki, accused No.22-Imran Ahmed Pathan and accused No.20-Atikur Rehmaan, all from Rajasthan and were present in the Camp. Accused No.35-Rafiuddin Kapadiya addresses this Halol camp as SIMI camp. He also refers to stay of certain persons at Dargah. As the statement of A-35 (Rafiuddin

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Kapadiya), is on affidavit, hence may not be treated as an evidence. However, the Court has referred to the same as such statement under Section 164 Cr.P.C. has now been exhibited.

16.9.12. The law of conspiracy is that, apart from it being a distinct offence, all the conspirators are liable for the act of each other's crimes which had been committed to achieve ultimate object of conspiracy. It is not necessary to prove and establish that all the accused came together and actually agreed to commit offence. If a conspiracy had already formed and other person joins it afterwards, then person joined subsequently is also liable for all the acts committed by other conspirators. Moreover, Section 10 of Evidence Act provides special rule of evidence followed in the case of conspiracy, if conditions of Section 10 of evidence act are fulfilled. If we look to the evidence of this case, the conditions of Section 10 of Evidence Act are fulfilled. Therefore, what was said or done by the members of conspiracy in the present case by the accused in reference to their intention would be evidenced against other co-conspirator i.e. co-accused of the case. Hence, confessional statement of accused No.2-Imram Ibrahim Shaikh vide Exh.8619 gives narration of activities done and conducted in both the camps including giving of speeches, giving of dummy names to hide the identity of participants, coming to the camp sites secretly, dividing all participants in different groups for the purpose of giving training as executors of ultimate object of conspiracy and others being accessory to the executors, participants coming from across the country from different states and also staying in hotels in a dummy name and participation of different accused as well as involvement of SIMI as narrated in the confessional statement and different acts either express or implied altogether needs to be seen within the ambit and scope of

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Section 10 of Evidence Act as discussed in the judgment of in case of ***State Of Maharashtra V/s. Damu S/o Gopinath Shinde*** *reported in* ***(2000) 6 SCC 269*** and also in context of Section 2(o) of the The Unlawful Activities (Prevention) Act, 1967 which defines "unlawful activity" would have full play in the facts and circumstance of the prosecution case. The evidence in the form of confessional statement of A-2 strongly establishes the holding of terror camp at Halol.

16.9.13. Therefore, the prosecution has led sufficient evidence to convict the accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan for the charges. Accordingly, the conviction of accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan for the offence is confirmed and not interfered with.

16.10. In case of Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri (Ahmedabad) (A-27)

(Accused No.18 in Criminal Confirmation Case No. 2/2022 and Appellant No.14 in Criminal Appeal No. 1710/2022):

16.10.1. In case of accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri, he has been convicted for various offences by the trial Court, and has been sentenced to death penalty in Sessions Case No.38/2009 and others.

16.10.2. Learned Senior Advocate Mr. S. Nagamuthu has commenced his submissions for accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri. He came to be arrested on 23-10-2008 in connection with initially C.R. No.236 of 2008 with Shahibaug Police Station and since then, has been in custody for nearly 17 years and 5 months.

16.10.3. Learned Senior Advocate has opened his argument by

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submitting that the charge against accused No.27- Abdul Rajik is a faulty charge and also misleading thereby not giving the full scope for accused to defend the charge. According to him, accused No.27- Abdul Rajik has been awarded death penalty on account of his conviction under Sections 302 read with Section 34 and 109 of IPC, however, for attracting Section 34 of IPC and overt act in furtherance of the conspiracy is necessary, whereas it is even the case of the prosecution that no act is attributed, as is necessary for bringing home the charge of Section 34 or even for Section 302. It is the case of the prosecution that accused No.27- Abdul Rajik has not played any role as such in causing bomb explosion, which amounts to be an overt act, as is necessary for attracting ingredients of Section 302. Similarly, there is no participation in the actual act for attracting Section 34. It is submitted that as the charge against accused No.27- Abdul Rajik itself was misleading, accused No.27- Abdul Rajik was unable to defend the same. It is candidly submitted that the prosecution case if it is taken to the fullest, it may not be possible to claim clear acquittal, but his responsibility could be only to a limited extent and that too if there is sufficiency of evidence in that regard.

16.10.4. Learned Senior Advocate has argued that even for establishing such role by the prosecution to attract conspiracy, there is no bare minimum evidence against accused No.27-Abdul Rajik. Learned Senior Advocate reiterated that in absence of actual participation, accused No.27-Abdul Rajik could not be convicted under Section 302, as there is no evidence that accused No.27-Abdul Rajik was present on the spot and the same arguments are advanced, where the charge under Section 307, 326, etc. is made against accused No.27-Abdul Rajik read with Section 34 and Section 109. Learned Senior Advocate has

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submitted therefore only case of the prosecution against accused No.27-Abdul Rajik is that of conspiracy, which largely is on the basis of evidence of approver; PW No.1141-Aiyaz Razakmiya Saiyed.

16.10.5. Learned Senior Advocate has assailed evidence of approver; PW No.1141-Aiyaz Razakmiya Saiyed to be without jurisdiction and Sessions Judge had no circumstances before him, which would satisfy requirement of Section 307. Arguments advanced by learned Senior Advocate in assailing evidence of approver; PW No.1141-Aiyaz Razakmiya Saiyed is dealt with in a separate Section dealing with evidence of approver; PW No.1141-Aiyaz Razakmiya Saiyed.

16.10.6. Learned advocate has raised common contention for both accused No.7-Mohammad Usman Agarbattiwala and accused No.27-Abdul Rajik with regard to applicability of Section 10. It is submitted that in the facts/role attributed to this accused No.27-Abdul Rajik, the applicability of Section 10 is not made out. He has relied upon the decision in case of **Kehar Singh (supra)** on the scope of Section 10. According to learned advocate, anything said or done by the conspirator is to be treated as if it applies to accused No.27-Abdul Rajik when admittedly there is no role attributed to the appellant nor it is the case of prosecution that the appellant was present in execution of the conspiracy, there is doubt that Section 10 would apply.

16.10.7. According to this Court, Section 10 provides for taking into consideration as an evidence of those facts established against one of the conspirators and co-accused as an evidence for other conspirators. Section 10 requires an explanation of a 'reasonable ground' to believe that two or more accused have conspired. The prosecution has been able to establish that the present offence is an outcome of conspiracy and therefore, when any conspirator does an act in reference to their

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common intention when this common intention for the first time entertained by them. In the facts of the case, the common intention was to strike terror and that was entertained by the conspirators even when the conspirators had a meeting at Vagamon terror camp, Halol terror camp and the meetings in Ahmedabad and Surat and therefore, for proving the existence of conspiracy for the purpose of striking terror, the aforesaid meetings is a strong circumstance to infer the common intention. The decision of Supreme Court in case of **Kehar Singh (supra)**, where the Court has held that ordinarily the act or action of one of the accused cannot be used as evidence against others, but an exception is carved out under Section 10 of the Evidence Act in cases of conspiracy and therefore, second part of Section provides for using of evidence which otherwise could not be used against the accused person. Albeit, second part operates only when the first part of the section i.e. conspiracy is established. Concurring with the opinion expressed by G.L.Oza, J., K.Jagannatha Shetty, J. also held that Section 10 of the Evidence Act has introduced doctrine of agency and will come into play when the Court is satisfied that there exists a reasonable ground to believe on the basis of 'prima-facie evidence'. The conspirators are sharing common intention as discussed elsewhere. The Court has already accepted that the present crime is an outcome of well-planned conspiracy and that at various stages, the common intention has been demonstrable.

16.10.8. Learned Additional Advocate General for the State has submitted that accused No.27-Mohammad Ismail is involved by approver Aiyaz Exh.8191. It is submitted that in para 7 of his deposition, witness deposed about meetings of SIMI activist which took place at different places during the period starting from 2002 to 2005. The

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witness had various occasions to visit office of SIMI at Shahpur where he found accused No.6- Arif Kagzi working. This witness knows about SIMI activities post banning of SIMI, secret meeting of SIMI and ideology of SIMI about doing jihad and most importantly preparing Muslim youths for taking revenge of Gujarat riots. He also involves accused No.27-Abdul Rajik in meeting where lot many other accused persons were present who were talking and discussing on jihad, requirement of doing jihad in India against Government etc. This witness states that on 25.07.2008, he went to Gitamandir and called accused No.37-Kayamuddin Kapadiya and to support this fact, the prosecution has relied on panchnama vide Exh.5463 dated 08.09.2008 through which witness pointed STD PCO named Ajay Telecom and this panchnama is also proved through panch witness Exh.5462 and Investigation Officer vide Exh.8638.

16.10.9. To support the case of witness having gone to Sarangpur bridge on 26.07.2008 and having called accused No.37-Kayamuddin Kapadiya through P.C.O., it is supported by evidentiary material of PW-932/Exh.6601 Abbas Hajibhai, who was present at that P.C.O which is situated in Anand cloth market who was subjected to police interrogation as well as Test Identification Parade report; Exh.3139 in which witness Abbas has identified witness Aiyaz as a person who came to his P.C.O.

16.10.10. It is submitted that PW-1097-Mehtab Shaikh vide Exh. 7767 has deposed about SIMI meeting at Surat attended by accused No.4-Samsuddin S/O Shahabuddin Shaikh, accused No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, accused No.8-Yunus S/O Mohammad Mansuri and accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori. It is submitted that case of prosecution is also further established about accused persons being SIMI activists and

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having SIMI ideology and that out of the four accused named by witness Mehtab Shaikh who were present in SIMI meeting at Limbayat, Surat, accused No.6-Mohammad Aarif and accused No.12-Safdar Hussain Nagori were also attendees of Vagamon camp, accused No.8-Yunus Mansuri was also an attendee of Halol camp and accused No.4-Samsuddin Shaikh was attendee of his own Nana's house meeting where SIMI leaders across India were present. The Court has referred to the evidence of Mehtab Shaikh in detail under the Chapter of "Appreciation of deposition of relevant witnesses".

16.10.11. It is submitted that considering the confessional statement of accused No.26-Mohammadali Ansari, it is established about SIMI activism by accused. It is submitted that from the confessional statement of accused No.35-Rafiyuddin Kapadiya, it becomes clear in terming Halol camp as SIMI camp and that attendees of both the camps are SIMI activists having SIMI ideology.

16.10.12. It is further submitted that as per the confessional statement of accused No.76- Manjarimam Aliimam at Exh.9021, who had attended Vagamon camp, he has very clearly stated about he having met top SIMI leaders at Vagamon camp. It is submitted that upon considering all the above evidentiary material, Vagamon camp is a camp of banned SIMI organization. It is submitted that considering the judgment of Kerala Session's court, there were large number of accused, and some of them are common in the present proceedings, have been convicted under Section 10 of Unlawful Activities (Prevention) Act (UAPA), 1967, for being a member of an unlawful association, Section 20 of UAPA for being a member of terrorist gang or organization and Section 38 of UAPA for offence relating to membership of terrorist organization under UAPA. The first schedule falling under UAPA gives description and

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particulars of terrorist organization and within it at Serial no.22 Student Islamic Movement of India i.e. SIMI is declared as a terrorist organization.

16.10.13. It is submitted that confessional statement of accused No.76-Manzer Imam involves accused No.27-Abdul Rajik, as one of the attendees of Vagamon camp alongwith many others and that even accused No.76- Manzer Imam has accepted that he joined SIMI. He also revealed that, he met top SIMI leaders in the Vagamon camp named accused No.12- Safdar Nagori, accused No.10-Amil Parvaz and accused No.11- Sibily. Further, accused No.76- Manjarimam has also stated about a period subsequent to bomb blast in Ahmedabad and stated that certain accused persons named absconder Taukir wanted to stay with him and after his stay for 10 to 12 days, accused No.76- Manjarimam found photo for Rajik and Mujib in connection with Gujarat blast who were also with Taukir. It is submitted that therefore, it becomes clear that not only accused No.27-Abdul Rajik attended Vagamon camp but even after commission of bomb blast while he was absconding, he stayed with accused No.76- Manjarimam along with two other accused namely absconder Taukir and deceased accused Mujib. It is submitted that this would establish that accused No.27-Abdul Rajik is closely associated with this set of accused persons.

16.10.14. It is submitted that witness Jakir Hussein has also involved accused No.27-Abdul Rajik in different conspiratorial meetings. It is submitted that his extra-judicial confession before witness as well as considering the motive of accused persons which has been dealt at the time of submission of different accused and also their ultimate object of hatching conspiracy. The witness was residing earlier at Gomtipur and thereafter, at Juhapura and was working as a carpenter and that Firoz,

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who is a friend of this witness, played cricket together and through Firoz, this witness came to know accused No.27-Abdul Rajik. accused No.27-Abdul Rajik was also resident of Gomtipur and both had good relations.

16.10.15. Upon perusal, the Court finds that witness Jakir has deposed about accused No.27-Abdul Rajik coming to him on 20th July and asking for sim card having old number for the purpose of his father, which was given to accused No.27-Abdul Rajik by this witness. He also deposed that on 23rd July he called on his old number (based on sim card given by witness to accused No.27-Abdul Rajik) which was picked by accused No.27-Abdul Rajik to which witness asked as to where he was, to which accused No.27-Abdul Rajik replied that he was busy in work and snapped the call. Thereafter, witness went to house of accused No.27-Abdul Rajik but accused No.27-Abdul Rajik was not found present. On 24th July accused No.27-Abdul Rajik called witness and asked him for coming to his house for the purpose of some repairing to which witness had visited the house of accused No.27-Abdul Rajik, but accused No.27-Abdul Rajik was not found present and mother of accused No.27-Abdul Rajik told the witness that since last 2 two days, accused No.27-Abdul Rajik was not staying there and witness after examining the repairing work left the house of accused No.27-Abdul Rajik. On next date i.e. 25th July, witness again visited the house of accused No.27-Abdul Rajik, however he was not found present but witness finished his work of repairing at the house of accused No.27-Abdul Rajik. On the same night, witness was taken by accused No.27-Abdul Rajik to Dariyapur Limdi, where Imran Puthawala, accused No.8- Yunus Mansoori and accused No.35-Shamsuddin Shaikh were present but he was kept at some distance and they were talking amongst them. The version of the eye-

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witness Jakir has been dealt with by the Court in a separate chapter "Appreciation of deposition of relevant witnesses".

16.10.16. It is submitted that witness further deposed that he does not know what they were taking about and that he only overheard as to what type of Muslims they were as they were welcoming Rathyatra. On 26th July, 2008 i.e. a day later, he came to know in the evening about occurrence of bomb blast which caused human loss.

16.10.17. It is submitted that he further deposed that a day later i.e. 27th July, this witness called accused No.27-Abdul Rajik upon which he to meet this witness and that accused No.8-Yunus Mansoori was also present who had come after meeting accused No.4-Shamsuddin Shaikh. They went to the place of accused No.8-Yunus mansoori then thereafter, to Bapunagar for meeting the friend of accused No.27-Abdul Rajik and thereafter they went to the house of Altafbhai, maternal uncle of accused No.75-Mohammad Rafiq where accused No.75-Mohammad Rafiq was present and was found frightened. It is submitted that accused No.75-Mohammad Rafiq is from Juhapura but was present at his uncle's house at Bapunagar. Little later, the witness left that place. At Bapunagar, accused No.75-Mohammad Rafiq and accused No.27-Abdul Rajik were talking to each other and he was kept at some distance. After some time on the same day, accused No.27-Abdul Rajik was found worried as two guests were coming from Vadodara and he was anxious about their safe arrival. A day later i.e. on 28th July, witness heard accused No.27-Abdul Rajik saying that in such type of bomb blasts, one would need reliable companion who would be there for each other, would ask each other to remain normal and they also discussed that one should not feel that they have done such work and also about human loss suffered by Muslims in the year 2002.

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16.10.18. The Court has considered the rival submissions of the parties. The Court finds that witness Jakir Hussein has involved accused No.27- Abdul Rajik in different conspiratorial meetings. This witness has deposed about conspiratorial meeting at Kamdar Medan in November 2007 which was attended by accused No.27- Abdul Rajik and few other accused persons where accused No.18-Javed Ahmed Shaikh talked on Qayamat and Jihad and on completion of program, accused No.27- Abdul Rajik told about keeping of such program on every Monday. One other conspiratorial meeting deposed by this witness was in January 2008, at the house of secret witness (1) Ibrahim Ansari a resident of Gomtipur which was also attended by accused No.27- Abdul Rajik and few other accused persons including accused No.23-Ayaz, who is now an approver witness. accused No.27- Abdul Rajik also did Takrir and also exhorted for human loss suffered by Muslims in the year 2002 and taking of revenge for it and also talked on jihad. This meeting was attended by many other accused who also attended Vagamon and Halol camp and considering the deposition of witness accused No.27- Abdul Rajik, he has acted as a leader of this meeting. In march 2008, one another big conspiratorial meeting took place at the house of accused No.4-Samsuddin Shaikh's Nana, where many other accused persons were present from across India and discussion on taking of revenge for atrocities suffered by Muslims, human loss suffered by Muslims in 2002 and striking terror against Government which is anti-Muslim and also referring to SIMI having become strong and their activist being present across India in all cities and therefore, declaration was made to do Jihad. Association of accused No.27- Abdul Rajik in this meeting with other SIMI leaders namely; accused No.15- Mufti from Uttar Pradesh, absconder accused Taukir from Maharashtra and others. In the month of

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March, in one another meeting at the corner of Sarangpur bridge, accused No.27- Abdul Rajik and other accused gathered to express their dismay as their co-activists were arrested and accused No.27- Abdul Rajik expressing his anger on this situation and exhorted about doing explosion in public against Government hence, one of the accused told witness to drop accused No.27- Abdul Rajik at his house and as witness was wholly unaware about the happenings, out of curiosity this witness asked accused No.27- Abdul Rajik as to what happened to which, accused No.27- Abdul Rajik replied that SIMI activists are arrested in Indore and therefore, for such atrocities on Muslims, revenge must be taken.

16.10.19. It also appears from the evidence of this witness that accused No.27- Abdul Rajik in an extra judicial confession, has confessed to the witness about different happenings and witness came to know that accused No.27- Abdul Rajik had gone to Indore and police persons have apprehended SIMI persons and therefore, accused No.27- Abdul Rajik had gone to the home of apprehended SIMI persons as well as other SIMI persons, and on discussion with other SIMI persons, it was decided that for getting apprehended SIMI activists released, requirement of striking terror is must. And that, as accused No.27- Abdul Rajik had visited Indore other SIMI persons are also required to know about accused No.27- Abdul Rajik's visit to Indore. This witness also involves accused No.27- Abdul Rajik in one another meeting, which was held in the month of June wherein accused No.27- Abdul Rajik and other accused including accused No.15-Mufti of Uttar Pradesh were present and discussion took place that, as SIMI persons are apprehended, there is no need to worry or panic but they would establish Islamic regime. This meeting is also proximate to the occurrence of incident.

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The evidence of witness also reveals about accused No.27- Abdul Rajik having visited-reccee certain places like Naroda Patiya, Gulbarg society, Naroda gam, wherein incidents took place in which, Muslims were affected as they suffered human loss as well as damage to their property. A week thereafter, one another meeting was conducted in which, accused No.27- Abdul Rajik and other accused persons including accused No.15-Mufti of Uttar Pradesh were present and they talked about establishing Islamic rule and for that all preparation have been made. Also, accused No.27- Abdul Rajik met witness on 1st august as well as on 3rd august and witness knew that phone received by him from accused No.27- Abdul Rajik and deceased accused Mujib were from same number. On 7th August 2008, this witness went to pick up his wife from Gwalior, MP. In the evening, the witness was at Kalupur railway station and he received a phone call from accused No.27- Abdul Rajik to which the witness replied that he is going to Gwalior to pick his wife and on inquiry from accused No.27- Abdul Rajik, witness gave his travel journey and accused No.27- Abdul Rajik told this witness that he is coming to Ratlam to meet him. accused No.27- Abdul Rajik came to witness and inquired about the friends of Ahmedabad to which the witness replied no one is meeting him and he does know any other thing. Thereafter, accused No.27- Abdul Rajik told witness that he is coming with witness till Nagda and during travel to Nagda, accused No.27- Abdul Rajik confessed that idea of bomb blast was of accused No.37- Kayamuddin Kapadiya and Absconder Taukir. He further said that they were in contact of Indian Mujahidin and logistics was provided by Indian mujahidin for committing bomb blast to take revenge of 2002. accused No.27- Abdul Rajik also said about they having surveyed(recce) at different places for the purpose of planting bomb and accused No.27-

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Abdul Rajik being in contact with accused No.75- Mohammad Rafiq, accused No.23-Ayaz (approver) and deceased accused Mujib. He further said about cycles loaded with bomb were planted by accused No.23-Ayaz (approver), accused No.37-Kayamuddin Kapadiya and accused No.75- Mohammad Rafiq and deceased accused Mujib. Cycles loaded with bomb were also placed by persons belonging to Indian Mujahidin of UP and after bomb blasts, persons from UP went back and that car loaded with bombs planted at Civil and LG hospitals, was brought by persons of Indian Mujahidin from Bombay and lastly, he said on reaching back to Ahmedabad to witness, to take care of parents of accused No.27- Abdul Rajik and on reaching Nagda, accused No.27-Abdul Rajik deboarded the train.

16.10.20. The Court finds that he also deposed about he having received summons from court of Metropolitan Magistrate which he attended and on 05.11.2008, witness gave his statement before Metropolitan Magistrate where he stated that he had voluntarily given statement to assist the country. He also stated that whatever he was answering and stating, was reduced in writing by Magistrate and after the writing being complete, he was given to read it and thereafter, he put his signature. The witness upon being shown his statement recorded by the Magistrate, has agreed about the contents of the statement as stated by him and has stated that he was speaking in Gujarati and Hindi and the Magistrate was writing in Gujarati-Hindi and thereby he proved his statement vide Exh.6688. Thereafter, witness was called upon to identify different accused known to him, wherein he successfully identified accused No.27- Abdul Rajik and many other accused while giving deposition. One pertinent aspect about the identification is he was able to identify accused No.18-Javed Ahmed Shaikh only when accused

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No.18-Javed Ahmed Shaikh was asked to remove his cap and spectacles and same would apply to identification of accused No.75-Afridi. On completion of the examination in chief of this witness, for the purpose of cross-examination, matter was adjourned to 08.12.2017. The Court has also discussed in detail the evidence of this eye-witness under the Chapter of "Appreciation of deposition of relevant witnesses" and also under the sub-chapter of "Extra-Judicial Confession" under Chapter "Issues".

16.10.21. In the opinion of the Court, accused No.2-Imran Shaikh in his confessional statement had involved accused No.27- Abdul Rajik as one of the participants from Ahmedabad alongwith many other co-accused from Ahmedabad as well as different States across India who attended Vagamon. Considering the confessional statement of accused No.2- Imran Shaikh, it clearly appears that since 2004 he associated himself with SIMI, a banned organization with accused No.7-Usman Agarbattiwala under a belief that SIMI is a religious organization. It appears that there were many conspiratorial meetings, where there was exhortation of taking of revenge, for atrocities on Muslims and establishing Islamic rule but while making such exhortation, there is always one aspect in such meeting which relates to reading of Quran. Therefore, in almost all such conspiratorial meetings there is reference of some or the other religious work. Accused No.2-Imran Shaikh further has further stated that even after imposition of ban on SIMI, SIMI activists continued their SIMI objectives secretly at different places and because of that, certain accused persons were arrested for their association with SIMI. Even from the evidence of witness Jakir Hussein and witness Ayaz, it appears that accused persons are SIMI activist and even after imposition of ban on SIMI they continued their association

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with SIMI uninterruptedly, at least until their ultimate object of committing bomb blast was achieved. Even defence themselves have placed on record investigation material which is in the nature of SIMI literature vide Exh.9248, and perusal of it, establishes that why SIMI was banned and that inspite of imposition of ban, SIMI activists including accused persons continued with their SIMI ideology. Even from this literature; Exh.9248 names of accused No.1-Jahid Shaikh, accused No.4-Samsuddin Shaikh, accused No.6-Mohammad Aarif, accused No.8-Yunus Mansuri and accused No.14-Mohammad Mansuri appears as office bearers of different areas.

16.10.22. The Court finds that accused No.24- Umarbhai @ Ashok Kalabhai Kabira in his confessional statement involves accused No.27-Abdul Rajik in the conspiratorial meeting which took place at the house of secret witness (P) Yakubbhai. Date of this conspiratorial meeting is 20.07.2008 which is proximate to commission of bomb blast as it happened just 6 days prior to bomb blast and most pertinent part of the meeting is accused No.27- Abdul Rajik delivered speech on Jihad and in the words of accused No.24-Umar Kabira, accused No.27-Abdul Rajik did 'Jehadi Wali' and they also discussed and exhorted about loss of Muslim lives, atrocities on Muslims and taking of revenge of 2002 Godhra riots.

16.10.23. The Court finds that accused No.27- Abdul Rajik was also involved by approver Ayaz vide Exh.8191. This witness also involves accused No.27- Abdul Rajik in meeting which was held at accused No.4-Samsuddin Shaikh's nana's house. He has also involved accused No.27- Abdul Rajik as a person who helped accused No.37-Kayamuddin Kapadiya for taking on rent one house at Vatva. As accused No.27-Abdul Rajik is connected with Vatva house and other accused are also

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connected with this house more particularly, accused No.15-Mufti and this house was subjected to search as well as recovery of objectionable articles and also sending it to F.S.L and receiving of opinion for it. This witness has involved accused No.27- Abdul Rajik in one meeting which took place on 22nd July as witness received phone from accused No.37-Kayamuddin Kapadiya and was called to come at Vatva bus station and when witness went there, he found accused No.37-Kayamuddin Kapadiya as well as accused No.27- Abdul Rajik and from there they went to Narol and on the way, they discussed about Gujarat riots and also for taking revenge for it, and to a question put by accused No.37-Kayamuddin Kapadiya to the witness about witness being ready to be involved in such a plan, the witness answered in affirmative. Thereafter accused No.37-Kayamuddin Kapadiya told about plan of bomb blast and participation of victim and witness inquired from accused No.37-Kayamuddin Kapadiya the manner and way of bomb blast to which accused No.37-Kayamuddin Kapadiya told him to not ask much and to follow the instructions and abide with it. This statement of accused No.37-Kayamuddin Kapadiya to the witness, assumes importance as accused No.27- Abdul Rajik was present all throughout this conversation. This witness also deposed that on 25th July, witness went to Gitamandir bus stand from his house and from there through P.C.O, witness called accused No.37-Kayamuddin Kapadiya to which accused No.37-Kayamuddin Kapadiya told this witness to stay there and that he is coming. This witness also learnt that the next day i.e. 26th July was the day fixed for bomb blast and therefore, witness was instructed to come at Sarangpur in the noon at around 4 o'clock and also called accused No.37-Kayamuddin Kapadiya. On the next day i.e. 26.07.2008, witness went to Sarangpur and called accused No.37-Kayamuddin Kapadiya

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who instructed witness to come to Ajit Mill Cross Roads and thereafter called him again, upon which the phone of accused No.37-Kayamuddin Kapadiya was responded by accused No.27- Abdul Rajik who told witness to stay at Ajit Mill Cross Roads and accused No.27- Abdul Rajik is reaching there. Therefore, it clearly appears that accused No.27- Abdul Rajik was all through out with accused No.37-Kayamuddin Kapadiya. accused No.27- Abdul Rajik went to Ajit Mill Cross Roads in rickshaw with four bags loaded with bombs, heavy in weight and dropped all the four bags near witness and thereafter, accused No.27- Abdul Rajik left these bags for some time by saying that he would come within some time and then he came with one cycle at the place of witness. Thereafter, out of four bags placed before witness, one bag was tied on governor of cycle and one another bag was placed on carrier, to which witness said that accused No.37-Kayamuddin Kapadiya wholly instructed him to place bomb at a particular place then why second bag was given to him, to which accused No.27- Abdul Rajik replied that he was in hurry so he should put one bag at the place shown to him by accused No.37-Kayamuddin Kapadiya and other bag at a place found suitable to him or at a place like City bus but to complete this work before 6 o'clock and he left after saying so and this witness does not know where accused No.27- Abdul Rajik left. This witness also identified accused No.27- Abdul Rajik during the course of deposition. Witness Ayaz also pointed out different places of importance, which he visited on 26.07.2008 namely Ajit Mill Cross roads, Naroda Gam Bhagod, AMTS Bus number 63/3, Naroda bus stand where the bus stopped and the place where witness deboarded that bus at Saijpur Bus stand. This pointing out of places is recorded in pnachnama Exh.5470 proved through panch witness Exh.5439 and I.O. Exh.8638.

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16.10.24. The Court finds that accused No.27- Abdul Rajik is also involved in taking on rent House No.10-Al-Mohammadi Society, Danilimda, Ahmedabad (which was used as a hideout). It has also come on record through evidence of other witnesses more particularly from evidence of Fukhrajbanu that her house had been rented to accused through witness Mohd. Ibrahim and Arif. Considering the evidence of Arif vide Exh.6651 who is a broker and had deposed that from 05.07.2008 to 07.07.2008, two persons came to him for taking on rent a house and from these two persons, during the course of Test Identification Parade Exh.3171, witness Arif identified accused No.27-Abdul Rajik as one of the persons who visited him for the purpose of taking on rent a house. Witness Fukhrajbanu, owner of this house had identified accused No.37-Kayamuddin Kapadiya in Test Identification Parade as a person who came to her.

16.10.25. The Court finds that another important circumstance against accused No.27- Abdul Rajik is relating to him having purchased two gas cylinders named Golden Click bottles from a shop named Deluxe Gas stove, which were used for the purpose of preparing bombs and during the course of panchnama; Exh.2036 which is a panchnama of scene of offence at LG hospital Maninagar, the car in which bombs were planted and after explosion of bomb-damaged car etc were lying at the place in which one of the damaged articles was a gas cylinder in the name of Golden click gas cylinder. Two gas cylinders each weighing 5 kilos, in the name of Golden Click bottles were sold by PW-926/Exh. 6574 Muktarbhai on date 25th , who running business in the name of Deluxe Gas Stove situated at Kalupur Tower. This witness during the course of deposition has identified damage gas cylinder under the name of Golden Click gas bottle found from scene of offence which is part of Muddamal

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more particularly Article No.1 of Muddamal Article List Exh.2034. This witness during the course of Test Identification Parad Exh.3136 also identified accused No.27- Abdul Rajik as a person who came to purchase Golden Click gas bottles. This Test Identification Parad is proved through Executive Magistrate Exh.3130 and scene of offence panchnama Exh.2036 is proved through panch witness Exh.2035. This place of Deluxe Gas Stove situated at Kalupur is pointed out by one another accused namely accused No.75- Mohammad Rafiq one of the conspirators through panchnama Exh.7937 proved through panch witness Exh.7936 and I.O. Exh.8014.

16.10.26. Furthermore, prosecution has examined witness namely Abdul Sajid Pathan at Exh.6668 who resides at Gomtipur and is also doing embroidery work at Hathikhayi, Gomtipur. accused No.27- Abdul Rajik also resides in Gomtipur. As per evidence of witness Pathan, he knew accused No.27- Abdul Rajik since 3 years. He further deposed that either on 24th or 25th July one person in the company of accused No.27- Abdul Rajik came to his shop and one bag containing gas cylinders was kept at his shop for some time. He also deposed that, police came to his shop on 08.12.2008 with a person with whom accused No.27- Abdul Rajik came.

16.10.27. It appears that during panchnama Exh.5622, dated 25.10.2008, accused No.27-Abdul Rajik made disclosure statement regarding taking of bomb, delivering it to Ayaz, the place from where he purchased cloth bag and where he planted cycle with bomb and he has also thereafter pointed out the place (1) Al- Mohammadi Society house, (2) place from where he sat in auto, (3) Kamdar Medan place where he left auto and took new auto, (4) place of Ajit Mill Tolnaka where he get down from auto and met Ayaz and gave delivery of cycle with bomb, (5)

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place near Hathikayi Government Dispensary from where he took cycle and placed bomb on cycle, (6) one shop namely Rajesh Tailor Shop Ladies and Gents at that place one Vajubhai Kalyanbhai Chaurasiya was present, (7) Dhanvantri Hospital near Diamond Pan Parlour where he planted cycle with bomb, (8) place at Panch Kuva, Nr. Municipal School No.2 and 24 from where he purchased cycle, wherein at the relevant time, cycle repairer Ayubbhai Husseinbhai was present.

16.10.28. This panchnama (Exh.5622) was proved by prosecution through PW-833/Exh.5622 as also by Investigating Officer Exh.8638. Also, PW-1141/Exh. 8191 approver-Aiyaz gave evidence regarding delivery of cycle with bomb by accused No.27-Abdul Rajik at Ajit Mill Cross Roads. The Court has also perused the deposition of PW-828/Exh.5560-Vajubhai Kalyanbhai Chaurasiya, who was doing stitching work in the name of Rajesh Tailor Shop. In the cross-examination of this witness, he denies that he knew the name of person i.e. accused No.27-Abdul Rajik through Police hence, witness has identified accused No.27-Abdul Rajik when he was taken before him. He stated that in the year 2008, police came with one accused No.27-Abdul Rajik. He has also stated that he purchased bag from his shop.

16.10.29. The Court has thereafter perused the deposition of PW-829/Exh.5561-Ayubbhai Shaikh, who was doing business of selling and purchasing of old cycles. He has stated that, he sold one cycle to the person who came with police and the name of person is accused No.27-Abdul Rajik. This cycle was identified by witness on an earlier occasion in Crime Branch as muddamal article No.1 of muddamal article list Exh.3227 during his deposition. In cross-examination, this witness admits that he sold this cycle before three months when police arrived at his place.

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16.10.30. It appears that during panchnama Exh.5545, dated 25.10.2008, accused No.27-Abdul Rajik made disclosure statement regarding hiding of cycle and other material taken and thereafter, pointed out the place inside Jameel Masjid, Mahavir Flat, on backside of Al-Aman Flat and thereafter pointed out one black cycle which is of Hercules make 22 inch having two bar and also made disclosure about the key of cycle and thereafter, from his house, from the vault (Tijori) and showed key of cycle. Thereafter, during this panchnama, the said cycle was seized alongwith the key. This panchnama was proved through PW-824/Exh. 5544 and I.O. Exh.8638. Also, accused No.27-Abdul Rajik involved accused No.37-Kayamuddin Kapadiya in his disclosure statement.

16.10.31. It appears that during panchnama at Exh.5534 dated 02.11.2008, accused No.27-Abdul Rajik made disclosure statement about recce with other accused and thereafter, pointed out the place of recce and from where he had taken the cycle on rent. Thereafter, he pointed out a shop named Janta cycle repairing works and thereafter, other place near ambulance parking, trauma centre. During this panchnama, a cycle rent register at Exh.5535 was recovered from Janta cycle repairing, in which there was a entry dated 22.07.2008 of cycle no.11, size 22, and a person named Raju was present. This panchnama Exh.5534 is proved through Exh.5526 and through the Investigating Officer at Exh. 8368.

16.10.32. The Court has perused the deposition of PW-826/Exh.5554-Rafikbhai Ansari, who was doing business in the name of Janta cycle repairing works at Gomtipur. The said witness knew Isaqbhai and had rented cycle to Raju, whose father's name is Isaqbhai. This witness has stated that in the register entry, name of a person named Raju and time

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was mentioned and that register was taken by the police from him (accused No.27-Abdul Rajik's father name is Isaqbhai). This witness identified muddamal article register which is serial no.2 of muddamal list Exh.3227. The place of Janta cycle repairing works was pointed out by accused No.27-Abdul Rajik during aforesaid panchnama Exh.5534.

16.10.33. The Court finds that during panchnama Exh.5556 dated 04.12.2008, accused No.27-Abdul Rajik made disclosure regarding taking of Maruti 800 from lane of Al- Mohammadi society with bomb and planting it at LG hospital parking area. Thereafter, he pointed out the place where he sat in the car driven by co-accused being accused No.28-Afzal @ Afsar S/O Mutallib Usmani and accused No.37-Kayamuddin Kapadiya and thereafter, pointed out the place near Chandola Talav near barrel market from where he sat in Maruti car and he has also pointed out LG hospital parking area. This panchnama has been proved through PW No.827/Exh.5555 and through Investigating Office at Exh.8638.

16.10.34. The Court finds that during panchnama at Exh.6091 dated 08.12.2008, accused No.27-Abdul Rajik made disclosure regarding recce which was conducted at various places in Khadia and thereafter, he has pointed out Al-Mohammadi Society House No.10 from outside and the place from Shree Ram Tea house where they ate gutka and smoked. He has also pointed out places such as Gokhale Pan House and Sarangpur Chakla, which is crowded area where vegetable lorries were stationed. This panchnama is proved through PW No.865/Exh.6050 and through Investigating Officer vide Exh.8638.

16.10.35. The Court finds that during panchnama at Exh.5485 dated 08.12.2008, accused No.27-Abdul Rajik pointed out Attic (maliyu) inside the Al-Aman Apartment and from there he showed one orient

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company fan which they have used in 10 Al- Mohammadi Society house, which was recovered during panchnama which is proved through PW No.816/Exh.5484 and through Investigating Officer vide Exh.8638. Accused No.37-Kayamuddin Kapadiya has pointed out one Jay Ambe Electric shop, situated near Isanpur Gam from where he purchased Orient company table fan which they kept at house of Al-Mohammadi Society. Even during investigation, in Test Identification Parade Exh.3142 before Executive Magistrate PW-588/Exh.3130, witness of Jay Ambe Electric shop-Ambalal Haribhai Patel has identified accused No.37-Kayamuddin Kapadiya. But prosecution was unable to examine witness Ambalal Haribhai Patel as he was dead and report regarding the same is at Exh.6877.

16.10.36. It is the contention of the defence that panchnama Exh.6051 is dated 08.12.2008 and starting time is 12:00 and ending time is 14:00. Moreover, panchnama Exh.5485 is dated 08.12.2008 and starting time is 11:00 and ending time is 13:00 and both these panchnamas are fabricated. In this regard, upon perusing the deposition of Investigating Officer at Exh.8638, at the relevant time, Investigating Officer has explained that there may be time error in panchnama. Even the trial Court with regard to the deposition of Investigating Officer (Exh.8638), made a note regarding the explanation of Investigating Officer.

16.10.37. The Court finds that during panchnama Exh.6068, dated 02.01.2009, accused No.27-Abdul Rajik made disclosure regarding purchase of cycles and use of cycles. Thereafter, he has pointed out different cycle shops situated at Sarangpur area and one cycle shop at Raipur-Gomtipur, from where he purchased old cycles. This panchnama is proved through PW No.868/Exh.6067 and through Investigating Officer vide Exh.8638.

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16.10.38. The Court has perused the deposition of PW-955/Exh.6672 Allahrakha Satarbhai, who is having one small galla from where he was doing cycle repairing. This witness sold cycle at Rs.700/- to Mohammad Ismail who resides at Tolnaka. The old cycle which was sold by this witness was having govender of Hercules Company and cycle of Hero Company. This witness identified article No.9 of Muddamal Article List Exh.2065 i.e. cycle which is having Govender of Hercules Company and cycle of Hero Company. This cycle was recovered from scene of offence of Bapunagar I-C.R. No.220/08, during scene of offence panchnama Exh. 1890. Accused No.27-Abdul Rajik on 25.10.2008, during panchnama Exh.5622 pointed out Dhanvantri Hospital near Diamond Pan Parlour where bomb blast occurred.

16.10.39. The Court finds that during panchnama Exh.6064, dated 03.01.2009, accused No.27-Abdul Rajik made disclosure statement regarding planting of bomb on cycle, purchasing of old cycle and placing of cycle at different places. Thereafter, he has pointed out the following places (1) Apsara Cycle Shop, Juhapura-shop of Abdul Rahim Gulambhai Mansuri, (2) Star Cycle Shop, Sanklitnagar, Juhapura, (3) M.R. cycle works, Shop No.7, Suhana Apartment, (4) United cycle works Mansuri Masjid Shop-2, (5) shop at Rahil Park-shop of Khurshidbhai Khureshi, Fatehwadi Sarkhej, (6) Unnamed Shop near Chandola Talav, (7) closed shop at Shah-Alam, from where he purchased cycles. This panchnama is proved through PW No.867/Exh.6063 and through Investigating Officer vide Exh.8638.

16.10.40. The Court has perused the deposition of PW-1035/Exh. 7046-Abdul Rahim Gulambhai doing cycle repairing works in the name of Apsara cycle. This witness stated that on 03.01.2009, police came to his shop and at that time one accused and two other people of public

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were with police. The name of accused is Mohd. Ismail Mansoori (A-27). This witness stated that he had sold cycle which was purchased by him from scrap, which was sold by him to Mohd. Ismail (A-27). PW-1036/Exh.7047-Khurshidbhai Khureshi, who was doing business at Fatehwadi Sarkhej in the name of Sadik Cycle works has stated that on 03.01.2009, police came to his shop with four police persons, two public people and one accused and at that time, that person who is referred to as accused came to him and he gave Rs.600/- and took cycle from him.

16.10.41. As stated hereinabove, the Court finds that accused No.27-Abdul Rajik had pointed out many places of relevance which would show his conduct. Over and above this, there is other evidentiary material which lends support and corroboration to such pointing out as well as places pointed out also assumes importance as the case of prosecution reveals important part of prosecution case with regards to the locations of the serial blasts. In the opinion of the Court, this aspect of the case of the prosecution is required to be considered in light of the judgment of the Apex Court in case of Mohd. Naushad v. State (NCT of Delhi), reported in (2024) 12 SCC 494, wherein the Apex Court has considered the pointing out by the accused of the shop where the duplicate key of the stolen vehicle was prepared, the shop where its fake number plates were prepared, the place where the vehicle had been parked prior to the blast, the Dulhan Dupatta shop where it had been parked on the date of the failed attempt, and the shops from where various articles used in preparing the bomb, including wire, a drill machine, a gas cylinder, soldering iron and solder, a 9V battery and a wall clock, had been procured or worked upon. Upon finding the relevant pointing out circumstances proved against the respective accused, the Apex Court treated the knowledge of the accused persons of

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such places, particularly facts which were not previously known to the police, as incriminating circumstances which, together with the other evidence, established their participation in the preparation and execution of the conspiracy.

16.10.42. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri. The Court has therefore, no reason to interfere with the conviction recorded.

16.11. In case of Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari (Madhya Pradesh) (A-26)

(Appellant in Criminal Appeal No. 1710/2023)

16.11.1. In case of accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.11.2. Learned advocate Mr. Somnath Vatsa appearing for accused No.26-Mohammadali Ansari submitted that the submission qua this accused is identical to the submission made for accused No.26-Mohammadali Ansari. Therefore, prayed for adopting the submissions in common. The role of this accused is to have attended the camps at Vagamon and Halol.

16.11.3. Another role attributed is to have made arrangement for accommodation for co-accused Fukran. For this though prosecution relies on evidence of PW No.1126-Navalkishor Mithulashankar Agrawal, who was examined vide Exh.8086. This witness is not naming

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this accused at all nor identified and therefore, the role attributed is not established.

16.11.4. The prosecution has examined another witness PW No.1127-Mohammad Irshad Mohammed Mumtaz Ansari, who was examined vide Exh. 8087, for this same fact viz. this accused provided for accommodation for co-accused by helping in renting out of a poultry farm under the guise of doing business. However, this witness was declared hostile. Despite this, Special Court has relied upon the evidence of this hostile witness to establish the identity of this accused in this offense.

16.11.5. It is argued that even if the contradiction of the hostile witness are proved by putting proper question to the investigating officer, those contradictions cannot take place of substantive evidence. According to learned advocate, the attempt of the prosecution was exactly which the Special Court has accepted as an evidence against this accused.

16.11.6. Learned Additional Advocate General on behalf of State has submitted that the prosecution would submit that one of the alias names of accused No.27-Mohd. Rajik is Furkan, which is clearly revealed from the cause-title of appeal filed by accused No.27-Mohammad Ismail Mansuri as well as he being A-20 of Kerala Sessions Court proceedings. In the cause-title of Judgment, one of his alias names shown is Furkan. So far as, accused No.26-Mohammadali Ansari is concerned, he is one of the conspirators and therefore, it is submitted by prosecution that fountain head of conspiracy is Vagamon camp, where different activities like shooting, preparation of bomb etc. are undertaken much secretly by all the participants of Vagamon camp. It is submitted that for this particular terror camp, separate offence is also registered against the

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participants of the camp at the police station in Kerala and charges under Sections 10, 20 and 38 of UAPA Act and under Section 120 B of I.P.C as well as Section 4 of Explosive Substance Act, 1908 are framed. Prosecution's case is substantiated by this particular registration of offence, framing of charge and conviction for some of the accused. Prosecution specifies here that prosecution fully relies only on the evidence led by it in the proceedings.

16.11.7. It is submitted that also considering the sequel to this fountain head of conspiracy as like conspiratorial meeting held at Halol in the month January 2008, one another conspiratorial meeting at accused No.4-Samsuddin Shaikh's Nana's house, different conspiratorial meetings right up to the day of occurrence i.e. 26.07.2008 from which it clearly established that ultimate object for hatching conspiracy was to commit an act of mass killing, taking of revenge for loss of Muslim lives in 2002 riots, doing Jihad, giving Takrir, preparation of bomb, stealing of cars, planting of bombs, staying in hotels in dummy names also stay of some accused at Sherpura Bharuch house, stay and preparation of bomb at 10 Al-Mohammadi Society Danilimda, Ahmedabad, stay at Vatva house as well as few other places, association etc of accused with SIMI and which ultimately leads to achieving of conspiratorial objects by bomb explosion at Ahmedabad at different places on 26.07.2008 and planting of bomb at different places at Surat. All these acts done separately by different accused, but achieving common object of conspiracy clearly shows from different evidentiary material and based on it making reasonable inference makes out a probable catalogue that all the conspirators have meetings of mind implied agreement to commit an offence though all the conspirators would not be knowing each other or may not be knowing acts committed by each other or even known to

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each other but their acts by themselves makes them conspirators.

16.11.8. It is further submitted that while considering different conspiratorial acts, the prosecution would submit that evidence of PW No.957-Zakir (Jakir) Hussain Abdul Jabbar Kureshi vide Exh.6687, PW No.1141-Aiyaz Razakmiya Saiyed (approver) vide Exh.8191, Riyaz Hussein (though hostile but relevant), PW No.1117-Asif Usman Shaikh vide Exh.8019, PW No.1098- Asif Vora vide Exh.7769, PW No.1115-Mohd. Umar Mansoori vide Exh.8002, PW No.1097- Mehtab Shaikh vide Exh.7767and PW No.1131-Mohamaadrafik @Baba Shaikh vide Exh.8118 and confessional statements of different accused which are voluntary and truthful and their statements of retraction is false, different panchnamas falling under Section 27 of Evidence Act importantly which would include disclosure statements of accused No.1-Jahid Shaikh made on 19.09.2008, i.e. Exh.6656 which led to discover some explosive substance, chance fingerprint of accused No.38-Mohammad Saif and some pertinent objects which leads to use of this house for the purpose of preparation of bombs, stayed by different accused at this place and taking on rent this place together with disclosure statement made by accused No.63-Mohammad Tanvir on 28.08.2008 .i.e. Exh.2757 which led to discovery of certain objects from house of house D-34 River View Society, Surat, wherein from some object, discovered, explosive elements were found and different pointing out panchnamas through which places of relevance as like place of Vagamon camp, Halol camp, D34-River View Society, Surat, 10 Al-Mohammadi Society, Danilimda, Ahmedabad, Vatva house etc. all together establishes conspiracy under Section 120B of IPC and conduct under Section 8 of Evidence Act. For considering the facts and circumstance of the case and when considering the same as per the governing principles of rule of conspiracy as

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enunciated in the case of ***Nalini (supra)***, all the standards are met and fulfilled by prosecution.

16.11.9. It is submitted that so far as accused No.26-Mohammadali Ansari is concerned, he is one of the conspirators and therefore, prosecution invokes Section 10 Evidence Act.

16.11.10. It is submitted that the prosecution has examined witness named PW No.1126-Navalkishor Mithulashankar Agrawal vide Exh.8086, who is running grocery shop in a place called Shivni of Madhya Pradesh. The police came to him in the month of November 2008. He further states that, one Mohd. Rashid came to him for the purpose of taking his godown on rent. Rashidbhai came with one person and after taking on rent, Rashidbhai and the said person started poultry farm at that place. Witness denies that person who came with Rashidbhai was Irshad @Babu. He also denies that in his police statement he had not stated about person who came with Rashid was Irshad @Babu. This omission is proved by prosecution through PW-1133-Mansinbhai Devjibhai Chaudhary vide Exh.8134. Considering the cross-examination of this witness Naval, defence has not denied nor assailed aspect of taking on rent poultry farm of this witness. In view of above, the prosecution has proved fact of Mohd. Irshad, being in a business of poultry farm and also took one place from witness Naval for the purpose of poultry farm and prior to 2 to 4 months from November 2008, the witness took poultry farm on rent.

16.11.11. The Court has considered the rival submissions of the parties. Considering this evidence and examining it in context of evidence of PW-1127/Exh. 8087 named Mohd. Irshad, it is clear that this witness Mohd. Irshad is in business of Poultry farm and was in search of poultry farm and for that purpose he contacted Rashidbhai and through

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Rashidbhai witness Mohd. Irshad took on rent the place of witness Naval for the purpose of poultry farm.

16.11.12. The Court finds that the witness denies about accused No.26-Mohammadali Ansari having met him in Mosque and that accused No.26-Mohammadali Ansari's real name is Mohd. Ali and alias name is Yasir. The witness is declared hostile and after declaring him hostile during the course of cross-examination, the prosecution has brought on record relevant omission which would reveal that witness Mohd. Irshad meeting a person in Mosque is Yasir, whose real name is Mohd. Ali i.e. accused No.26-Mohammadali Ansari. He also denies that Yasir wanted to see his poultry farm. Witness also denies omission put by prosecution that Mohd. Ali came with three boys for the purpose of facilitating their stay at witness's poultry farm. Witness also denies the omission that Mohd. Ali gave name of these three boys as (1) Furkan, (2) Abid, (3) Karim. Witness also denies omission about Furkan's real name is Mohd. Ismail @Mohd Rajik, Abid's real name is Mujib and Karim's real name is Irfan Kareliwala and these three stayed at the poultry farm of Mohd Irshad from 11.08.2008 to 30.08.2008. There is no substantive cross-examination by defence. It appears that all the above referred omissions brought on record by prosecution are proved through PW-1133/Exh.8134 M D. Chaudhary. Considering the above evidence, so far as person named Furkan is concerned, whose real name is Mohd. Ismail @Mohd Rajik is accused No.27-Mohammad Ismail Mansuri of the present proceedings. Person named Abid's real name is Mujib, who is a deceased accused of the present proceedings. Person named Karim's real name Irfan Kareliwala is accused No.53-Mohammad Irfan.

16.11.13. Hence, considering the totality of above referred evidentiary material, aspect of witness Mohd. Irshad having taken place on rent for

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poultry farm from witness Naval is established. Identity of person who came to witness Naval along with person Rashid was none other than Mohd. Irshad, is also established and in the fact of the matter considering Section 154 (2) of Evidence Act and the proved contradiction through Investigating Officer Shri Chaudhary. Accused No.26-Mohammadali Ansari is fully involved in providing shelter to accused No.27-Mohammad Ismail Mansuri @ Abdul Rajik, accused No.53-Mohammad Irfan and deceased accused Mujib at the poultry farm of witness Mohd Irshad.

16.11.14. The Court finds that accused No.26-Mohammadali Ansari is involved by accused No.2-Imran Ibrahim Shaikh in his confessional statement as one of the attendee-conspirator on his participation at Vagamon camp in December 2007. accused No.26-Mohammadali Ansari is from Madhya Pradesh. Many other co-conspirators are also from Madhya Pradesh, more particularly their leader accused No.12-Safdar Nagori. As this was the secret camp, an identity of each conspirator was also to be kept hidden and secret even from each other. Code name of accused No.26-Mohammadali Ansari as stated by accused No.2-Imran Ibrahim Shaikh is Abu Basar. So far as, details and activities conducted at this camp are concerned, the evidence is discussed in appreciation of the evidence of eye-witnesses and the confessional statements of co-accused.

16.11.15. Accused No.26-Mohammadali Ansari is also one of the accused in Kerala FIR proceedings, which after conclusion of investigation culminated into filing of chargesheet and also conclusion of Session's Trial after framing of charge under Sections 10, 20 and 38 of the Unlawful Activities (Prevention) Act, 1967 and 120 B of Indian Penal Code alongwith few other Penal Provisions. Accused No.26-

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Mohammadali Ansari is arraigned in Kerala Proceedings at A-9, though he stands acquitted there.

16.11.16. The Court finds that accused No.2-Imran Ibrahim Shaikh has also involved accused No.26-Mohammadali Ansari as one of the participants of Halol camp. Accused No.2-Imran Ibrahim Shaikh has very clearly stated at running page (773573) that four participants were from Madhya Pradesh. These four participants of Madhya Pradesh are accused No.9-Kamruddin Nagori, accused No.10-Aamil Parvaz Shaikh, accused No.12-Safdar Hussain Nagori and accused No.26-Mohammadali Ansari. So far as, names given by accused No.2-Imran Ibrahim Shaikh is concerned, who are coming from Madhya Pradesh. These are the only four accused from Madhya Pradesh and there is no other named by accused No.2-Imran Ibrahim Shaikh from Madhya Pradesh. It is pertinent to state here that code names given by accused No.2-Imran Ibrahim Shaikh. So far as persons from Madhya Pradesh is concerned, one code name is Ali and accused No.26-Mohammadali Ansari's alias name is also Ali.

16.11.17. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari. The Court has therefore, no reason to interfere with the conviction recorded.

16.12. In case of Afzal @ Afsar S/O Mutallib Usmani (Mumbai) (A-28)

(Accused No.19 in Criminal Confirmation Case No. 2/2022):

16.12.1. In case of accused No.28-Afzal @ Afsar S/O Mutallib

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Usmani, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.12.2. According to prosecution, the role attributed to accused No.28-Afzal @ Afsar Usmani in the conspiracy is to provide for a car which was to be utilized for packing of Bomb and explosives in the car and parking it at a place, where it can strike a terror attack.

16.12.3. Learned Advocate Mr. Hriday Buch for the accused submits that the accused cannot be treated as SIMI worker as he has not participated in the camp at Halol or Vagamon. It is further submitted that to connect accused No.28-Afzal Usmani with the car, the prosecution has relied on a witness, who is employee in a Guest House. Learned Advocate referred to deposition of PW No.985-Hasan Ali Ahmedbhai Sunsara vide Exh.6852 and submits that his evidence is not reliable as he has not identified accused No.28-Afzal Usmani. Moreover, the documentary evidence in the form of register at Hotel is also doubtful as in that Register, the entry of car registration number is made only against the name of accused, whereas against other guests no car registration number is entered. Thereafter, it is also argued that the prosecution has exhibited those registers' entry only in 'pages' form and not entire register of the Hotel. Also, that this entry in Register is of no use as the same is 10 days prior to the incident.

16.12.4. The Court is of the view the argument that the entry in Hotel Register being 10 days prior to the incident is of no consequence as 10 days period is quite proximate to the crime. In fact, it appears that the period of 10 days taken for shifting the 'car' to its destination both at Ahmedabad and Surat and thereafter, stuffed it with explosive etc.

16.12.5. Learned Advocate has referred to evidence of Investigating

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Officer; PW No.1075-Vijaysingh Juvansingh Jadeja vide Exh.7311, who investigated joint stay of accused No.28-Afzal Usmani and accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh in the Hotel in the fake name. It is submitted that making entry in the Register in a different name does not amount to forgery.

16.12.6. Learned Advocate has thereafter argued that a panchnama Exh.6438 is relied by the prosecution to connect accused No.28-Afzal Usmani with the car, however, such panchnama cannot be accepted as the same is drawn after almost four years and there is variation in the colour of the car mentioned as grey in colour. Moreover, the witness has not identified in Court.

16.12.7. The Court has perused panchnama Exh.6438, which is exhibited by examine the panch witness being PW No.899-Shersinh Khusalsinh Mahavar vide Exh.6437, who has deposed to the voluntary disclosure by the accused about the car and its usage. The disclosure to the Court being voluntary in nature and it points out the place where it was part for explosion at the location identified the accused coincides with the panchnama of scene of offence. The Court has already discussed about the Section 27 panchnama and its acceptance as evidence in a separate chapter of 'issues'.

16.12.8. Learned Advocate has thereafter assailed evidence Exh.5321 of the 'Express-way'. It is submitted that in the aforesaid deposition, the communication Exh.5322 does not mention anything of series of registration, make of car or even colour of the car. Therefore, no connection of the car. Moreover, accused No.28-Afzal Usmani being an accused of this car theft registered at Mumbai, where he has been acquitted.

16.12.9. Learned Advocate has also assailed the other set of evidence

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Exh.6349 and 6314 submitting that these panchnamas cannot be under Section 27 as it has not lead to any discovery of material object and it is a disclosure of these aspects and circumstances already known to Investigating Officer.

16.12.10. Thereafter, there is a evidence being Exh.6649 where the evidence pertains to repairing of the Maruti 800 car. The witness deposes to have repair the car, but not able to identify the accused in the Court.

16.12.11. It appears that the accused has been awarded death sentence and the case comes up for confirmation, but there is no appeal filed by him.

16.12.12. Learned Additional Advocate General has submitted that before placing evidentiary material against accused No.28-Afzal Usmani, one of the sequel to the conspiracy is stealing of cars from Maharashtra and bringing it to Surat and Ahmedabad and loading it with bombs and explosive materials and placing them at four different places namely at a place of Civil Hospital, Ahmedabad; secondly at the place of L. G. Hospital, Ahmedabad and two other places in Surat.

16.12.13. It is submitted that prosecution would rely on Panchnama Exh. 7367, which is drawn on 01.10.2011 between 12.30 hours to 13.30 hours by Surat Police at DCB Police Station, where one accused namely Mohd. Mubin @ Irfan S/o. Abdul Shakur Khan, resident of Madhya Pradesh was present, who is accused No.70-Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan of the present case. On the basis of register at Exh. 2858, disputed writings are marked as Mark D and based on it, two sample hand writings of accused No.70- Mohammad Mobin are taken through this panchnama, which are marked as Mark S1 to S6 and from the bag hold by the accused, handwriting of accused

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No.70-Mohammad Mobin were found and they were also seized as Mark N and Mark N1. Panchnama Exh. 7367 is proved through PW No.1078-Yusuf Daudbhai Shaikh vide Exh. 7364. Sample handwriting of accused No.70-Mohammad Mobin is Exh. 7365 and natural handwriting of accused No.70-Mohammad Mobin is Exh. 7366.

16.12.14. The Court has perused the evidence of PW 985-Hasanali Ahmedbhai Sunsara vide Exh. 6852, who was working as Manager at Hotel Shrinath and Guest House, Valsad. He deposes that he was working at this Hotel since the year 2003 and the owner of this hotel is one Meenaben Desai. He also states about he being interrogated by the police. The witness is shown one Register which is Exh. 2858 of his hotel i.e. Hotel Shrinath and Guest House, Valsad. He is shown entry of his hotel's Register, more particularly, Entry No.424, which shows in Column No.2 three names; (1) Kishan Vanzari, (2) Amin Shaikh and (3) Usmani. Witness also states about signature of customer in the second last column of the Register and below it, number of motorcar as mentioned by writer is GJ-6-CD-3569. The witness further deposed that this Register was seized by Pardi Police and on the last page of this Register, he identifies his signature and the rubber stamp at the time of its seizure. He further deposed that customers of Entry No.424 came to his hotel on 09.07.2008 at 11.00 hours in the night and the car written in the entry is of Wagon R car, which was black in colour. They were speaking Hindi and they were allotted Room No.102 and they left the hotel on the next day i.e. on 10.07.2008 at around 09.15. hours. These persons were of age between 25 to 30. He further states that in the month of October, 2008, he was called at Killa Court for identifying persons, who stayed at his Hotel and he firstly identified one person who stayed at his hotel and, thereafter, in the year 2011, he was again called

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for the purpose of identification, where he identified other two persons who stayed at his hotel. He was also further interrogated on this aspect. During the course of his deposition, he further states that he is unable to identify those three persons whom he identified successfully in test identification parade. During the course of cross-examination, he reiterates that some part of the entry are in the handwriting of the customer. He denies that entry in Register Exh. 2858 is done at the instance of police and to help police.

16.12.15. The Court find that disputed hand writings of Register Exh. 2858 alongwith sample and natural handwriting of accused No.70-Mohammad Mobin were sent for opinion of Handwriting Expert through forwarding letter Exh. 7989 and upon its examination, Handwriting Expert has given his opinion at Exh. 7990, which opines that disputed writings of Register Mark D as well as Mark D1 are written by writer of sample handwriting S1 to S6 and N. Based on this opinion, it is established that entry in Register Exh. 2858 is in the handwriting of accused No.70-Mohammad Mobin. As Hasanali Exh. 6852 was subjected to Test Identification Parade, which is at Exh. 3100 and during the course of this Test Identification Parade, he successfully identified present accused i.e. accused No.28-Afzal Usmani. The prosecution has proved this Test Identification Parade panchnama Exh. 3100 through PW No.575-Kirtanbhai Chaturbhai Patel vide Exh. 3076. Thereafter, this witness was subjected to Test Identification Parade vide Exh. 6844 and during this parade, he successfully identified accused No.70-Mohammad Mobin and accused No.69-Amin Shaikh. Prosecution has proved Test Identification Parade at Exh. 6844 through Executive Magistrate PW No.982-Kanaiyalal Dhirajlal Raja vide Exh.6842.

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16.12.16. In the light of established and proved circumstances, it is established beyond doubt that on the basis of hotel Registers of Hotel Shrinath Guest House, which is Exh. 2858 and also through Entry No.424, wherein, there are two disputed writings, one marked as Mark D and other marked as Mark D1 are written by accused No.70-Mohammad Mubin as the entry relates to three persons having stayed at this hotel for a period mentioned hereinabove and there is also mention of Motorcar No.GJ-6-CD-3569, which is Black Wagon R. It is further established that these three accused i.e. accused No.28-Afzal Usmani, accused No.69 and accused No.70- Mohammad Mubin stayed at this hotel from 09.07.2008 to 10.07.2008. It further establishes that accused No.70-Mohammad Mobin personated himself so far as his name is concerned, as his real name is Mohammad Mubin but he gave his fake name Kishan Vanzari to the hotel authorities.

16.12.17. It is submitted that the prosecution would rely on evidence of panchnama Exh.6782 drawn on 07.01.2009 between 08.15 hours to 09.00 hours, through which accused No.28-Afzal Usmani led investigators to the hotel named Hotel Shri Balaji Lodge situated at Mumbai-Goa Highway, Panvel, and that after leading investigator to that place, on inquiry, Register of Occupancy was seized from the person present at the reception of the hotel. It is submitted that during the course of Panchnama, person present at the reception recognized accused No.28-Afzal Usmani as a person who stayed at Hotel Shri Balaji Lodge with two other persons, and that the relevant entry of their stay was recorded at Entry Serial No.99, which would show stay of three persons named (1) Kishan Vanzari, (2) Amin Shaikh and (3) Usmani, residents of plot No.106, Vasant Barai Road, Jalgaon. Entry is in english and they stayed in Room No.305 from 07.07.2008 from 17:15 p.m. to

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09.07.2008 8:30 a.m. It is submitted that Exh.6782 is proved through panch witness; PW-968/Exh.6781 as well as investigating officer PW-1075/Exh.7311 and that seizure of register as well as relevant entry at serial no.99 is proved vide Exh.6783 which bears the signature of panchas as well as Investigating Officer.

16.12.18. It is submitted that prosecution would rely on panchnama at Exh.6891 dated 30.08.2011, whereby accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin led investigator and pointed out a place where they parked one black color and other silver color Wagon R motor cars after it were stolen. The place pointed out is Indian Oil Nagar near Kinjal building, Bhavandi, Mumbai. It is submitted that the panchnaama at Exh.6891 is proved through panch witness PW-976/Exh.6818 as well as the Investigating Officer at PW-1089/Exh.7626.

16.12.19. It is submitted that the prosecution would also rely panchnama at Exh.6502 drawn on 21.11.2008, between 11:00 hours to 13:00 hours by Surat Police wherein accused no.45-Fazalerehman, who is from Maharashtra intended to show and say something and pursuant to it, he led police persons to a place of petrol pump named Vanaj Roshni Corporation situated in Sarthana, Surat. It is submitted that he also disclosed about he having came there on 10.07.2008 with a person named Talha (accused No-63: Mohammad Tanvir) with silver color Wagon R of a particular number for the purpose of filling gas. It is submitted that on basis of it, bill book was submitted and came to be seized through this panchnama.

16.12.20. The prosecution has also placed reliance on the bill at Exh.6502, dated 10.07.2008, bearing bill number 18654 and vehicle number GJ-6-CD-9719; relating to filling of gas of around Rs.515/-. It is submitted that this bill along with other five bills would also show same

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date i.e. 10.07.2008 and bill numbers are also in sequence and that all the bills show vehicle number, which is seized through panchnama bearing the signature of panchas as well as I.O. It is submitted that the deposition of panchas (PW-909/Exh.6500) about the fact of recovery of bill, seizure of bill and the content of the bill, alongwith the evidence of Investigating Officer at Exh.8517 who has deposed about this bill establishes that this particular numbered motor vehicle is of above referred stolen silver color Wagon R.

16.12.21. The prosecution has also placed reliance on panchnama vide Exh.6537 drawn on 31.08.2011, whereby accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin led investigator to a place where black and silver color Wagon R were parked and the place pointed out is main building of Surat Railway station. This panchnama was proved through panch witness Exh.6536 and I.O. Exh.7626 who also identified accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin during the course of giving deposition.

16.12.22. The prosecution has also placed reliance on the panchnama drawn on 26.09.2011 between 15:15 hours to 15:45 hours drawn at Kalupur Makerivad, near Jakariya Masjid at Prince Hotel on getting lead about accused persons having stayed at this hotel. It is submitted that upon reaching this hotel i.e. Prince Palace, manager named Rajesh Kumar was present who submitted a register which was seized by the police, which bore the details of occupancy at Prince Palace from 17.04.2008 to 25.07.2008 and one particular entry number 1326 in the name of two accused persons named Amin Shaikh and Afzal Shaikh (accused No.28-Afzal Usmani and accused No.69-Amin @ Raja), who had occupied room no.105 on 17.07.2008 between 11:30 to 6:30. It is submitted that this register bearing entry No.1326 is proved and is

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Exh.6315.

16.12.23. The Court has considered the submissions of the parties. In the opinion of the Court, in all four motorcars were stolen and their registration numbers were tampered and were used for the purpose of planting bomb in it, which got exploded at two places and remained unexploded in other two places at Surat. So far as fact of four cars being stolen from State of Maharashtra is concerned, the same is established by four different FIRs, which relate to registration of offence for stealing of cars and prosecution has examined either first informant or victims whose cars are stolen. In view of above, this being one of the sequel to the conspiracy of achieving the ultimate object of mass killing through planting of bomb in the stolen car and getting it exploded and thereby causing mass killing.

16.12.24. The Court finds that one car was stolen on 7-8th July, 2008, for which FIR was registered at Panvel Police Station and FIR of theft was also submitted at Exh. 6832. Registration Book, insurance papers, etc. of the stolen car are produced at Exh. 6833. This car is silver Wagon R. Silver Wagon R car was used for the purpose of loading and planting bombs at Civil Hospital, Ahmedabad. This silver Wagon R loaded with bomb exploded, which took loss of lives of many persons and also caused injuries to many and damaged to huge property, for which FIR was registered at Shahibag Police Station. Real registration number of this stolen car is MH.06.AF.9719, whereas fake and tampered number is GJ.06.CD.9718.

16.12.25. It appears that another car was stolen for which FIR came to be registered on 7-8th July, 2008 which is submitted at Exh. 7067. Actual and real registration number of this car is MH-43-R-3569, whereas fake and tampered number is GJ-6-CD-3569. This motorcar is

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black Wagon R used for the purpose of planting explosive substance and parking it at a place situated within Kapodara Police Station, Surat and FIR to that effect is also registered at Kapodara Police Station.

16.12.26. The Court finds that one other car being Maruti 800 is stolen on 14/15 July, 2008, FIR for which was registered at Navi Mumbai and the same was produced alongwith other motorcar papers at Exh.7316. The said car loaded with bomb was placed at L. G. Hospital and bombs exploded, which led to registration of offence at Maninagar Police Station. Actual registration number of this car is MH-05-H-5764, while fake and tampered number is GJ-1-HF-5764. As car was loaded with bombs and got exploded, the car was damaged and the same is proved through panchnama Exh. 2036. Damaged Chasis of the car is also seized during course of investigation.

16.12.27. The Court finds that fourth motorcar being Red Maroon Wagon R is stolen on 14/15 of July, 2008 and for the theft of this car, offence of theft is registered and FIR of theft is submitted at Exh.7070 and registration book of this car is submitted at Exh.7071. Actual and genuine number of this motorcar is MH-06-AF-8294., whereas fake number of this very motorcar is GJ-6-CD-2908. This car was parked with plantation of bomb inside the car, for which FIR was registered as C.R.No. I-176/2008 at Kapodara Police Station. As bomb remained unexploded, the car was seized through Muddamal Pavti No.6/2008 at Serial No.27, relevant would be Exh.2350 and Exh.2411.

16.12.28. It appears that for the theft of Black Wagon R, an FIR was registered at Vasi Police Station. Period of offence for theft of this car is 19.00 hours to 17.00 hours of 07.07.2008 to 08.07.2008. The prosecution has placed this FIR at Exh. 7067. Prosecution has also examined first informant of this FIR as PW No.1045-Nitaben Pradipbhai

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Madhav vide Exh. 7066 and Registration Book is at Exh. 7068. This car is seized in Kapodara Police Station under I-C.R.No.175/2008 and produced through Muddamal Pavti No.3/2008 at Serial No.37 vide Exh. 2336.

16.12.29. To the Court it appears that the several set of evidences are common for A-28, A-69 and A-70 and therefore are referred to hereinbelow and for the sake of avoiding repetition, the Court has taken into consideration jointly and therefore only, the discussion qua each of the accused namely; A-28, A-69 and A-70 are dealt with by the Court in succession.

16.12.30. The Court has perused the evidence of PW 985-Hasanali Ahmedbhai Sunsara vide Exh. 6852, who was working as Manager at Hotel Shrinath and Guest House, Valsad. He deposes that he was working at this Hotel since the year 2003 and the owner of this hotel is one Meenaben Desai. He also states about he being interrogated by the police. The witness is shown one Register which is Exh. 2858 of his hotel i.e. Hotel Shrinath and Guest House, Valsad. He is shown entry of his hotel's Register, more particularly, Entry No.424, which shows in Column No.2 three names; (1) Kishan Vanzari, (2) Amin Shaikh and (3) Usmani. Witness also states about signature of customer in the second last column of the Register and below it, number of motorcar as mentioned by writer is GJ-6-CD-3569. The witness further deposed that this Register was seized by Pardi Police and on the last page of this Register, he identifies his signature and the rubber stamp at the time of its seizure. He further deposed that customers of Entry No.424 came to his hotel on 09.07.2008 at 11.00 hours in the night and the car written in the entry is of Wagon R car, which was black in colour. They were speaking Hindi and they were allotted Room No.102 and they left the

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hotel on the next day i.e. on 10.07.2008 at around 09.15. hours. These persons were of age between 25 to 30. He further states that in the month of October, 2008, he was called at Killa Court for identifying persons, who stayed at his Hotel and he firstly identified one person who stayed at his hotel and, thereafter, in the year 2011, he was again called for the purpose of identification, where he identified other two persons who stayed at his hotel. He was also further interrogated on this aspect. During the course of his deposition, he further states that he is unable to identify those three persons whom he identified successfully in test identification parade. During the course of cross-examination, he reiterates that some part of the entry are in the handwriting of the customer. He denies that entry in Register Exh. 2858 is done at the instance of police and to help police.

16.12.31. The Court find that disputed hand writings of Register Exh. 2858 alongwith sample and natural handwriting of accused No.70-Mohammad Mobin were sent for opinion of Handwriting Expert through forwarding letter Exh. 7989 and upon its examination, Handwriting Expert has given his opinion at Exh. 7990, which opines that disputed writings of Register Mark D as well as Mark D1 are written by writer of sample handwriting S1 to S6 and N. Based on this opinion, it is established that entry in Register Exh. 2858 is in the handwriting of accused No.70-Mohammad Mobin. As Hasanali Exh. 6852 was subjected to Test Identification Parade, which is at Exh. 3100 and during the course of this Test Identification Parade, he successfully identified present accused i.e. accused No.28-Afzal Usmani. The prosecution has proved this Test Identification Parade panchnama Exh. 3100 through PW No.575-Kirtanbhai Chaturbhai Patel vide Exh. 3076. Thereafter, this witness was subjected to Test Identification Parade vide

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Exh. 6844 and during this parade, he successfully identified accused No.70-Mohammad Mobin and accused No.69-Amin Shaikh. Prosecution has proved Test Identification Parade at Exh. 6844 through Executive Magistrate PW No.982-Kanaiyalal Dhirajlal Raja vide Exh.6842.

16.12.32. The Court finds that so far as theft of Black Wagon R is concerned, these accused persons are involved. After stealing this car, they brought to Valsad and stayed at this particular hotel mentioned above. These three persons are involved and there are many other circumstances, which would be elaborated hereunder, which would further establish that these three accused persons of whom accused No.70-Mohammad Mobin and accused No.69-Amin Shaikh are from Madhya Pradesh and accused No.28-Afzal Usmani is from Maharashtra are involved alongwith other accused persons as well. So far as seizure of Hotel Register Exh. 2858 is concerned, it is seized through panchnama at Exh. 2857 on 23.10.2008 by DCB Police Station, Surat City and proved through Panch Witness PW No. 466-Hemang Gunvantray Upadhyay vide Exh. 2856. This panchnama is drawn by investigator, who is examined by prosecution as P No.1157-Rajedrasinh Ranjitsinh Sarvaiya vide Exh. 8566.

16.12.33. It may be pertinent to observe here at the cost of repetition that, a silver coloured Wagon R was stolen, for which an FIR was registered at Panvel City Police Station, Navi Mumbai. As per the FIR, period of offence is between evening of 07.07.2008 to early morning of 08.07.2008. A black coloured Wagon R was stolen between 19:00 hours of 07.07.2008 to 17:00 hours of 08.07.2008 while the silver coloured Wagon R was stolen during the intervening night of 07.07.2008 to 08.07.2008. Considering the timing and place from where these two cars

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were stolen, as well as the registration of FIRs, it directly relates to stay of these three accused namely accused No.28-Afzal Usmani, accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin at Hotel Shri Balaji Lodge as mentioned in hotel register; Exh.6783. This hotel is situated in close proximity from where the aforesaid cars were stolen, and Exh.6783 clearly shows that address of this hotel is Bombay-Goa Highway, Panvel. In the context of this circumstance, another circumstance which emerges from Exh.2858, being the hotel register of 'Hotel Shreenath and Guest House', Valsad is that Entry No.424 of this register also records the names of these very three persons in the same sequence. The register further shows that these three persons arrived from Mumbai on 09.07.2008 at 11:00 p.m. and left the hotel at 10.07.2008 at 9:15 a.m. This Entry No.424 of register also mentions car number GJ-6-CD- 3569 as well as the signature of occupant of hotel room. Though, register of Balaji Lodge at Exh.6783 is not subjected to opinion of Hand Writing Expert, but as Hotel Shreenath register at Exh.2858 was subjected to opinion of Hand Writing Expert, which clearly opined that entry of hotel Shreenath is written by accused No.70-Mohd. Mobin. The manager of Hotel Shreenath in Test Identification Parade has also identified the aforesaid three persons who came and stayed at this hotel. It is also established that, name mentioned in register is that of Kishan Vanjari which is also a fake name given by accused No.70-Mohammad Mobin, as handwriting belongs to him. The Court finds that address of these three persons i.e. accused No.28-Afzal Usmani, accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin is found to be same as mentioned in both the registers i.e. Balaji and Shreenath. In both the registers address mentioned is Plot no.106, Vasant Barai Road, Jalgaon. In view of above, Exh.6783 though not

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examined by Hand Writing Expert, is directly comparable with Exh.2858 and needs to be appreciated like wise.

16.12.34. The Court has perused the evidence of PW-977/Exh.6820 Kamal Thapar of Navi Mumbai. The witness deposed that he is in the business of preparing number plates and sign boards since 2003-2004 in the name of Pappu Radium. The witness further deposed that on 30.08.2011 Crime Branch Police came to him with two persons named accused No.70-Mohammad Mobin and accused No.69-Amin @ Raja. As per the witness, he knows these two persons as they were coming to him for preparing number plates. The witness further deposed that they came in the year 2008 and got prepared two number plates of Gujarat bearing GJ-6 and further deposed that they said that their cars are kept in garage and cars were Wagon R. Witness also states that they were coming regularly. In cross-examination para 3, witness states that customers, who came regularly would be known. In cross-examination para 5, witness again states that as he would know these two persons, these two persons would also know him.

16.12.35. The Court has perused the evidence of evidence of Gulam Hussein Pathan, resident of Bharuch, who is examined at PW-1138/Exh. 8165. Evidence of this witness relates to his other house at village Sherpura, which he gave on rent to a person named Rafik Shaikh in the month of July 2008. As per his deposition, this person who is Rafik Shaikh was given keys of his Sherpura house and when Rafik Shaikh came to give deposit, he came with one silver color Wagon R whose number as known to him is GJ-06. The entire evidence of this witness would establish, the case of prosecution is Sherpura house was kept on rent by person named Rafik Shaikh, but prosecution has established identity of this Rafik Shaikh as accused No.45, whose name is Fazle

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Rehmaan. This witness has also deposed that all the three persons were also staying at his Sherpura house and they are accused No.43-Anik @ Khalid, accused No.44-Mohammad Akbar as well as accused No.45-Fazle Rehmaan. This case of prosecution is based on Test Identification Parade report through which this witness i.e. Gulam. identified accused No.43-Anik @ Khalid and accused No.44-Mohammad Akbar and also accused No.45-Fazle Rehmaan whose fake name is Rafik Shaikh. Therefore, the silver Wagon R was brought to Surat and gas was filled at Vanaj petrol pump on 10.07.2008 and thereafter was taken to Bharuch again and found in the possession of accused No.45-Fazle Rehmaan.

16.12.36. The Court finds that the evidence of PW-947/Exh. 6640 named Hamidbhai Memon, who is resident of Bharuch and runs a petrol pump near sherpura gam. He has deposed that on 12.12.2008, he was at his petrol pump and police came with one person whose name is Fazale Rehman and he said that he filled petrol at this petrol pump in his Wagon R motor car bearing number was either 9718 or 9719. The witness also deposed about this happened between 15.07.2008 to 17.08.2008 and he also submitted a bill book bearing bill number 162 dated 17.07.2008 of motor car number 9719, a xerox of it was given by witness to the police. This bill is submitted through list Exh.6641 and the same is on record at Mark A. During the course of cross- examination, suggestion was put to this witness about no such person having come to the petrol pump of witness. Witness replies that, it was Fazlu Rehman who said that he came during 15.07.2008 to 17.07.2008. Considering this deposition, though particular bill is mark A, but so far as evidence of witness Hamidbhai is concerned, it is established that accused No.45-Fazle Rehmaan came to this petrol pump with a car of above referred number. The evidence of this witness is required to be seen alongwith evidence

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of event relating to Vanaj petrol pump as well as evidence of witness named Gulambhai of Sherpura.

16.12.37. The Court also perused the deposition of PW-948/Exh. 6642 named Irfan resident of Bharuch, who runs a garage at Sherpura, Bharuch. He has stated that police having come to him on 12.12.2008 with one accused whose name as known through police is Fazlu Rehman. Witness recognized this person (Fazlu Rehman) as a person who came to his garage for repairing of his motor car in the month of July. Witness further states about he going with this person (Fazlu Rehman) to Sherpura, where his Maruti Wagon R car was lying. Witness further states that he repaired that Wagon R car and according to witness, the car was off-white color. The defense has put suggestion about name of accused was known to witness through police. Even otherwise in examination in chief, witness has stated the same but relevant which has come in cross- examination is that witness saw accused when his car got broken down. This is suffice, that witness had known accused. The evidence of this witness Irfan, which is also required to be seen with the evidence of witness Gulam, Vanaj petrol pump and witness Hamidbhai.

16.12.38. Moreover, it has come on record by way of evidence of PW 1075/Exh.7388, Investigating Officer that accused No.69-Amin @ Raja and accused No.28-Afzal @ Afsar also stayed at hotel Shri Dutt, Panvel. During panchnama Exh.7318, Investigating Officer PW-1075/Exh. 7311 has seized register of hotel Shri Dutt Exh.7319. This panchnama and hotel register are proved through this investigating officer PW-1075/Exh.7311 Vijay Jadeja. In hotel Shri Dutt register entry number 2462 is in the name of Amin Shaikh as well as of Afzal Shaikh. The date of arrival of Amin Shaikh and Afzal Shaikh was 14.07.2008 at 11:00

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a.m. and date of departure was 15.07.2008 at 11:30 a.m. In the address column, addresses of both the accused are written and it is Khajrana Palace, Indore, Madhya Pradesh. This address is of accused No.69-Amin @ Raja as accused No.69-Amin @ Raja has also given this very address in his appeal memo i.e. Criminal Appeal No.1710 of 2022. During this period, Maruti 800 car was stolen between 14.07.2008 to 15.07.2008 and F.I.R is at Exh.7316. Moreover, between 14.07.2008 to 15.07.2008, maroon-red color Wagon R was also stolen, F.I.R. of which is at Exh.7070. Maruti 800 car was ultimately used at LG hospital blast and maroon-red color Wagon R number GJ-6-CD-2908 was ultimately used for plantation of four live bombs at Sonal Bhel parking at Kapodra which was recovered during panchnama Exh.2413. F.I.R Exh.7316 was registered at Nerul Police Station, Navi Mumbai and F.I.R Exh.7070 was registered at Panvel Police Station. Hotel Shri Dutt is situated at Panvel, Navi Mumbai. It is pertinent to state that place from where marron-red color Wagon R and Maruti 800 motor car were stolen and the place where hotel Shri Dutt is situated, are near to each other. Furthermore, these three accused are also found present near to hotels which are also close to place of their stealing and most importantly, evidence of Hand Writing Expert, which clearly establishes presence of these three accused at Shreenath Hotel, Valsad alongwith one of the stolen cars. Moreover, during panchnama Exh.2789 from Vanaj Roshni Auto LPG Station, bill book contained bill number 21250 dated 25.07.2008 was recovered. This bill number 21250 dated 25.07.2008 is of vehicle number GJ-6-CD-2908 (red-maroon Wagon R), which is produced at Exh.6009. This bill is proved by PW-856/Exh.6012 and I.O. PW-1157/Exh.8566. From this evidence it reveals that, on 25.07.2008, a red-maroon color Wagon R filled Auto LPG gas at Vanaj gas pump. accused

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No.45-Fazle Rehmaan has pointed out this Vanaj gas pump vide panchnama Exh.6502 and at that time bill of vehicle number GJ-6- CD-9719 with other bills were recovered.

16.12.39. The Court has perused the deposition of PW-802/Exh.5321, who was working with NHAI received letter Exh.5322 from Investigating Officer, who requested manager of Ahmedabad-Vadodara express way to provide movement of vehicles on express way. The Investigating Officer has asked for the details of different numbers of cars for movement of these cars from Vadodara to Ahmedabad as well as one car's movement of Ahmedabad to Vadodara. Moreover, Investigating Officer has asked photography as well as videography also. Witness produced in his deposition reply to the communication by police at Exh.5323. If we examined this Exh.5323, the details were provided by Ahmedabad Vadodara Express Company Limited, NHAI authority send the movement of specific vehicle on mentioned dates as asked by Investigating Officer and in that reply authority also stated that no cameras are installed at the toll plaza and details of photographs and videographs are not available. If we look to Exh.5323, which was proved by prosecution through PW-802/Exh.5321, following entries are reflected are :-

i. entry of car-2908, dated 16.07.2008, time 18:28:30 hours.

ii. entry of car-5764, dated 16-07.2008, time 18:27:56 hours.

ii. entry of car-9718, dated 23.07.2008, time 13:54:29 hours.

iv. entry of car-9719 dated 23.07.2008 time 18:21:56 hours.

16.12.40. On the lead gathered by investigator from accused No.28-Afzal Usmani, panchnama Exh.6349 is drawn on 26.12.2008 between 18:00 hours to 21:30 hours. When investigating officer as well as F.S.L officer went to parking place of Kalupur Railway station, collected

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electronic material including hard disc of Samsung Company which was seized from the place of panchnama i.e. Kalupur Railway Station in the presence of person named Harishbhai Dharamchand Agrawal, who was managing and attending a fare of car parking at that place and another. On examination of this hard disc, it is revealed that vehicle bearing registration number 5764 was parked on 16.07.2008 at 23:57 hours and this car was removed from parking on 19.07.2008 at 16:14 hours. This is proved through Scientific Examination of hard disc at F.S.L office and for proving it, prosecution has examined F.S.L Officer who was present at the time of drawing of panchnama i.e. PW-851/Exh.5985. FSL opinion proved through this witness are Exh.5992 referred hard disc is mark "HA". The prosecution also examined person named Harish Agrawal, a parking contractor in whose presence computer hard disc was seized by police at PW-602/Exh.3229. A person named Virenbhai Rajeshbhai Makwana was also present at the time of drawing of panchnama and attending computer related works who actually removed hard disc from the computer, is also examined by prosecution at PW-925/Exh.6573. Hence, the case of prosecution is that the car found parked at Kalupur Railway Station parking bearing number 5764 is actually Maruti 800 bearing number GJ-1-HF-5764 which as such elaborated earlier is a fake number and the real number is MH-05-HS-5764. The combined perusal of the aforesaid evidences, establishes the movement of the car and the accused No.28, 69 and 70 being connected with it.

16.12.41. The Court has perused the deposition of the receptionist of Prince Hotel named Vijay bhai PW-920/Exh.6550. He has deposed that so far as handwritings of entry of 1326 of register Exh.6315 is concerned, it bears witness's handwritings as well as customers'

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handwriting. In para 2 he deposes about the name of customers, date and time of their arrival and their departure and he also states about he being interrogated by police and his statement also being recorded. He also deposes that entry number 1326 was written in his presence. In para 6 of the cross-examination, on a suggestion made by defence, witness stated that entry was in the handwriting of Amin Shaikh, as stated by Afzal i.e. entry was in the handwritings of accused No.69-Amin @ Raja. Panchnama Exh.6316 is proved through panch witness Exh.6314. As register Exh.6315 more particularly entry number 1326 was subjected to opinion of Hand Writing Expert specimen and natural hand writing of accused No.69-Amin @ Raja were taken through panchnama Exh.6512 dated 26.09.2011. This specimen as well as natural hand writing are collectively exhibited at Exh.6511 and the panchnama is proved through panch witness Exh.6510. Specimen and natural hand writing of accused No.69-Amin @ Raja which is Exh.6511 as well as disputed entry number 1326 of hotel register Exh.6315 were sent for Hand Writing Expert's opinion through forwarding letter Exh.6863. On examination of it, hand writing expert's opinion is received and place at Exh.6864 and also proved through hand writing Expert Exh.6862 and is established that disputed writing of entry number 1326 mark as D1 is written by accused No.69-Amin @ Raja. The above referred Circumstance of Maruti 800 being parked at Kalupur Railway Station at parking place and stay of accused No.28-Afzal Usmani and accused No.69-Amin @ Raja very close to the parking place i.e. Prince Hotel and the timings of each other i.e. timing of parking and timing of staying and handwritings in the hotel register of accused No.69-Amin @ Raja establishes the case of prosecution that accused No.28-Afzal Usmani and accused No.69-Amin @ Raja are also connected with parking of Maruti 800.

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16.12.42. Accused No.28-Afzal Usmani also made the disclosure regarding going at Al Mohammadi Society on 25.07.2008 at night and placing of nut-bolts, gas bottles, bomb in Wagon R car GJ6-CD-9718 and bolt regarding planting of car on 26th at Civil hospital and thereafter, pointed out Al-Mohammadi Society house from outside as well as Trauma Centre Civil hospital, Ahmedabad, where they planted Wagon R car loaded with bomb. This disclosure panchanma Exh.6438 is proved by prosecution through PW-899/Exh. 3467 and I.O. Exh.8638. accused No.28-Afzal Usmani also made disclosure that after planting of car loaded with explosive at Civil hospital, he went to Kalupur Railway Station and stayed at AC waiting room in the name of Sanjay He further pointed out AC waiting room near platform no.1 near staircase at Kalupur Railway Station. This panchnaama Exh.6451 dated 10.12.2008 is proved by prosecution through PW-901/Exh. 6450 and I.O. Exh.8638. PW-963/Exh. 6757, who was working with Indian Railway at waiting room produced the register of waiting room at Exh.6758 and there is entry dated 26.07.2008 in the name of Sanjay.

16.12.43. In view of the above, accused No.28-Afzal Usmani, accused No.69-Amin @ Raja, accused No.70-Mohammad Mobin, accused No.45-Fazle Rehmaan, accused No.44-Mohammad Akbar, accused No.43-Anik @ Khalid Saiyed, accused No.14-Mohammad Sajid as well accused No.63-Mohammad Tanvir, accused No.37-Kayamuddin Kapaidya, accused No.27-Mohammad Ismail are connected with all the above referred circumstances and hence, are co-conspirators in achieving ultimate objects of mass killings facts and circumstances of the prosecution case which would include statement of accused U/s 164 as well as application of Section 10 of Evidence Act.

16.12.44. In view of the aforesaid discussion of evidence, the Court is

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independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.28-Afzal @ Afsar S/O Mutallib Usmani. The role thereddore of this accused which emerges on record is a crucial one of playing part of the conspiracy to involve stolen four wheeler vehicles and transport the same to other cities where they were to be utilized for the crime. The Court has therefore, no reason to interfere with the conviction recorded.

16.13. In case of Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh (Ujjain, M.P.) (A-10)

(Accused No.10 in Criminal Confirmation Case No. 2/2022 and Appellant No.6 in Criminal Appeal No. 1710/2022)

16.13.1. In case of accused No.10; Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.13.2. With regard to accused No.10; Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh, learned Advocate for the accused; Mr. Hriday Buch has submitted that case of this accused is identical to that of accused No.9 and has therefore, submitted the submissions made for accused No.9, be also treated as submissions for this accused. In addition to aforesaid, reference is made to confession of accused No.21; Mehndihasan @ Viki Abdul Habib Akbarkha Ansari as Exh.8623. However, such confession of Mehndihasan cannot be relied upon for the purpose of convicting the appellant and has submitted that said accused; Mehndihasan was arrested on 08-10-2008 and he applied for confessing the offense on 07-11-2008 and on the same day, he was sent to judicial custody. On 12-11-2008, confession was recorded, which is verbatim the

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same as that of Exh.8621, but is recorded in Hindi.

16.13.3. Learned Advocate for the accused has also referred to retraction of Exh.9226. Learned Advocate has submitted that these statements cannot be taken into consideration as evidence as they are exculpatory in nature and do not involve maker of statement.

16.13.4. With regard to the accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh, the evidence against this accused is identical to that of accused No.9- Kamruddin @ Raja @ Abdulla Chandmohammad Nagori and the role attributed to accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh is to be the main person who had organized the terror camp at Vagamon. He being a SIMI member has participated in hatching of the conspiracy to cause blast in Ahmedabad and Surat. The holding of the Vagamon camp was established by accused No.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla who pointed out the place where the Vagamon camp for training was conducted vide panchnama Exh.8254. This panchnama is proved by panch witness PW No.1148- Joseph Joyson vide Exh.8253, which is supported by the evidence of the Investigating Officer as PW No.1163- Mayur Jagmalbhai Chavda vide Exh.8638. The panchnama being under Section 27 of the Evidence Act established the place where the camp had taken place.

16.13.5. The other set of evidence is by way of PW No.989-Raju Gopinathan Nair vide Exh. 6879, who is the Manager of one Shri Hari Tourist Home, who had produced the hotel register and the entry made in the period around 13.12.2008. The documentary evidence in the form of handwriting in the register would establish accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri, who had made such entries, but had entered a fake name in the

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register.

16.13.6. The point out panchnama Exh.8254 at the behest of accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla has established the holding of the camp at Vagamon. Use of fake name by accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri is established by the opinion of the handwriting expert PW No.990-Kaushikumar P. Vyas vide Exh.6886 holding that the entry made in the register in a fake name was in fact a handwriting of accused No.14. Therefore, the documentary evidence in the form of the register of the hotel at Exh.6486 and the presence of handwriting of accused No.14 in the vicinity of the camp in a fake name is established by the corroborative piece of evidence of the handwriting expert at Exh. 6886 (Report).

16.13.7. The other circumstance to establish the holding of Vagamon camp is a confessional statement by accused No.76-Manjar Imam at Exh.9021. The detail of this confessional statement is already covered under the chapter of the confessional statement. This is a statement which was recorded in the investigation of the crime registered at Kerala for the Vagamon camp and in this confessional statement, the participation and organization of the camp by accused No.10 has surfaced. The confessional statement refers to accused No.10-Aamil Parvez to be the member of the SIMI and how he instigated the confessor to indulge into the activities of SIMI and made him the member. The statement also refers to the active participation of Aamil Parvez in making the arrangements of the camp at Vagamon. Though the confessional statement was recorded during the course of investigation, the same has been duly exhibited at Exh.9021 in this trial. This evidence firmly establishes the fact of holding of terror camp at Vagamon

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Ernakulam, over and above, the fact that the trial at Ernakulam has already confirmed the holding of such camp and convict many of the accused.

16.13.8. Perusal of Exh.9021 would attribute the role to accused No.10, who is from Madhya Pradesh and had invited accused No.76 to Madhya Pradesh, where the camp at Charol was held. Thereafter, accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh went to Ranchi and took train tickets alongwith accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam to travel to Ernakulam and from there to Vagamon, where there was meeting with other SIMI leaders. In the statement under Section 164 of Cr.P.C., it is recorded that the participants were warned from using their original names and if questioned about the camp, the participants have to refer the same to be an adventure program. The confessional statement further refers to physical training like rope climbing, rope jumping, swimming and shooting. The lectures which were organized within the camp referred to the atrocities on the Muslims, demolition of Babri Masjid, RSS activities and resorting to Jihad and therefore, the camp was organized in the direction of performing Jihad.

16.13.9. Over and above the aforesaid evidence, the Court may also refer to the panchnama Exh.8251 which was executed pursuant to the arrest of accused No.65- Mohammad Yunus @ Umar @ Khalid S/O Mohammad Shabir. Exh.8251 is exhibited through PW No.1147- Girindran Bhaskaran Nair at Exh.8250. The witness has stood a panch to an activity undertaken by the Investigating Officer for identification of those persons who had participated in the camp at Vagamon. The witness Girindran Bhaskaran Nair, who was working as hotel manager in Kerala, has deposed that two persons namely Anilkumar, who was serving near

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Vagamon and another accused No.65-Mohamad Yunus were present and were shown several photographs, of which Anilkumar identified 26 photographs as the persons who had participated in the Vagamon camp. Out of these 26 photographs, accused No.65-Mohamad Yunus had identified 21 photographs alongiwth their names. These photographs were arranged and names were given as per the identification by accused No.65. One of the persons thus identified has having participated in the camp was accused No.10.

16.13.10. PW No.998-Anilkumar D.P. is examined at Exh.6950. In his deposition, he has deposed that he was working as a farmhouse supervisor at Vagamon since long and near that farmhouse approximately 500 meters away, he observed around 30 persons residing by pitching a tent and were entered into motorcycle race and were shouting slogans like Allahu Akar bolo Takbir and they were also training for crawling and walking in small areas. Therefore, this witness had seen the holding of camp and participants therein. In the cross-examination, he has withstood the questions posed, but his version in the evidence-in-chief is not deviated and therefore, when the exercise of identification under Exh.8251 was undertaken, the identification of the participants was also preliminary made by photo identity. Out of the photographs identified by this witness, accused No.65 had identified one of the photographs to be that of Aamil Parvez, accused No.10. Accordingly, the evidence as discussed for accused No.9 and to avoid repetition is not again discussed qua accused No.10, and it is fully applicable as evidence for accused No.10 over and above the evidence as discussed above separately for accused No.10 to the main organizer of the camp at Vagamon.

16.13.11. Therefore, the role of the accused No.10 to participate in the

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conspiracy is clearly established by his role in organizing and participating in Vagamon terror camp and thereafter, his presence and participation in Halol terror camp. Aamil Parvez was tried as accused No.7 in Sessions Case No.2 of 2011/NIA by the Special Court for NIA Cases in Ernakulam (Exh.9421), whereas accused No.9-Kamruddin has been tried as accused No.26. Both the accused have been convicted by the Ernakulam Court for offenses punishable under Sections 10 and 38 of UAPA and Section 4 of the Explosive Substance Act and Section 120B of IPC read with Sections 10 and 38 of UAPA and Section 4 of the Explosive Act.

16.13.12. As the holding of a terror camp in Vagamon being one of the important circumstances of the conspiracy followed by another terror camp at Halol, Pavagadh also being established as an important circumstance of the larger conspiracy, the Court has no hesitation in confirming the conviction of accused Nos.9- Kamruddin @ Raja @ Abdulla Chandmohammad Nagori and accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh.

16.13.13. Therefore, the prosecution has led sufficient evidence to convict the accused No.10; Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh for the charges. Accordingly, the conviction of accused No.10; Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh for the offence is confirmed.

16.14. In case of Sibli @ Sabit S/O Abdul Karim Muslim (Kerala) (A-11)

(Accused No.11 in Criminal Confirmation Case No. 2/2022 and Appellant No.7 in Criminal Appeal No. 1710/2022):

16.14.1. In case of accused No.11- Sibli @ Sabit S/O Abdul Karim

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Muslim, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.14.2. Learned Advocate Mr.Hriday Buch in so far as accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is concerned, he submits that the submissions made for accused No.9- Kamruddin S/O Chandmohammad Nagori and accused No.10-Aamil Parvaz S/O Kaji Saifuddin Shaikh may also be treated as arguments for accused No.11-Sibli @ Sabit S/O Abdul Karim Muslim as well in view of the commonality of the allegations and to avoid repetition.

16.14.3. Accordingly, learned Advocate has submitted that evidence of approver; Aiyaz Razakmiya Saiyed, who has given role of the appellant being part of the meeting which took place at Samsudin's Nana place. Learned Advocate has submitted that previously it is argued that there is no substantial evidence of the meeting having taken place, especially when owner of the premises himself has deposed as defense witness and has falsified the fact of any meeting having taken place.

16.14.4. It is submitted that though this accused had allegedly participated in the Halol Camp, but none of the three witnesses namely shepherd and the driver of the vehicle have identified this accused to be present at Halol camp. The confessional statement of accused No.2; Imran Ibrahim Shaikh is not reliable, as is argued previously. With regard to SIMI connection, reliance is placed upon evidence of accused No.76; Mohammad Manjar Imam. Despite there being no evidence, Special Court has given incorrect finding about presence of this accused at Halol and the only evidence relied upon is that of confessional statement of Imran.

16.14.5. In the opinion of the Court, SDS Tests at Exh.9248 and the

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opinion of the Expert is also relevant as confessional statement of Imran attributes the role, which is corroborated by SDS Tests report and the Expert opinion, which the Court may refer later.

16.14.6. According to learned Advocate Mr. Hriday Buch the nature of evidence is only confessional statement of accused and therefore, a weak evidence and it cannot be considered as basis for conviction, it can be used at best for corroboration.

16.14.7. He has also assailed the evidence of the approver by adopting the arguments advanced by learned Senior Advocate Mr. S. Nagamuthu and learned Advocate Dr. Yug Mohit Chaudhry. Therefore, according to him, both these evidences cannot be treated as substantive evidence. The submissions of learned Advocate Mr. Hriday Buch will have to be considered in the light of the provision of Indian Evidence Act. Section 30 specifically provides for consideration of proved confessions of the affecting persons making it and other jointly tried for same offence. The essential requirement being a joint trial of same offence. There is no manner of doubt that co-accused accused No.2 and accused No.76 are jointly tried along with accused No.11.

16.14.8. Over and above, the Court has made elaborate discussion on confessional statement and also effect of confessional statement of co-accused in a separate chapter.

16.14.9. However, the Court may quote at this stage Section 30 of Indian Evidence Act and the illustration (a) applicable:

> *"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as*

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against such other person as well as against the person who makes such confession.

[Explanation.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.]

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The Court may consider the effect of this confession as against B."

The Court may at this stage refer to yet another provision of Indian Evidence Act being Section 10, which is as under:

"10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may

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have taken place before he joined the conspiracy or after he left it."

16.14.10. Apparently, Section 10 has been enacted in order to make acts and statements of co-conspirator admissible against all the conspirators, who are acting as one machine because of the very nature of crime.

16.14.11. Therefore, if the evidence of existence of conspiracy is given and accepted then the acts and statement made by any one of the conspirator in furtherance of the common object is admissible against all conspirators.

16.14.12. With this, the Court may refer to the submissions by State on facts. Learned Additional Advocate General has submitted that accused No.11-Sibli @ Sabit S/O Abdul Karim Muslim is from Kerala and as per the confessional statement of accused No.2- Imran S/O Ibrahim Shaikh, he has attended Kerala camp. As per this statement, accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim was given the dummy name of Hidayat by co-accused; accused No.-12 Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori. As per accused No.2- Imran S/O Ibrahim Shaikh's confessional statement different accused persons including accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim gave Jihadi Takrir. Exhortation made in Jihadi speech would relate to things like they would like to do practical work, work of Jihad to be executed, division of all participants-conspirators in two groups of which one group would be doing work of execution and most importantly, exhortation on mass killing.

16.14.13. It is further submitted that accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is also one of the accused in Kerala Session's Case proceedings, where he is arraigned as accused no.4 and as per judgment

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of Kerala Court, he is convicted U/s 10, 20 and 38 of UAPA, Section 4 of Explosive Substance Act, 1908 and Section 120 B of L.P.C.

16.14.14. Considering the submissions made in this regards, the Court finds that accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is implicated by accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam in his confessional statement Exh.9021, which was recorded during Kerala investigation proceedings by Judicial First- class Magistrate, Kochi and prosecution of this case has exhibited certified copy from Kerala proceedings and had submitted in the present proceedings. According to this confessional statement, accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam, who is also from Kerala is a friend of accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim. According to confessional statement of accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam, he refers to various activities done at Kerala camp as like airgun shooting, jihadi speech, atrocities against Muslims in Gujarat, demolition of Babri Masjid, RSS activism against Islam, Jihad in India, accumulating money, how to take money from persons who are against Muslims, by kidnapping etc., giving of dummy names, also naming of different accused persons of whom many are referred by accused No.2-Imran S/O Ibrahim Shaikh in his confessional statement.

16.14.15. So far as accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is concerned, accused No.2-Imran S/O Ibrahim Shaikh has categorically stated that the programme was led by accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim. The aforesaid proved confessional statements of accused No.76- Manzar Imam (Exh.9021) and accused No.2-Imran Ibrahim Shaikh (Exh.8619), has to be treated as evidence invoking Section 30 of the Indian Evidence Act.

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16.14.16. In this, the specific role attributed to accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is on the 2nd day of the camp where specific knowledge of 'Maaleghanimat' was imparted i.e. methods for raising funds by methods like Zakat etc. from the Non-Muslim or against Muslims by resorting to kidnapping etc. and this programe was led by accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim.

16.14.17. The Court finds that he has also implicated accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim as the person who managed Vagamon camp activity along with other accused-conspirators. Pertinently accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam also refers to different SIMI camps. Accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam also states about certain accused visiting him after a bomb blast having taken place on 26.07.2008. Accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam in his confessional statement also involves accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim's real brother named Saduli i.e. accused No.60- Saduli @ Hariz S/O Abdul Karim Muslim. Accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam also refers to the bomb blast in Banaras, Bombay and also refers to activities of Indian Mujahidin. Brother of accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim Saduli is also convicted for above referred offences as like accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim in Kerala Session's case proceedings.

16.14.18. The Court finds that accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim is also involved by approver Ayaz in para 8 of his deposition, whereby accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim was one of the participants along with other co- accused at the conspiratorial meeting which was held at accused No.4-Samsuddin S/O Shahabuddin Shaikh's Nana's house in 2008. Witness Ayaz has also

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identified accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim during course of his deposition i.e. Dock Identification. This meeting assumes importance as conspirators across India were present where different conspirators gave takrir as well as indulged in other activities of the terror training camp.

16.14.19. The Court finds that accused no.11 is also implicated by prosecution in a SIMI material literature which was part of chargesheet and investigation material which was submitted by defence, as defence relied on through Exh.9248. This literature Material Exh.9248, involves accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim as SIMI activist along with many other SIMI activists whose names are revealed through this Literature and are also accused of this case. Over and above it, there is also an evidentiary material which would demonstrate that accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim and many other accused are members of SIMI.

16.14.20. The Court finds that in addition to above referred different conspiratorial circumstances, there is one more link of circumstance in the nature of forensic evidence as accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim was subjected to Suspect Detection Test (SDS) i.e. Exh.5901 proved through PW-848 vide Exh.5894 and the opinion of it finds accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim involved and connected with different bomb blast and his association with SIMI along with other accused persons.

16.14.21. The Court having perused the report at Exh.5901 which refers to the lie-detection test to which accused No.11 is subjected and from the reactions of accused No.11, the Expert opinion is given about his involvement in various blasts including Bangalore and Hyderabad, showing him to be a part of larger conspiracy. This is an important

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circumstance which corroborates the existing evidence.

16.14.22. Further, even upon considering the confessional statement of accused No.2-Imran S/O Ibrahim Shaikh and accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam which not only involves accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim but many other accused persons.

16.14.23. With the aforesaid discussions, the Court finds sufficient evidence against accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim for his participation in the hatching of conspiracy from the beginning and to record his conviction for the offences charged.

16.15. In case of Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman (Rajasthan) (A-20)

(Appellant No.1 in Criminal Appeal No. 1917/2022):

16.15.1. In case of accused No.20-Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.15.2. Learned Senior Advocate Mr. Mihir Desai has made specific submissions with regard to the appellants, whom he represents by beginning his submission with regard to accused No.20; Atikurrehman @ Atik Abdulhakim Khilji. It is submitted that this accused was arrested on 31-08-2008 in Rajasthan for his involvement in some other offence and on 09-10-2008, he was arrested in the present offences with the allegations that he had participated in so called terror camp at Halol. According to learned Senior Advocate, nature of evidence against accused No.20; Atikurrehman @ Atik Abdulhakim Khilji is chance witnesses, evidence of Munjavar at Halol camp site and certain pointing

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out panchnamas. It is submitted that though there are certain confessions which the prosecution has relied upon, but according to learned Senior Advocate, confession of accomplice cannot be treated to be substantial evidence to base conviction. It is submitted that Test Identification Parade at the hands of chance witnesses, had taken place on 30-08-2008, when accused No.20; Atikurrehman @ Atik Abdulhakim Khilji was not even arrested and thereafter, other Test Identification Parades were organized on 12-09-2008, where also accused No.20; Atikurrehman @ Atik Abdulhakim Khilji was yet to be arrested and again on 16-12-2008, when accused No.20; Atikurrehman @ Atik Abdulhakim Khilji was arrested, but yet was not put up for Test Identification Parade. On 16-12-2008, Test Identification Parade for accused No.37; Kayamuddin @ Musa @ Ashfak @ Abdul Kadir @ Rizwan @ Samir Sarfuddin Kapadiya was conducted, which is at Exh.3162. At that time, though accused No.20; Atikurrehman @ Atik Abdulhakim Khilji was arrested, yet he was not put up for Test Identification Parade. On 06-06-2012, Exh.4085 was Test Identification Parade of accused No.74; Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim Babukhan Maniyar, at that stage also, present accused No.20; Atikurrehman @ Atik Abdulhakim Khilji was not put up for Test Identification Parade and therefore, the prosecution has failed in establishing the presence of accused No.20; Atikurrehman @ Atik Abdulhakim Khilji at the hands of the chance witnesses in front of whom, accused No.20; Atikurrehman @ Atik Abdulhakim Khilji has not been put up for Test Identification Parade.

16.15.3. Learned Senior Advocate has thereafter referred to another witness of the camp examined at PW No.981- Pravinbhai Hamirbhai Katariya, Exh.6835, who also is chance witness and was plying the

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vehicle in the area at the relevant time. Accused No.20; Atikurrehman @ Atik Abdulhakim Khilji has not been put to Test Identification Parade by this accused nor is he been identified by this witness in the Court. Chance witness has identified many in the Court, as to be part of the Halol camp, but has not identified Accused No.20; Atikurrehman @ Atik Abdulhakim Khilji. Similarly, arguments have been advanced qua PW No.972-Ramkabhai Devkaranbhai Kesariya, Exh.6802, who also is chance witness and PW No.1067-Ambalal Vechatbhai Bariya, Exh.7231. Both of whom, being chance witnesses have not identified accused No.20; Atikurrehman @ Atik Abdulhakim Khilji in the Court.

16.15.4. Learned Senior Advocate has thereafter referred to evidence of PW No.1105-Idrish Gulabsha Fakir Diwan, Exh.7923, who is Munjavar of Khundpir Dargah, where the alleged camp had taken place and submitted that this witness though according to the prosecution, was present throughout, has not been able to identify accused No.20; Atikurrehman @ Atik Abdulhakim Khilji.

16.15.5. Learned Senior Advocate has thereafter referred to another set of evidence in the form of pointing out panchnama, which took place at the behest of co-accused and submitted that in this panchnama, though the accused have named several participants of the camp, but present accused No.20; Atikurrehman @ Atik Abdulhakim Khilji has not been named in any of such panchnama. He thereafter, has taken this Court through Exh.6480 pointing out panchnama at the hands of the accused No.1-Jahid S/O Kutubuddin Shaikh. Exh.7053 is the pointing out panchnama at the behest of accused No.16; Abbas Umar Sameja and Exh.6443 at the behest of accused No.35; Rafiuddin Sarfuddin Kapadia and Exh.7252 at the hands of the accused No.66; Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali, nowhere accused No.20;

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Atikurrehman @ Atik Abdulhakim Khilji is being mentioned.

16.15.6. Learned Senior Advocate has thereafter particularly pointed out to Exh.7392, which is pointing out panchnama by accused No.78; Tausifkhan @ Atik Sagir Ahmedkhan Pathan. This accused in the panchnama has named certain accused, who were part of the camp, but has definitely not named accused No.20-Atikurrehman @ Atik Abdulhakim Khilji.

16.15.7. Learned Senior Advocate has submitted therefore, only evidence available with the prosecution to involve accused No.20-Atikurrehman @ Atik Abdulhakim Khilji in the offence are confessional statement of accused No.21-Mehndihasan @ Viki Abdul Habib Akbarkha Ansari and accused No.35-Rafiuddin Sarfuddin Kapadia.

16.15.8. It is submitted that Exh.8623 is confessional statement of accused No.21-Mehndihasan @ Vikki, which was recorded on 12-11-2008, but the same has been retracted immediately on 25-11-2008 and on 27-11-2008. Similarly, another Confessional statement at the hands of accused No.35-Rafiuddin Sarfuddin Kapadia, which is recorded at Exh.8631 can also not be taken into consideration, as the same has been recorded on oath and rightly the Special Court has not taken the same into consideration at the time of impugned judgment. Though learned Senior Advocate has taken this Court through Exh.9351, which is retraction of accused No.35-Rafiuddin Sarfuddin Kapadia, which by the reasoned order was not accepted by the Special Court. However, any further reference to such confessional statement or its retraction would not be necessary as the Special Court has itself not treated the same as evidence under consideration.

16.15.9. However, learned Senior Advocate has submitted that by virtue of contents of Exh.9351, content of pointing out panchnama,

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Exh.6443 dated 17-11-2008 at the hands of very accused No.35-Rafiuddin Sarfuddin Kapadia can be disproved. It is narrated that accused No.20- Atikurrehman @ Atik Abdulhakim Khilji was in the camp for a period of 2 days, whereas in confessional statement, he has stated that accused No.20-Atikurrehman @ Atik Abdulhakim Khilji was in the camp only for two hours and likelihood of accused No.35-Rafiuddin Sarfuddin Kapadia within short span of two hours, being able to interact and remember name of accused No.20-Atikurrehman @ Atik Abdulhakim Khilji, is highly doubtful.

16.15.10. Learned Senior Advocate has thereafter referred to decision of the Apex Court particularly in case of ***Bhuboni Sahu v/s. The King,*** judgment of Privy Council reported in ***1949 SCC OnLine PC 12*** in connection with utilizing of confessional statement of accomplice. He has also referred to decision of the Apex Court in case of ***Kashmira Singh v/s. State of Madhya Pradesh*** reported in ***(1952) 1 SCC 275*** on the same issue. Yet another judgment in this regard is in case of ***Chandrakant Chimanlal Desai v/s. State of Gujarat*** reported in ***(1992) 1 SCC 473***. By relying upon the aforesaid judgments, learned Senior Advocate has submitted that approach towards confessional statement of accomplice, the Court has to first marshal evidence, by excluding confession and after having found that other evidence on the record is sufficient to satisfy the Court, then the Court may utilize the confessional statement in the form of corroboration.

16.15.11. Thereafter, learned Senior Advocate has taken this Court to relevant part of the impugned judgment, where the Court has discussed the nature of evidence and appreciated the same. He has also referred to Page-6864 of the impugned judgment, where the Court has recorded that in connection with arrest of this accused No.20; Atikurrehman @ Atik

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Abdulhakim Khilji, in Rajasthan, wherein accused No.20; Atikurrehman @ Atik Abdulhakim Khilji has been acquitted in that case.

16.15.12. Learned Senior Advocate has lastly submitted that confessional statement of co-accused No.21; Mehndihasan @ Vikki at Exh.8623 being exculpatory in nature, as maker of the confession himself disassociates himself from the participation in the offence and therefore, when confession at behest of accused No.35; Rafiuddin Sarfuddin Kapadia, the Court itself has not taken into consideration while confession of accused No.21; Mehndihasan @ Vikki being exculpatory in nature, therefore, the prosecution is left with no evidence against the present accused No.20; Atikurrehman @ Atik Abdulhakim Khilji.

16.15.13. Lastly, for accused No.20-Atikurrehman @ Atik Abdulhakim Khilji, learned senior advocate has submitted that non holding of Test Identification Parade of this accused has to be treated as fatal to the prosecution as the only evidence possible for involving the appellant in this offense could have been the test identification parade through the witnesses, which deliberately the prosecution has not carried out though the opportunity and resources available to the prosecution. In this connection, learned senior advocate has relied upon the decision of the Apex Court in case of ***Rajesh Govind Jagesha v/s. State of Maharashtra, reported in, (1999) 8 SCC 428***, particularly to the observations made in para-4, wherein the Apex Court has held that when offender is not known previously to the witness, it is obligatory on the part of the Investigating Agency to hold identification parade and the evidence of identifying an accused at the trial for the first time is an inherently a weak evidence.

16.15.14. The Court may further observe that in the very judgment,

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absence of Test Identification Parade by itself may not be fatal where the accused is known or is sufficiently described, which is sufficient for the Court to be satisfied with regard to the involvement of the offender.

16.15.15. The very judgment also holds that holding of identification proceedings may not be a substantive evidence, but the proceedings may be used for corroborative purpose to believe or not to believe the involvement of a person tried before the Court and the holding of Test Identification Parade being a rule of prudence and is required to be strictly followed in accordance with the settled principle of law and that too expeditiously. However, if there is any delay in holding the Test Identification Parade, the same can be accepted, if such delay is satisfactorily explained.

16.15.16. Learned Additional Advocate General on behalf of the State has submitted that accused No.20-Atikur Rehmaan is from Rajasthan and is involved by accused No.21-Mehandihasan @ Vikki who is also from Rajasthan. In his confessional statement, accused No.21-Mehandihasan @ Vikki states about his intimate relationship with accused No.20-Atikur Rehmaan and his involvement and participation at Halol camp. In the statement of accused No.21- Mehandihasan @ Vikki, there is reference of topography of Halol camp which is surrounded by Khundpir Dargah, Minar Masjid, mountains etc.

16.15.17. It is submitted that insofar as Halol camp is concerned, the prosecution has examined important witness like Munjawar Idris, Ambalal, Ramkabhai and Pravinbhai, who not only fully supports the case of prosecution about Halol camp being one of the sequels to the conspiracy, but these witnesses have identified many accused in Test Identification Parade and some during course of their deposition. There is also evidentiary material of certain objects-articles being found from

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the place of Halol camp which also substantiate conducting of Halol camp as stated by accused No.21-Mehandihasan @ Vikki in his confessional statement.

16.15.18. It is submitted that there are different pointing out panchnamas by different accused persons as they attended Halol camp, which also supports the case of prosecution. The prosecution has fully established that Halol camp is the sequel to the fountain head of conspiracy i.e. Vagamon camp. There are many accused who are found to be common as they attended both Vagamon and Halol camp. They are, accused No.1-Jahid Shaikh, accused No.2-Imran Ibrahim Shaimkh, accused No.6-Mohammad Aarif, accused No.7-Mohammad Usman, accused No.10-Aamil Parvaz, accused No.12-Safdar Hussain Nagori, accused No.14-Mohammad Sajid, accused No.26-Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari, accused No.37-Kayamuddin Kapadiya, accused No.59-Mohammad Ansar and absconder Abdul Shuban @Taukir Qureshi.

16.15.19. The Court has considered the rival submissions of the parties. In the opinion of the Court, accused No.21-Mehandihasan @ Vikki states that in the month of December 2007, they had a lunch meet where accused No.22-Imran Pathan and accused No.14-Sajid Mansoori, were present alongwith three other persons whose last name was Qureshi. In this meet, accused No.20-Atikur Rehmaan and accused No.22- Imran Ahmed were from Kota, Rajasthan like accused No.21-Mehandihasan @ Vikki also from Kota, Rajasthan. Other three persons whose last name as submitted earlier is Qureshi of whom one appears to be absconder Taukir Qureshi.

16.15.20. The Court finds that after this lunch meet, accused No.14-Sajid Mansoori gave tickets (railway) to accused No.21-Mehandihasan

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@ Vikki, accused No.20-Atikur Rehmaan and accused No.22- Imran Ahmed and on 12.01.2008, these three i.e. accused No.21-Mehandihasan @ Vikki, accused No.20-Atikur Rehmaan and accused No.22-Imran Ahmed started their journey from Kota to Surat and for the reasons stated in the confessional statement, ticket was found faulty and for that they were fined. These three accused dropped at Godhra and at that time, accused No.14-Sajid Mansoori called accused No.22-Imran Ahmed. After these three accused dropped at Godhra, they also booked their tickets for their backward journey to Kota and as they received phone from accused No.14-Sajid Mansoori, ultimately, they went to Halol for attending camp and they were received by accused No.7-Usman Agarbattiwala. There is also reference in the statement of accused No.21- Mehandihasan @ Vikki that after they got down at Godhra, and after they having received phone from accused No.14-Sajid Mansoori, they thereafter got down at the later station; Piplod and from there they went to Halol. After reaching there, they attended camp and actively participated in the camp. So far as, Halol camp activities are concerned, detailed narration has been made by prosecution earlier. The most important feature of this case is declaration of mass killing. At Halol camp all participants were given dummy names. Accused No.20-Atikur Rehmaan was also given a dummy name and his dummy name was Abu Bakar.

16.15.21. It appears that accused No.20-Atikur Rehmaan is also involved by accused No.35-Rafiuddin Kapadiya in his confessional statement as one of the accused-conspirators who attended Halol camp. Accused No.35-Rafiuddin Kapadiya has clearly stated that three persons by name accused No.21- Mehndihasan @ Vikki, accused No.22-Imran Ahmed and accused No.20-Ateek-Ur-Rehman are from Rajasthan and

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were present in the Camp. Accused No.35-Rafiuddin Kapadiya addresses this Halol camp as SIMI camp. He also referred to stay of certain persons at Dargah. The confessional statement of A-35 though may not be accepted as an evidence however, having been given an Exhibit no., this Court has only referred to the same and the Court finds that the content of this confessional statement is in the same line of the other admissible evidence.

16.15.22. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.20-Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman. The Court has therefore, no reason to interfere with the conviction recorded.

16.16. In case of Amin @ Raja S/O Ayub Nazir Shaikh (MadhyaPradesh)(A-69)

and

Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan (Madhya Pradesh) (A-70)

(Accused No.35 in Criminal Confirmation Case No. 2/2022 and Appellant No.28 in Criminal Appeal No. 1710/2022)

and

(Accused No.36 in Criminal Confirmation Case No. 2/2022 and Appellant No.6 in Criminal Appeal No. 727/2024)

16.16.1. In case of accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh (Madhya Pradesh) and accused No.70-Mohammad Mobin, they have been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.16.2. Learned advocate Shri Hriday Buch submitted that accused

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No.69-Amin @ Raja, according to prosecution alongwith accused No.70-Mohammad Mobin has played a very crucial role of procuring four wheeler for the purpose of loading with bomb and explosive material. This was a part of the conspiracy to cause blast in an identified place near Civil Hospital and to create a big impact of bigger vehicle in which more explosive material can be stalled to give maximum effect.

16.16.3. The role attributed to accused No.69-Amin @ Raja is to be part of the conspiracy to provide for four wheeler vehicles (car) for the purpose of loading the Bomb and explosives in bigger quantity and to park it in a crowded area.

16.16.4. According to learned Advocate Buch, the role attributed to accused No.69-Amin @ Raja is quite identical to that of accused No.28-Afzal Usmani. He therefore submitted to avoid repetition would directly focus on the case of accused No.69-Amin @ Raja Shaikh and submissions for accused No.28-Afzal Usmani may also be considered in common.

16.16.5. It is pertinent to observe herein that the task for procuring the car was undertaken by the set of accused who are not directly in contact with other accused, but as a part of modus to avoid any contact to and thereby to avoid any tracking back the accused.

16.16.6. Learned Advocate has argued that the main case of the prosecution is that a car theft is committed in Bombay and then this car was used in crime. Therefore, there was an offence registered for theft of the car, but accused No.69-Amin @ Raja is not convicted in the said offence of the car theft. Therefore, no connection of the car could be established with accused No.69-Amin @ Raja.

16.16.7. The other evidence relied upon by the State is the travel from Mumbai to Surat or Ahmedabad. To prove these witnesses who are

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employees of the Hotels on the way have been examined to establish their stay enroute. It is argued that in absence of any evidence of actual travel by accused No.69-Amin @ Raja alongwith the car, a Hotel register of Hotel Prince in Ahmedabad is not sufficient to establish that accused travelled in the very stolen car to reach Ahmedabad and then stayed in the Prince Hotel.

16.16.8. Though the prosecution has relied on the Hotel Register and Hand writing expert opinion to compare and conclude that the handwriting in the register is of accused No.69-Amin @ Raja, still it only established the accused No.69-Amin @ Raja was in the vicinity. However, the said evidence is upto 17-07-2008 almost 10 days prior to the incident and hence not believable.

16.16.9. It is further submitted that prosecution has placed reliance on evidence of panch witness being PW No.976-Shoeb Shaikh vide Exh.6818 on the issue of pointing out of a spot in Surat when the car is parked or at the Mumbai when it was parked, is not a circumstance relevant to the offence hence, this evidence does not connect accused No.69-Amin @ Raja.

16.16.10. According to learned Advocate, the only evidence of an incriminating circumstance is the evidence of PW No.977-Kamal Jaswantlal Thapar vide Exh.6820, who deposed about role of accused No.69-Amin @ Raja in making of a vehicle register number plate. However, there is no evidence to connect said number plate with the car, which was used in crime. Therefore, the prosecution wants the Court to presume, a circumstance on the basis of this circumstance.

16.16.11. It is lastly submitted that though the prosecution may rely upon the circumstance of pointing out panchnama of the scene of offence from where this car was seized, but the same cannot be treated

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as an evidence against accused No.69-Amin @ Raja. He referred to the panchnama Exh.1992, which is of panchnama of scene of offence of blast site at Civil Hospital and also to panchnama Exh.2385 by which bomb/ explosive laden car was seized from Puna General Hospital and submitted that there is nothing in panchnama, which will connect accused No.69-Amin @ Raja to the car.

16.16.12. Similarly, it is submitted that oral and documentary evidence of the Hotel Staff also does not go on to establish the travel of accused No.69-Amin @ Raja alongwith the car. It is therefore, prayed for clear acquittal.

16.16.13. Learned advocate Mr. Somnath Vatsa has thereafter, submitted with regard to accused No.70-Mohd. Mobin. The role attributing to this accused is in relation with bringing of vehicles from Bombay to outskirts of Bombay and collectively then bringing it to Surat and parking it in railway parking and later on handing over this vehicle to the co-accused for using the same at Surat and Ahmedabad.

16.16.14. The major incriminating evidence is the investigation at Hotel Shrinath, where the register of the hotel entries were seized on 23.10.2008. It is PW No.1157-Ranedrasinh Ranjitsinh Sarvaiya, who has carried out the investigation in connection with stay at Hotel and in his deposition at Exh.8566, this witness has said that he has no information prior to executing of panchnama about the connection of this accused with Hotel Shrinath and the Investigating Officer, N.B.Parmar had only assigned him the task of executing the panchnama of seizure. It is submitted that as on 23.10.2008, the other three co-accused were yet to be arrested and though the question is as to how the Investigating Officer, Shri N.B.Parmar received the information regarding the stay at Hotel Shrinath and seizing of the register. Learned advocate has also

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indicated by drawing attention to Exh.2857 panchnama to submit that though the panchnama was executed after considerable period, the register was readily available at the time of panchnama which creates doubt about the genuineness of such register.

16.16.15. Moreover, the Investigation Officer himself; N. B. Parmar is not able to clarify as to on what basis he was able to identify Hotel Shreenath as a place for his investigation and to seize the register. In this regard, the Court has considered the register and its content of the Register of the Hotel as the Hotel Register refers to the vehicle number, which is mentioned and which connects with the accused. The Register bears the registration number of the very vehicle, which is connected to the Surat offence and therefore, the Investigation Officer who already had the vehicle number with him and with the arrest of the accused, would easily lead to the movement of such vehicle, which has led the Investigation Officer to the Shreenath Hotel.

16.16.16. Learned Advocate has also assailed the evidence of Hotel Register which the prosecution connects by using the hand writing firstly as the Register had remained in unsealed manner, he refers to Exh.2336; Muddamal item 43. It is submitted that panchnama vide Exh.7367 removes only one page to use the sample for natural hand writing of this accused creating a doubt that such a sample can really be treated as a correct sample for natural hand writing. There is no corroboration to the effect, which ought to have been by some C.D.R.

16.16.17. Considering the commonality of the role of A-28, A-69 and A-70, the Court has already recorded in the preceding para that the discussion qua theses three accused is taken up consecutively and therefore, the association of these accused with the stolen four wheeler vehicles and the movements in detail has been referred to alongwith the

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evidence while discussing the role of A-28. Still, to maintain continuity, wherever necessary cursory reference is made to that set of evidence.

16.16.18. The Court has perused the panchnama vide Exh.7367 drawn at the behest of accused; Mobin (accused No.70) at Hotel Shreenath on 01-10-2011. The prosecution witness records the process of identifying the hand writing of the accused himself in the Hotel Register, which is marked by circling the same and thereafter, sample signature in due process were taken on blank paper. The panchnama also records the information written by accused; Mobin in the Register regarding other accompanying person, the co-accused. The panchnama is duly proved by examining a panch-witness as well as the I.O. The deposition of these witnesses does not indicate that the Register muddamal was tampered in any manner, so as to falsify the content of the panchnama. Therefore, in the opinion of the Court, the panchnama vide Exh.7367 is correctly appreciated as an evidence to establish the presence of the accused No.70-Mohammad Mobin at the Hotel.

16.16.19. Learned Advocate has thereafter assailed the identification of this accused through the Hotel employee; Hasan Ali. It is submitted in the deposition, the witness has not given any description of the accused or any specific feature of identification. Therefore, the prosecution has failed to establish the identity of accused; Mobin for this particular circumstance.

16.16.20. The Court has perused Exh.6844, which the Test Identification Panchnama drawn on 30-10-2011. After the offence in 2008, this accused was arrested in 2011 and was put up for Test Identification. Exh.6843 is the Yadi sent. The perusal of the panchnama vide Exh.6844 would indicate all necessary parameters being followed and necessary precaution regarding protecting identity were taken and

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was being conducted by ensuring complete absence of Police. The panchnama does record correct identification of the accused; Mobin. Therefore, the Test Identification Panchnama is an evidence establishing the identity of Mobin at Hotel Shreenath.

16.16.21. The Court has also perused the evidence of PW No.985-Hasanali Ahmedbhai Sunsara, vide Exh.6852 of Hotel Shreenath employee; Hasanali. His deposition supports the prosecution though in the cross examination, doubt is sought to be created about the parking of the offence vehicle bearing registration number; GJ-6-EB-3569 and entry of such vehicle number in the register by putting to him that except for entry number 424 vehicle number in other entry is not mentioned. However, Exh.2858; the part of the register indicates that against each entry, the vehicle number is mentioned and to the question of previous pages of the register i.e. page-1 to 42, though the answer is in the negative by witness, but there is nothing to show that the witness was shown during deposition all the previous pages before recording such answer. The Court is therefore of the opinion that PW No.985- Hasanali Ahmedbhai Sunsara, vide Exh.6852 cannot be doubted in any manner and the argument of the learned Advocate is therefore not required to be accepted.

16.16.22. Another circumstance against this accused is the circumstance of his association with the four wheeler vehicle; the car theft from Bombay and brought to Surat for its use in planting bomb. Exh.6537 is a point out panchnama of the place, where the vehicle was parked near Railway Station in Surat after being brought from Bombay. Learned Advocate has argued that the panchnama only establishes the location of the parking and nothing more can be attributed. Moreover, PW No.1146-Vajesinh Vakhatsinh Rathod vide Exh.8231, I.O. who has

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drawn the panchnama mentions about recording of statement of one Hitesh Modi, the Manager of Parking area, but he is not examined as a witness, thereby, doubting the execution of panchnama.

16.16.23. PW No.1146- Vajesinh Vakhatsinh Rathod vide Exh.8231, at Page-7 does indicate the investigation he carried out during the remand period of this accused in offence C.R. No.176/2008; Kapodara Police Station carried out on 02-10-2011. It is the argument that already the panchnama was executed on 02-10-2011, then what was the need of panchnama dated 25-11-2011, Exh.6537. However, what is referred to in Page-7 of PW No.1146 is the activity done on 02-10-2011, which was a panchnama vide Exh.7370 executed by this very accused of a place, where he had handed over the delivery of stolen cars to the co-accused; Afzal Mutallib Usmani, whereas the panchnama Exh.6537 executed on 25-11-2011, which is the panchnama of the place, where the stolen cars were parked in Railway Station parking at Surat after being brought from Mumbai. Panchnama vide Exh.6537 is proved by the independent panch PW No.916- Sureshkumar Ramcharan Sharma vide Exh.6536, who is an employee at the parking place of Surat Railway Station. This witness has supported the prosecution and the panchnama is exhibited through him and there is no cross examination of this witness.

16.16.24. The Court has perused Exh.6537; panchnama pointing out the location of the stolen cars from Bombay being part at Surat Railway Station. During the panchnama, it is recorded that the accused; Mobin has expressed desire to voluntarily disclose the places, where the stolen cars were parked. This panchnama records the manner in which the accused led the team to said location. The car mentioned there is a 'Wagon R' car stolen from Mumbai.

16.16.25. The Court does not find any anomaly in the two panchnamas

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vide Exh.6537 and Exh.7370 as the same was executed at different point of time for different purpose altogether and in fact are of different locations, though such locations are in close vicinity, the same are for completely different objective and therefore, cannot be treated as creating doubt on the investigation. Therefore, the argument of the learned Advocate is not accepted.

16.16.26. Learned Advocate has lastly referred to the statement of accused under Section 313 of Cr.P.C. (Exh.958) to submit that this accused Mobin was tried in Mumbai Local Court for the offence of the car theft related to these very cars and has been acquitted, therefore he invoked the principle of estoppel. Hence, the circumstance of the role of Mobin in connection with the car theft cannot be accepted. Accordingly, learned advocate has prayed for clear acquittal of this accused.

16.16.27. Considering the commonality of role and evidence as per the State, the common submissions are advanced for accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh and accused No.70-Mohammad Mobin.

16.16.28. Learned Additional Advocate General for the State has submitted that as evidences against accused No.28-Afzal Usmani, which are discussed earlier are also equally applicable against accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin. Hence, summary of evidentiary material is discussed hereunder. As like accused No.28-Afzal Usmani, accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin are also involved in conspiracy. The accused are also involved in obtaining car for planting of bomb with accused No.28-Afzal Usmani and handedover the cars to other accused for planting of bomb .During conspiracy, accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin also stayed in different hotels with accused No.28-Afzal Usmani together.

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16.16.29. It is submitted that it has come on record that accused No.69-Amin @ Raja and accused No.28-Afzal Usmani stayed at Hotel Shri Dutt, Panvel. During panchnama Exh.7318, Investigation OFficer PW-1075/Exh.7311 has seized register of Hotel Shri Dutt, there is entry No.2462 vide Exh.7319, which is in the name of Amin Shaikh and Afzal Shaikh and date of arrival of Amin Shaikh and Afzal Shaikh was 14.07.2008 and departure date was 15.07.2008. The address in the entry is Khajrana Palace, Indore Madhya Pradesh, which is the address of accused No.69-Amin @ Raja, as stated in memo of Criminal Appeal No.1710 of 2022. During this period, Maruti 800 car and red-maroon colour Wagon R were stolen. Maruti 800 car was used for blast at LG hospital and maroon-red colour Wagon R number GJ-6CD-2908 was used for plantation of four live bombs at Sonal Bhel parking, Kapodra. Further, the place of Hotel Shri Dutt and stolen car, both are nearer to each other.

16.16.30. It is submitted that during panchnama Exh.2789 from Vanaj Roshni Auto LPG Station, bill book contained bill number 21250 dated 25.07.2008 was recovered, which is of vehicle number GJ-6-CD-2908 (red-maroon Wagon R) produced at Exh.6009. From this evidence, it reveals that on 25.07.2008 red-maroon colour Wagon R filled with LPG gas at Vanaj gas pump. Earlier accused No.45-Fazle Rehmaan has pointed out this Vanaj gas pump vide panchnama Exh.6502 and at that time, bill of vehicle number GJ-6-CD-9719 was recovered.

16.16.31. It is submitted that looking to the evidence of witness Exh.5321 who gave car movement from Vadodara to Ahmedabad Express way and produced documentary evidence Exh.5323. It transpires from the evidence that car number 2908 was passed through Express way on 16.07.2008 at 18:28:30 hours, car number 5764 was

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passed through Express way on 16.07.2008 at 18:27:56 hours, car number 9718 was passed through Express way on 23.07.2008 at 13:54:29 hours and car number 9719 was passed through Express way on 23.07.2008 at 18:21:56 hours.

16.16.32. The Court has considered the submissions of the parties. Though the Court has already given some of the findings individually for both accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh and accused No.70-Mohammad Mobin on the points which are common, the Court may discuss their roles jointly.

16.16.33. The Court has perused the deposition of PW-1138/Exh. 8165 Gulam Hussein Pathan, who is resident of Sherpura had rented his house to Rafik Shaikh in the month of July 2008, which has connection with accused No.45-Fazle Rehmaan. The said witness identified accused No.45-Fazle Rehmaan as a person named Rafik Shaikh, who stayed in his house on rent with other accused. Witness also identified accused No.43-Anik @ Khalid and accused No.44- Mohammad Akbar. who have also stayed at his house. The witness also deposed that Rafik Shaikh is actually accused No.45-Fazle Rehmaan and when he had come to give deposit, he came with one silver colour Wagon R, whose number as known to him as GJ-6.

16.16.34. The Court has perused the evidence of PW-947/Exh.6640 Hamidbhai Memon, who runs petrol pump near Sherpura gam. He deposed that accused No.45-Fazle Rehmaan, has filled petrol in Wagon R car bearing either 9719 or 9718 to show his involvement. PW-948/Exh. 6642-Irfan, who runs a garage at Sherpura, Bharuch also involved accused No.45-Fazle Rehmaan as a person who came to his garage for repairing of Wagon R car during the month July. The evidence of PW-948/Exh.6642-Irfan is required to be seen with the

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evidence of PW-1138/Exh.8165-Gulam Hussein Pathan and PW-947/Exh.6640 Hamidbhai Memon with pointing out panchnama Exh.6502 of Vanaj Gas Pump and recovery of bill from Vanaj Gas Pump. Moreover, house at Sherpura of Gulam Pathan pointed out earlier by accused No.14-Mohammad Sajid from where articles-objects used for preparation of bombs like explosive substance are also recovered. If all the evidences may be seen together, it shows the involvement of accused No.69-Amin @ Raja, accused No.70-Mohammad Mobin, accused No.28-Afzal Usmani with other accused accused No.45-Fazle Rehmaan, accused No.14-Mohammad Sajid, accused No.44-Mohammad Akbar, accused No.43-Anik @ Khalid, accused No.63-Mohammad Tanvir, accused No.37-Kayamuddin Kapadiya and accused No.27-Mohammad Ismail in deep rooted hatched conspiracy, whose ultimate object was of mass killing.

16.16.35. The Court finds that when silver colour Wagon R car number MH-06-AF-7919, which was ultimately used for the purpose of blast was stolen between 07.08.2008 to 08.08.2008 and when black colour Wagon R car number MH-43-R-3569, which was ultimately used for the purpose of planting of explosive material was stolen between 07.08.2008 to 08.08.2008. Accused No.69-Amin @ Raja, accused No.28-Afzal Usmani and accused No.70-Mohammad Mobin have stayed together at Balaji Lodge Shirdon, Panvel. This hotel and the places of theft are close to each other. Balaji Lodge Shirdon, Panvel was pointed out by accused No.28-Afzal Usmani. During pointing out panchnama by accused No.28-Afzal Usmani, hotel register entry of stay from 07.07.2008 at 17:15 p.m. to 09.07.2008 at 8:30 a.m. was recovered. The relevant entry of Balaji Lodge is at serial No.99, which is in the name of (1) Kishan Vanzari, (2) Amin Shaikh and (3) Usmani.

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Moreover, accused No.69-Amin @ Raja, accused No.70-Mohammad Mobin and accused No.28-Afzal Usmani have also stayed together at Hotel Shreenath and Guest House, which is situated at Valsad. This hotel register entry No. 424 was also in similar name and sequence as entry of Hotel Balaji Lodge, Shirdon Panvel. If the said entry No.424 of Hotel Shreenath and Guest House is perused, it appears that the same is in the name of (1) Kishan Vanzari, (2) Amin Shaikh and (3) Usmani. In entry said No.424 in signature column, under the signature of visitor, number GJ-6-CD-3569 is also written. Names written in the said entry are same and are in same sequence so also the address in the entry of Hotel Balaji Lodge and Hotel Shreenath and Guest House are same.

16.16.36. Moreover, as per the Hand Writing Expert opinion, entries in the register of Hotel Shreenath and Guest House are proved to be written by accused No.70-Mohammad Mobin Mohd. Mobin. It appears from this, the said proved false entry is in the name of Kishan Vanzari was made by accused No.70-Mohammad Mobin. All the three accused have stayed in Hotel Shreenath and Guest House. From entry of Hotel Shreenath and Guest House, which was proved to be written by accused No.70-Mohammad Mobin, it also proves that number which was written in the column of signature is fake number of black colour Wagon R which was recovered during panchnama Exh.2385 of scene of offence of II-C.R No.175 of 2008 registered with Kapodra Police Station, Surat. From this scene of offence, black colour Wagon R car number GJ6-CD-3569 was recovered, as pointed out by accused No.63-Mohammad Tanvir during panchnama Exh.2794.

16.16.37. The Court finds that Manager of Hotel Shreenath and Guest House has also identified accused No.69-Amin @ Raja, accused No.70-Mohammad Mobin and accused No.28-Afzal Usmani in Test

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Identification Parade, but he was unable to identify accused in the Court due to lapse of time. Accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin went to witness Kamal Thapar for preparing number plate and got prepared two number plates of Gujarat bearing GJ6 by saying that their cars are kept in garage. Accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin made disclosure statement regarding parking of car and pointed out the place, behind Indian Oil colony, Mumbai during panchnama Exh.6819. Moreover, accused No.69-Amin @ Raja and accused No.70-Mohammad Mobin made disclosure regarding parking of stolen car from Mumbai and thereafter, pointed out the place of Surat Railway Station parking, which is opposite of main building of Surat Railway Station during panchnama Exh.6537.

16.16.38. The Court finds that during panchnama Exh.6502, accused No.45-Fazle Rehmaan made disclosure regarding filling of gas by him and accused No.63- Mohammad Tanvir in silver colour Wagon R number GJ-6-CD-9719 and thereafter, pointed out Vanaj Roshni Auto LPG, situated at Sarthana Surat and from there bill book containing bill number 18654 in which vehicle number GJ6-CD-9719 was written and was recovered. This circumstance as also other circumstance as discussed above connect accused No.70-Mohammad Mobin, accused No.69-Amin @ Raja, accused No.28-Afzal Usmani with accused No.45-Fazle Rehmaan as also connect all these four accused with silver colour Wagon R.

16.16.39. The Court has perused the evidence of PW-892/Exh.6348-Ramanbhai Chauhan, panchnama produced, deposition of PW No.851-Shri H P. Sanghvi vide Exh.5985, deposition of PW No.602-Harishbhai Agrawal vide Exh.3229 who is Contractor of Kalupur Railway Station

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car parking and deposition of PW No.925-Viren Makwana vide Exh.6573, who is computer in charge of Kalupur Railway Station car parking. The prosecution has proved that Kalupur Railway Station car parking computer hard disc was seized, and from the F.S.L report, it appears that vehicle bearing registration number 5764 was parked on 16.07.2008 at 23:57 hours and this car was removed from parking on 19.07.2008 at 16:14 hours. The Court finds that this car found parked at Kalupur Railway Station parking bearing number 5764 is actually Maruti 800 bearing number GJ-I-HF-5764 which was a fake number and the real number is MH-05-HS-5764. The Court has also considered the evidence relating to Prince Palace Hotel situated near Jakariya Masjid, Kalupur. Hotel register entry Exh.6315 containing Entry No.1326 dated 17.07.2008 in the names of accused No.28-Afzal Usmani and accused No.69-Amin @ Raja has been proved through PW-920/Exh.6550 Vijay Vadikar, PW-884/Exh.6314, panch witness, the panchnama Exh.6316 and the evidence of Handwriting Expert PW-987/Exh.6862. The handwriting opinion at Exh.6864 establishes that the relevant entry was written by accused No.69-Amin @ Raja. The Court finds that the circumstance of parking of the Maruti 800 at Kalupur Railway Station and the stay of accused No.28-Afzal Usmani and accused No.69-Amin @ Raja at Prince Palace Hotel during the relevant period establishes the connection of accused No.28-Afzal Usmani and accused No.69-Amin @ Raja with the said Maruti 800.

16.16.40. The Court finds that above circumstance may be appreciated together with disclosure statement of accused No.28-Afzal Usmani acting as corroboration regarding placing of bomb etc in car number GJ-6CD-9718 and point out panchnama of place of Al-Mohammadi Society and Trauma Centre; Exh.6438 which was proved by prosecution through

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PW-899/Exh.3467. Moreover, above circumstances may be appreciated with disclosure statement of accused No.28-Afzal Usmani regarding planting of car loaded with explosive at Civil hospital and thereafter, going to Kalupur Railway Station and staying at AC waiting room in the name of Sanjay which was supported by register of Kalupur Railway Station waiting room which was seized during investigation and in it, there is entry in the name of Sanjay. This panchnama Exh.6451 dated 10.12.2008 is proved by prosecution through PW-901/Exh.6450 and I.O. Exh.8638.

16.16.41. The aforesaid discussion would lead this Court to a conclusion that the accused nos.69 and 70 together with accused no.28 have played a crucial role as assigned to them as a apart of conspiracy for procurement of the cars which were to be used for committing the crime.

16.16.42. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.69-Amin @ Raja S/O Ayub Nazir Shaikh (Madhya Pradesh) and accused No.70-Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan The Court has therefore, no reason to interfere with the conviction recorded.

16.17. In case of Rafiyuddin S/O Sarfuddin Kapadiya (Vadodara) (A-35).

(Appellant No.5 in Criminal Appeal No. 1917/2022):

16.17.1. In case of accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

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16.17.2. Learned advocate Shri Yug Chaudhry assisted by learned advocate Ms. Payoshi Roy has made submissions on behalf of accused No.35 Rafiyuddin Sarfuddin Kapadiya, who has been awarded imprisonment for life for the offences charged against him. The case of the prosecution against the present accused is of having participated in the conspiracy by taking part in the terror training camp held at Pavagadh in Halol, Gujarat. It is a case where accused No.35-Rafiyuddin Sarfuddin Kapadiya was arrested on 13.11.2008 in connection with the offence bearing C.R. No.236/2008 registered with Shahibagh Police Station and thereafter, was taken in police custody in various other offences registered at various Police Stations and was, ultimately, sent to judicial custody on 11.02.2009 having spent around 60 days of custody with the police.

16.17.3. Learned advocate submitted that there are no circumstances, which could be said to establish case against this accused and the only reason why he is implicated in the offence is because he is the brother of accused No.37-Kayamuddin Kapadiya.

16.17.4. Learned advocate submitted that the prosecution has relied upon the confessional statement of this accused. However, such a statement cannot be treated as an evidence in view of the fact that the confessional statement under section 164 of Cr.P.C., admittedly, has been recorded on oath and therefore, the trial Court has rightly discarded such evidence. Moreover, it is submitted that even if the confessional statement is taken into consideration, it is evident that he had proceeded to accompany his brother as he was misled by his brother to accompany him for a trip / picnic but the moment he realized that the purpose of the camp at Halol was something else, he had dissociated himself.

16.17.5. Learned advocate submitted that the prosecution relies upon

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the evidence of Munjavar of Khundpir Dargah, PW No.1105 Idrish Gulabshah Fakir Divan vide Exh.7923. This witness, though has identified the accused in the Court but, such identification cannot be treated as reliable as the same had taken place after a period of almost 11 years and that no test identification parade was undertaken to support the dock identification. Moreover, the very witness who had identified yet another accused has wrongly identified accused No.68-Mohammad Habib as accused No.2 Imran Shaikh and hence, this witness cannot be treated as wholly reliable witness.

16.17.6. Another evidence relied upon is the point out panchnama purportedly under section 27 of Cr.P.C. being Exh.6443, by which accused No.35 Rafiyuddin Sarfuddin Kapadiya has voluntarily disclosed the place where the camp was located.

16.17.7. Learned advocate submitted that this panchnama cannot be treated as an evidence in view of the fact that earlier, through accused No.1-Jahid Kutubuddin Shaikh Exh.6480, panchnama was drawn on 27.08.2008. Similarly, on 28.09.2008, panchnama Exh.7053 was drawn at the behest of accused No.16-Abbas Umar Sameja and both of them had drawn the investigating officer to the same place and therefore, the location identified by accused No.35-Rafiyuddin Kapadiya was already known to the investigating officer and as this panchnama did not lead to any new discovery, it cannot be treated as panchnama under section 27 of Cr.P.C. Learned advocate, by comparing the contents of the statement of accused No.35-Rafiyuddin Kapadiya made under section 164 of Cr.P.C. Exh.8631 with the contents of Panchnama Exh.6443, has submitted that the contents of both these documents, though are attributable to accused No.35-Rafiyuddin Kapadiya, are self-contradictory. According to the learned advocate, in Exh.8631, which is

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the confessional statement of the accused, the role attributed to the accused himself is of having accompanied accused No.37-Kayamuddin Kapadiya to Pavagadh camp in his capacity as brother only, though in the very statement, the witness has confessed to have become a member of SIMI organization at the instance of his brother and other co-accused; whereas, in Exh.6443, the narration is as if accused No.35-Rafiyuddin Kapadiya is one of the organizers.

16.17.8. In this connection, the Court has perused Exh.8636, which is the confessional statement of accused No.35-Rafiyuddin Kapadiya made under section 164 of Cr.P.C. and the same would indicate that it is recorded as if the oath has been administered to accused No.35-Rafiyuddin Kapadiya before recording it. Therefore, the Court may only consider the contents of this document to appreciate the submissions of the defence counsel. In this statement, the accused admits to have gone to the camp at Pavagadh and having realized that the purpose behind the camp is for giving training for terror activities, he had asked his brother to leave the place and he himself also left the place. However, in the very document, he admits that he had become a member of SIMI organization at the behest of co-accused.

16.17.9. The Court, having perused Exh.6443, wherein the voluntary disclosure made before the Panch witness was only to the extent that accused No.35-Rafiyuddin Kapadiya had disclosed that Imran, Kayamuddin, Sajid Mansuri and five people from Madhya Pradesh and four people from Rajasthan had organized a terror training camp, which involved training of trekking, swimming, firing, etc. and was participated by other co-accused, where he does identify himself to be one of the oganizers. This Panchnama is proved by PW No.900 Himesh Pravinchandra Mehta Exh.6442. A perusal of this Panchnama would

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clearly indicate that while the accused was in custody, he preferred to make a voluntary disclosure. The Panch witness has deposed in such voluntary disclosure wherein, the accused had disclosed that between 13th and 15th of January, he himself along with Imran, Kayamuddin, Sajid Mansuri and others from Madhya Pradesh and Rajasthan had organized terror training camp for imparting training of trekking, swimming, firing, etc. wherein, other co-accused had also participated by delivering instigating speeches. Pursuant to such disclosure, the investigating officer and panch witnesses were led by this accused to the locations where the camp site had existed. He had also taken to various places within the camp sites where the training were imparted.

16.17.10. Learned advocate has lastly submitted that confession of accused No.2-Imran Shaikh recorded under section 164 of Cr.P.C. may also not be treated as an evidence as it is a confession of co-accused and since there is no independent evidence against accused No.35-Rafiyuddin Kapadiya, the confessional statement of co-accused is of no consequence.

16.17.11. The Court is of the view that over and above the confessional statement of Imran Shaikh (accused No.2), there are other evidences like, the deposition of PW No.1105 Idrish Gulabshah Fakir Divan Exh.7923 who has deposed that accused No.35-Rafiyuddin Kapadiya had participated in the terror training camp and has also identified accused No.35-Rafiyuddin Kapadiya in the Court and therefore, this is a substantive evidence of participation in the camp. Moreover, the point out panchnama at Exh.6443 is also an evidence in view of the fact that the same has been drawn under section 27 of the Indian Evidence Act. The Court has, in detail, dealt with the reasons as to why this panchnama is required to be treated as substantive evidence in a separate sub-

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chapter of "Panchnamas under Section 27 of Indian Evidence Act" in the chapter of "issue". In view of the aforesaid two substantive evidences, the evidence of confessional statement of co-accused accused No.2-Imran Shaikh, if now perused as evidence, then Exh.8619, the accused has named accused No.35-Rafiyuddin Kapadiya as one of the individuals from Baroda who had participated in the camp.

16.17.12. One more evidence that the Court may take into consideration is the evidence of PW No.1115 Mohammad Umar Usman Mansuri Exh.8002, who has deposed to have facilitated a call between accused No.35- Rafiyuddin Kapadiya and accused No.37-Kayamuddin Kapadiya.

16.17.13. Learned Additional Advocate General for the State has submitted that accused No.35-Rafiyuddin Kapadiya is the real brother of accused No.37-Kayamuddin Kapadiya. Accused No.35-Rafiyuddin Kapadiya is involved by accused No.2-Imran Shaikh in his confessional statement as a person who attended Halol camp alongwith many other accused including accused No.37-Kayamuddin Kapadiya his real brother as well as one another accused No.3-Iqbal Shaikh from Vadodara.

16.17.14. It is submitted that law of conspiracy is that, apart from it being a distinct offence, all the conspirators are liable for the act of each other's crimes which had been committed to achieve ultimate object of conspiracy. It is not necessary to prove and establish that all the accused came together and actually agreed to commit offence. If a conspiracy had already formed and other person joins it afterwards, then person joined subsequently is also liable for all the acts committed by other conspirators. Moreover, Section 10 of Evidence Act provides special rule of evidence followed in the case of conspiracy, if conditions of Section 10 of evidence act are fulfilled. If we look to the evidence of this

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case, the conditions of Section 10 of Evidence Act are fulfilled. Therefore, what was said or done by the member of conspiracy in the present case by the accused in reference to their intention would be evidenced against other co-conspirator i.e. co-accused of the case…...

on the point of application of Section 10 of Evidence Act, para 4 for A-18.

16.17.15. It is submitted that on the issue of accused No.35-Rafiyuddin Kapadiya being made to take oath, prosecution would submit that on bare reading of the provisions of Section 164 of Cr.P.C together with Section 281 of Cr.P.C, when the recording Magistrate is Metropolitan Magistrate, there is no legal prohibition for not administering oath to confessor. Further submissions are made for accused No.6-Mohammad Aarif. After giving this statement of confession, accused No.35-Rafiyuddin Kapadiya gave statement of retraction on 17.06.2009 through Exh.9351, which was sent by accused No.35-Rafiyuddin Kapadiya from jail, which is in Gujarati. The relevant part of his statement reveals that he was brought to Ahmedabad Crime Branch on 12th August 2008 and he was kept confined illegally for 18 days and was tortured by P.S.I J M. Bharvad. Thereafter, he was released and repeatedly called by Crime branch police and lastly called on 13.11.2008 and was not permitted to go back thereafter. He has stated that he was falsely involved in serial bomb blast case of Ahmedabad and he had nothing to do with this case nor he knew anything about it.

16.17.16. The accused further stated that during the course of police remand, he was mentally and physically broken down and he was told to give statement before Metropolitan Magistrate and his mental condition

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was broken down to an extend that he could not say no to it. Therefore, he made an application before him and also gave his statement which he was withdrawing. Further, presently his mental condition was good and therefore, he was giving this application. Even now his physical condition was not good and he detached himself from the signatures made by him on blank papers during the course of remand as he was made to put his signatures on it. He further stated that, he had no concerned with Ahmedabad bomb blast and Surat bomb plantation case and it is his request that no papers bearing his signature be accepted and lastly, he has stated that Metropolitan Magistrate would give sufficient attention to his request. After completion of this statement, accused No.35-Rafiyuddin Kapadiya has put his signature. This statement of retraction of accused No.35-Rafiyuddin Kapadiya is considered by Magistrate and the prayer made by accused No.35-Rafiyuddin Kapadiya is rejected. It is submitted that the only relevant part of the order is that learned Metropolitan Magistrate had observed that accused No.35-Rafiyuddin Kapadiya was produced before him along with his Advocate on different production and on every such time, accused No.35-Rafiyuddin Kapadiya was asked about any physical torture harassment etc, to which he had not complained and the same was observed in the contemporaneous record, which also bore his signatures. The Metropolitan Magistrate had also observed about different Court sitting being held in Sabarmati Central Jail and recording Magistrate had also occasioned to meet different accused, but no such complaint was made by accused No.35-Rafiyuddin Kapadiya. Even inquiry was made about any such complaint against jail authority, however, it appears that no such complaint has been made by accused No.35-Rafiyuddin Kapadiya nor even during video conference, appearance etc. It is submitted that

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regardless of the outcome of statement of retraction of accused No.35-Rafiyuddin Kapadiya, which had legal consequences, but observation made by Metropolitan Magistrate which goes to the root of the matter about physical torture made by particular Police Officer, after almost more than four months of the confessional statement, would certainly take away the credibility of statement of retraction on the ground of physical torture being caused to him and most importantly accused No.35-Rafiyuddin Kapadiya is not denying version made by him in his confessional statement. In statement of retraction, he only says that he is withdrawing his confessional statement.

16.17.17. It is submitted that the torture made by PSI J M. Bharvad is not relating to compelling him to give confessional statement and he only blames his weak and failing mental and physical condition which made him to give confessional statement at Exh.8631. The allegation made by accused No.35-Rafiyuddin Kapadiya in his statement of retraction about he being illegally confined by Crime Branch Police from 12th August 2008 for 18 days, is also a got-up version, as till his arrest on 13.11.2008, accused No.35-Rafiyuddin Kapadiya has not whispered to anyone in any manner about he being kept under illegal confinement from 12th August 2008 for 18 days and released thereafter, as well as he being physically tortured during the said period. It is not only that, on arrest of accused No.35-Rafiyuddin Kapadiya on 13.08.2008, he did not complaint about his illegal confinement and physical torture to anyone, but even after his arrest till the date of statement of retraction which is almost seven months, he did not complaint about it to the concerned Metropolitan Magistrate Court on his various production etc. Hence, his allegation about he being in illegal confinement-detention and physical torture is a got-up version and that

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there is no material either on record or otherwise that what use police did out of such illegal confinement.

16.17.18. In view of above, statement of retraction is required to be discarded.

16.17.19. The Court has considered submissions of the parties. In the opinion of the Court, the prosecution has examined PW-1115/Exh. 8002 named Mohd. Umar Mansoori from Vadodara, who knew accused No.37-Kayamuddin Kapadiya, accused No.7-Usman Agarbattiwala, accused No.2-Imran Shaikh as also accused No.35-Rafiyuddin Kapadiya, since childhood. This witness has deposed that he was interrogated by Crime Branch Police on 07.12.2008. He has also stated that Kayamuddin having absconded and during that time accused No.37-Kayamuddin Kapadiya called witness on phone from Vapi and told him that he wanted to talk with his family and he would again call at 8 o'clock in night. Accused No.37-Kayamuddin Kapadiya called at the given time and had talked with his brother accused No.35-Rafiyuddin Kapadiya Rafiyuddin. Witness also deposed that on the other day accused No.37-Kayamuddin Kapadiya called again and asked for telephone number of Dilawar Gheevala, which he has given. This witness has also given his statement under Section 164 of Cr.P.C, which is produced at Exh.8003. The witness was cross-examined about accused No.37-Kayamuddin Kapadiya's call and talked with accused No.35-Rafiyuddin Kapadiya and has stated about distance between the house of witness and the house of accused No.35-Rafiyuddin Kapadiya is 300 feet and he denies that he had not arranged telephonic call between accused No.37-Kayamuddin Kapadiya and accused No.35-Rafiyuddin Kapadiya.

16.17.20. The Court finds that so far as Halol camp is concerned, one

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very important witness who is Munjawar of Khundpir Dargah, where some of the accused persons had stayed was examined by prosecution at Exh.7923 who has fully supported the case of prosecution. This witness has identified accused No.35-Rafiyuddin Kapadiya, when he was taken to him in the month of November and also during the course of deposition he has identified accused No.35-Rafiyuddin Kapadiya.

16.17.21. The Court finds that accused No.35-Rafiyuddin Kapadiya has also pointed out this place of Halol camp through panchnama dated 17.11.2008 at Exh.6443 and the said panchnama is proved through panch witness at Exh.6443 and Investigating Officer at Exh.7626. Accused No.35-Rafiyuddin Kapadiya is arrested on 13.11.2008. Accused No.35-Rafiyuddin Kapadiya gave application Exh.8629 on 19.01.2009 to Metropolitan Magistrate, Ahmedabad while in judicial custody, stating that he intends to give his statement and confessed to the facts known to him about the incident. He also stated that he has given this application without anyone's duress. He also stated that he should be heard on it. After stating this, he puts his signature and date. Thereafter, on 20.01.2009, through Exh.8360, the Court of Chief Metropolitan Ahmedabad, given application Exh.8629 to Metropolitan Magistrate Court No.11 to record the statement under Section 164 of Cr.P.C. As per the record submitted through Exh.8631, it clearly appears and establish that on 29.01.2009 accused No.35-Rafiyuddin Kapadiya was produced before Metropolitan Magistrate Court No.11 from Sabarmati Central jail. Upon his production, Metropolitan Magistrate Court No.11 observed and complied with safeguards for taking statements under Section 164 of Cr.P.C as learned Judge explained to accused No.35-Rafiyuddin Kapadiya that there is no compulsion for him to make any confession and his confession can be used against him. The learned Judge also

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verified that whether accused No.35-Rafiyuddin Kapadiya is making his confession voluntary without anyone's duress, without any promise allurement, to which accused No.35-Rafiyuddin Kapadiya replied in affirmative**.** Learned Magistrate also verified that whether police has promised him for his exoneration and upon verifying about it, learned Magistrate gave him time of reflection. Thereafter, accused No.35-Rafiyuddin Kapadiya was produced before Metropolitan Magistrate Court No.11 from Sabarmati Central Jail on 04.02.2009. On the very day, the learned Magistrate again verifies about intention of accused No.35-Rafiyuddin Kapadiya to give statement, to which he said yes and upon his consent, statement of accused No.35-Rafiyuddin Kapadiya was recorded in open Court, on verifying about no police persons remained in Court except two security guards and accused No.35-Rafiyuddin Kapadiya was again made to know about safeguards as observed by Metropolitan Magistrate Court on 29.01.2009. Thereafter, accused No.35-Rafiyuddin Kapadiya had put his signature alongwith the date.

16.17.22. Further, accused No.35-Rafiyuddin Kapadiya started giving his statement and clearly stated about accused No.37-Kayamuddin Kapadiya being his real young brother. He also stated that all the persons in family believes in 'Sufism' and his brother accused No.37-Kayamuddin Kapadiya believing in 'Ahele-Hadees. He has further clarified that accused No.37-Kayamuddin Kapadiya is not a believer in dargah and he is believer in Dargah. He stated that he became SIMI activist because of his brother accused No.37-Kayamuddin Kapadiya, accused No.7-Usman Agarbattiwala and accused No.-4-Shamsuddin Shaikh, who are SIMI activists. In the year December 2007, accused No.37-Kayamuddin Kapadiya left home without informing anyone in the house and came after 5 to 6 days and conveyed that he had went to

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training camp in Kerala state.

16.17.23. The Court finds that on reaching to camp, accused No.37-Kayamuddin Kapadiya introduced him to others which would include accused No.7-Usman Agarbattiwala, accused No.14-Sajid Mansoori, accused No.3-Iqbal Shaikh, accused No.2-Imran Shaikh from Vadodara and accused No.6-Arif Kagzi, accused No.8-Unus Mansoori, accused No.75-Alam Jeb Afridi, Mujib (now deceased), accused No.78-Tausifkhan @ Atiq, accused No.1-Jahid Shaikh, accused No.16-Abbas Sameja of Bhuj and accused No.22-Imran Ahmed, accused No.21-Mehandihasan @ Vikki and accused No.20-Atikur Rehmaan who were from Rajasthan. Accused No.35-Rafiyuddin Kapadiya also stated that absconder Taukir, accused No.12-Safdar Nagori, accused No.9-Kamruddin S/O Chandmohammad Nagori, accused No.10-Amil Parvaz, accused No.59-Mohammad Ansar @ Siddik, accused No.74-Mohammad Abrar, Afroz Shaikh, accused No.66-Mohammad Safiq were also present at Champaner Dargah. After going back to home, accused No.35-Rafiyuddin Kapadiya stated that he had not informed to his father as accused No.35-Rafiyuddin Kapadiya was confident that his brother accused No.37-Kayamuddin Kapadiya would understand the things and would leave his engagement from such activities. In the month of March, Madhya Pradesh police alongwith Vadodara police, came in search of accused No.37-Kayamuddin Kapadiya knowing that accused No.37-Kayamuddin Kapadiya left the house and he ran away with the aid of accused No.7-Usman Agarbattiwala and accused No.2-Imran Shaikh. Thereafter, accused No.37-Kayamuddin Kapadiya used to call sometimes. Based on it, accused No.35-Rafiyuddin Kapadiya realized that his brother accused No.37-Kayamuddin Kapadiya is in Ahmedabad, but at what place was not known. On completion of statement of

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accused No.35-Rafiyuddin Kapadiya, accused No.35-Rafiyuddin Kapadiya read over the statement and as the same was as per his say, he put his signature as well date as 04.02.2009.

16.17.24. The Court finds that on completion of this statement, recording Metropolitan Magistrate has noted that accused No.35-Rafiyuddin Kapadiya was explained for there being no compulsion on accused No.35-Rafiyuddin Kapadiya to make any confession and if any confession is made, it would be used against him and upon verification, the Magistrate certified that confessional statement is made voluntarily by accused No.35-Rafiyuddin Kapadiya which was reduced in writing by him and also read over to accused No.35-Rafiyuddin Kapadiya as the same was found to be true and as per his say. On completion of this note, recording Magistrate has put his signature and date. It is established that statement of accused No.35-Rafiyuddin Kapadiya is voluntarily given by him and the same also is truthful. As per confessional statement of accused No.35-Rafiyuddin Kapadiya, Halol camp was a SIMI camp and his participation alongwith many other accused named in the statement establishes his involvement in this SIMI camp.

16.17.25. Accused No.35-Rafiyuddin Kapadiya gave his further statement under Section 313 of Cr.P.C on 03.03.2020, which is after almost 14 years to his giving statement of retraction, is completely different, contrary and full of improvements. Hence, accused No.35-Rafiyuddin Kapadiya has also given false explanation which would be an additional link to a chain of circumstances placed by prosecution against him and others. It is submitted that accused No.35-Rafiyuddin Kapadiya had observed silence on his statement of retraction during the course of examination of witnesses and during this period, he had not attempted to place his statement of retraction even at the time of

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recording of his further statement. Accused No.35-Rafiyuddin Kapadiya has not placed his statement of retraction before Court. Unlike to some other accused, more particularly, accused No.2-Imran Shiakh, accused No.21- Mehandihasan @ Vikki and accused No.24-Umar @ Ashok Kalabhai Kabira having placed their statement of retraction (certified copy) only at the time of recording of their further statement.

16.17.26. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya. The Court has therefore, no reason to interfere with the conviction recorded.

16.18. In case of Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori (Ujjain, M.P.) (A-12)

(Accused No.12 in Criminal Confirmation Case No. 2/2022 and Appellant No.8 in Criminal Appeal No. 1710/2022)

16.18.1. In case of accused No.12; Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori, he has been convicted for various offences in Sessions Case No.38/2009 and others, and has been awarded death penalty.

16.18.2. With regard to accused No.12; Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori**,** learned Advocate Mr. Hriday Buch has submitted that evidence of prosecution against him is that of approver; PW No.1141-Aiyaz Razakmiya Saiyed, three witnesses of Halol Terror Camp and Test Identification Parade through these witnesses and evidence of PW No.1073-Mohammadyunus Abdulatif Sumra at Exh.7298; who has performed Test Identification Parade about internet activity from Cybercafe. It is submitted that evidence of Aiyaz is

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not believable, as it cannot be treated to be evidence to undertake serial blast.

16.18.3. Learned Advocate Mr. Hriday Buch has submitted that in general submissions, he has already argued the reasons why evidence of Aiyaz cannot be treated as admissible evidence on account of discrepancies argued by him.

16.18.4. The Court is of the opinion that in so far as accused No.12; Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori is concerned, PW No.1141-Aiyaz Razakmiya Saiyed has deposed regarding activities of SIMI and the object behind it, which is evident in Para-2 and Para-7 of his chief examination. In Para-8, he has specifically mentioned with regard to program held at residence in Dariyapur about which, he was informed by co-accused; Arif Kagzi, where he was introduced to other co-accused including accused No.12;Safdarhussain @ Hussainbhai @ Iqbalbhai Jahiruddin @ Jaharulhasan Nagori. He has deposed that this accused played important role in delivering lectures (hate speeches), referring to violent activities in different countries for imposing Islamic rule and also advocated for Islamic rule in India by resorting to practical 'Jihadi' activities and these activities continued for 2-3 days, wherein propaganda was made with the help of Colour TV, VCD players and Video Cassettes of Suicide bombing, Gorilla attack, bomb explosions carried out through Taliban Al-Qaeda and Hamas. Demonstration was also shown on Video CD about preparing of explosives.

16.18.5. With regard to argument of carrying out explosions, it is pertinent to observe that in Para-13 of his deposition, he has referred to 23rd July, when one of the co-accused had taken him to place and identified the same asking this witness to place the bomb upon being

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instructed. He was also asked to make call on 25th July for further instructions. Even in Para-12 of deposition, he has referred to co-accused, who had conveyed to him about plan to cause bomb explosions and asking him to participate. Therefore, argument of learned Advocate that evidence of Aiyaz for the offense is not believable as he does not refer to causing of bomb explosions, is not accepted. During the meetings, which took place, this witness has definitely pointed out to the present accused to have instigated practical 'Jihadi' activities and therefore, this accused cannot be absolved on the argument that during meeting, there is no reference to causing bomb explosions, as it is a matter of fact that the bomb explosion did take place immediate to such a meeting. It is too much of an argument that at the time of the explosion itself the presence of the accused is necessary at the scene to convict him of such offence.

16.18.6. With regard to identification by three witnesses about participation in Halol Terror Camp, learned Advocate has referred to his arguments in connection with previous accused about non-reliability of three witnesses. However, from evidence of these three witnesses, their presence at the place was natural as they were attending their day-to-day work in the vicinity and the Court does not see any reasons to doubt their credentials or finds no reason from the cross examination to treat these witnesses as planted witnesses which is discussed in detail under the Chapter of "Appreciation of deposition of relevant witnesses".

16.18.7. Learned advocate submitted that the prosecution has relied upon PW No.1073-Mohammadyunus Abdulatif Sumra at Exh.7298; a cybercafe operator to establish the activity of this accused on internet. Learned advocate submitted that this witness has not given any detail about the activity nor has any documentary evidence like ID Proof of

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accused No.12 visiting his cafe. He is also unable to identify accused No.12 to connect him with visit to his cybercafe in the year 2008. Moreover, the register seized from the witnesses also had the name within "Irfan" against the usage of his cybercafe. Therefore, it is contended that this witness in no manner is useful to the prosecution.

16.18.8. In this connection, the Court may find useful to refer to the evidence of the investigating officer PW No.1089-Pravinsinh Gatorsinh Vaghela at Exh.7626 and panch witness PW No.1074-Osman Abdul Siddi at Exh.7300 in whose presence the muddamal hard disc was seized and sent to FSL and the FSL officer PW No.851-Hitesh Pramodukumar Sanghvi at Exh.5985 gave report Exh.5998 in this connection.

16.18.9. Learned advocate has thereafter taken the Court to PW No.1097-Mehtab Ibrahim Shaikh at Exh.7767 on attending the SIMI meeting at Limbayat, Surat with co-accused Hanif. It is argued that the evidence of this witness does not disclose the details or discussion in the meetings and he could not identify this accused.

16.18.10. Learned Advocate has submitted by drawing attention of this court to the judgment rendered by the Ernakulam Court in connection with the conducting of terror camp at Vagamon in Kerala being Exh.9421 and submitted that as the Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is already convicted in the previous trial, the prosecution is estopped from using the same set of evidence as in the present case also as the accused is being tried for participating in the very camp.

16.18.11. In this connection, the Court observes that the trial for the present offence is not identical to that of the trial conducted for participating in the Vagamon camp, but the holding of the Vagamon camp is only one of the circumstances in the entire chain of events

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establishing the larger conspiracy to commit terror attack. Moreover, the court has already found that the evidence laid before this court is not common evidence as was laid before the Vagamon camp, and there are witnesses to the activities attributed to the Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori, even subsequent to the Vagamon camp.

16.18.12. Learned advocate has submitted that the prosecution has also relied upon the Suspect Detection Test (SDS), which the learned advocate submits cannot be treated as evidence at all and is merely an opinion based on certain tests.

16.18.13. Learned advocate has drawn attention of this court to PW No.1041 at Exh.7056 Talib Abdul Maniar and submitted that though the prosecution has examined this witness to connect Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori with the SIMI, this witness has been declared hostile and therefore, the attempt of the prosecution to establish the Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori being General Secretary of SIMI has failed.

16.18.14. In this connection, it would be pertinent to point out that apart from the evidence of the hostile witness Talib, there are other witnesses who have named Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori to be the part of SIMI and these witnesses have deposed with regards to the connection of Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori with SIMI. Therefore, it is sufficient when it is projected to a witness and other accused persons that the Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori represents the SIMI, in that case it is not expected to have any documentary

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evidence to support the case of prosecution, particularly when the organization itself is working as undercover.

16.18.15. Learned advocate for the accused has lastly submitted with regards to the educational qualification acquired by the accused while in jail undergoing the sentence. It is submitted that the accused has done various courses and is presently undertaken PG Diploma in Human Rights and has also received GSD MS certificate and this circumstance be treated as mitigating circumstance while considering the sentence.

16.18.16. Learned Additional Advocate General on behalf of the State, submitted that accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is one of the accused in Kerala-Vagamon Terror Training camp and was arraigned as Accused no.3-Iqbal S/O Kasam Shaikh in Kerala Proceedings. As per the Kerala Session's Court Judgment, Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is convicted U/s 10, 20 and 38 of UAPA and Section 4 of Explosive Substance Act, 1908 and Section 120 B of I.P.C.

16.18.17. It is also submitted that accused No.12-Safdar Hussain @Manjarimam @ Alam @ Jamil S/O Aliimam Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is also involved by Accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam who is from Ranchi, in his confessional statement Exh.9021. So far as, his confessional statement is concerned, prosecution has stated in detail about different facts as revealed and stated by Accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam.

16.18.18. It is further submitted that accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam also disclosed about an organization named Muslim Student Federation other than SIMI. He also elaborated about ban on SIMI and most importantly about Accused No.76- Manjarimam

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@ Alam @ Jamil S/O Aliimam stating about him having met a top SIMI leader named Safdar Nagori i.e. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori, Accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam and has also stated about Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori directing all participants to not reveal their real name and also not to speak much. He has also stated about Vagamon camp being arranged by Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori alongwith Accused no.10- Aamil Parvaz S/O Kaji Saifuddin Shaikh, Accused No.11- Sibli @ Sabit S/O Abdul Karim Muslim and Accused No.60- Saduli @ Hariz S/O Abdul Karim Muslim.

16.18.19. It is stated that accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is also implicated by prosecution in a SIMI material literature which is part of investigation material as well as chargesheet as defence relied on it, and submitted through Exh.9248. This SIMI literature Material Exh.9248, by name involves Accused No.1- Jahid S/O Kutubuddin Shaikh, Accused No.4-Samsuddin S/O Shahabuddin Shaikh, Accused No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, Accused No.8-Yunus S/O Mohammad Mansuri and Accused No.14- as SIMI activist along with many other SIMI activists whose names are revealed through this Literature, and are also accused of this case. Over and above it, there is also an evidentiary material which would demonstrate that Accused No.12-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri and many other accused are members of SIMI. This literature Exh.9248 gives details about activities of SIMI and also gives details about different SIMI activist by their name and by their position in SIMI across India. It further includes activities conducted by SIMI across India, one pertinent

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aspect of this literature at (pg.779549), where details about SIMI activist of Rajasthan Zone is given at Serial No.67, about Savai Mansingh Stadium bomb blast case (1996), Jaipur. Therefore history of SIMI in bombing activities.

16.18.20. It is submitted that PW No.1073/Exh.7298 Mohd. Unus Sumra, running Cyber Cafe at Bhuj involved Accused No.16- Abbas bhai and other 2-3 persons who came with Accused No.16 for surfing at his Cyber Café, and this witness has also identified Accused No.16 in court. This witness identified Accused No.1 in TIP Exh-3068 and Accused No.12 in TIP Exh-3065 but was unable to identify in Court due to lapse of time and change in body and facial appearance. As deposed by witness Mohd. Unus Sumra, that Accused No.16-Abbas S/O Umar Sameja was coming with 2-3 persons and considering the evidence of witness in totality, these 2 other persons are Accused No.1- Jahid S/O Kutubuddin Shaikh and Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori. This witness was running Cybercafé at Bhuj and the accused who was identified by this witness i.e. Accused No.16- Abbas S/O Umar Sameja was a local person i.e. from Bhuj but other 2 accused namely Accused No.1- Jahid S/O Kutubuddin Shaikh is from Ahmedabad and Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is from Madhya Pradesh. Therefore, it was submitted that at the Cyber Cafe at Bhuj, three different accused, i.e. a local person Accused No.16- Abbas S/O Umar Sameja and the other two from Ahmedabad and Madhya Pradesh were found surfing together at Bhuj.

16.18.21. In the opinion of the Court, it appears that Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori attended Halol Terror Training camp along with many other co-

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conspirators, for which there is evidentiary materials in the nature of certain witnesses namely; (1) Ramkabhai Kesariya, (2) Pravinbhai Hamirbhai Katariya and (3) Ambalal Vechatbhai Bariya and few other witnesses of Halol who had occasioned to see some of the activities conducted at Halol Terror Training camp as they being a local witness who could have seen that, and are therefore, natural witnesses to Halol camp. When Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was subjected to TIP before these three witnesses, accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was successfully identified by all the three witnesses before Executive Magistrate and the Test Identification Report of Executive Magistrate for such identification is also proved by prosecution by examining Executive Magistrate who had testified that at the time of drawing identification report, accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was mixed with many dummy persons and when these witnesses were called upon to identify Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori amongst other dummy persons, these witnesses have successfully identified Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori by holding his hand and drawing him out from the line of different persons. Upon doing that, Executive Magistrate confirmed the name of the person who was drawn out by all the three witnesses by holding his hand and the person on asking about his name by Executive Magistrate answered that he is Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori. All these three witnesses have also identified Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori while deposing in Court. Therefore, over and above there being

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successful TIP, there is also successful dock identification.

16.18.22. This Court also finds that approver Aiyaz also involves Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori at the conspiratorial meeting held at the house of Accused No.4-Samsuddin S/O Shahabuddin Shaikh's Nana's house as a prominent person who gave takrir. This witness has also involved accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori as activist of SIMI group led by him, arrested from Madhya Pradesh, Indore which had started preparing for doing practical activities. There is a reference in the investigation where a Moduleof SIMI is named as Nagori Group. This witness Aiyaz also identified Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori, during his deposition in the Court.

16.18.23. It also appears that one another witness Mehtab Shaikh also involved Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori in one another SIMI meeting which took place at Limbayat, Surat in the year 2008. This meeting was also attended by other accused as like Accused No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, Accused No.4-Samsuddin S/O Shahabuddin Shaikh and Accused No.8-Yunus S/O Mohammad Mansuri. This witness also identified Accused No.4-Samsuddin S/O Shahabuddin Shaikh in court during his deposition. Witness also assertively deposed about Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori being connected with SIMI. Considering the evidence of this witness, it appears that accused persons including Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori attended SIMI meeting though SIMI is a banned terrorist organization.

16.18.24. This Court finds that accused No.12-Safdar Hussain @

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Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is involved by accused No.2-Imran S/O Ibrahim Shaikh in his confessional statement. From the statement of accused No.2-Imran S/O Ibrahim Shaikh, accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is found to be one of the leaders of the camp and active activist of banned organization name SIMI. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori himself made takrir and exhorted that, they would be doing practical work, executing jihad, as well as targetting mass killing and had shown his pleasure whenever explosion had taken place. Accused No.2-Imran S/O Ibrahim Shaikh also had stated about Accused No.2-Imran S/O Ibrahim Shaikh, Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori and Accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri having stayed in a guest house. It would be pertinent here to state that, during the course of investigation, police found one guest house named Shri Hari tourist and on collecting relevant registers and other document related to guest house, occupancy of the relevant period i.e. the period when Kerala Vagamon Camp took place. One pertinent entry was found which was forensically investigated and it has been established that person named by Accused No.2-Imran S/O Ibrahim Shaikh in his statement, i.e. Accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri did stay at this guest house named Shri Hari tourist in a dummy name Salim Shaikh and address Kota, Rajasthan. The handwriting of Accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri was subjected to forensic investigation, and the hand writing expert had given opinion that the entry which is disputed as referred here in above, is in the hand writing of Accused No.14-

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Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri. Accused No.2-Imran S/O Ibrahim Shaikh also had stated about Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori gave dummy names to the person-conspirator present at Vagamon camp. The name of Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was Iqbal.

16.18.25. This Court finds that Accused No.2-Imran S/O Ibrahim Shaikh also involved Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori in one another conspiratorial terror camp where Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori decided that place of camp should be Gujarat, Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori inspected the place and chose it which is Halol, Pavagadh. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori also chose the place of Khundpir Dargah for the purpose of place of stay for the participants of Halol camp and camp was also arranged accordingly. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori nominated accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri, as manager of this camp and accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori as well as accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri decided as to who should be the participants of this camp and all logistics were managed by Accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori also decided about participants belonging from Madhya Pradesh. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan

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Nagori also stated about dummy names being given to all participants at Halol camp, name of Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori remained Iqbal. Accused No.2 also stated that Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori exhorted about taking of revenge of loss suffered by Muslims in the year 2002 in riots. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori also exhorted about training must be taken keeping in mind that, everything done is only because of taking revenge, he also declared that they should keep in mind that Mosque, which were deserted, are now flourishing. Accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori also stated about ensuring that identity of participants remained secret even amongst and within the Group. Accused No.2 also states about accused No.12- Safdar Hussain and accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla came to him of whom accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla came from Karnataka, and they disclosed about accused No.57- Dr. Asadullah H.A. @ Aslam @ Asad S/O Abubakr H. and accused No.19- Rajiuddin Nasir @ Riyajuddin Nasir @ Alaur Rehmaan @ Abujaj @ Mohammad Daud @ Abdul Razak @ Rashidkhan Mohammad Nasiruddin @ Maulana Nasiruddin, are apprehended and they are dismayed for that, as both were intending to commit blast. Accused No.2-Imran S/O Ibrahim Shaikh also states that, when accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori and accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla were at his place Shibily also came and they also stayed for some days and then they left for Rajasthan and Madhya Pradesh. Accused No.12-Safdar Nagori, accused No.14-Mohammad Sajid Mansuri, accused No.13- Hafiz Hussain @

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Adnan S/O Tajuddin Mulla and accused No.7-Mohammad Usman Agarbattiwala also went to Vapi. According to accused No.2-Imran S/O Ibrahim Shaikh on 27th March, accused No.12-Safdar Hussain Nagori and some 12 persons got arrested.

16.18.26. It also appears that accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) also gave his confessional statement Exh.8623 and he also involved accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori as a conspirator who made takrir- speeches of prominence most importantly, establishing Islamic rule and executing mass killing.

16.18.27. It is pertinent to note that accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya had also given his confessional statement which is Exh.8631. Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya admitted that he attended Halol Terror Training Camp and he described this camp as SIMI camp, having attended by lot many persons and from different regions. Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya also involves accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori as one of the attendees of Halol camp along with many other conspirators who are also accused in the present case. Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya also pointed out place of Halol camp through panchnama dated 17.11.2008. As the statement of A-35 (Rafiuddin Kapadiya), is on affidavit, it may not be treated as evidence, however, the Court has referred to the same as such statement under Section 164 Cr.P.C. has now been exhibited.

16.18.28. In addition to above referred different conspiratorial circumstances, it appears that there is one more link of circumstance in the nature of forensic evidence as accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was subjected to

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Suspect Detection Test (SDS). And the opinion of it, founds accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori involved and connected with different bomb blast as like Banglore-Samjota Railway bomb blast and his association with SIMI along with other accused persons and his association with one another organization named Huji.

16.18.29. The court has perused the report of Suspect Detection Test (SDS) at Exh.5091, wherein the expert has opined that accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was subjected to Suspect Detection System, and his reaction to several questions were observed on the basis of which the opinion was given by the expert that: (1) Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was involved with SIMI and SIMI organization; (2) He was involved with HUJI organization; (3) He is acquainted with the people involved in causing bomb blasts in future; (4) He is involved in the Bangalore blast and Samjhauta Railway bomb blast; (5) With regards to causing of bomb blast after a periodic interval, the reaction of Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was on the lower side.

16.18.30. Thus, considering the reaction given, the expert has formulated an opinion that accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is involved in the aforesaid instances. Of course the expert opinion as above for accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori is only an opinion, however, such an opinion formulated on the basis of scientific examination can certainly be considered as an evidence, if not to base the conviction, but at least to corroborate the other evidences, where the witnesses have deposed before the court that

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accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori was associated with SIMI and other terror organizations and therefore, this circumstance strengthens the case of the prosecution of accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori having played an important role in mobilising the locals of Gujarat though himself coming from Madhya Pradesh to commit the offence.

16.18.31. In view of the aforesaid discussion, the court finds that sufficient evidence has been led to establish the role of Accused No.12- Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori beyond reasonable doubt in convicting him of the charges against him, the conviction therefore is hereby confirmed.

16.19. In case of Hafiz Hussain @ Adnan s/o Tajuddin Mulla (Karnataka) (A-13)

(Accused No.13 in Criminal Confirmation Case No. 2/2022 and Appellant No.9 in Criminal Appeal No. 1710/2022):

16.19.1. In case of Accused No.13- Hafiz Hussain @ Adnan s/o Tajuddin Mulla, he has been convicted for various offences in Sessions Case No.38/2009 and others, and has been awarded death penalty.

16.19.2. With regard to this accused No.13-Hafizhussain @ Adnan @ Tamim Tajuddin, learned advocate has submitted that the accused was arrested while in Indore Jail by way of Transfer warrant on 28-03-2008. However, as on that day, the Investigating Officer did not have any material to show his involvement in this offence.

16.19.3. The role, as per the prosecution, is participation in Vagamon Camp and Halol Camp and the organiser of these camps.

16.19.4. Learned advocate submits that the nature of evidence against

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accused No.13- Hafizhussain is the confessional statements, particularly of Imran, Ibrahimbhai Shaikh-Accused No.2, Exh.8619. However, there is perversity in the impugned Judgment, when reliance is placed on Exh.8631 confession of Co-accused Rafiuddin, however, this co-accused does not even name accused No.13-Hafizhussain. Similarly, the statement of the other co-accused Exh.8623-Mehandi Hasan, Exh.8627-Umarbhai @ Ashok Kalabhai, and Exh.9021-Manzar Iman, all do not name this accused, if their confessions are to be believed, then confession of the accused would have contained the name and role of this accused also the fact that no role is appearing in this confessional statement.

16.19.5. With respect to Exh.8619 of co-accused; Imran, Ibrahimbhai Shaikh, the confessional statement refers to only one Adnan. Thereafter, the prosecution has failed to bring on the record any evidence to establish that Adnan is Hafiz or Adnan is alias name of Hafiz. Therefore, the identity of Hafiz as Adnan or Vice-Versa is not clearly established.

16.19.6. He has also submitted confession of Imran Ibrahimbhai Shaikh; Exh.8619 is not voluntary in nature. He refers to date 07-11-2008 on which Imran expressed his desire to confess and this date coincide with period to confess of Mahendi Hasan and accused Umarbhai @ Ashok Kalabhai, Exh. 8627. Learned advocate submitted that therefore, by a common Javak No. (Outward No.) on same day accused persons were brought before the Magistrate for recording of the confessional statement.

16.19.7. The submission is that the enmass declaration by various accused to get their confessional statement recorded is a matter of suspicion which the prosecution must explain. Furthermore, these accused have retracted their statements, therefore it no more remains a

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evidence to support conviction.

16.19.8. Even if statement of Imran confessing the guilt is considered, still he does not refer to any bomb blast or explosive in Gujarat during these camps and if the role of this accused is only restricted to attending camps, still there is no nexus with causing Bomb Blast.

16.19.9. With great emphasis, it is argued that the confessional statement of co-accused cannot be treated as a substantive evidence, as it is not an evidence adduced in the Court during the course of the trial, only manner it can be used is under Section 30 of the Evidence Act to lend support or assurance to the cogent and proved evidence on the record and that too against the maker. In any case, such evidence can not be treated as sole evidence to convict after receiving corroboration from other evidence.

16.19.10. The Court is of the opinion that though the outward communication for recording the confessional statement of co-accused is common, even the date of forwarding the accused to the Magistrate is the same, however, the Magistrate has recorded the statement on different dates and have given different time period for reflection and then recording the statement on various dates and not on the same dates and during this period the accused is in Judicial Custody and not in police . Moreover, the sending of communication is a mere administrative exercise by keeping in mind application of Section 268 of Cr.P.C. at the relevant point of time. Moreover, the argument of not treating the confessional statement as evidence is dealt with in detail in the sub-chapter “Confessional Statement and statement under Section 164 Cr.P.C.” and “Confessional statement of co-accused” in Chapter-“Issues”.

16.19.11. Learned Advocate thereafter argued that PW No.1105-

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Idrish Gulabsha Fakir Diwan, who was examined vide Exh.7923 is the Munjavar at Halol, who is cited as a witness to those who participated at Halol Terror Camp. This witness does not name present accused nor any Test Identification Parade is carried or nor any dock identification. There is no identification established by connecting the accused-Hafiz with Halol.

16.19.12. Learned Advocate has also doubted the credibility of this witness as he has identified Mohd. Habib Shaikh as Imran and accused Mohd. Habib Shaikh being accused No.68 has been acquitted. The role of accused No.68 was to the extent of being present at Vagamon Camp.

16.19.13. Learned Advocate has then assailed evidence in the nature of pointing out panchnama under which this accused-Hafiz was taken to Vagamon. Though there was no basis with the Investigating Officer to do so. Moreover, the panchnama is argued to be in the nature of confession and that too in presence of the Investigating Officer and hence, no evidentiary value can be attached to such evidence panchnama.

16.19.14. It is argued that the panchnama was drawn on 19-11-2008, whereas the Vagamon Camp FIR was registered at Ernakulam Police Station in June 2008, therefore, the panchnama without the same leading to any discovery or recovery has to be treated as a statement barred under Sections 25 and 26 of the Indian Evidence Act.

16.19.15. It is pertinent to observe that the terror camp period of Vagamon was between 10-12-2007 to 12-12-2007 and the present accused-Hafiz was accused No.2 in the trial before Ernakulam Court, where this accused Hafiz is convicted.

16.19.16. Learned advocate has submitted that PW No.1148-Joseph Joyson vide Exh.8253 is a panch witness of panchnama at Exh.8254. It

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is only pointing out a place, where the camp was held with various activities, but there is no investigation to connect the activity at the camp with present offence.

16.19.17. The Court find Exh.8253 is the deposition, which deposes about executing of the panchnama with the co-panch. He has deposed that Hafiz wanted to point out a place where he had "created a problem" the accused himself stated that some places are to be seen and took the police party to 2-3 places identifying the place where accused took training.

16.19.18. In cross, he has denied that the activity of drawing panchnama never took place and that he had simplicitor put his signature.

16.19.19. Learned advocate submitted that PW No.998-Anilkumar Damodran Pottananiyil, who was examined vide Exh.6950 has deposed about the camp at Vagamon and a photo identification of this accused is done vide Exh.8251, the panchnama drawn in this regard. The police statement of this accused is recorded on 19.11.2008, if he is treated to be independent witness, no Test Identification Parade is organized at his behest. This is a lacuna in the investigation that creates doubt. Moreover, the place identified in the panchnama is a regular tourism place with resort, which cannot be identified as a terror camp.

16.19.20. Therefore, with the nature of identification by a panchnama of photo identification and that too vide Exh.8251 dated 13.01.2010 after 14 months of the panchnama first drawn at Vagamon and during that period no steps were taken to protect the identity of this accused, the identity of this accused is not established by the prosecution.

16.19.21. Learned advocate thereafter, dealing with the point out panchnama of co-accused Rafiuddin and his confessional statement at

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Exh.8631, he does not name this accused-Hafiz being present at Halol Camp. Had Hafiz been present, his reference would have been made in Exh. 8631. Similarly, in point out panchnama at Exh,6443, there is no presence of Hafiz or his alias Adnan. Learned advocate has lastly claimed that case of Hafiz is similar to Manzar Imam-accused No.76 and he has been acquitted and therefore, this accused also needs to be acquitted.

16.19.22. Learned Advocate has cursorily also argued on the nature of investigation by submitting that had the investigation been made properly on the mobile phones then, it would have established innocence of the appellant. It is submitted that in today's life, mobile phones are integral part of the life. The prosecution has not brought anything on record to submit that the participants of the camps were prohibited from bringing mobile phones. The proper investigation on mobile location could have established the presence of appellant at the camps.

16.19.23. Learned Advocate has then submitted that the submissions made regarding the S.D.S. test for Hafizhussain be treated as argument for this appellant as well.

16.19.24. Learned Advocate has lastly submitted that this appellant has been acquitted in the trial conducted in Ernakulam in connection with the Vagamon camp. It is submitted that accused no.65; Mohammad Yunus @ Umar @ Khalid S/O Mohammad Shabir and accused no.68 Mohammad Habib @ Habib Falahi @ Mohammad Taiyab s/o Abuljais Shaikh, both were the accused in present trial as well as Ernakulam case and both are acquitted in Ernakulam trial as well as the present trial. Therefore, the appellant should also be treated at par and be acquitted.

16.19.25. Learned Advocate has thereafter referred to relevant part of the judgment to submit that the conviction recorded at Page-6540 of the

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judgment remains unsubstantiated.

16.19.26. Learned AAG on behalf of the State has submitted that Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla is implicated by prosecution in a SIMI material literature which is part of investigation material as well as chargesheet. As defence relied on it, and submitted through Exh.9248. This SIMI literature Material Exh.9248, involves many other SIMI activists whose names are reveal through this Literature and are also accused of this case. Over and above it, there is also an evidentiary material which would demonstrate that Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla and many other accused are members of SIMI.

16.19.27. It is also submitted that Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla also pointed out place of Vagamon Camp through pointing out panchnama dated 19.11.2008, which is proved through panch witness as well as Investigating Officer.

16.19.28. The Court finds that Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla is involved by Accused No. 2-Imran S/O Ibrahim Shaikh in his confessional statement as one of the participants of Vagamon Terror Training Camp. Accused No.2-Imran S/O Ibrahim Shaikh had stated that Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla along with other accused persons including him were present and have participated in this camp. Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla have actively participated in this camp as he gave taqrir along with many other leaders. Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla also instructed that no one should talk about they having attended this camp and no one should also disclose the same to any other. He further explained it by saying that if someone asks about us then we should say that we have come for

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adventure for our organization. Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla was also one of the organizers of this camp and his dummy name was Tamim. Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla is described by Accused No.2-Imran S/O Ibrahim Shaikh in his statement, as close associate of Accused No.12-Safdar Nagori, who came together at his place and thereafter Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla with Accused No.12-Safdar Nagori, Accused No. 14- Sajid Mansuri and Accused No.7-Usman Agarbattiwala went to Vapi. And is also one of the accused in Kerala Session's case proceedings which relates to Vagamon camp in which he is arraigned as Accused No.2. His name as recorded in Kerala Session's case proceedings is Hafiz Husain @ Adnan@ Adnan @ Jaid, S/o Tajuddin Gausamohidin and is convicted for the offences punishable U/s 10, 20 and 38 of UAPA read with 120 B of I.P.C and Section 4 of Explosive Substance Act, 1908.

16.19.29. An important evidence against Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla, which is substantive in nature is the point out Panchnama Exh.8254 drawn on 1911-2008 in the presence of two panch witnesses- Sony Thomas and Joseph Joyson at Vagmon. In presence of the panch witnesses, the accused has made a voluntary disclosure to identify the location of the camp at Vagamon and accordingly, led the Investigating Officer from T-point near Mukhiyuddin Jamaat Bandar to the place where the camp was conducted. Following the directions were given by Accused No.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla, the team was led to an isolated place approximately 1 k.m. away from the motorable road, which was identified as a Mazar. Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla also identified the place, where firing was

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practiced and the training for rock climbing took place from there on. Again through the vehicle, they went to another site, which was an under construction house, where in the nearby place, tents were erected for the purpose of staying while conducting of the terror camp. Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla took them yet to another site, which was half a kilometer away of road to identify the location, where bike training was given. This area was also identified by a Mazar nearby.

16.19.30. The accused thereafter took the police party one kilometer ahead in the vehicle and after stopping the vehicle, one kilometer off-road, the party was taken to a grassland containing a lake filled with water, where training for swimming was given. Yet another location was taken to by Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla, which was approximately 100 meters away from one Summer Sand Resort and identified a location of two tall pine trees, between which ropes were tied for practice of tight rope crossing. The Panchnama was proved by the evidence of Joseph P.N., PW No.1148 at Exhibit 8253. Perusal of Exh. 8253 would indicate that the accused being from Kerala understood Malayalam and English and therefore, with the help of translator (Exh.8249- application), the evidence of this witness was recorded. The witness has deposed the manner, in which he was summoned at Tea point in Vagamon, from where Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla, in front of him, made a disclosure of showing certain places connected with an offence and along with him, another panch witness was also present and accordingly, the accused had led the police party to various places. The witness has identified his own signature as well as signature of first panch (Sunny) and accordingly was exhibited at Exh.8254. This evidence is also

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supported by the evidence of the Investigating Officer PW No.1163 at Exh.8638.

16.19.31. The Court may refer to the deposition of the investigating officer, particularly in Para No.7, where there is a complete narration of the manner, in which the Panchnama was executed, beginning from summoning of the panch witnesses, and the disclosure made by Accused No.13- Hafiz Hussain @ Adnan s/o Tajuddin Mulla, identified the location voluntarily, where the camp had taken place and thereafter, the accused taking to six different places in the jungles of Vagamon, where different training has been imparted thereby confirming to exhibiting of Exh.8254- the point out Panchnama, executed on 19.11.2008 at the behest of this accused by Investigating Officer M.J. Chavda, Dy.S.P.

16.19.32. The court has no hesitation in holding that the pointing out Panchnama satisfies the requirement of Section 27, and therefore be admissible as an evidence against Accused No.13- Hafiz Hussain @ Adnan s/o Tajuddin Mulla.

16.19.33. The Court finds that in addition to above referred conspiratorial circumstances, there is one more link of circumstance in the nature of forensic evidence as A-13 was subjected to Suspect Detection Test (SDS) i.e. Exh.5901 3 proved through PW-848/5894 and the opinion of it founds A-13 involved and connected with different bomb blast and his association with SIMI along with other accused persons.

16.19.34. The Court has perused Exh.5901, which is the opinion of an expert on the Suspect Detection System Test, to which Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla was subjected to. The opinion is given by the expert on the basis of the reaction given by the Accused no.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla to several

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questions put to him and the reaction was recorded to conclude that the accused person is involved in the offence. The question put to him to which a positive reaction has been recorded that he is involved in SIMI, he is an operative of SIMI. He is aware of the people involved in causing the bomb blast and lastly the cities, in which the bomb blast had occurred in future again in those very cities again bomb blast would take place. Therefore, based on the aforesaid evidence is on record about the special knowledge of this accused with regards to his being connected with SIMI activities and the bomb blasts.

16.19.35. The holding of the terror camp at the Vagamon being an important circumstance to the initiation of the conspiracy for the objective set by the accused persons jointly. The participation of the Accused No.13- Hafiz Hussain @ Adnan S/O Tajuddin Mulla in this camp would indicate his participation in the conspiracy. He has been identified to be one of the organizers of the camp, on the basis of the confessional statement of Accused No.2- Imran S/O Ibrahim Shaikh. In view of the application of Section 10 of the Evidence Act as well as the Section 30 of the Indian Evidence Act, discussed elsewhere, the court is of the view that the conviction recorded by the Special Judge does not need any interference.

16.20. In case of Abbas S/O Umar Sameja (Bhuj) (A-16)

(Accused No.16 in Criminal Confirmation Case No. 2/2022 and Appellant No.12 in Criminal Appeal No. 1710/2022):

16.20.1. In case of accused No.16-Abbas S/O Umar Sameja, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.20.2. Learned advocate for the appellant; Dr. Yug Mohit Chaudhry

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has made submissions for accused No.16-Abbas S/O Umar Sameja. Insofar as accused No.16-Abbas S/O Umar Sameja is concerned, upon perusal of record, it appears that he came to be arrested on 04.09.2008 in connection with Shahibaug Police Station C.R. No.236 of 2008 as is reflected in the arrest memo at Exh.9206. The total duration of the police custody undergone by accused No.16-Abbas S/O Umar Sameja is a period of 88 days, spanning over periods from 04.09.2008 to 17.11.2008, from 01.12.2008 to 20.12.2008, and from 09.02.2009 to 11.02.2009. It is further noted that as on date, the accused has undergone incarceration for a period of more than 17 ½ years.

16.20.3. The trial Court while recording the conviction of accused No.16-Abbas S/O Umar Sameja has considered the various circumstances which include: (i) the participation of accused No.16-Abbas S/O Umar Sameja in the training camp held from 13.01.2008 to 15.01.2008 held at Halol-Pavagadh in Gujarat, (ii) the use of cybercafe along with other co-accused persons and (iii) the seizure of a paper from the house of accused No.16-Abbas S/O Umar Sameja which bore the mobile number, on the lower part of which, “mobile number of SIMI, Pakistan” was written.

16.20.4. According to learned Advocate for the accused, only for attending Halol camp, he has been awarded death penalty and the evidence for his attending Halol camp is not substantial evidence. Only confessional statements of co-accused have been relied upon, but there is no independent evidence. It is submitted that prosecution has to establish his presence by sufficient independent evidence and then only can rely upon confessional statement of co-accused. The attempt of prosecution is to convict accused solely on the basis of confessional statement of co-accused.

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16.20.5. It is submitted that merely presence is not sufficient, there must be something more than the presence, active participation and agreement to commit the offence is also required to be established.

16.20.6. Learned Advocate for the accused further submitted that even if his presence is established, still there is no evidence of any discussion or agreement on planting of bombs in Ahmedabad and Surat.

16.20.7. However, the prosecution has based its case against accused No.16- Abbas S/O Umar Sameja on the evidence of eye-witness to the Halol terror camp. PW No.981-Pravinbhai Hamirbhai Katariya vide Exh.6835, is the driver of Jeep, who saw group of persons. His evidence is assailed by defense by submitting that he is merely a chance witness, who has not given description of accused and also not mentioned about specific role to accused. He only had a chance of fleeting glance that too, from some distance. It is contended that the Test Identification Parade is highly doubtful in view of improper procedure adopted in Test Identification Parade.

16.20.8. Perusal of Exh.6835 would indicate that the prosecution witness has deposed the exact reason for his presence. He being a daily driver on the shuttle route had suffered break down (puncture) and therefore, he along with co-prosecution witness describes how he overhead voices. It was a forest area usually uninhabited and there the group of persons were undertaking training activity of the nature, which is unusual and it was in broad day light. He deposes that during his statement, he informed that he will be able to identify those people, if shown. Accordingly, the prosecution witness was summoned with other witnesses to Ahmedabad where he undertook the Test Identification Parade and identified accused No.16-Abbas S/O Umar Sameja in Test Identification Parade held on T.I. dated 12-09-2008 and the identified

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person gave his name as Abbas from Bhuj. The prosecution witness also identified accused No.16- Abbas S/O Umar Sameja in the Court in his deposition on 03-03-2018.

16.20.9. The exercise of dock identification adds to the genuineness of the prosecution witness version as in many rows of accused, he has not identified any accused but has identified accused No.16-Abbas S/O Umar Sameja. The prosecution witness has been cross-examined about his presence as a chance witness. However, from the deposition in cross, he is consistent in explaining the reason for his presence over there and his version is also supported by another witness. The Court sees no reason to doubt his presence at the site. With regard to identification in cross-examination in Para-28, this witness does say that when he gave the statement to the Police for the first time, he did not give description of accused, but before undertaking the Test Identification Parade, he had given description of accused to the Police in a statement form.

16.20.10. Learned advocate for the accused has thereafter tried to give mathematical explanation about the percentage success in accurate identification. However, such a mathematical exercise by taking out percentage cannot be adopted to discount what is deposed on oath.

16.20.11. Thereafter, PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231 is also an eye-witness to the camp activity in Halol-Pavagadh Forest area. Learned advocate submits that evidence of this prosecution witness may not be believed as he has failed to correctly identify accused No.16- Abbas S/O Umar Sameja during his deposition in the Court. In evidence in chief, this prosecution witness has deposed the reason how he was at the place where the camp was held and in broad day-light seen the group of persons. He is accurately able to identify the place, where the camp is located (Valley like area near Helikal Vav) and

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Kamlesh Quarry area. He also describes the activity being undertaken by the group of people. He deposed that they watched the activity for almost half an hour and the activity stopped the moment the witness was spotted. The prosecution witness has deposed in the most natural form.

16.20.12. He has deposed about the manner in which he went before the Magistrate for identification on 12-09-2008, wherein he identified accused No.16- Abbas S/O Umar Sameja; as Abbas from Bhuj.

16.20.13. This witness does explain about dock identification after lapse of time as they have changed in appearance. The extensive cross does not raise any doubt about his presence on the day and his reason to be there for long enough is also acceptable to the Court. Of course, he has denied that Police had tutored him for his deposition or given him description to identify. In fact, the deposition of this witness also comes out as a natural deposition.

16.20.14. The prosecution has examined PW No.588-Laxman Keshavlal Pagri vide Exh.3130, who has proved the Test Identification Parade dated 12-09-2008. The perusal of Exh.3130 will show that the Executive Magistrate has completely followed procedure, taken precaution to keep identity of accused confidential till brought out to stand among similar type of dummies and from that both the prosecution witnesses have consistently identified accused No.16- Abbas S/O Umar Sameja. Hence, there is uniformity of the evidence of identification.

16.20.15. One more prosecution witness, PW No.1105-Idrish Gulashal Fakir Diwan vide Exh.7923, who is a Munjavar of the Khundpir Dargah located in Pavagadh area of Halol where accused have stayed during the terror camp. Learned advocate for the appellant has also titled this witness as unreliable as he has identified accused No.16-Abbas S/O Umar Sameja after 11 years in the Court. In absence of Test

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Identification, the dock identification is of no consequence. However, the Court having perused the evidence of this prosecution witness, he comes out as truthful witness and his presence at the site of camp is natural as narrated by him. His evidence is reliable and he has identified present accused with name in the Court, which is substantial evidence. The defense has not put any question in cross with regard to identification of accused No.16- Abbas S/O Umar Sameja in the Court.

16.20.16. Learned Additional Advocate General for the State has submitted that accused No.16- Abbas S/O Umar Sameja is involved by accused No.2-Imran Ibrahim Shaikh in his confessional statement, as one of the participants of Halol camp.

16.20.17. It is submitted that accused No.35-Rafiuddin Kapadiya in his confessional statement also involves accused No.16-Abbas S/O Umar Sameja as one of the participants of Halol camp. accused No.35-Rafiuddin Kapadiya in his statement has stated that, his brother accused No.37-Qayamuddin introduced accused No.35-Rafiuddin Kapadiya with other participants- co-conspirators in which accused No.16-Abbas S/O Umar Sameja was one of them. accused No.35-Rafiuddin Kapadiya has termed this camp as SIMI camp.

16.20.18. It is submitted on behalf of the State that accused No.2-Imran Ibrahim Shaikh and accused No.35-Rafiuddin Kapadiya both had involved accused No.16-Abbas S/O Umar Sameja as one of the participants in Halol camp, evidence of witness named Idris Exh.7923 would assume importance and considering the evidence of Idris, more particularly para 6 of his deposition on 28.09.2008 Crime Branch Police went to the Khundpir Dargah of this witness Idris, with one accused and Police shown this accused and inquired whether this accused had stayed here, to which witness Idris replied that during the time of Uttarayan on

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13.01.2008, this accused stayed at this Dargah with one Imran of Taiwada, Vadodara. And witness came to know through the police that the accused identified by witness is named Abbas of Kutch, Bhuj. Witness Idris also identifies accused No.16-Abbas S/O Umar Sameja Abbas during the course of giving his deposition i.e. dock identification. This witness; Idris has also given his statement U/s 164 of Cr.P.C, which is Exh.7924. Like accused No.16-Abbas S/O Umar Sameja, witness Idris has also identified many other accused who attended Halol camp and some accused whom he could not identify, he stated that their physical appearance has changed substantially and therefore he cannot identify. So far as, cross-examination on behalf of accused No.16-Abbas S/O Umar Sameja is concerned, it is of two lines in para 9 and accused No.16-Abbas S/O Umar Sameja has not even attempted to challenge any part of the examination in chief of this witness.

16.20.19. With the aforesaid evidence, the Court finds that the confessional statement of accused No.2-Imran Ibrahim Shaikh at Exh.8619 the presence of accused No.16-Abbas S/O Umar Sameja is clearly shown. This evidence is discussed in detail under the chapter of "Confessional Statement and statement under Section 164 Cr.P.C.".

16.20.20. Exh.8631 is a confessional statement of accused No.35-Rafiyuddin Kapadiya. Though the Court has discarded the same as being evidence on oath, nonetheless the statement under Section 164 of Cr.P.C. of accused No.35-Rafiyuddin Kapadiya is recorded and the same has been exhibited. Though this may not be substantive evidence in itself, it at least can be used to lend credence, where this co-accused also mentions about presence of accused No.16-Abbas Sameja.

16.20.21. The Court may now refer to PW No.1039-Laxmanbhai Popatbhai Bharwad vide Exh.7052, who is a panch witness to prove

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Exh.7053; a panchnama under Section 27 executed on 28.09.2008, where accused No.16- Abbas S/O Umar Sameja points out the site in the forest of Pavagadh where terror training camp was held. Learned advocate for the accused argues that his evidence may not be believed as he has failed to identify accused No.16- Abbas S/O Umar Sameja in Court. In opinion of the Court, during panchnama the Investigating Officer has brought the accused before the panch for introduction, therefore identification by such panch witness is of no consequence. Through the panchnama, the mental fact of knowledge of accused No.16-Abbas S/O Umar Sameja of place of terror camp in forest area of Pavagadh comes on record. Therefore, the panchnama can be taken as a corroborative piece of evidence against accused No.16- Abbas S/O Umar Sameja.

16.20.22. As discussed hereinbefore, it appears that there are two other witnesses of Halol who had occasioned to oversee the real time activities of Halol camp and they are PW No.981-Pravinbhai Hamirbhai Katariya vide Exh.6835 and PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231. Both these witnesses during the course of TIP, have identified accused No.16-Abbas S/O Umar Sameja through TIP report Exh.3133 and Executive Magistrate is examined at Exh.3130. So far as PW No.981-Pravinbhai Hamirbhai Katariya is concerned, over and above he having identified accused No.16-Abbas S/O Umar Sameja during TIP has also identified accused No.16-Abbas S/O Umar Sameja during course of giving deposition i.e. dock identification.

16.20.23. The Court finds that accused No.16-Abbas S/O Umar Sameja during the course of investigation on 28.09.2008, has also pointed out place of Halol camp and panchnama to that effect is also drawn at

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Exh.7053 and also proved through panch witness as well as investigating officer.

16.20.24. Another supporting , evidence of PW No.1073-Mohammadyunus Abdullatif Sumra vide Exh.7298, who is owner of cybercafe and witness to use of internet cafe for surfing by accused No.16- Abbas S/O Umar Sameja in company of accused No.1-Jahid Shaikh. This witness is shown one register Exh.7223 more particularly pg. 153 at Serial no.5 and 8. These entries shows name of Irfan and Abbasbhai. These entries are in the handwriting of witness, who has stated that at the time when the entry in the register was made, Abbas was coming with 2-3 persons to his Café for the purpose of surfing. This witness has identified accused no.16-Abbas during the course of his deposition in Court on 14.09.2018. This witness has been subjected to TIP which is Exh.3068 and Exh.3069. This witness has also deposed before the court about having identified two other persons who were coming with accused No.16-Abbas S/O Umar Sameja Abbas, but during the course of deposition, witness is unable to identify those two persons because of lapse of time and change of facial appearance and body. But witness had identified accused No.1-Jahid Shaikh and accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori in TIP report Exh.3068 and Exh.3051.

16.20.25. The Court finds that PW-1063/722 Munaf-Ali gave evidence regarding seizure of register of Infinity Cyber Café Exh-7223, vide panchnama Exh-7224. PW-1069/Exh.7256; who is an investigating officer has given evidence in respect of this panchnama at page no.3 of his deposition. Moreover, during panchnama Exh-7301 hard disc of Infinity Cyber Café of Bhuj was seized, which was proved through PW-1074/Exh.7300 Osman Sidi and Investigation Officer PW-

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1089/Exh.7626-Pravinsinh Vaghela.

16.20.26. It is pertinent to state here that, Cyber Café is at Bhuj. accused No.16-Abbas S/O Umar Sameja; one of the conspirators is a local person but accused No.12-Safdar Nagori is from Madhya Pradesh and accused No.1-Jahid Shaikh is from Ahmedabad, so remaining co-conspirators though of different city and states but all the three together were doing surfing.

16.20.27. The Court finds that accused No.16-Abbas S/O Umar Sameja is also involved in one another panchnama Exh.6605 drawn on 04.09.2008, drawn at the instance of accused No.16-Abbas S/O Umar Sameja who took Police to his residence at Bhuj and on search of that place some articles-objects were found and seized and one particular article which is one chit of paper, in which mobile number-0092212527248 was written and below that number, it is further written that the mobile number is of SIMI Pakistan. This panchnama is proved through panch witness Exh.6604 and I.O. Exh.6806.

16.20.28. Upon appreciation of evidence regarding accused No.16-Abbas S/O Umar Sameja, the Court is of the view that there is sufficient evidence to implicate the accused in the offense and therefore, does not deem fit to interfere with the decision of Special Court and hereby confirms the conviction of accused No.16- Abbas S/O Umar Sameja.

16.21. In case of Saduli @ Hariz S/O Abdul Karim Muslim (Kerala) (A-60)

(Accused No.33 in Criminal Confirmation Case No. 2/2022 and Appellant No.27 in Criminal Appeal No. 1710/2022)

16.21.1. In case of accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim, he has been convicted for various offences by the trial Court,

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and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.21.2. The role attributed to accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim is to be part of the conspiracy by participating in the terror training camps, both at Vagamon in Kerala and also in the forest of Pavagadh in Halol (Gujarat). According to the prosecution, considering the activities undertaken in these camps, accused No.60-Saduli @ Hariz also shared common object with other co-accused in striking terror by bomb blasts or any other means with an object to take revenge and bringing in Islamic Rule. Hence, this accused has participated in the camps with other accused at a place away from his ordinary residence.

16.21.3. Learned advocate Shri Hriday Buch has though assailed the evidence against accused No.60-Saduli @ Hariz the nature of evidence is very weak. There is evidence of an approver which in itself a weak evidence as the approver is himself part of the offence and therefore, to save himself of the consequences of his act has become approver. He submits that other counsels have made elaborate submissions as to why the evidence of the approver may not be an evidence on which conviction could be based. He has adopted those arguments as well. Learned advocate further submitted that the evidence of an approver is not reliable as he has not identified accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan in the Court.

16.21.4. The other nature of evidence in the form of a confessional a statement of co-accused being accused No.76-Manjarimam @ Alam @ Jamil S/O Aliimam vide Exh.9021. According to the evidence of Section 164 statement of accused No.76-Manjarimam, accused No.60-Saduli @ Hariz has participated in the camp at Vagamon. It is submitted that the

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confessional statement of the co-accused cannot be the basis of the conviction, especially when accused No.76-Manjarimam who made the confessional statement himself being acquitted from this offence. Therefore, it is argued that this evidence is not sufficient to support the charge.

16.21.5. The Court is of the view that as discussed earlier, the prosecution has well established that the two camps for terror training that had been organized with specific motive and the activities undertaken have also been established.

16.21.6. This Court has considered several evidences of prosecution regarding holding of such a camp including the point out panchnama by co-accused, which establishes this circumstance.

16.21.7. With regard to the argument of the evidence of confessional statement of co-accused, the Court has discussed in great details about the acceptability of the confessional statement of co-accused and also the decision of the Apex Court on the issue of Confessional statement of co-accused, who is acquitted in the Sub-chapter of 'Confessional statement of co-accused' in the chapter of 'Issues'. Accordingly, the evidence of confessional statement of co-accused A-76-Manjarimam @ Alam @ Jamil S/O Aliimam is an admissible evidence. Therefore, as per this evidence, accused No.50-Saifur Rehmaan has participated in the Terror training camp which is part of the conspiracy.

16.21.8. Similarly, PW No.1141-Aiyaz Razakmiya Saiyed vide Exh.8191 is the deposition of the 'Approver'. By a separate order, the trial Court has granted pardon to accused No.23-Ayaz Razakmiyan Saiyed and this Court has under the separate chapter of 'Approver' in the chapter of 'Issues' discussed in detail and therefore, considering the role thus assigned, the Court finds that the participation of accused No.60-

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Saduli in conspiracy is established.

16.21.9. Learned Additional Advocate General for the State has submitted that the prosecution has relied upon the evidence of witness PW No.1141-Aiyaz vide Exh.8191. The witness after giving his substantial deposition was called upon to identify accused persons known to him and while doing so he has identified A-60-Saduli, but, before doing so, he had identified one person named Sibli, who on verification was not Sibli but accused No.60-Saduli. Thereafter, this witness explained that as Saduli and Sibli both are real brothers, their face and beard are similar.

16.21.10. The prosecution has relied on confessional statement of A-76 at Exh.9021, which involves A-60 as "Saduli" as brother of Sibli as he alongwith others, had attended Kerala Camp.

16.21.11. It is submitted that A-60 had also been arraigned as one of the accused in Kerala Court proceedings, wherein he has been convicted for the offences punishable under Sections 10, 20 and 38 of UAPA as also under Section 120(B) of IPC and Section 4 of Explosive Substance Act, 1908.

16.21.12. The Court finds that according to the prosecution, the role attributed to this accused is to be the part of the conspiracy by participating in the terror camp at Vagamon. In this connection, the accused was tried in Sessions Case No.2 of 2011 by the NIA Court at Ernakulam and he has been convicted. The fact that he was the participant in the terror camp is also evident from the deposition of PW No.1141-Aiyaz (Approver) vide Exh.8191. During the deposition, when PW No.1141-Aiyaz volunteered to identify those accused, who have played role, as per his deposition he has proceeded to identify accused No.60- Saduli @ Hariz S/O Abdul Karim Muslim though he named

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accused No.60-Saduli wrongly as 'Sibli'. It is pertinent to observe that accused No.60-Saduli and Sibli are brothers. The aforesaid evidence of the witness PW No.1141-Aiyaz can be corroborated by the confessional statement of co-accused No.76- Manjarimam @ Alam @ Jamil S/O Aliimam, who in his statement at Exh.9021 has stated that the Vagamon camp was managed by accused No.10-Aamil Parvaz S/O Kaji Saifuddin Shaikh, accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori, accused No.11-Sibli @ Sabit S/O Abdul Karim Muslim and Sibli's brother Saduli (Accused No.60).

16.21.13. It is further stated in the statement under Section 164 of Cr.P.C. that accused No.76-Manajimam while in the camp came to know that camp was conducted to decide on "Jihad in India". Therefore, the evidence against this accused as per the confession, being one of the organizers of the camp and the evidence of approver-Aiyaz established the role of this accused in the conspiracy. In connection with the issue of evidence of approver identifying accused No.60-Saduli, to be one of the accused, the Court has perused the cross-examination on behalf of accused No.60-Saduli in Exh.8191, which begins with para-68, wherein the witness has not been confronted with regard to the mistaken identity of accused No.60-Saduli. It appears that the witness has identified accused No.60-Saduli in the Court, who had wrongly given the name as Sibli (his brother). This would not dispute the deposition of the approver identifying A-60 to be one of the participants in the conspiracy.

16.21.14. Therefore, in the opinion of the Court, the identification of the accused No.60-Saduli in the Court by PW No.1141-Aiyaz stands as accused being one of the participants in the conspiracy. This aspect is then corroborated by the confessional statement of accused No.76-Manjarimam, who has named accused No.60-Saduli as one of the

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organizers of the terror camp at Vagamon and for which the accused No.60-Saduli has been convicted.

16.21.15. On the issue of confessional statement, the Court has already dealt in detailed for acting upon the confessional statement of the co-accused even for conviction. However, in the facts of the case and the case of accused No.60-Saduli, there appears to be an evidence against him which is corroborated by the confessional statement of co-accused. Even considering the provision of Sections 10 and 30 of the Evidence Act, as discussed, in the opinion of the Court, the trial Court has rightly recorded the conviction of this accused.

16.21.16. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.60-Saduli @ Hariz S/O Abdul Karim Muslim. The Court has therefore, no reason to interfere with the conviction recorded**.**

16.22. In case of Mohammad Usman S/O Mohammad Anis Agarbattiwala (Vadodara) (A-7)

(Accused No.7 in Criminal Confirmation Case No. 2/2022 and Appellant No.4 in Criminal Appeal No. 727/2024):

16.22.1. In case of Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, he has been convicted for various offences in Sessions Case No.38/2009 and others, and has been awarded death penalty.

16.22.2. Learned Senior Advocate Mr. S. Nagamuthu submitted that Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala has been arrested on 16.08.2008 and after undergoing police custody for various offences registered in connection with several blasts at

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Ahmedabad and recovery of unexploded bombs in Surat, was finally in judicial custody on 11.02.2009. According to learned Senior advocate, the case of the prosecution hinges on flimsy evidence more in the nature of confessional statement of the co-accused. Learned senior advocate submitted that the confessional statement of the co-accused cannot be the base for convicting Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, more particularly, when consequences of evidence is as serious as death penalty.

16.22.3. It is submitted that evidence relied upon by prosecution in the form of depositions of eye witnesses PW No.981/ Exh.6835- Pravinbhai Hamirbhai Katariya, PW No.1067/Exh.7231- Ambalal Vechatbhai Bariya and PW No.571/ Exh.3051- Ramabhai Sendhabhai Solanki. Their evidence is not believable as they are chance witnesses, whose presence at the place of site of alleged terror camp is not explained. Moreover, all these witnesses have not identified Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala during the course of their depositions.

16.22.4. It is therefore submitted that the important circumstance of the Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala attending the so called terror camp in Pavagadh at Halol based on the aforesaid evidence, cannot be said to have been established by cogent evidence.

16.22.5. Learned senior advocate has therefore submitted that the recovery of the motorcycle at the hands of the father of Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, even if is established by drawing panchnama, still the prosecution has not been able to establish that the very motorcycle recovered, has been utilized at the training camp at Halol.

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16.22.6. The Court having perused the evidence in the form of panchnama at Exh. 3256 proved by PW No.617- Hemantbhai Kapurchand Khandelwal at Exh.3255, wherein the motorcycle has been produced by the father of Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and this motorcycle is connected to this evidence in view of deposition of PW No.1105/ Exh.7923-Idrish Fakir, caretaker of Khundpir Dargah, where the participants of terror training camp had resided at the place of Idrish Fakir, who has deposed that for the purpose of transporting the participants in the the camp Tata Sumo and motorcycle were utilized.

16.22.7. For Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, it is argued that this panchnama may not be believed as PW No.617 has not identified Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and that the father of the accused no.7, who has produced the motorcycle has not been examined. PW No.617 himself being a panch witness at the time of drawing of panchnama of Exh.3256 was introduced to Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and therefore, his identification is of no consequence.

16.22.8. Another circumstance relied upon against Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala is seizure of air gun, pistol, pipe bomb in the house of his uncle near Bawamanpura, Baroda. The reference is made to Panchnama at Exh.6370 approved by panch witness Prakash Manoharlal Tolani- PW No.895, which according to the learned Senior Advocate need not to be added as evidence, as this witness did not identify Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala in the Court, nor the prosecution has examined the uncle of accused no.7 or taken signature of the uncle of

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accused no.7 on the seizure panchnama.

16.22.9. In this connection it would be pertinent to peruse Exh.6370, which was executed on 19.08.2008 under section 27 of the Indian Evidence Act, wherein Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala had made voluntary disclosure, wherein, air gun, country made pistol, two cartridges, a pipe bomb, a Rampuri knife, 19 CD/ DVDs and 2 plastic bags containing balloon bags were recovered. This panchnama is duly approved by examining PW No.895-Prakash Manoharlal Tolani at Exh.6369, who has also deposed with regards to voluntary disclosure made by the accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala.

16.22.10. Over and above, the Court has also perused the evidence of PW No.849/ Exh.5908- G. D. Sharma, Assistant Director, FSL, Gandhinagar, who has submitted a report at Exh.5911, as he had undertaken the preliminary inspection of the house of the uncle of Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala. Similarly, FSL report of Chemical Analyzer is also recorded at Exh.5874 approved by Scientific Officer, Hemantkumar B. Bhatt, PW No.846 at Exh.5838, which shows the presence of potassium nitrate, free Sulphur, free Aluminum and Carbon in the pipe bomb seized. According to the opinion in the FSL report, the presence of potassium nitrate, Sulphur and carbon are constituents of the gunpowder. Another report of the FSL, Physical Department at Exh.5790 is established through PW No.841 at Exh.5783. The Scientific Officer, Kundanbhai J. Golaniya, who has given the report regarding the dimension of the pipe bomb and the quantities of potassium and manganese, found in minor quantities.

16.22.11. As per the report at Exh.5689 by Scientific Officer, FSL Surendrabhai Purushottambhai at Exh.5685 by PW No.838 establishes

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the air gun and the pistol in working condition and therefore, the evidence of the Panchnama at Exh.6370 cannot be seen in isolation. The combined reading along with the voluntary of disclosure made by the Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, while in custody goes on to establish that Panchanama at Exh.6370 as a discovery Panchanama under Section 27 and therefore, the statement deposed to by the punch witness regarding the participation of the accused in the offence has to be admitted as an evidence.

16.22.12. Learned Senior advocate has though submitted that there is no reference of usage of any air gun, pistol in commission of the offence, for which Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala is tried. It would be pertinent to refer to the panchnama of the scene of offence at Halol, which goes on to show that there is recovery of the bursted balloon directly connecting the usage of air gun for practice by the accused during their presence in camp.

16.22.13. Learned Senior advocate has submitted that there is no direct or indirect evidence to connect Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala with the activities of SIMI, wherein the prosecution has failed to place on record any material regarding SIMI activities and material has come on record only by way of some documents placed on record by Accused no.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh during his statement under section 313. In this connection it would be pertinent to refer to the evidence of PW No.1115/ Exh.8002- Mohammad Umar Usman Mansuri, who has referred Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala to be projecting to be member of SIMI. The prosecution has argued that sufficient evidence has placed on record with regards to his participating in the training camp at Halol, where he has played an

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active role including travelling from Baroda to the camp using his motorcycle.

16.22.14. The evidence of voluntarily disclosure where the panchnama at Exh.6370 has been drawn, whereby the accused has led evidence to the house of his uncle in Bawamanpura, Vadodara, from where several articles have been seized, which can directly be connected to the terror activities. It is also submitted that from the house of accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, one Hard disk, laptop and pen drive had also been recovered and panchnama at Exh.6290 has been drawn, which is proved by PW No.879 / Exh.6289 – Kamlesh Sureshbhai Gohil and the consequential report of the FSL at Exh.595. However, the report may not contain any incriminating material regarding connect with SIMI or terrorist activities but still the case of the prosecution is that the accused was acquainted with the usage of this, as PW No.1062 at Exh.7219- Abdul Azim Abdul Hamid Saudagar, who is an employee of iNet cyber cafe located at NID has deposed that Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala has learnt computer and therefore acquainted with browsing activity. Moreover, the connection of Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala with other accused is established by PW No.1115/Exh.8002- Mohammad Umar Usman Mansuri, who has deposed that Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala is in continuous acquaintance of Accused No.2- Imran S/O Ibrahim Shaikh and Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and had a meeting, where Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya had discussed of taking revenge by causing bomb blasts in various places in Gujarat like Ahmedabad,

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Baroda and Surat.

16.22.15. Considering the rival submissions of both the sides in connection with accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala, the Court finds that as accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala attended Halol Terror Training camp along with many other co-conspirators, there is evidentiary materials in the nature of certain witnesses named Pravinbhai Hamirbhai Katariya and Ambalal Vechatbhai Bariya and few other witnesses of Halol who had occasioned to see some of the activities conducted at Halol Terror Training camp as they being a local witness who could have seen that. So far as, Pravinbhai is concerned, he had seen Halol camp activity has also elaborated about it in his evidence and had deposed about, he having seen mob of 15-20 persons at camp place where they were taking training of crawling, he also saw practice of firing by targeting balloons and they were Hindi speaking unknown persons.

16.22.16. The Court finds that witness Pravinbhai is subjected to TIP, this Parade report is proved through examining Executive Magistrate and during the course of, witness Pravinbhai has successfully identified accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala but in the course of dock identification, which happened after years together witness Pravinbhai could not identity accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala, because of lapse of time and change of facial appearance of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala. The court has assigned reasons, in detail under the sub- chapters of “Identification” under chapter “Issues”.

16.22.17. It transpires that similarly, another witness Ambalal had occasioned to see this camp and he was also subjected to TIP and during

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the course of it he identified accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala in TIP. Prosecution has also examined Executive Magistrate, before whom accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala and other accused have identified by these witnesses.

16.22.18. It appears that during the course of investigation, accused No.1- Jahid S/O Kutubuddin Shaikh voluntarily pointed out place of Halol Terror Training camp on 27.08.2008 and the panchnama to that effect was drawn in presence of panchas as well as presence of F.S.L Officers. During the course of panchnama accused No.1- Jahid S/O Kutubuddin Shaikh pointed out place of Halol camp where different articles as like 12 pellets stained with mud, bursted rubber balloons, iron bolt fix on tree, piece of metal, pellets used in air gun etc. All these articles-objects as well other articles which were seized during the course of panchnama are subject matter of forensic examination and F.S.L report.

16.22.19. This Court finds that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala voluntarily led police the house of his uncle Mohd. Usman Mohd. Anees Agarbattiwala of Vadodara and from the house of his uncle he discovered certain articles as like (1) air gun, (2) one Rampuri knife, (3) one country made pistol loaded with cartridges, (4) rubber balloons, (5) CD/DVD, (6) pipe bomb and from it gun powder. From out of these articles, articles like air gun which was given mark A, pistol with cartridges mark B, CD/DVD mark C, pipe bomb which is defuse which is mark D and gun powder which is mark E were sent for scientific examination. This panchnama is carried out in the presence of panch witnesses, F.S.L Officers and Police Officers on 19-08-2008 through panchnama Exh.6370. Thereafter, the articles were

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sent for F.S.L opinion and F.S.L had given its opinion through Exhs. 5689, 5790 and 5874 which opines that articles-objects i.e. air gun, pistol were found to be functional and gun powder was found to be potassium nitrate and pipe bomb was found to be containing pellets. This evidence establishes the training rendered at the terror camp of preparing of Bomb (pipe).

16.22.20. It also appears that so far as, this evidence is concerned, it is also supported by evidence of investigating officer as well as evidence of panch witness. So far as, F.S.L evidence is concerned, primary report Exh.5911 is proved through F.S.L Officer PW No.849/ Exh.5908, forwarding letter Exh.5872, insofar as F.S.L opinion Exh.5689 is concerned, it is proved through PW No.838/Exh.5685, insofar as F.S.L opinion Exh.5790 is concerned, it is proved through PW No.841/Exh.5783 and insofar as F.S.L opinion Exh.5874 is concerned, it is proved through PW No.846/Exh.5838.

16.22.21. This Court finds that on 20.08.2008 accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala voluntarily led Police, panchas and F.S.L persons to his house at Taiwada, Vadodara and during the search of his house following articles/objects were found: (1) Hard disc of CGET company, (2) Laptop of intel company and (3) Pen drive. The articles seized were sent for forensic examination through forwarding letter Exh.5993 and the opinion received about it is Exh. 5995. Forwarding letter Exh. 5993 relates to muddamal articles seized from three other different places which would include Cyber Cafe name Shraddha Communication at Vadodara, over and above, the place of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala.

16.22.22. It also appears that accused no.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, accused no.2- Imran S/O Ibrahim

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Shaikh and accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala were resident of Taiwada, Vadodara and accused No.3-Iqbal S/O Kasam Shaikh is resident of Yakutpura and were childhood friends as deposed by PW No.1115/Exh.8002. Moreover, Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, Accused No.2- Imran S/O Ibrahim Shaikh and accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala did their computer course at Shraddha communication at Vadodara. Accused No.1- Jahid S/O Kutubuddin Shaikh and accused no.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya also used i-Net Cyber Cafe at NID, Ahmedabad for surfing during March, 2008 as deposed by PW No.1062/Exh.7219. Therefore this is an evidence connecting the accused with each other being an important circumstance for conspiratorial meeting.

16.22.23. This Court also finds that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala is also involved by PW No.1115-Mohammadumar Usmanbhai Masnuri at Exh.8002 as this witness as well as Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and Accused no.2- Imran S/O Ibrahim Shaikh all are from Taiwada and are childhood friends. In para 3 of the deposition, witness states about in the month of July 2008, Kayamuddin met witness and talked about taking of revenge for Godhra incident and also talked about explosion of bomb blast to be done in Vadodara and some places within Gujarat, for which Accused No.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya sought help of witness and also asked witness to do recce- surveillance for the purpose of finding out crowded places dominated by Hindu community to which witness

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denied. In para 4 of the deposition, witness states about after commission of bomb blast incident he came to know even through news involvement of Accused no.37- Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala, Accused No.2-Imran S/O Ibrahim Shaikh and accused no.3- Iqbal S/O Kasam Shaikh in the incident, as it emerged from news. This witness has also given his 164 Cr.P.C statement at Exh. 8003.

16.22.24. This Court finds that Accused no.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala is involved in the confessional statement of Accused No.2- Imran S/O Ibrahim Shaikh in relation of Vagamon camp. Accused No.2- Imran S/O Ibrahim Shaikh has stated in his statement that he joined SIMI along with Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and they both i.e. Accused No.2 - Imran S/O Ibrahim Shaikh and Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala were attending different programmes of SIMI. After ban on SIMI, they used to attend SIMI programmes secretly. Accused No.2 - Imran S/O Ibrahim Shaikh also states that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala was arrested in 2001. He also states that through accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala he met other big leaders of SIMI named Sajid Mansuri (Accused No.14), Safdar Nagori (Accused No.12) and Amil Parvaz (Accused No.10). He also states about accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala having come to railway station on 07.12.2007 to drop them at railway station and that some other accused persons as named in the statement were present and they boarded Marusagar Express for Ernakulam Railway station. So far as accused No.7-Mohammad Usman

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S/O Mohammad Anis Agarbattiwala is concerned, he was arraigned as accused no.8 in Kerala Session's Court proceedings.

16.22.25. It appears that Accused No.2- Imran S/O Ibrahim Shaikh in his confessional statement also involves accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala in Halol camp which was conducted during 12th to 13th January, 2008. He also states that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala was present along with other accused persons as already stated earlier activities conducted at Halol camp were same as like conducted at Kerala camp. He states that on completion of this camp persons from Madhya Pradesh, Rajasthan etc went to their respective places and persons from Ahmedabad, Vadodara went to their respective places. He further states that, somewhere in March, 2008, some SIMI activists of Madhya Pradesh were arrested and at that time accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala and three other accused as named in the statement have gone to Vapi. It appears that Accused No.2- Imran S/O Ibrahim Shaikh also states in his statement in June 2008, more particularly on 14.06.2008 in the laptop of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala absconding accused Taukir and A-15 Abu Basar, saw Islamic CD which was on Qayamat and they also saw Film Black Friday which was on blast. The Section 164 statement of Accused No.2- Imran S/O Ibrahim Shaikh is also dealt with for its admissibility in a separate sub-chapter of "Confessional Statement" under chapter of "Issues".

16.22.26. It also appears that accused no.35- Rafiyuddin S/O Sarfuddin Kapadiya in whose confessional statement, role and participation of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala is stated, has also pointed out this place of Halol Terror Training camp

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on 17.11.2008.

16.22.27. This Court also finds that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala is also involved by Accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) in his confessional statement. As Accused No.21- Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) in his statement has stated that through accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala they reached Dargah at Halol. So far as activities of Halol camp is concerned, Accused No.21- Mehandihasan @ Vikki S/O Abdul Habib Ansari (Julaha Sunni) has stated that those activities were like giving of Takrir, establishing Islamic regime, Hindustan to be made Islamic regime and for doing the same to execute mass killing, and has also stated about taking of revenge of 2002 riots, etc.

16.22.28. It appears that accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala is also involved by Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya in his confessional statement for the purpose of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala having attended Halol camp. He also states that he became SIMI activist as his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and Accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala were SIMI activist. He also states in his statement about there being SIMI camp in January 2008 where he went with his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, and upon going there, he saw Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and other accused persons as stated by him in his statement. He saw them at Champaner Dargah.

16.22.29. It also appears that Accused No.35- Rafiyuddin S/O

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Sarfuddin Kapadiya also states that somewhere in March of 2008, Madhya Pradesh police came to his house for search of his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and as his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya came to know about it, he left the house. He also states that Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala and Accused No.2- Imran S/O Ibrahim Shaikh facilitated escape of his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and that his brother Accused No.37 - Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya is of fanatical ideology. The Court is only referring to the confessional statement of Accused No.35- Rafiyuddin S/O Sarfuddin Kapadiya though not treating it to be an evidence either for conviction or corroboration, as the statement under section 164 of Cr.P.C. is recorded on oath administered during such recording. However, since the evidence is on record in the form of exhibited documents, same is referred.

16.22.30. This Court finds that through panchnama Exh.3256 drawn on 27.08.2008 wherein father of accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala produced one motorcycle of a description as narrated in the panchnama as used in Halol camp, stands proved through the evidence of the panch witness being PW No.617/Exh.3255, as well as Investigating officer PW No.1070/Exh.7264.

16.22.31. The overall analysis of the evidence against Accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala, Court finds that is sufficient evidence and reason to uphold the conviction of the Accused No.7- Mohammad Usman S/O Mohammad Anis Agarbattiwala

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for the offences charged against him in the Chapter of 'Charges framed and Sections invoked'.

16.23. In case of Yunus S/O Mohammad Mansuri (Ahmedabad) (A-8)

(Accused No.8 in Criminal Confirmation Case No. 2/2022 and Appellant No.4 in Criminal Appeal No. 1710/2022):

16.23.1. In case of accused no.8- Yunus S/O Mohammad Mansuri, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.23.2. Learned Senior Advocate Mihir Desai has made submissions on behalf of accused no.8- Yunus Mohammadbhai Mansuri, who came to be arrested on 16-08-2008 and was sent to judicial custody on 09-02-2009. According to learned Senior Advocate, allegations against accused no.8-Yunus Mohammadbhai Mansuri are threefold being present at Halol, present in the meetings at Ahmedabad and present in the meeting at Surat.

16.23.3. Learned Senior Advocate has submitted that present accused no.8- Yunus Mohammadbhai Mansuri was not accused in Kerala and therefore, at the outset, learned Senior Advocate has taken this Court to Page No.6456 of impugned judgment to submit that perverse finding is recorded by holding that accused no.8- Yunus Mohammadbhai Mansuri is present at Vagamon. Learned Senior Advocate has submitted that the prosecution has relied upon three confessional statements being Exh.8619 by accused No.2-Imran Ibrahim Shaikh, Exh.8631 by accused No.35-Rafiuddin Sarfuddin Kapadia and one Exh.8623; confession of accused No.21-Mehndihasan @ Viki Abdul Habib Akbarkha Ansari. However, Exh.8623; confession of accused No.21-Mehndihasan @ Viki

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Abdul Habib Akbarkha Ansari does not name present appellant to be part of Halol camp, whereas statement of accused No.35-Rafiuddin Sarfuddin Kapadia at Exh.8631, the Special Court has not considered it to be evidence.

16.23.4. Learned Senior Advocate has thereafter argued that in all, seven point out panchnamas have been executed in connection with Halol Camp, but it is only one point out panchnama at Exh.7053, where the name of the present accused no.8- Yunus Mohammadbhai Mansuri is appearing, whereas in other five point out panchnama, the present accused no.8- Yunus Mohammadbhai Mansuri is not even named. It appears that Exh.6840 being pointing out panchnama at behest of Jahid, present accused no.8- Yunus Mohammadbhai Mansuri is also named. Thereafter, learned Senior Advocate has submitted that with regard to Test Identification Parade at Exh.3061, wherein accused no.8- Yunus Mohammadbhai Mansuri has been identified to be part of the camp.

16.23.5. Learned Senior Advocate has submitted that Test Identification Parade at Exh.3061 was conducted on 30-08-2008 by witnesses, who can be termed to be chance witnesses, whereas there is discrepancy inter-se between this chance witnesses as witness; Ambalal mentions about accused no.8-Yunus Mohammadbhai Mansuri being present in the group, but does not mention anything to do with fire arm training or crawling and physical exercise, whereas other witnesses are mentioning about some activities.

16.23.6. The Court is of the view that the panchnama of scene of offences would indicate that the camp area was spread out at different places and visibility of different area for different witnesses would be different and therefore, any non-mentioning of so called activities being undertaken by one of the witnesses, cannot be falsified, because other

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witness may not have witnessed the same and therefore, not mentioned in his deposition.

16.23.7. The Court also finds that PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 has identified accused no.8- Yunus Mohammadbhai Mansuri in dock identification.

16.23.8. Learned senior advocate submitted that one of the evidences by prosecution connecting this appellant-Yunus Mohammadbhai Mansuri is that the purchase of the utensils which were found in Al Mohamadi Society and therefore, the presence of the appellant-Yunus Mohammadbhai Mansuri alongwith other accused persons in the very house of Al Mohamadi Society. The point out panchnama vide Exh.6656 was executed at the behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh and during this panchnama alongwith other articles, no vessels was seized. Therefore, in absence of vessels being found at the very first panchnama, the appellant cannot be connected with the house at Al Mohamadi Society. It is submitted that a subsequent panchnama dated 19.09.2008 at Exh. 5538 cannot therefore be believed as to the vessels were found in the house after the first panchnama was executed. Therefore, the attempt on the part of the prosecution in connecting the appellant on the basis of the vessels through panchnama at Exh.5538 as well as evidence of PW No.938-Mahamad Farooq Ajijbhai Memon, who was examined vide Exh.6617, should not be treated as a sufficient evidence.

16.23.9. It is also argued that even if the appellant-Yunus Mohammadbhai Mansuri is connected to the vessels, still there is nothing on record to establish that such vessels are in any manner utilized for the purpose of preparing bomb or any explosive. It is submitted that even from the bare reading of the panchnama, it is

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coming out that vessels are kept in a unsealed manner and therefore, such evidence cannot be treated as a reliable evidence. He has drawn attention to Exh.2131, the muddamal list, where at item No.40, it is recorded that the vessels were found seal.

16.23.10. The Court is of the view that though for establishing the panchnama at Exh.5538 dated 19.09.2008, panch witness PW No.823-Bhavin Shaileshkumar Oza, was examined vide Exh.5537. The Court is of the view that Exh.6656 and Exh.5538 are found executed in the span of two days. Exh.5538 is a point out panchnama at the behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh is executed on 21.09.2008, whereas Exh.6656 is a panchnama executed at the behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh on 19.09.2008. Therefore, Exh.6656 was executed, first in point of time and it is during this panchnama several articles were seized, but that panchnama was discovering various articles directly connecting with preparation of explosive bomb and in para-14 of the panchnama, even the vessels, 15 in number have been enumerated. Exh.5538 is again a panchnama at the behest of accused No.1-Jahid @ Javed Kutubuddin Shaikh of house No.10-Al Mohamadi Society, which also is seizure of utensils 13 in number. This panchnama was with a specific purpose of carrying out identification of those utensils which were already part of panchnama at Exh.6656 and in presence of one PW No.938-Mahamad Farooq Ajijbhai Memon, who has identified these vessels to have been purchased from him by the present appellant-Yunus Mohammadbhai Mansuri. The identification of Yunus Mansuri vide Exh.3061, which was conducted on 30.08.2008 which is prior to the panchnama vide Exh.5538 dated 19.09.2008 and panchnama vide Exh.6656 dated 21.09.2008. As this witness had identified the appellant-Yunus Mansuri in the Test

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Identification Parade, as a person who had purchased vessels from his shop, the panchnama was held for the purpose of identifying the vessels (Exh.5538).

16.23.11. The aforesaid procedure has been established by examining panch witness PW No.823-Bhavin Shaileshkumar Oza at Exh.5537, who has supported the case of the prosecution to the extent that witness PW No.938-Mahamad Farooq Ajijbhai Memon had correctly identified the vessels which were purchased by the appellant-Yunus Mansuri. Therefore, in the opinion of the Court, the circumstance of the vessels which were found in house being No.10-Al Mohamadi Society, where other items of making bombs were also seized, the vessels were found therein, which were purchased by the appellant-Yunus Mansuri, thereby strongly establishing the connection of the appellant-Yunus Mansuri with the house No.10 of Al Mohamadi Society.

16.23.12. With regard to the contention that the vessels are not sealed, the Court is of the opinion that by combined reading of Exh.5538, Exh.6656 and Exh.6617, it appears that there is no question of vessels having been identified satisfactorily, non sealing of the same is not of any consequence. Muddamal articles vessels are not of the type, where the form of the utensils would change over the period nor is there any question put to either panch witness, or the Investigating Officer so as to justify that as the vessels had remained unsealed, the same have been tampered with or later on introduced in the panchnama.

16.23.13. Learned senior advocate has submitted that the prosecution has relied upon Exh.5488, a point out panchnama of the own house of this appellant-Yunus Mansuri, which led to discovery of several articles connected with the preparation of bombs however, learned senior advocate submitted that this panchnama cannot be relied upon as no

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explosive has been found from the residence of the appellant-Yunus Mansuri. He has particularly drawn attention to Exh.5957 and Exh.5955, which are Ravangi Nodh (Outward Note), wherein, specific questions were put by the Investigating Officer, but no answers are available on record to the same. Another point raised for not believing this panchnama is by drawing attention to time of drawing this panchnama. According to learned senior advocate, Exh.5492 is the panchanama of the very date on which Exh.5488 was drawn however, Exh.5492 was concluded at 1:00 a.m., whereas Exh.5488 was commenced at 1:30 a.m., meaning thereby in the midnight and therefore, it is ordinarily difficult to find out the panch witnesses at this late hours, still for both Exh.5492 and Exh.5488, panch witnesses are completely different and therefore, execution of panchnama itself is doubtful.

16.23.14. The Court has perused Exh.5488, which is panchnama dated 19.08.2008, the first part of it, was commenced at 1:30 a.m., wherein the appellant-Yunus Mansuri has made voluntarily disclosure for search of his residence, because of which personnel of FSL were summoned forthwith and the team was led to the house at the behest of the appellant-Yunus Mansuri from 2:00 onwards. Upon reaching the house, several articles were seized, which included ball-bearings, bolts, Cello tape, various colours, electrical wires and for initial inspection, the FSL Officers had utilized an equipment known as Polire Kit which would display the presence of sticky material at various places of the house, clothes, the ball-bearing etc. When the panchnama has been established by PW No.817-Chirag Govindbhai Varsda, who was examined vide Exh.5487, who in his deposition, has made a complete narration of the content of the panchnama and upon identifying the signatures thereon, the panchnama came to be exhibited. He has also mentioned with regard

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to the various articles in great detail which would include the ball-bearings, bolts, wires etc. This witness has been extensively cross-examined initially for the purpose of physical appearance of the accused at whose behest the panchnama was drawn to which he has answered that he had not made any particular observation of his physical appearance. This witness was also questioned with regard to the circumstance upon his arrival at the residence to which he has appropriately described. Though the several questions have been put to this witness regarding the manner in which he was took up as panch witness at the late house, he has appropriately explained the reason for him to be there as his friend had been hospitalized and was returning from hospital.

16.23.15. The Court having perused this evidence of the witness does not find anything objectionable to disbelieve the witness and therefore, holds that Exh. 5458, a point out panchnama has been duly exhibited and can be treated as an admissible evidence.

16.23.16. This panchnama undoubtedly is either of the residential premises of the appellant-Yunus Mansuri and there is discovery of several articles which can be connected to the bomb blast and therefore, by applying Section 27, the Court is of the view that relevance as described in the panchnama about the voluntarily disclosure pertaining to the offense of bomb blast, thereby leading to the discovery of actual articles which is corroborated by the evidence of the panch witness, who in his deposition has deposed that voluntarily, the appellant-Yunus Mansuri wanted to take the Investigating Officer to his residence to be disclosed something regarding the offense. Therefore, the Court finds that the circumstance of articles discovered during Exh.5488 directly connecting with the articles which were found as part of explosive is

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established.

16.23.17. Learned Additional Advocate General has submitted that accused no.8- Yunus S/O Mohammad Mansuri is involved by accused No.2- Imran S/O Ibrahim Shaikh and accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya, in their confessional statements as one of the participants of Halol camp. As per accused No.2- Imran S/O Ibrahim Shaikh's statements, the dummy name of accused no.8- Yunus S/O Mohammad Mansuri is Amin.

16.23.18. It is further submitted that accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya has also involved accused No.8-Yunus S/O Mohammad Mansuri in his confession as one of the participants from Ahmedabad along with many others who came from Vadodara, Rajasthan and from other places. One more aspect which is emerging from the statement of accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya is that Halol camp is also identified as SIMI's camp.

16.23.19. It is further submitted that accused no.8-Yunus S/O Mohammad Mansuri is also involved by accused No.24-Umar @ Ashok Kalabhai Kabira in his confessional statement, when accused No.8-Yunus S/O Mohammad Mansuri attended one meeting on 20.07.2008 which was held at the place of one secret witness, Yakubbhai Memon. Accused no.8-Yunus S/O Mohammad Mansuri actively participated in this meeting, as confessor very categorically stated that Shamshubhai and few other conspirators spoke on Jihad. Confessor, i.e. accused No.24-Umar @ Ashok Kalabhai Kabira had specified about the meaning of Jihad and had explained, jihad means to take revenge for loss suffered by Muslims in 2002 Godhra riots.

16.23.20. It is submitted that accused No.8-Yunus S/O Mohammad Mansuri is also implicated by prosecution in a SIMI material literature

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which was part of chargesheet and investigation material which was submitted by defence as defence relied on it through Exh.9248. This literature Material; Exh.9248, involves accused No.8-Yunus S/O Mohammad Mansuri as SIMI activist along with many other SIMI activists whose names are revealed through this Literature and are also accused of this case.

16.23.21. It is submitted that through panchnama dated 19.09.2008, accused No.1- Jahid S/O Kutubuddin Shaikh volunteered to point out a place known as house no.10 Al-Mohammadi Society, Danilimda. This panchnama is drawn in presence of panchas, Investigators and F.S.L Officers on pointing out this house. One of the articles which has been mentioned at item no.14 in panchnama are certain steel and aluminum utensils, along with many other articles and objects of relevance. This panchnama is proved through a panch witness as well as an Investigating Officer.

16.23.22. It is submitted that one another panchnama is drawn on 21.09.2008, which relates to above referred different utensils which were seized from above house no.10 were taken to the Crime Branch office and the person named Mohd. Faruq Ajijbhai Memon resident of Rakhiyal identified these utensils as utensils purchased by accused no.8-Yunus S/O Mohammad Mansuri from a shop named ‘Evergreen’ situated at Kalupur. Accused no.8-Yunus S/O Mohammad Mansuri is identified by this witness, Shri. Memon in the TIP before Executive Magistrate.

16.23.23. The Court has considered the rival submissions of the parties. In the opinion of the Court, the star witness of the prosecution, Jakir Hussein has also involved accused no.8-Yunus S/O Mohammad Mansuri at the meeting at accused No.4-Samsuddin S/O Shahabuddin Shaikh's Nana's house. Witness Jakir also involves accused no.8-Yunus S/O

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Mohammad Mansuri for the activities done in the month of June, i.e. proximate to the incident where some accused persons have gathered at the place of secret witness (1) Ibrahim Ansari and at this time accused No.7-Mohammad Usman S/O Mohammad Anis Agarbattiwala was instructed by accused No.27- Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri to take accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh to his house and drop there. Witness Jakir also deposed that, one week thereafter certain accused persons had gathered at the house of accused no.8-Yunus S/O Mohammad Mansuri where accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh, was also present and at the place of accused no.8-Yunus S/O Mohammad Mansuri, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh exhorted that all preparations are made for establishing Islamic regime. Accused no.8-Yunus S/O Mohammad Mansuri also organized food for all, at his place and they disbursed thereafter. Witness Jakir also involves accused no.8-Yunus S/O Mohammad Mansuri, in one another meeting which took place at Dariyapur, Limdi on 25th July (one day earlier to bomb blast). Witness Jakir also involves accused no.8- Yunus S/O Mohammad Mansuri, in one another meeting on 27th (a day after bomb blast) which involves accused no.8- Yunus S/O Mohammad Mansuri and other accused who had gathered at the place of accused no.8- Yunus S/O Mohammad Mansuri. One aspect of this meeting is that accused No.75- Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, was also present there. Thereafter, they went to the house of one Altafbhai who is the maternal uncle of accused No.75- Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, and they were seeing T.V. and this

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accused Yunus was frightened. The witness also identified accused no.8-Yunus S/o Mohammad Mansuri during his deposition.

16.23.24. The Court finds that the Prosecution has examined witnesses from Halol for the purpose of supporting the case about there being a camp at Halol in the month of January 2008 for which they have examined the following prosecution witnesses namely; Ramkabhai Kesariya, Pravinbhai and Ambalal Bariya, who are resident of the area where the camp was held and their presence at the place of Halol camp, when such a camp was in progress is natural as their visit to that place as deposed by them is natural and therefore when they were interrogated by police they substantiated about Halol and some of the activities done at Halol camp. It is also pertinent to state here that, not only that they supported conducting of camp at the particular place but they also identified a number of accused to be the person who participated in the activities which they saw. One amongst many accused who was identified is accused no.8-Yunus S/O Mohammad Mansuri. When accused no.8- Yunus S/O Mohammad Mansuri was subjected to TIP before these three witnesses, accused no.8-Yunus S/O Mohammad Mansuri was successfully identified by all the three witnesses before Executive Magistrate and the Test Identification Report of Executive Magistrate for such identification is also proved by prosecution by examining Executive Magistrate who had testified that at the time of drawing identification report, accused no.8- Yunus S/O Mohammad Mansuri was mixed with many dummy persons and when these witnesses were called upon to identify accused no.8- Yunus S/O Mohammad Mansuri amongst other dummy persons, these witnesses successfully and rightly identified accused no.8-Yunus S/O Mohammad Mansuri by holding his hand and drawing him out from the line of

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different persons and on doing it, Executive Magistrate asked the name of the person who was drawn out by all the three witnesses by holding his hand and the person on asking about his name by Executive Magistrate answered that he is accused no.8- Yunus S/O Mohammad Mansuri. This Test identification report would also be admissible U/s 291/A of Cr.P.C which was introduced in the year 2006. TIP report proved through Executive Magistrate is Exh.3061 through which witness identified accused no.8-Yunus S/O Mohammad Mansuri.

16.23.25. Over and above these three witnesses, one another witness named Idrish, who was Munjawar at Khundpir Dargah where some 20 to 22 accused have stayed during the time of Halol Terror Training Camp is also examined by prosecution who had fully supported the case of prosecution as at the place of Dargah, certain accused have stayed there. He also states that accused persons staying at Dargah have come to him on reference of one Dr. Sadab of Vadodara, under the reason that they would be doing trekking activity in the jungle. This witness has also given his statement U/s 164 before Metropolitan Magistrate which is Exh.7924. During the course of his deposition, he also identified certain accused and, on his failure, to identify a few others, he gave an explanation about there being substantial change in the physical appearance of the accused persons. It is also pertinent to state here that witness Idrish is very clear and categorical with regard to fact that he permitted accused persons to stay at Dargah on reference of Dr.Sadab, but Dr.Sadab has not supported the case of prosecution and was treated hostile. Even then, the evidence of Dr. Sadab is required to be seen and examined in context of newly introduced Sub-section 2 of Section 154 of Cr.P.C which came into force somewhere in April, 2006. Considering the evidence of Dr. Sadab, more particularly, his cross- examination by

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defense it appears that subsequent to his police interrogation more particularly at the time of his deposition, he was won over by the defense but his evidence to a certain extent can be relied upon, which he did not deny and certain part of witness Idrish's evidence which deposes about Dr.Sadab. So far as evidence of these witnesses is concerned though it is not against accused no.8-Yunus S/O Mohammad Mansuri in particular but in general it fully testifies conducting of Halol camp and participation of accused persons in it.

16.23.26. The Court has also considered the confessional statement of accused no.2-Imran Ibrahim Shaikh, wherein he has stated that the arrangement of tents at Halol Camp was done by accused no.8-Yunus S/O Mohammad Mansuri, who came with a bike. In the said camp, accused No.12-Safdar Nagori was assigned the duty of an organizer to accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri and for the purpose of supporting him, accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, accused No.1-Jahid and accused no.8- Yunus S/O Mohammad Mansuri were made his supporters. Accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and accused no.8-Yunus S/O Mohammad Mansuri were also assigned the duty of bringing any articles-things etc from outside. Furthermore accused No.2-Imran S/O Ibrahim Shaikh also states that on 26th i.e. on the day of the bomb blast, accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri called accused No.2-Imran S/O Ibrahim Shaikh for the purpose of getting telephone number of accused no.8-Yunus S/O Mohammad Mansuri, which was not with accused No.2-Imran S/O Ibrahim Shaikh. Considering the statement of accused No.2-Imran S/O Ibrahim Shaikh over and above, accused no.8- Yunus S/O Mohammad

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Mansuri's secret participation in such kind of a camp, many other activities are done and assigned to accused no.8-Yunus S/O Mohammad Mansuri which deeply involves accused no.8- Yunus S/O Mohammad Mansuri in the activities conducted, arranged and organized at this camp.

16.23.27. Moreover, apart from the confessional statement of accused No.35- Rafiyuddin S/O Sarfuddin Kapadiya, he had also pointed out the place of Halol camp through panchnama dated 17.11.2008 which is supported by the evidence of panch as well as Investigating Officer.

16.23.28. Further, accused no.8-Yunus S/O Mohammad Mansuri through panchnama dated 19.08.2008 also led police to a place which is a residential house no. C/132, Ajit Mil Row House, Ajit Mill Char Rasta, Bapunagar which is a residential place. At the time of drawing of this panchnama, accused no.8- Yunus S/O Mohammad Mansuri took investigator, panchas and F.S.L officers to this place where his family members were present and some articles in the nature of pellets, bolt, entangled wires, tangle of cello-tape, cloth, pieces of polyethylene and sample of fluid laden marks found from a wall and marked as mark A etc. were collected and sent for forensic examination. This panchnama is proved through panch witness as well as investigating officers. Articles seized were sent for F.S.L examination through forwarding letter Exh.5955 and the report of it is received at Exh.5957. On the examination, F.S.L has found one of the articles which is marked 6 and 16 having presence of Petroleum Hydro Carbons and few other articles having presence of calcium. The F.S.L. opinion is proved through F.S.L Officer PW-849 at Exh.5908.

16.23.29. Moreover, the Court has perused the evidence of PW No.938-Shri Memon at Exh.6617, who has deposed that he works in a

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shop named 'Evergreen' situated at Kalupur. He was interrogated somewhere in August of 2008. He further deposed that he was subjected to TIP for the purpose of identifying accused no.8-Yunus S/O Mohammad Mansuri, which took place on 30.08.2008 and during the course of TIP, he has successfully identified accused no.8- Yunus S/O Mohammad Mansuri as a person who purchased the utensils from his shop. He also states that he was taken to Crime Branch office and was subjected to identify the utensils which were seized from house no.10 Al- Mohammadi Society and at Crime Branch office, he identified the utensils shown to him as utensils belonged to his shop and the person who is identified by him i.e. accused no.8-Yunus S/O Mohammad Mansuri, as the person who purchased those utensils. It is pertinent that this witness also identified accused no.8- Yunus S/O Mohammad Mansuri in the court as well as he also identified these utensils which are part of muddamal list Exh.2131.

16.23.30. Also, one another witness namely; Mehtab Shaikh also involved accused no.8- Yunus S/O Mohammad Mansuri in one another SIMI meeting which took place at Limbayat, Surat in the year 2008, which was also attended by other accused like accused No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, accused No.4-Samsuddin S/O Shahabuddin Shaikh and accused No.12-Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori. These witness also identified accused no.8- Yunus S/O Mohammad Mansuri in court during his deposition. Considering the evidence of this witness, accused persons including accused no.8-Yunus S/O Mohammad Mansuri had attended SIMI meetings though SIMI is a banned terrorist organization.

16.23.31. Therefore, the prosecution has led sufficient evidence to convict the accused No.8-Yunus S/O Mohammad Mansuri for the

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charges. Accordingly, the conviction of accused No.8-Yunus S/O Mohammad Mansuri for the offence is confirmed.

16.24. In case of Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri (Bharuch) (A-14)

(Accused No.14 in Criminal Confirmation Case No. 2/2022 and Appellant No.10 in Criminal Appeal No. 1710/2022)

16.24.1. In case of accused No.14-Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.24.2. On behalf of accused No.14-Mohammad Sajid, learned advocate Dr.Yug Chaudhary has pointed out the basic facts of his conviction and sentenced to death penalty. He was arrested on 16-08-2008 initially in connection with Shahibaug FIR bearing CR No.I-236/2008 and thereafter in other cases and in all, he was in Police custody till 11-02-2009.

16.24.3. According to Shri Chaudhary, the case of prosecution against accused No.14- Mohammad Sajid is that he has participated in the Terror camp of Vagamon (Kerala), thereafter in Pavagadh at Halol, Gujarat and also, in the meetings later on organized. He is also alleged to be associated with the houses, which were used for the offence and from where, articles relating to bomb making were traced.

16.24.4. Learned Advocate however, has assailed this evidence by arguing that all such evidences are corroborative in nature and cannot be basis for conviction. One by one he has assailed each of such evidences.

16.24.5. Learned Advocate submitted that for the circumstances of Vagamon camp, the prosecution has relied on evidence of Manager of

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Shri Hari Tourist Home, who deposed that accused No.14-Mohammad Sajid was staying in Hotel under the name of Salim Shaikh. However, there is no Test Identification Parade nor accused No.14-Mohammad Sajid was identified in Court. Therefore, allegation of accused No.14-Mohammad Sajid going to Vagamon is not established.

16.24.6. However, the Court finds that the prosecution is also relying on the hand writing expert report, which establishes the presence of hand writing of accused No.14-Mohammad Sajid in the Register of the Hotel. Firstly, the PW No.905-Kalpeshbhai Ratilal Gajjar at Exh.6484, the panch witness to the specimen signature of accused No.14-Mohammad Sajid is examined. Though it is argued that the witness does not identify in Court, however, same is of no consequence as the accused at the time of the panchnama itself was introduced to the witness.

16.24.7. The opinion of the expert PW No.990-Kaushikkumar Punjalal Vyas vide Exh.6886, has opined at Exh.6888, 6889, 6890. The Court has perused Exh.6887, the letter of Investigating Officer sending the documentary evidence to Expert and the consequential report. The close perusal of Exh.6888 and 6889 being the Report and Reasons of expert clearly would establish that it is the handwriting of accused No.14-Mohammad Sajid in the Register though the entry made is not in real name, but in fake name of accused No.14-Mohammad Sajid. Therefore, the stay of accused No.14-Mohammad Sajid in Vagamon Hotel in a fake name is established. The combined reading of PW No.989-Raju Gopinathan Nair vide Exh.6879 and expert opinion establishes this circumstance.

16.24.8. At this stage, the Court may refer to fact that accused No.14-Mohammad Sajid was also an accused in Vagamon case in trial at Ernakulam Court and was acquitted. However, this aspect will not affect

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the present case in view of the evidence against accused No.14-Mohammad Sajid in this case and also as dealt with in a separate sub-chapter of 'Section 300 of Cr.P.C. and Issue estoppel' in the Chapter of "Issues".

16.24.9. Learned Advocate for the accused has then assailed the evidence regarding participation in Halol Training camp. It is submitted that only confessional statement of co-accused forms the basis to prove this circumstance and as submitted in general submission on the 'confessional statement', are weak evidences, which cannot be relied upon.

16.24.10. The Court has extensively dealt with the evidence of 'confessional statement' under a separate chapter. Over and above 'confessional statement', there are eye-witnesses PW No.981-Pravinbhai Hamirbhai Katariya vide Exh.6835 and PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231. However, learned Advocate has submitted that their evidences also not reliable as they are the chance witnesses and they have not identified accused No.14-Mohammad Sajid in Court, though they have, in Test Identification Parade.

16.24.11. The other evidence is that of point out panchnama of the House in Sherpura in Bharuch. According to learned Advocate, this is not a panchnama under Section 27 of the Evidence Act. The panch witness has not identified accused No.14-Mohammad Sajid in the Court.

16.24.12. PW No.1138-Gulamhussain Abdulrashid Pathan vide Exh.8165 is the witness to renting of the house. He has also not identified the accused nor there is any Test Identification Parade. Though there is evidence of FSL Officers, who submitted their preliminary and final report at Exh.5585 and 5963 respectively, but as accused No.14-Mohammad Sajid is not connected with the house in

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Sherpura, this evidence is of no use against accused No.14-Mohammad Sajid.

16.24.13. Similarly, it is argued that the evidence in the form of panchnama under Section 27 of Evidence Act regarding an apartment viz. Akmal Apartment at Baroda may also not be treated as evidence to connect accused No.14-Mohammad Sajid. It is argued that to connect accused No.14-Mohammad Sajid to the house, there has to be evidence like fingerprint or DNA samples of accused No.14-Mohammad Sajid in the house, which can be treated as clinching evidence. In absence, no other evidence is sufficient. Moreover, it is argued that even if the connection is established, there is no explosive substance.

16.24.14. To the Court, it appears that house located in Akmal Apartment is the house (hide out) meant for meeting and hatching conspiracy. Therefore, it is not necessary that the pointing out of a house as a location for conspiracy must lead to discovery of any explosive substance. In this regard, reference be made to yet another point out panchnama of a House No.33 in a Lukman Society in Bharuch, where panchnama Exh.6359 is proved through PW No.894-Hitesh Apabhai Patel vide Exh.6358. In the search of this house, petroleum hydrocarbon presence was detected through the FSL Report at Exh.5957 proved by PW No.849-Gauridatt Dayanidhi Sharma, Assistant Director, FSL vide Exh.5908. In connection of this house then it is argued that the panch witness was also not able to identify the accused in the Court and hence, accused No.14-Mohammad Sajid cannot be connected to House No.33 in Lukman Society in Bharuch.

16.24.15. It is argued that the prosecution is unable to establish connection of accused No.14-Mohammad Sajid with SIMI or any of its meetings. It is submitted that the prosecution examined PW No.1103-

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Mohammadfaruk Abdulrashid Master vide Exh.7799, but he is hostile. Similarly, other witness PW No.1041-Talib Abdul Gafar Maniar vide Exh.7056 and PW No.881-Adnan Mohammad Khalid Gujarati vide Exh.6299 have also been declared hostile, also PW No.1099-Mohammad Shoeb vide Exh.7774 is also hostile.

16.24.16. As submitted by the State, the Court may observe here that all the aforesaid witnesses have deposed in uniform pattern and turned hostile. The Court having perused the respective cross examination conducted by Defense counsel, it follows the pattern of questions, which are identical and pointed towards putting the investigation in doubt by asking that whether they were detained illegally and pressured to give such statements, to which the witnesses appear to have very readily answer in affirmative. However, when question was put by State Counsel in the cross examination that whether the witness made any complaint, even after passage of 10 years period, the witnesses have answered in negative indicating the fact how the witnesses have been won over for obvious reasons and later on utilized to cast doubt on investigation.

16.24.17. However, the Court finds that in so far as the circumstance of accused No.14-Mohammad Sajid association with SIMI, there is evidence in form of confessional statement of co-accused, who have stated that accused No.14-Mohammad Sajid was also participating despite his knowledge of other accused known to be SIMI workers.

16.24.18. Learned Additional Advocate General has submitted that the prosecution has stated that earlier as examined, the owner of this Sherpura house at Exh.8165 who had clearly stated that, he had rented this house to a person named Rafik Shaikh of Maharashtra and this person named Rafik Shaikh was spotted on 7th or 8th with Silver Wagon

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R car and was also spotted before 2-3 days of occurrence of blast with red colour Wagon R car. This witness successfully identified in Test Identification Parade accused No.43-Anik @ Khalid S/O Shafik Saiyed, accused No.44- Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari and Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani. Accused No.14-Mohammad Sajid has also pointed out this very hide out house and from there explosive substances were found from this place together with the fact that as per the case of prosecution, motor cars used for planting bomb were also spotted along with concerned accused at this house. It is also pertinent to state here that Accused No.45- Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani has also pointed out Sherpura house on 12.12.2008 as well as house of Lukman park i.e. the house belonging to accused No.14-Mohammad Sajid.

16.24.19. It is further submitted that explanation given by accused No.14-Mohammad Sajid in his further statement, that the Guest House entry register at Exh.6486 is a document created subsequently. He had never gone to Kerala, pages of register are created subsequently and he denies about his own sample handwritings as well as natural hand writings. However, according to State, there is a strong evidentiary material to counter the claim made by the accused in the F.S.

16.24.20. It is submitted that further statement of accused No.14-Mohammad Sajid runs fully contrary to cross-examination of relevant witnesses namely Manager of Shri Hari Tourist Home Kerala, Raju Nair PW-989/Exh.6879 and relevant panch witness as well as deposition of Hand Writing Expert.

16.24.21. The Court has considered the rival submissions of the parties. In the opinion of the Court, two important witnesses of Halol named

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Pravinbhai and Ambalal who saw some activities of Halol camp were subjected to Test Identification Parade for the purpose of identifying persons-accused who attended Halol camp. In these Test Identification Parades, these two witnesses identified many accused of whom accused No.14-Mohammad Sajid was one amongst them. Though accused No.14-Mohammad Sajid was identified in Test Identification Parade by these two witnesses, these witnesses could not identify accused No.14-Mohammad Sajid before Court for which appropriate explanation is given about lapse of time and change of facial appearance. It would be pertinent to note here that these witnesses had identified one another accused i.e. Accused No.12-Safdar Nagori in Test Identification Parade as well as dock identification. For the reasons mentioned in the sub-chapter of "Identification" in chapter "Issues", the identification of A-14 by this witness is accepted as an evidence.

16.24.22. The Court finds that accused No.14-Mohammad Sajid volunteered to show one residential place and pursuant to which Police drew panchanma on 03.09.2008 in presence of panchas and FSL Officers. This house belongs to person named Gulab Hussein Abdul Rasid Pathan and is situated at Sherpura, Bharuch. This is the place which was taken on rent by then absconder Taukir and also visited by accused No.14-Mohammad Sajid within the proximate period of occurrence of bomb blast. While examining this panchnama, it would be necessary to look into the evidence of landlord Gulab, who is examined at PW-1138/Exh.8165. While drawing this panchnama, this witness was called by informing him on telephone. During the course of panchnama, more particularly, second part of it, different articles which are marked A, B, C, D, E were seized. This panchnama is proved through examining panch witness at Exh.6539, seized articles A, B, C and D were sent

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through forwarding letter at Exh.5961 and opinion thereof is received at Exh.5963. Considering this opinion, item marked B and C would contain Ammonium Nitrate and Petroleum Hydrocarbon Oil and the final opinion states about this substance being high explosive and to explode it, detonator is used.

16.24.23. It appears that investigator had also drawn one panchnama Exh.6359 dated 19.08.2008, at the place of accused No.14-Mohammad Sajid i.e. House No.33 Lukman Park, Jambusar Road, Bharuch and certain articles were seized during the drawing of panchnama. This panchnama was drawn in presence of F.S.L Officers. This panchnama is proved through examining panch witness. So far as articles seized at the time of drawing of panchnama are concerned, they were sent for scientific examination through forwarding letter at Exh. 5955. Relevant articles as mentioned in forwarding letter are Item Nos.15 to 18. Final F.S.L opinion for these articles is placed at Exh.5957 and out of item Nos.15 to 18, relevant is item No.16, for which the opinion says that it contains Petroleum Hydro Carbons. This opinion is proved through FSL Expert PW No.894-Hitesh Apabhai Patel vide Exh.6358. Prosecution has examined owner of this Lukman park house PW-1084/Exh. 7395 named Saiyed, who has stated about he has given his house on rent i.e. above referred house no.33 to a person named Saiyed, but as it was happened ten years back, he cannot identify that person.

16.24.24. The Court finds that accused No.14-Mohammad Sajid is involved by accused No.2-Imran Ibrahim Shaikh in his confessional statement. According to his statement, accused No.2-Imran Ibrahim Shaikh refers accused No.7-Usman Agarbattiwala, with whom he joined in the activities of SIMI. Accused No.2-Imran Ibrahim Shaikh also states about accuse No.7- Mohammad Usman S/O Mohammad Anis

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Agarbattiwala being apprehended in the year 2001. Accused No.2-Imran Ibrahim Shaikh states that accused No.7-Usman introduced him (accused No.2-Imran Ibrahim Shaikh), to accused No.14-Mohammad Sajid and other big leaders named accused No.12-Safdar Nagori and accused No.10-Amil Parvaz. Accused No.14-Mohammad Sajid was given dummy name of Usman. Accused No.2-Imran Ibrahim Shaikh also states that accused No.12-Safdar Nagori and accused No.14-Mohammad Sajid stayed at Hotel Guest house down way to mountain. Accused No.14-Mohammad Sajid is one of the accused arraigned in Kerala Session's Court trial and he was accused No.16 in this trial. During course of investigation, it is found that accused No.14-Mohammad Sajid stayed at Shri Hari tourist home, when he and others attended Vagamon Training Camp. The prosecution examined PW-989/Exh.6879 Raju Nair, who was Manager of Shri Hari Tourist Home and who had deposed on the basis of hotel register at Exh.6486, which shows a person named Salim Shaikh, having stayed at this guest house during relevant period i.e. period of Vagamon camp. Entry of occupancy which was disputed entry was subjected to forensic examination and the opinion of Hand Writing Expert based on sample and natural handwritings of accused No.14-Mohammad Sajid, is established to be of accused No.14-Mohammad Sajid. Hence, it is established that accused No.14-Mohammad Sajid stayed at this guest house. It is pertinent to note here that accused No.14-Mohammad Sajid stayed at this guest house under the fake name of Salim Shaikh and he also gave his fake address of Kota, Rajasthan. Fake Register entry of guest house register is Exh.6486 and is for a period of 13.12.2007 to 14.12.2007. Sample handwritings etc. are sent to Hand Writing Expert through Forwarding Letter Exh.6887 and the opinion of Hand Writing Expert is Exh.6888.

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Sample hand writings of accused No.14-Mohammad Sajid were taken under panchnama Exh.6487 and proved through panch witness PW-905/Exh.6484. Opinion of Hand Writing Expert is proved through PW-990/Exh.6886. Opinion of Hand Writing Expert is also required to be seen in context of Section 45 of Evidence Act as it is relevant fact.

16.24.25. The Court finds that as per statement of accused No.2-Imran Ibrahim Shaikh, accused No.14-Mohammad Sajid was one of the accused along with many other accused who chose the place of Gujarat camp at Halol and also decided for keeping some participants at Khundpir Dargah, which was situated near the camp. Accused No.2-Imran Ibrahim Shaikh also states that some accused persons including accused No.12-Safdar Nagori came to the house of accused No.14-Mohammad Sajid and accused No.12-Safdar Nagori made accused No.14-Mohammad Sajid organizer of the camp. Accused No.14-Mohammad Sajid was also given responsibility for deciding the participants of the camp and providing logistics namely railway tickets for them and also distribution of it. Dummy name of accused No.14-Mohammad Sajid, was Sehjad. Accused No.2-Imran Ibrahim Shaikh also states that, after completion of Halol camp, different persons-accused left for their respective States and some of the participants-accused who came on motor cycle also stayed for two days at the house of accused No.14-Mohammad Sajid. Accused No.2-Imran Ibrahim Shaikh also states that, some leader like accused No.7-Usman Agarbattiwala, accused No.12-Safdar Nagori, Accused No.13-Hafiz Hussain @ Adnan S/O Tajuddin Mulla and accused No.14-Mohammad Sajid went to Vapi, prior to arrest of some persons-accused by Madhya Pradesh Police in March. On 26th March, absconder Taukir and accused No.14-Mohammad Sajid went to Surat. On the day of occurrence i.e.

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26th July 2008, accused No.14-Mohammad Sajid contacted accused No.2-Imran Ibrahim Shaikh and asked for telephone number of accused No.4-Shamsuddin which accused No.2-Imran Ibrahim Shaikh gave and then accused No.14-Mohammad Sajid also asked for telephone number of accused No.8-Yunus Mansuri which accused No.2-Imran Ibrahim Shaikh was not having and he could not give.

16.24.26. The Court finds that accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari in his confessional statement at Exh. 8623 involves accused No.14-Mohammad Sajid in Halol Terror Training camp but he also states about one lunch party in the month of December 2007, where different persons along with some accused persons named accused No.20- Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman and accused No.22-Imran Ahmed @ Raja were present was also attended by accused No.14-Mohammad Sajid. Accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari has addressed accused No.14-Mohammad Sajid while referring him in context of this lunch party as accused No.14-Mohammad Sajid whose alias name is Salimbhai. It would be pertinent to state here that accused No.14-Mohammad Sajid when stayed at Shri Hari Tourist Home, he gave his name as Salim Shaikh of Kota. It would be further pertinent to note that accused No.14-Mohammad Sajid is to intimate to above referred Kota accused. Accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari also states about accused No.14-Mohammad Sajid being intimated to almost all participants-accused and was leading group of accused persons-conspirators.

16.24.27. It appears that accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya in his confessional statement at Exh.8631 has also involved accused No.14-Mohammad Sajid as one of the participants of Halol

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Camp. Pertinently Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya has termed this camp as SIMI camp and it was also attended by accused No.21- Mehandihasan @ Vikki S/O Abdul Habib Ansari, accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan and accused No.20-Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman who are from Kota, Rajasthan. These three accused persons are relevant as accused No.14-Mohammad Sajid was guest of accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari in a lunch party in the month of December, 2007 where accused No.14-Mohammad Sajid also met accused No.20-Atikur Rehmaan @ Atik S/O Abdul Hakim Musalman and accused No.22-Imran Ahmed @ Raja S/O Siraj Ahmed Haji Pathan. It is also pertinent to note that accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya in his confessional statement had clearly stated that accused No.37-Kayamuddin Kapadiya when came to know that Madhya Pradesh Police is in search of accused No.37-Kayamuddin Kapadiya, accused No.37-Kayamuddin Kapadiya left his home (this is fully contrary to the evidence of accused No.37- Kayamuddin Kapadiya as he examined himself as defence witness has stated that he remained in illegal confinement of Madhya Pradesh Police). Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya who is also real brother of accused No.37-Kayamuddin Kapadiya has also clearly stated that his brother accused No.37-Kayamuddin Kapadiya is SIMI fundamentalist, he is a staunch SIMI activist and adhered to fundamentalist ideology. Accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya also pointed out place of Halol camp, for which panchnama is drawn at Exh. 6443 dated 17.11.2008. The Court is aware that the confessional statement of A-35 having been recorded after administering oath, the Court is referring to the same only as the documents have been exhibited.

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16.24.28. Therefore, the prosecution has led sufficient evidence to convict the accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri for the charges. Accordingly, the conviction of accused No.14- Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri for the offence is confirmed.

16.25. In case of Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh (Azamgarh, Uttar Pradesh) (A-15)

(Accused No.15 in Criminal Confirmation Case No. 2/2022 and Appellant No.11 in Criminal Appeal No. 1710/2022):

16.25.1. In case of accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.25.2. Learned Senior Advocate Shri Mihir Desai representing the case of accused No.15-Mufti Abubasar made submission at the outset that accused No.15-Mufti Abubasar is convicted by Ernakulam Sessions Court in connection with Vagamon camp (Exh.9421). It is submitted that there the conviction is recorded for being a participant in that training camp, however, he being a member of SIMI is not proved. It is also submitted that an Appeal is preferred to higher forum and is pending. He has however, pleaded 'issue estoppel', which the Court has dealt in a separate sub-chapter titled "Section 300 Cr.P.C. and issue estoppel" in the chapter "Issues".

16.25.3. Learned Senior Advocate submitted that accused No.15-Mufti Abubasar has even as per the case of the prosecution not participated in Halol camp, therefore, factual error is committed by the trial Court by concluding that he was a participant in Halol camp. The

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Court has independently considered the evidence against accused No.15-Mufti Abubasar in entirety and therefore, factual error by the trial Court will be subsumed in the finding now being recorded.

16.25.4. It is submitted that in so far as participating in meeting at Surat, the case of prosecution is based on two witnesses; PW No.1103-Mohammadfaruk Adbdulrashid Master vide Exh.7799 and PW No.881-Adnan Mohammad Khalid Gujarati vide Exh.6299, both of whom have been declared hostile. Therefore, there is no evidence for Surat against accused No.15-Mufti Abubasar.

16.25.5. It is submitted that, at best, there is evidence with prosecution for participating in the meetings at Ahmedabad. However, such evidence is that of PW No.957-Zakir Hussain vide Exh.6687. According to Counsel, Zakir is not reliable witness as he himself has participated in the meetings. It is therefore contended that he ought to be treated as an accomplice. So, if his evidence as accomplice is to be relied upon, the legal requirements governing the appreciation of accomplice evidence needs to be fulfilled. If evidence of PW No. 957-Zakir Hussain is not to be believed, then there is no evidence of accused No.15-Mufti Abubasar participating in the Takrir or inciting co-accused.

16.25.6. With regard to the role attributed for providing for residential accommodation in Umraonagar, the evidence is point out panchnama vide Exh.6434 by accused No.15-Mufti Abubasar of Umraonagar house. According to learned Senior Advocate, the panchnama cannot be treated as under Section 27 of Evidence Act, but a confessional statement before the Police. Moreover, there is a time gap as according to witness, the rented premises was secured in the year 2007, whereas point out panchnama is of August, 2008.

16.25.7. In this connection, the Court observes that in point out

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panchnama, the material objects were seized and point out panchnama was proved by independent panch witness (Exh.6433), who has deposed to voluntary disclosure of the house displaying the knowledge of the fact of the house being used as a part of conspiracy. Moreover, the material objects seized were sent to FSL and FSL report Exh.5395 is on record as exhibited document.

16.25.8. Thereafter, learned Senior Advocate has cursorily referred to the opinion in the SDS Tests submitting that such evidence is no evidence in the eye of law. Therefore, even if the report demonstrates his participation, the same is of no consequence.

16.25.9. Learned Additional Advocate General has submitted that accused No.15-Mufti Abubasar is involved by secret witness named Firoz Dilawar Shaikh Exh.7929, owner of Umraonagar house, Vatva. This house was kept on rent by accused No.37-Kayamuddin Kapadiya and was visited by absconder Taukir and accused No.15-Mufti Abubasar. This house of witness is also subjected to search at the instance of accused No.15-Mufti Abubasar during which bolt, wires, pellets etc. were found which is also deposed by witness Firoz. As per the case of prosecution for getting this house on rent, help of person named Sayeedu Rehman was taken and accused No.27-Abdul Rajik is also connected with accused No.37-Kayamuddin Kapadiya for the purpose of taking the house on rent. Witness Firoz has given his statement under Section 164 of Cr. P.C, which is Exh.7930. Witness Firoz identifies accused No.15-Mufti Abubasar, when Police took accused No.15-Mufti Abubasar at witness's place and witness identified him.

16.25.10. It is submitted that the defence has tried to discredit this witness by citing deposition of witness in some other case, wherein he is declared hostile. Merely on this aspect about witness having been

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declared hostile in some other case, more particularly any action being taken against witness for perjury etc. evidence of this witness in the present proceedings cannot be discredited. More particularly, when the evidence of witness in the present case has remained unshaken and that witness has also given his statement under Section 164 of Cr.P.C. The witness also identifies original accused No.23-Ayaz Razakmiyan Saiyed now approver Ayaz as a person coming to his house with other above referred accused during the course of his deposition. Witness also identifies accused No.37-Kayamuddin Kapadiya, during the course of his deposition. accused No.37-Kayamuddin Kapadiya pointed out this house of witness Firoz Shaikh on 18.12.2008 through panchnama Exh.6083 proved through panch witness Exh.6082. The prosecution has also examined witness named Rafikbhai Husseinbhai Exh.6587, a person running a Hotel by the name of 'Garib Nawaz', which used to be visited by three persons. This witness is subjected to Test Identification Parade for the purpose of identifying persons who used to visit his Food Court and during the course of Test Identification Parade Exh.3054 drawn on 27.08.2008, witness Rafikbhai identified accused No.15-Mufti Abubasar as a person who used to visit his Food Court. This Test Identification Parade is proved through Executive Magistrate Exh.3051.

16.25.11. It is further submitted that in addition to above referred conspiratorial circumstances, there is one more link of circumstance in the nature of forensic evidence as accused No.15-Mufti Abubasar was subjected to Suspect Detection Test (SDS) i.e. Exh.5901 proved through PW-848/Exh.5894 and the opinion of it, it was found that accused No.15-Mufti Abubasar was involved and connected with different bomb blasts and his association with SIMI alongwith other accused persons. accused No.15-Mufti Abubasar also knows other persons who are

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involved in bomb blasts.

16.25.12. The Court has considered the rival submissions of the parties. In the opinion of the Court, accused No.15-Mufti Abubasar is involved by Jakir Hussein in the meeting which took place at accused No.4-Samsuddin Nana's house, wherein accused No.15-Mufti Abubasar gave Takrir about SIMI having become strong and their presence is across all cities in India and therefore, we all together must do Jihad against the regime who is anti-Muslim. Witness Jakir, while deposing about such meeting, had also deposed that during this meeting, he realized that persons-activists gathered at accused No.4-Samsuddin Nana's house, are SIMI activists and are Anti-Government and Anti-Nation. Witness Jakir Hussein involves accused No.15-Mufti Abubasar, in one another meeting, which took place in the month of June in the house of secret witness (1) Ibrahim Ansari where many other accused persons were present and accused No.15-Mufti Abubasar exhorted that as SIMI activists are apprehended, they were not to be frightened about it and will establish Islamic regime. Witness Jakir also involves accused No.15-Mufti Abubasar who is from UP, who came again to Gujarat after June 2008 to the house of accused No.8-Yunus Mansuri where few other accused persons were also present and accused No.15-Mufti Abubasar exhorted that everything is ready for establishing Islamic regime. Witness Jakir Hussein also identifies accused No.15-Mufti Abubasar, at the time of giving deposition i.e. dock identification.

16.25.13. The Court finds that accused No.15-Mufti Abubasar is also involved by approver Aiyaz in the meeting at accused No.4-Samsuddin Nana's house, where other accused persons were also present. Details about this meeting is eloquently narrated in para-8 of the deposition. Witness Aiyaz states that about sometime in May 2008, accused named

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accused No.27-Abdul Rajik and two of his SIMI friends named accused No.37-Kayamuddin Kapadiya and absconder Taukir are in search of house to be taken on rent and ultimately with the help of a person named Sayeedu Rehman, house of person named Firoz Shaikh was taken on rent. Witness also states about he visiting this house of Firoz shaikh and once he saw accused No.15-Mufti Abubasar at this house, whom he very clearly recognizes as a person whose name is Mufti Abu Bashar and he is also known as Mufti Saheb. Witness also states about that they are discussing about taking of revenge of Gujarat riots and these three persons were also discussing about the same. Witness Aiyaz also identified accused No.15-Mufti Abubasar during his deposition i.e. dock identification.

16.25.14. The Court also finds that witness Riyaz Hussein vide Exh.8265 has involved accused No.15-Mufti Abubasar in his statement which was recorded under Section 164 of Cr.P.C as participant-co-conspirator in the meeting, which took place at accused No.4-Samsuddin Nana's house and activities which were done there as like watching D.V.Ds on Al-Queda, speech of Osama Bin Laden, training to do explosion as well as preparation of bomb and to do explosion through NHO3, Nitrocellulose and Cylinder. Though this witness has not supported the prosecution and is declared hostile still, the statement of this witness recorded under Section 164 Cr.P.C vide Exh.8266 go on to establish the fact about the activities done by the accused as a part of the conspiracy like, watching DVDs, collecting information of Al-Qaeda and speeches of terrorists like Osama Bin Laden and also, learning about repairing of bombs by using explosives.

16.25.15. It appears that accused No.15-Mufti Abubasar is involved by accused No.2-Imran Ibrahim Shaikh in his confessional statement as he

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having attended Vagmon camp. Accused No.2-Imran Ibrahim Shaikh while describing many other participants-conspirators have stated that accused No.15-Mufti Abubasar Abu Bashar came from Uttar Pradesh. Dummy name of accused No.15-Mufti Abubasar was Abdul Rasheed. So far as, conspirators who gave instigative Jehadi Takrir are concerned, accused No.15-Mufti Abubasar was amongst other conspirators named accused No.12-Safdar Nagori, accused No.10-Amil Parvaz, accused No.11-Sibli @ Sabit, accused No.13-Hafiz Hussain @ Adnan and absconder Taukir. Accused No.2-Imran Ibrahim Shaikh also states that on 24th and 25th of March, accused No.15-Mufti Abubasar came to his house and on 26th of March accused No.15-Mufti Abubasar left for UP. In the month of June 2008, accused No.15-Mufti Abubasar again came to the house of accused No.2-Imran Ibrahim Shaikh and states about absconder Taukir also came to his house. He further states that, in the night of 12th July, accused No.15-Mufti Abubasar again came to his house and on the next day i.e. on 13th absconder Taukir came to his house. Thereafter, on 14th in the house of accused No.2-Imran Ibrahim Shaikh on the laptop of accused No.7-Usman Agarbattiwala, accused No.2-Imran Ibrahim Shaikh, accused No.7-Usman Agarbattiwala, absconder Taukir and accused No.15-Mufti Abubasar together saw Islamic CD. This Islamic CD was on Qayamat which would mean End of time. They saw film named Black Friday which was on blast and in the night of 14th July Mufti went back to UP. accused No.15-Mufti Abubasar is also arraigned as accused in Kerala Session's Case proceedings and in this Session's Case proceedings, he is accused No.15 as like in the present case and Kerala Court has convicted him for the offences punishable under Sections 10, 20 and 38 of UAPA and 120 B of I.P.C as well as Section 4 of the Explosive Substance Act, 1908.

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16.25.16. It also appears that accused No.15-Mufti Abubasar is involved by accused No.76-Manzer Imam, who is from Ranchi in his confessional statement Exh.9021. He also states about he having joined SIMI and got associated with accused No.10-Amil Parvaz and absconder Taukir. Accused No.76-Manzer Imam during his participation in the Vagamon camp also met top leaders of SIMI. Accused No.76-Manzer Imam was given dummy name of Hanif. Accused No.76-Manzer Imam states about lecture being given by accused No.10-Amil Parvaz in Urdu and which was explained by accused No.15-Mufti Abubasar. It was like question and answer programme. Accused No.76-Manzer Imam also states about this camp was being conducted to decide Jihad in India. Accused No.76-Manzer Imam also states that after completion of camp, he was given two railway tickets to reach secretly back to Ranchi. He further states that after one month of the camp, accused No.10-Amil Parvaz came to accused No.76-Manzer Imam and took him to Calcutta to meet person named Harun Rasheed and there they had discussed about benefit of camp and thereafter, accused No.10-Amil Parvaz left for Madhya Pradesh and accused No.76-Manzer Imam returned to Ranchi.

16.25.17. The Court finds that accused No.15-Mufti Abubasar through panchnama dated 18.08.2008, pointed out house of prosecution witness Firoz Shaikh, i.e. the house no.3 Umraunagar Chawl, Vatva which accused No.15-Mufti Abubasar visited. This pointing out of place as well as seizure of certain articles at the instance of accused No.15-Mufti Abubasar took place in presence of panch as well as F.S.L Officers. During the course of drawing of second part of the panchnama articles as like newspapers (mark A), wires, bolt, pellets etc. (mark B), cardboard, and few other articles were found and they all were seized and collected. The articles used for making a bomb. Panchnama

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Exh.6434 is proved through panch witness Exh.6433. So far as, these articles are concerned, they were sent for Forensic Scientific Examination through Forwarding letter Exh.5933 and the opinion of which was received through Exh.5935 and Exh.7954, which supports the case of prosecution.

16.25.18. The Court has perused Exh.5901, the report of suspect detection test, which is an opinion of an expert. This report dated 20.10.2008 (page No.755143) demonstrates that accused No.15-Mufti Abubasar was subjected to suspect detention system and was questioned on various circumstances and the reaction of the accused is recorded under the test is indicative of his involvement. This accused, as per the report has given positive reaction to the issues like (a) his involvement in SIMI, (b) being members of SIMI, (c) blasts in future in Delhi and Varanasi, (d) repeat of Blasts in the Cities where blasts have already taken, (e) acquainted with those persons, who have caused bomb blasts. According to the Court, though this Report is an only an opinion of an Expert, but the conclusion is in consonance with the evidence led against accused No.15-Mufti Abubasar and therefore, it only strengthens the evidence against accused No.15-Mufti Abubasar.

16.25.19. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.15-Mufti Abubasar. The Court has therefore, no reason to interfere with the conviction recorded.

16.26. In case of Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh (Mumbai) (A-30)

(Appellant No.4 in Criminal Appeal No. 1917/2022)

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16.26.1. In case of accused No.30-Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others..

16.26.2. Learned Senior Advocate has made submissions qua accused No.30-Mohammad Sadik @ Yasir @ Imran @ Sadakat @ Sahadat Ishrar Ahmed Shaikh, who according to learned senior advocate was arrested on 24.09.2008 in a different offense under Maharashtra Control of Organised Crime Act (MCOCA) in Mumbai and in the present offense he was arrested in connection with the offenses registered at Ahmedabad on 05.11.2008 and in connection with the Surat offense on 21.01.2009. According to learned senior advocate, Shri Mihir Desai the allegations against the present accused No.30-Mohammad Sadik are two fold, the first being the involvement at the hands of accused no.29-Mohammad Jakir @ Ayub S/O Abdul Hak Shaikh, who in a point out panchnama had pointed out a PCO Call Booth and in that panchnama had indicated that upon the instructions of the present accused No.30-Mohammad Sadik, he had made a phone call from the said booth for receiving the instructions as to where the car bombs are to be placed. Secondly, being the point out panchnama where the accused No.30-Mohammad Sadik had pointed out the shop where time piece/clocks were purchased which were used in the explosion in Ahmedabad. It is submitted that except for the above role, there is no other role attributed to the accused No.30-Mohammad Sadik including any role of participating in any of the meetings.

16.26.3. Learned senior advocate has therefore, taken this Court to three evidences in connection with the first allegation. Exh.6742 is a point out panchnama executed at the behest of accused No.29-

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Mohammad Jakir @ Ayub S/O Abdul Hak Shaikh, which was proved by evidence of panch witness PW No.960-Abbasbhai Ismailbhai Multani, who was examined vide Exh.6741. In his deposition, this witness has deposed that when summoned as a panch witness, Mohammad Jakir was present in custody and upon being asked, he has stated that he had a telephonic conversation with these two friends with regard to the placing of four wheeler vehicle and the said vehicle contained some substance of crime. He has also mentioned the names of the friends being Sadiq and Arif. This accused thereafter, pointed out the place being a shop named 'Ajva Sweets' and pointed out the place from where the phone call was made. In the cross-examination of this witness, he has deposed that while he was mending his motorcycle for puncture, the police people came there and took him to Chowkbazar Police Station. He has also explained the time period required for reaching the place as per the panchnama and has answered the questions put to him with regard to the sweet shop and the phone booth to which he has deposed that upon their visit they did not find any equipments of STD PCO and he had not examined any documents from the occupier of the shop. The perusal of the entire evidence does not create any doubt upon the execution of the panchnama or that this witness not being a truthful witness.

16.26.4. According to learned senior advocate, from joint reading of the panchnama as well as deposition of the panch witness, the only portion that would be admissible as evidence would be the pointing out of the shop from where the alleged phone call was made however, any narration with regard to making of the phone call and acting thereon cannot be treated as a part of admissible evidence.

16.26.5. The prosecution has examined the Investigating Officer PW

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No.1119-Kantilal Narayanbhai Patel, who was examined at Exh.8048, who carried out the aforesaid panchnama. In his evidence in chief, he has deposed that he was assigned with the work of executing of the panchnama at the behest of accused No.29-Mohammad Jakir @ Ayub S/O Abdul Hak Shaikh, who was Hindi speaking and upon being asked, had voluntarily disclosed that at the behest of one Raju @ Tanvir and on the instructions of Tanvir, Sadiq and Arif to identify the place where the car containing explosive is to be placed. For this purpose, the panchnama was to be executed. This witness has also deposed that as per the instruction of the accused-Mohammad Jakir, the team consisting of police personnel and the panch witnesses proceeded to the place and the direction given by the accused and halted at a place where there was a shop consisting of two shutters with the name 'Ajva Sweets' and from that PCO, the accused had called Tanvir. From the deposition, it appears that the panchnama was completed in two parts as per the requirement. This witness has identified his own signature as well as that of the panchas and thereby confirming the preparation of the panchnama. This witness was extensively cross-examined on behalf of some of the accused. The perusal of the evidence in chief does not create any doubt on what has been deposed by this witness in the chief regarding procedure for execution of the panchnama. However, the Court finds that no questions have been put to this witness with regard to what has been deposed by the witness in the chief about the purpose of executing of panchnama and what has been mentioned by the accused in front of the panch witness to make a phone call to identify the place where the cars filled with explosive are to be placed and for that he had followed instructions of Tanvir, Sadik and Arif. Considering the evidence of this witness and placing it alongwith the first part of the panchanama

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Exh.6742, wherein it is noted that the accused-Mohammad Jakir on the say of his accomplice Sadik and Arif, on 18.07.2018, he got the instructions from one Raju as to where to place the cars with explosive and when he arrived at such place, he had utilized a PCO coin box for contacting one Raju @ Tanvir. Therefore, as the disclosure made led to the coin box, which existed as was declared in the first part of the panchnama, the information disclosed regarding the location identified, being a place where he received the instruction for planting of cars, such information is admissible under Section 27.

16.26.6. With regard to another allegation against this accused No.30; Mohammad Sadik, which pertains to purchase of clocks / time pieces, which were used ultimately as a timer in the bombs. In this regard, evidence is point out panchnama at Exh-8093 executed at behest of the very accused No.30; Mohammad Sadik to point out the shop from where clocks were purchased in bulk.

16.26.7. Learned Senior Advocate has argued that from the very beginning execution of panchnama is in great doubt, as the manner in which the panchas were appointed in casual manner and that too from amongst the passengers traveling in the train between Surat to Mumbai. Doubt is also created as to how the panch witnesses reached the Crime Branch Police Station at Pydhonie at Mumbai. Second doubt created is that though the panchas were from Gujarat, in the panchnama, it is narrated that contents of the panchnama were explained in Hindi.

16.26.8. It is also submitted that in the panchnama, the shop has been identified by its location from amongst other shops, whereas when the panch witness was examined vide Exh.8092, PW No.1128- Sunil Rasiklal Shah, in his deposition, he has mentioned that the shop was numbered as 58. This discrepancy creates doubt about panch witness

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being genuine panch witness and therefore, execution of panchnama and the panch witness itself is doubtful.

16.26.9. Learned Senior Advocate has thereafter submitted that contents of the panchnama though exhibited, cannot be utilized for any purpose, as it cannot be said to be panchnama under Section 27 of the Evidence Act. There is no fresh discovery of fact as the Investigating Officer prior to execution of panchnama already knew about the fact of the shop and this fact is clear from the evidence of the Investigating Officer vide Exh.8340, where he has stated that on 23-12-2008 prior to panchnama at Exh.8092 dated 27-01-2009, statement of person concerned with the clock shop was recorded.

16.26.10. Another instance is deposition of PW No.1155 –N. B. Parmar at Exh.8517, who is an another Investigating Officer, who has referred to recording of statement of the Shop Owner and workers therein on 29-11-2008. In view of the aforesaid, the panchnama at Exh.8092 is of no evidentiary value.

16.26.11. Learned Senior Advocate has submitted that evidence of clock purchase is also not sufficient to connect the present accused No.30; Mohammad Sadik as from the reading of the evidence of the Shop Owner; Exh.6823, PW No.978- Mohammadhanif Abdulkayum Roshan, it is coming out on record that clocks, which were found during the course of investigation to be part of explosive device, cannot be identified only from the shop, but could be available in open market as well. Moreover, the prosecution has itself put up the case that the present accused No.30; Mohammad Sadik, who had accompanied accused No.31-Mohammad Arif had never entered into the shop and therefore, it cannot be established that the accused No.30-Mohammad Sadik had played any role for purchase of the clock. At best, he can be said to have

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accompanied the co-accused.

16.26.12. Learned Senior Advocate has thereafter referred to Exh.6828, PW No.979- Dashrath Vishnubhai Patil, the witness, who had worked as helper in the Clock Shop, though has identified accused No.31-Mohammad Arif, but his evidence also does not indicate that the accused No.30-Mohammad had entered into the shop for the purchase of clock.

16.26.13. Learned Senior Advocate has argued that one more reason to doubt the selection of panch witnesses, is because the Investigating Officer; Mr. N. B. Parmar, in his deposition at Exh.8517, has deposed that he had met the panch witnesses for the first time at the Crime Branch Office and thereafter, there is nothing on record by the prosecution as to how and who had selected the panch witness for this panchnama, as the Police Officer referred to by the panch witnesses, have not been examined.

16.26.14. Learned Senior Advocate has submitted that if the panchnama does not meet requirement of Section 27 of the Evidence Act, then the same cannot be utilized with the aid of Section 8 of the Evidence Act.

16.26.15. In this connection, learned Senior Advocate has relied upon Para-66 and 73 of the decision of the Apex Court in case of ***Mohmed Inayatullah v/s. the State of Maharashtra reported in (1976) 1 SCC 828***. Learned Senior Advocate has also relied upon the decision of the Apex Court in case of ***Bahadul Alias Ghanshyam Padhan v/s. State of Orissa reported in (1979) 4 SCC 346*** and has thereafter extensively relied upon the latest decision of the Apex Court in case of ***Subramanya v/s. State of Karnataka repored in (2023) 11 SCC 255***. For the purpose of implication of Section 27 vis-a-vis Section 8 of the Evidence Act,

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learned Senior Advocate has relied upon the decision of the Apex Court in case of ***Narayan Yadav v/s. State of Chattisgarh reported in 2025 SCC Online SC 1603***.

16.26.16. Learned Senior Advocate has thereafter referred to relevant paras in the impugned judgment in connection with present accused No.30- Mohammad Sadik (See Page No.3796) and submitted that accused No.29; Mohammad Jakir @ Ayub, who was an accused only for Surat and not for Ahmedabad, has been acquitted and the case of the present accused No.30-Mohammad Sadik is similarly situated and therefore, is required to be acquitted.

16.26.17. With regard to antecedents, learned Senior Advocate has submitted that the accused No.30-Mohammad Sadik was originally arrested in Mumbai for the case under the MCOCA, has now been discharged, whereas another case in Delhi, is pending. Learned Senior Advocate has submitted that it is the case of accused No.30-Mohammad Sadik that he was never taken to Mumbai for the panchnama and the panchnama is an entirely got up story. There is no preliminary panchnama, which ought to have been executed at Surat and even if the panchnama is to be believed, then also the prosecution has not established role of accused No.30- Mohammad Sadik, as to how the said clocks had reached in the hands of the co-accused and were thereafter, utilized as time pieces in the explosive devices.

16.26.18. Learned Additional Advocate General for the State has submitted that accused No.30-Mohammad Sadik and accused No.31-Mohammad Arif both are from Maharashtra.

16.26.19. It is submitted that the panchnama Exh.1839 is drawn on 27.07.2008 between 10:30 hours to 11:15 hours, which would relate to a place known as Hateshwar, Baag-a-Firdosh Police Line Division 2,

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where from garbage box, live bomb was found. This live bomb was appropriately disabled and objects and articles found from it were collected, which are appropriately described in panchnama of which one article is Alarm clock of Prince Company containing 9-volt cell and also setting of time of 12:00 and connected with Electric detonator. All the items including this clock was sent by forwarding letter to F.S.L by Police Inspector, Ramol Police Station, Ahmedabad City and the panchnama is also drawn by Police Inspector, Ramol.

16.26.20. It is submitted that these articles referred hereinabove were sent for Scientific Examination through forwarding letter vide Exh.5918 and it would include at Serial No.4 and Marked D. The above referred seized alarm clock of Prince Company and the opinion of these articles given by F.S.L is Exh.5920 is that those articles mark A, B and C found from live bomb would contain Ammonium, Potassium Sodium and Nitrate as also Petroleum Hydro Carbon Oils which are high explosive substance.

16.26.21. Before referring to the factual aspect of this accused, the Court may observe a detailed discussion has been made under the sub—chapter of “Panchnamas under Section 27 of Indian Evidence Act” under Chapter “Issues” to deal with the admissibility of the panchnama referred to hereinabove.

16.26.22. The Court finds that before considering the evidentiary material against accused No.30-Mohammad Sadik, the prosecution would place reliance on panchnama Exh.2080. This panchnama relates to a place known as Main Gate of Arvind Mill Khatraj, from where one live bomb was found. This panchnama is drawn on 26.07.2008, from 22:30 hours to 2:00 hours on 27.07.2008 by Police Inspector of Kalol Taluka Police station. This panchnama also relates to finding out of live

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bomb from outside the main gate of Arvind Mill, Khatraj and live bomb after it being dismantled by Bomb Disposal Squad. Different articles-object as described in this panchnama were also found, of which Item No.9 relates to Alarm Clock of Red-White body under the name of Prince Company, containing pencil cell, wires, devices for setting time and blue coloured Cellotape. This Prince Company alarm clock alongwith all other articles found from live bomb were sent for Forensic Examination through Muddamal forwarding letter vide Exh.5715, alongwith articles found from bomb would also include at Serial No.9. This Prince Company alarm clock identified as Mark (I) having sent to F.S.L. On receiving of this article, F.S.L Officers have given their opinion at Exh.5716, which would include clock Mark (1) being considered as clock as described in panchnama and forwarding letter referred to hereinabove. As all the articles found from the live bomb were sent for forensic examination, articles marked as A, D, F and G are found to be contained with Ammonium and Nitrate and Petroleum Hydro Carbon oil and objects marked as M and N are found contained with Ammonium, Nitrate Lead and excides as also high explosive and Petroleum Hydro Carbons Oil. As per opinion, Ammonium, Nitrate etc high explosive substance and other articles as pellets are opined as used for missiles in handmade bomb. The said Article opined as lead excides and P.E.T.N. is used for blasting cap (detonator) and all together is opined as time delay device Improvise Explosive Device Bomb, that along with above referred explosive substances etc., there was Alarm clock named Prince being found from live bomb, is relevant as purpose of putting such clock in bomb, is to set time for explosion of bomb.

16.26.23. In the opinion of the Court, investigator has drawn panchnama vide Exh.8093 on 27.01.2009, from 13:15 hours to 14:45

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hours at the place of Bombay Crime Branch Police Station. Panchnama is drawn by C Division, Surat City Police Station. The panchnama relates to accused No.30-Mohammad Sadik being present at Police station and leading police to show a place-shop from where, accused No.30-Mohammad Sadik and his companion accused No.31-Mohammad Arif purchased timer clock. Thereafter, accused No.30-Mohammad Sadik led police and panchas to a shop at Mohd. Ali road, Abdul Rehman Street and pointed out a shop which was below old building of Javeri House and few other shops. Accused No.30-Mohammad Sadik also stated that accused No.31-Mohammad Arif went to purchase clocks and accused No.30-Mohammad Sadik stood outside the shop. The prosecution has proved this panchnama vide Exh.8093 through panch witness Exh.8092 as well as Investigating Officer vide Exh.8517.

16.26.24. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against 30-Mohammad Sadik @ Yasir @ Imran @ Sadakat S/O Israr Ahmed Shaikh. The prosecution has established that the accused has played a role, as a part of conspiracy in procuring the time-piece which was used in the explosive device. The Court has therefore, no reason to interfere with the conviction recorded.

16.27. In case of Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh (Mumbai) (A-31)

(Accused No.20 in Criminal Confirmation Case No. 2/2022 and Appellant No.15 in Criminal Appeal No. 1710/2022)

16.27.1. In case of accused No.31-Mohammad Arif @ Arif Badar @

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Ladan S/O Badruddin @ Jumman Shaikh, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.27.2. On behalf of accused No.31-Mohammad Arif @ Arif Badar @ Ladan, learned Senior Advocate Mr. Abhay Thipsay has argued that the role attributed to the accused is to have purchased clocks/time pieces in bulk, which were used as a timer in the explosive device. It is argued that to connect accused No.31-Mohammad Arif with such purchase witnesses like the shop-keeper have been examined. However, both the witnesses have failed to identify accused No.31-Mohammad Arif during their deposition. Their Test Identification Parade is also under great doubt in fact there is no Test Identification Parade conducted at all. For this, learned Senior Advocate has taken this Court through the evidence of PW No.978-Mohammadhanif Abdulkayum Roshan vide Exh.6823 and PW No.979-Dashrath Visnubhai Patil vide Exh.6828, who have deposed that Test Identification Parade was conducted on 06-01-2009 and after the Test Identification Parade, they left for Bombay. However, in fact it is on record that Test Identification Parade was conducted only on 07-01-2009. He referred to Exh.3174, a letter from Police to postpone the Test Identification Parade scheduled on 06-01-2009 by a day as the accused No.31-Mohammad Arif could not be brought to Executive Magistrate from the judicial custody. Therefore, when the Test Identification Parade was drawn, PW No.978-Mohammadhanif Abdulkayum Roshan and PW No.979-Dashrath Visnubhai Patil had already left for Mumbai and hence, the entire Test Identification Parade is a fabricated document.

16.27.3. It is further argued that Post Test Identification Parade usually a statement is recorded by Investigating Officer and the

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Investigating Officer, PW No.1154-Usha Bachubhai Rada in Exh.8340 has admitted to recording of a statement on 06-01-2009.

16.27.4. Moreover, it is argued that from the evidence of Investigating Officer, it is not clear that on what basis the Investigating Officer was able to identify the shop from where the clocks were purchased. By referring to deposition of PW No.978-Mohammadhanif Abdulkayum Roshan and PW No.979-Dashrath Visnubhai Patil, it is submitted that there is some role of Mumbai Crime Branch to name accused No.31-Mohammad Arif, but deliberately nothing is brought on record.

16.27.5. Learned Senior Advocate has submitted that on the basis of deposition of PW No.978-Mohammadhanif Abdulkayum Roshan and PW No.979-Dashrath Visnubhai Patil regarding identification a doubt is created from the deposition as to how on basis of small paper (summons), they were able to travel to Ahmedabad and reach the Court of Executive Magistrate on their own.

16.27.6. From the record it appears that, accused No.31-Mohammad Arif was arrested in Surat case prior in point of time, therefore, during the investigation his role surfaced. In this regard, while investigating bulk sale of clocks around the time period led to the shop and therefore the statement of the shop owner and the employee of shop was recorded. The witnesses have deposed about the purchase in bulk of the clocks and in phased manner both the witnesses have consistently deposed about the purchase, the Bill book and identification parade at Ahmedabad. The witnesses have identified the muddamal clocks in the Court to be the clocks purchased from their shops. Though in cross, questions are put as to how without using specific identification mark, the clocks have been identified. However, the fact that shop-keeper and employee have consistently stated about the sale, the product make being sold and

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supported by documents like Bill. The fact of purchase of muddamal clock is established and therefore, the bulk purchase of the clock is also established.

16.27.7. With regard to Test Identification, Exh.3172 is the letter of Investigating Officer on 31.12.2008 to Executive Magistrate in response to which Exh.3173 is addressed by the Executive Magistrate scheduling the Test Identification Parade on 06.01.2009 at 16:30 hours. Thereafter, Exh. 3174 has been addressed by the Investigating Officer to the Executive Magistrate that for some reasons, accused could not be brought from judicial custody for identification parade on 06.01.2009 at 16:30 hours and hence, the Test Identification Parade by the Executive Magistrate was rescheduled to the next date i.e. 07.01.2009 by communication dated 06.01.2009 vide Exh.3175. Exh.3176 is the panchnama of Test Identification Parade. The said panchnama records the date as 07.01.2009 on which the Test Identification Parade has been carried out. The deposition of Investigating Officer being PW No.1154-Usha Bachubhai Rada at Exh.8340, in which in para 2(68) has also deposed to the extent that during the course of investigation, the Test Identification Parade was organized on 07.01.2009. The Executive Magistrate is also examined as a witness as PW No.589-Indravir Vajubhai Zala vide Exh. 3159. He has deposed with regard to Test Identification Parade at Exh. 3176, in para-23 of his deposition that the Test Identification Parade of this accused was conducted on 07.01.2009 at 16:30 hours. This witness has in detail indicated the procedure adopted for protecting identity of the accused from the witness and has also given the liberty of change in clothes, appearance and standing in the line of dummies. Thereafter, the identification has taken place. The witness has been extensively cross-examined and the only question that

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is put to this witness regarding Exh.3176 in para-50 is with regard to the dummy persons gathered from Ramol area. The defense has not put any relevant question in cross-examination about the Test Identification being conducted on 06.01.2009. This witness has also in his deposition referred to Exh.3173, 3174 and 3175 to show that though original schedule of Test Identification Parade was on 06.01.2009, but was rescheduled to 07.01.2009.

16.27.8. The deposition of the identifying witness PW No.978-Mohammadhanif Abdulkayum Roshan vide Exh.6823 in para-22 of the cross-examination, a reference is made to arrival in Ahmedabad on 06.01.2009 by boarding train from Bombay on 05.01.2009. In para-24, he has denied the question put to him that on 06.01.2009, he has not identified anybody in the Test Identification Parade, but is giving false evidence on the say of the police. The contention of the defense by drawing attention to para-29 of the cross-examination, wherein the witness has answered that on 06.01.2009, he alongwith other witness Dashrathbhai returned to Bombay. Meaning thereby, they were not available for the scheduled Test Identification Parade on 07.01.2009. Considering the aforesaid documents relating to holding of Test Identification Parade and the Executive Magistrate himself having deposed about the holding of Test Identification Parade, cannot be set at naught merely because in a cross-examination date of 06.01.2009 is recorded. Upon closer examination of para-29 of the cross-examination, the purpose of putting the question appears to be that on the date when the Test Identification Parade has taken place, the witnesses have returned to Mumbai. The Court is of the opinion that such a mention of date 06.01.2009 to be the date of return to Mumbai in cross examination cannot falsify the entire evidence of Test Identification Parade.

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16.27.9. Similarly, the evidence of PW No.979-Dashrath Visnubhai Patil vide Exh.6828, who is an employer in the shop from where clocks were purchased. In his deposition, he has given detailed narration of the identification parade. The evidence of PW No.979-Dashrath Vishnubhai Patil vide Exh.6828 is confirmed with the evidence of Test Identification Parade being conducted and the witness having participated in the Test Identification Parade.

16.27.10. The Court may now take into consideration the evidence of PW No.978-Mohammadhanif Abdulkayum Roshan vide Exh.6823 insofar as it connects the accused No.31- Mohammad Arif to the purchase of clocks/time pieces. In his evidence, witness has indicated that in the month of July there was a bulk sale of 50 time pieces (Alarm Clock) from his shop and upon verifying through his bill book, he came across a bill of 4th July for 30 time pieces. It is deposed that customer had arrived at his shop, he had ordered for total 50 time pieces however, only 16 time pieces were readily available in the shop and he would provide 14 time pieces on the following day. Accordingly, payment of 30 time pieces were received with the understanding that if further 20 time pieces are available from the distributor, then the same would also be sold. It is deposed that on the following day, customer came to collect the 14 time pieces for which payment was made and as the additional time pieces were also available, the customer willingly collected. However, regarding the bill for the remaining 20 pieces, the customer left the shop before the bill could be drawn and given to him. It is deposed that for the bulk purchase, the witness had given discount of 15%.

16.27.11. The witness has also deposed that at the relevant time he had given description of such customer with regard to his body built, colour,

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height and approximate age.

16.27.12. The witness has deposed that on 2nd January, the police officer had visited his shop and asked him to remain present on 6th at Gheekanta Court, Ahmedabad and accordingly, witnesses alongwith his employer Dashrath came to Ahmedabad alongwith the paper given to him about the detail. He remained present in the office of Magistrate in the Court compound and after the Magistrate having ascertained his identity, proceeded to conduct the Test Identification Parade and the witness was able to identify the individual, who has purchased 50 time pieces from his shop. His name was recorded by the Magistrate to be Mohammad Arif Shaikh of Mumbai. The witness has produced the bill book at Exh. 6824 bearing No.22981 which was identified through the carbon copy of the bill containing his handwriting and signature. The witness admitted to identify the accused during the course of his deposition from Video Conferencing however, he has not been able to identify and has deposed that with the passage of more than 10 years and there being significant changes in the body of the accused, he was not able to identify.

16.27.13. The witness is able to identify time piece of Prince make which was sold from his shop which is article 05 of the muddamal list No.3351. Similarly, another time piece being Article 10 of muddamal list No.2078 is also identified to be the time piece sold from his shop.

16.27.14. The witness has been extensively cross-examined and he has admitted that from his shop, many people are purchasing articles in retail and in stock. He has also admitted that from his shop, clocks of various makes are being sold and that the clocks that he identified can be sold by many other shopkeepers. He has admitted that there is no specific mark of his shop on the clock identified by him. However, in para-15 of the

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cross-examination, the witness deposes that he has given proper description of the person, who purchased clocks from him and there was no variation in the appearance of that person at the time of Test Identification Parade. The witness has been cross-examined on the issue of any serial number on the clock as it is argued by the defense that the company manufacturing clock would have some unique identification number on its product to which the witness has categorically answered that manufacturing company does not put any serial number and the warranty period starts from the date of stamp applied by the dealer on the warrant card. This witness confirms in para-17 that it is not true that on the date of purchase of the clock, bill was not given to the customer, meaning thereby, the fact of purchase of the clocks from this witness is established. The witness was also questioned as to how he was able to produce such an old bill book before the Court to which he has answered that on account of the requirement by the Sales Tax Department, they have to maintain in their record. The cross-examination with regard to production of bill book as an evidence of purchase has been appropriately answered by the witness and therefore, the factum of sale of the clocks in bulk is positively established by this witness. The questions put in this regard in para-32 further confirms the sale of clocks in bulk.

16.27.15. To question the ability of the witness to identify, one customer out of the several customers that he had attended, a reference was made to the very bill book which referred to the sale of 30 calculators under the bill of 23029, to which the witness has categorically answered that at the relevant time he would have easily identified the customer. Thereby, confirming the ability of this witness to identify his customer and substantiated it by producing the relevant bill

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book regarding the sale of the clocks in bulk. One more aspect that comes out on record is that the clock/time piece which was found to be the part of explosive devise, are identified to be the clock from his shop. Over and above, identifying the accused No.31- Mohammad Arif as a person who is a purchaser of the time piece from his shop clearly connects accused No.31-Mohammad Arif with the offense of preparing and planting of the explosive devise.

16.27.16. The Court may thereafter, peruse the evidence of 979-Dashrath Visnubhai Patil vide Exh.6828, who is a employee of PW No.978-Mohammadhanif Abdulkayum Roshan in his shop being Vali Mohammad Roshan and Company. This witness has also deposed that in the month of July from his shop 50 time pieces with alarm were sold which is supported by the relevant bill book of the shop and out of 50, 16 clocks were handed over immediately and 14 pieces were to be handed over on the following day after receiving the money for entire 30 pieces of such clocks and it was assured that if 20 more clocks were available from the distributor, then the same would also be sold to the customer. Accordingly, on the next day, as per the say of his employer, who had gone for offering 'Namaz', at the time when the same customer arrived, 14 clocks out of 30 were handed over and additional 20 were also sold by receiving payment of Rs.2960/-. This witness has deposed that the customer left without taking the bill of additional 20 clocks. In para-4, witness has deposed that he at the time of recording the statement has given the description of the accused person on the basis of his colour, height, age and his body built.

16.27.17. The witness has thereafter deposed about the Test Identification Parade being carried out upon being summoned by the police to remain present before the Executive Magistrate at Ahmedabad

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and he had alongwith his employer travelled to Ahmedabad and reached the Court compound and after proper identification of himself participated in the Test Identification Parade and was able to identify the customer, who had purchased 50 clocks from his shop whose name was recorded as Arif Badruddin Shaikh.

16.27.18. With regard to the identification during the deposition, this witness has deposed that with the passage of almost 10 years and there being a change in appearance and body of the accused, he may not be able to identify however, an attempt was made to identify the accused through Video Conferencing, where the accused was lodged in jail. This witness has proceeded to identify the Article No.5 of Exh.3351 to be the Prince Brand Alarm Clock purchased from his shop and immediately Article No.10 of Exh.2078 also to be Prince Brand Alarm Clock sold from his shop. The witness has been cross-examined with regard to his ability to identify to which he has deposed that as the customer had purchased in bulk, therefore he was able to remember the appearance and when question about the other customers who may have purchased in bulk from his shop, witness has deposed that at the relevant time, he would be able to identify such customer. This witness has been also cross-examined about his visit to Crime Branch, Mumbai to which witness has answered that he had occasion to visit Crime Branch, Mumbai and each time he had gone in company of his employer PW No.978-Mohammadhanif Abdulkayum Roshan. It appears that this line of questioning was objected as the argument of the defense is that the witnesses PW No.978-Mohammadhanif Abdulkayum Roshan and PW No.979-Dashrath Visnubhai Patil are got up witnesses with the aid of Crime Branch, Mumbai as the arrest of the present accused was made when he was in custody of Mumbai police in MCOCA case. The Court

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is unable to accept such argument when the witnesses have clearly produced sufficient evidence regarding the purchase of the clocks substantiated with the bill book and confirmed by the Test Identification Parade. It was also argued to create doubt on the proceedings of identification that the witnesses took 10 to 15 minutes in the Test Identification Parade to identify accused No.31-Mohammad Arif. It is argued that it is unusual for a genuine witness to take 15 minutes to identify. The Court is unable to accept this argument as well as it is only a case of witness being extra cautious before he conclusively points out a person who was his customer. The Court is therefore, of the opinion that the prosecution has sufficiently established accused No.31-Mohammad Arif has purchased the time pieces in bulk from the shop of PW No.978-Mohammadhanif Abdulkayum Roshan and PW No.979-Dashrath Visnubhai Patil which were found as a part of explosive device.

16.27.19. Learned Additional Advocate General for the State has submitted that accused No.31-Mohammad Arif is also involved in panchnama Exh.5587, which is drawn on 13.12.2008, from 13:00 hours to 14:00 hours. The panchnama is drawn by Crime Branch Police station, Ahmedabad. Panchnama relates to presence of accused No.31-Mohammad Arif at Police station and accused No.31-Mohammad Arif demonstrating connection of timer device in bomb. This was done in presence of panchas as well as F.S.L Officers. For the purpose of demonstration, accused No.31-Mohammad Arif asked for clock, battery, bulb and adaptor as described in the panchnama, which was also provided to accused No.31-Mohammad Arif. On asking by accused No.31-Mohammad Arif, he was also provided with blank paper, pencil etc. for drawing picture of circuit diagram and on the basis of which, the

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accused drew a picture of circuit diagram which was kept alongwith panchnama. On the basis of articles provided, he prepared timer device and demonstrated that at a particular time, bulb used for the experiment lighted up. It was explained that in place of bulb, if detonator was connected, it would cause explosion. All the articles used were sent to F.S.L through forwarding letter vide Exh.4645 and the report thereof was received vide Exh.5647. The said report opines that the above articles used by accused No.31-Mohammad Arif during the course of demonstration panchnama, description about it as well as, usability and utility of it and most importantly similarity of articles used by accused No.31-Mohammad Arif with articles used for the purpose of preparing bomb. Panchnama Exh.5587 is proved through panch witness at Exh.6871 together with investigator at Exh.8638. The opinion of FSL vide Exh.5647 is proved through witness Exh.5631 and presence of F.S.L Officers at the time of demonstration, is examined at Exh.5566.

16.27.20. In view of the aforementioned evidence, in the opinion of the Court, relevant circumstance against accused No.30- Mohammad Sadik is him having pointed out shop from where Prince Company clocks were purchased as well as, use of prince Company clock for the purpose of preparation of bomb which have been found during two panchnamas from where live bombs were found, from live bombs Prince Company clock was recovered. The prosecution has examined PW-978/Exh. 6823, owner of a shop namely Wali Mohammad Roshan & Company, situated at Abdul Rehman Street, Bombay Masjid Bandar, who had deposed that he and his family members were in business of clocks since years. He stated that Crime Branch Police Ahmedabad came to his shop and inquired about sale of 50-time piece i.e. alarm clock. He also deposed that there being a bill of sale of 30 clocks, of which 16 clocks were

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given to the customer on the day on which customer came and on the other day, 14 pieces of clock were also given as customer wanted to purchase 50 clocks and on the next day, when he came to take remaining 14 clocks, this witness also gave remaining 20 pieces of clock. Therefore, on the first day, 16 pieces were given, on the next day 34 pieces were given and total 50 pieces were given of which there is a bill of 30 pieces of clock and customer took remaining piece without getting the bill from shop. The witness gave the description of the person, who came to his shop as dusky of medium body and height and age also. The said witness also gave xerox copy of the bill and also put his signature. The witness was also interrogated and his statement was recorded.

16.27.21. The Court finds that witness was called for Test Identification Parade at Executive Magistrate's Court Ahmedabad and he identified accused No.31-Mohammad Arif vide Exh.3176, a person to whom 50 clocks were sold.

16.27.22. The Court finds that the witness was also shown copy of Bill No.22981, which bears handwriting and signatures of witness. Witness also brought purchase bill showing purchased of clocks and the said bill was sought to be exhibited and original bill book was sought to be taken back by the witness and xerox copy of bill was exhibited at Exh.6824. The witness clarified about particulars of bill by deposing the name of manufacturers of clock as ‘Samay’ and the product name is ‘Prince’.

16.27.23. It appears that witness is shown article No.5 of Muddamal list Exh.3351 of Session's Case No.365 of 2009 and witness identifies that the article ‘Prince brand clock’ made by Samay Company and he also identifies article No.10 of Muddamal list Exh.2078 of Session's Case No.348 of 2009, which is also a same kind of clock. The above referred clock of article Nos.5 and 10 relate to one of the articles found

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from live bomb in the matter of Ramol and Kalol Police Station respectively. This again relates to panchnama Exh. 1839 and Exh.2080.

16.27.24. The Court finds that accused No.31-Mohammad Arif is also involved by PW-979/Exh.6828 Dashratbhai, resident of Mumbai, who working in the shop of witness Exh.6823-Mohd. Hanif Roshan. The said witness has fully supported the case placed by witness Mohd. Hanif Roshan and reiterated about accused No.31-Mohammad Arif having come to his shop and had taken in all 50-piece clocks of Prince brand which were manufactured by Company namely Samay. During the course of Test Identification Parade vide Exh.3176, the witness identifies accused No.31-Mohammad Arif as a person who came to his shop for purchase of clocks. He also identifies both the clocks as identified by witness Mohd. Hanif Roshan Exh.6823. The witness due of lapse of years and change of physical appearance, could not identify accused during course of deposition. The Test Identification Parade vide Exh.3176 is proved through examination of Executive Magistrate at Exh.3159.

16.27.25. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused 31-Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh. The Court has therefore, no reason to interfere with the conviction recorded.

16.28.In case of Kamruddin @ Raja @ Abdulla Chandmohammad Nagori (Ujjain, M.P.) (A-9)

(Accused No.9 in Criminal Confirmation Case No. 2/2022 and Appellant No.5 in Criminal Appeal No. 1710/2022)

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with accused No.10; Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh (Ujjain, M.P.):

16.28.1. Learned Advocate Shri Hriday Buch has made a joint submission for accused No.9- Kamruddin @ Raja @ Abdulla Chandmohammad Nagori and accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh as according to him the role and evidence in connection of these accused is identical. He has combined his arguments along with the general submissions that he has made. According to learned Advocate the role of these accused was to participate in the camp held at Halol.

16.28.2. In case of accused No.9-Kamruddin @ Raja @ Abdulla Chandmohammad Nagori, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.28.3. It is submitted that the evidence in support to participation in Halol camp is in the form of evidence of three witnesses who can be termed as chance witnesses. The manner in which the prosecution witnesses were identified as eye-witnesses, makes their evidence doubtful.

16.28.4. Learned Advocate for the accused has also argued that as during the deposition these chance eye-witnesses have not identified these accused, their evidence is further weakened. He has also assailed the Test Identification Parade submitting that there are many procedural lapses in conducting the Test Identification. According to him, proper safe guard was not observed in selecting the dummies and maintaining the ratio. Therefore, as the identification also was not established the evidence of eye-witnesses regarding their participation may not be believed.

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16.28.5. Learned Advocate has assailed evidence in the form of confessional statement of accused No.2–Imran Ibrahim Shaikh vide Exh.8619. It is assailed on the ground that the confessional statement is not recorded immediately after the arrest of accused No.2, but after almost three months. Moreover, the accused No.2 has retracted it within 12 days of making it. Therefore, it is not safe to rely on the evidence of confession of co-accused either to base the conviction or as the corroborative evidence.

16.28.6. The other set of evidence is SDS test of these accused. According to learned Advocate Exh.5901 is the report of the expert on SDS tests. Such evidence can only be corroborative evidence to the substantive evidence. When there is no substantive evidence, the corroborative evidence cannot stand alone to support conviction.

16.28.7. Learned Advocate has thereafter submitted that prosecution has also not been able to establish membership of the accused of SIMI. There is no documentary evidence or otherwise. Reliance on Exh.9248 is also not sufficient as this document has come on record through accused No.68- Mohammad Habib @ Habib Falahi @ Mohammad Taiyab S/O Abuljais Shaikh, who himself has been acquitted. It is submitted that the accused is convicted for the offence registered and tried by Ernakulam Sessions Court and therefore, the accused cannot be tried again for the same offence, as it would be barred under Section 300 of Cr.P.C.

16.28.8. The additional evidence against this accused according to learned Advocate is the confessional statement of accused No.21-Mahendi Hasan vide Exh.8623. This cannot be relied for the present accused as it is a confessional statement of co-accused. The confessional statement was recorded after a long time after the arrest of accused

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No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari. Moreover, the confessional statement has been retracted. It is also argued that the application to confess dated 07-11-2008 is verbatim to Exh.8621 of another co-accused creating doubt over the genuineness of the confession and indicates Police informer.

16.28.9. It is also submitted that the confessional statement still cannot be relied as the same is exculpatory and does not involve the maker in the crime.

16.28.10. With regard to accused No.9; Kamruddin @ Raja @ Abdulla Chandmohammad Nagori, learned Advocate has submitted that evidence relied for against this accused are three chance witnesses, who were examined for purpose of Camp at Halol. Learned Advocate has submitted that manner in which Investigating Officer has introduced them as witness on the basis of Investigating Officer reaching spot to carry out panchnama and stumbling upon this witness, does not inspire confidence. However, in the opinion of the Court, their presence cannot be questioned as they have stood cross examination. Moreover, their presence at vicinity has been quite natural, as these witnesses were present in the due course of their working like shepherd and regular person plying a vehicle in that area. It is submitted that identification of this accused through this witness is also not reliable, as there is no dock identification. Identification is also questioned on the ground that evidence of Executive Magistrate would indicate that dummy witnesses were brought in great haste and there was no proper safeguard and the steps taken was not as per requirement of Gujarat Police Manual. Other evidence against this accused is confession by accused No.2; Imran Ibrahim Shaikh in addition to what has been submitted earlier. Learned Advocate has submitted that confession has been recorded after period

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of three months of application and the same has been retracted 12 days later.

16.28.11. Learned Advocate has drawn attention of this Court to Exh.5901, which is report through PW No.848- Vasantbhai Hathibhai Patel (Exh.5894). It is submitted that it is only an opinion of Expert, which can be used as corroboration. However, in the facts of present case, when there is complete lack of substantive evidence, there is no question of corroboration by Report at Exh.5901. Learned Advocate has submitted that finding given by the Court in the judgment that the participation of this accused was from inception, is not established by any concrete evidence or even from confessional statement. Moreover, there is no evidence to establish any role, which the confessional statement refer to causing serial blasts in Ahmedabad. Confession of the act of causing serial blasts cannot be treated as admissible evidence. It is submitted that only evidence to connect the appellant to the banned terror organization; SIMI is Exh.9248. The prosecution has failed to establish as to how Exh.9248 appeared on the record. Even if this document is taken into consideration, then there is only reference of the name of appellant, but no other mention about his connection. According to learned Advocate, the document has come on record in connection with accused No.68; Mohammad Habib @ Habib Falahi @ Mohammad Taiyab Abuljaish Shaikh and accused No.68 Mohammad Habib @ Habib Falahi @ Mohammad Taiyab Abuljaish Shaikh has been acquitted. Exh.9248 was never put to the accused No.9 during recording of statement under Section 313 of Cr.P.C.

16.28.12. Against these arguments, the State has argued that the prosecution has proved the participation of these accused in the Terror camps organized at Vagmon as well as in the forest of Halol, Pavagadh.

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It is submitted that being part of such Terror camp they have became the part of conspiracy. The activities undertaken at both these Terror camps have been duly established by the prosecution.

16.28.13. According to prosecution by a set of evidence which includes eye-witnesses the holding of both the camps have been established. The prosecution has established their participation in these camps by three eye-witnesses to have identified them in the Test Identification Parade and the fact that they are not identified in Court, the witnesses have offered valid explanation.

16.28.14. According to the State, the role attributed to accused No.9-Kamruddin @ Raja @ Abdulla Chandmohammad Nagori and accused No.10- Aamil Parvaz @ Sikandar Kaji Saifuddin Shaikh is to be the part of the conspiracy and in furtherance of the conspiracy have participated in the terror camp organized at Vagamon in Kerala and Halol and Pavagadh-Halol. It is submitted that on the basis of the various circumstances established by the State, including the holding of terror camp at Vagamon and Halol by way of various witnesses who proved the travelling of accused persons to the camp by hiring of Tata Sumo and motorcycle, making arrangement for pitching tents by use of bamboo and on the basis of the point out panchnama executed under Section 27 of the Evidence Act. Moreover, the presence of accused No.9 and accused No.10 is also established by eye-witnesses who have identified these accused persons in the Test Identification Parade and therefore, the State has successfully established the participation of accused No.9 and accused No.10 in the conspiracy, thereby the conviction is justified.

16.28.15. Considering the submissions made by both the sides, as discussed in the preceding paras, the circumstance of holding of the terror camp at Vagamon as well as forest area of Pavagadh in Halol has

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been established. The evidence of PW No.1105-Idrish Gulabsha Fakir vide Exh.7923 being the care taker of the Khundpir Dargah has established that the accused persons had stayed at Khundpir Dargah while they participated in various camp activities. The factum of the camp being held at the site is also established by the witnesses whose Tata Sumo was hired for transportation, the material for tent was taken on hire and the point out panchnama under Section 27 of the Evidence Act.

16.28.16. Learned Advocate has thereafter made some additional submission qua Aamil Parvez. Accused No.10-Aamil Parvaz S/O Kaji Saifuddin Shaikh as his case is identical to accused No.9-Kamruddin @ Raja @ Abdulla Chandmohammad Nagori.

16.28.17. The presence of the accused Nos.9 and 10 in the camp at Halol is established by the eye-witness PW No.972-Ramkabhai Devkaranbhai vide Exh.6802, whose evidence has already been discussed in preceding paras and has identified accused Nos.9 and 10 in the test identification parade vide Exh.3061. The test identification panchnama has been exhibited by the Executive Magistrate PW No.571-Ramanbhai Senghabhai Solanki vide Exh.3051. Similarly, another eye-witness whose evidence has been discussed in the preceding paras being PW No.981-Pravinbhai Kantariya vide Exh.6835 is also a witness to the holding of the camp at Pavagadh-Halol and in the test identification, he has identified both accused Nos.9 and 10 in Exh.3061 exhibited through Executive Magistrate PW No.571-Ramanbhai Senghabhai Solanki vide Exh.3051.

16.28.18. The third witness who has identified both accused Nos.9 and 10 to be present in the camp is PW No.1067-Ambalal Bariya vide Exh.7231, who has also in Exh.3061 has identified accused Nos.9 and

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10 to be one of the persons who had participated in the camp. The three witnesses clearly established the presence of the accused Nos.9 and 10 in the terror camp at Halol. The camp was a terror camp could be easily established on the basis of the articles recovered during the scene of offense panchnama. Exh.6480 drawn at the behest of accused No.1-Jahid Shaikh and proved by the evidence of panch witness being PW No.904-Dilipkumar Dalwadi vide Exh.6479. While drawing the panchnama, FSL Officer being PW No.830-Amratlal Vasrambhai Hinglajiya was also present and had given a report vide Exh.5582. The articles recovered from the site consisted of pellets, cap of pipe, bursted balloons which matches with the version of the three eye witnesses and final report of the FSL produced through PW No.849- Gauridatt Dayanidhi Sharma vide Exh. 5908 confirms that the articles recovered from the scene of offense pertain to some kind of terrorist related training being imparted. It would be pertinent to point out that like accused No.1-Jahid Shaikh, other accused post their arrest being accused No.16- Abbas S/O Umar Sameja, accused No.35- Rafiyuddin S/O Sarfuddin Kapadiya, accused No.66-Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/O Abdulbari Ansari, accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar, accused No.75- Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed and accused No.78- Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan have made disclosure pursuant to which panchnana under Section 27 has been executed at different point of time, but this accused persons have led the Investigating Officer to the very same place indicating that though the accused persons were arrested at different point of time and panchnama was executed at different point of time, they confirmed the same place which was a site for holding Halol

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terror camp.

16.28.19. Another important evidence which implicates accused Nos.9 and 10 in the offense of having participated in the terror camp at Halol is the confessional statement of accused No.2-Imran Ibrahim Shaikh. This confessional statement gives out the detail of the activities which were conducted while all the accused persons were together in Halol camp. Under the chapter of confessional statement, the Court has already appreciated the evidence of the confessional statement of accused No.2-Imran Ibrahim Shaikh. Therefore, suffice it to say that even as per the confessional statement of accused No.2-Imran Ibrahim Shaikh, accused Nos.9 and 10 both were present in the camp. In the confessional statement, the activities which had taken place in the camp have also been confessed. The terror training camp activity involved inflammatory speech, inciting revenge for 2002 riots, resorting to Jihad and activities like making of bomb. From the evidence, it is also established that accused persons from different parts of the State and country had gathered for the training at Halol camp. The holding of the camp at Halol being a continuation of the conspiracy in the line of camp held at Vagamon.

16.28.20. Another evidence is that of accused No.21-Mahendi Hasan Abdul Habib whose statement under Section 164 of Cr.P.C. has been recorded and the evidence in the nature of confessional statement has already been discussed in detail in the chapter of confessional statement. In the confessional statement, the contents would reveal the manner in which they reached Khundpir Dargah in Halol. He also mentioned about the other accused who were participants in the camp which included accused No.10. With regard to the activities being conducted in the camp, it is narrated in the confessional statement that the participants

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were incited for Jihad to take revenge and a specific attribution to one accused Taukir, who is an absconder reportedly now arrested, who had given lectures to inspire Islamic rule and resorting to mass killing. Training for preparing bomb was also imparted. The confessional statement of accused No.35-Rafiuddin Kapadia which has been discarded by the Sessions Court in view of the fact that the confessional statement was recorded on oath. This document exhibited vide Exh.8631 also refers to the participation of accused Nos.9 and 10 alongwith other accused persons. The evidence is only in addition to the evidence of confessional statement of accused No.2-Imran Ibrahim Shaikh and accused No.21.

16.28.21. The Court may briefly refer to an application Exh.8278 filed by the prosecution invoking Sections 80 and 114 of the Evidence Act to exhibit the confessional statement recorded by the Magistrate, wherein the trial Court has passed separate order giving exhibit to the confessional statement. In the opinion of the Court, the aforesaid sets of evidence are sufficient to establish participation of accused Nos.9 and 10 in conspiracy which led to the present offense of serial blast.

16.28.22. In connection with accused No.9, the Court may also refer to the SDS test (Suspect Detection Test). The report of the test is exhibited vide Exh.5901 and was proved by PW No.848-Vasant Patel vide Exh.5894 of Forensic Science Laboratory. The opinion expressed in the report connects accused No.9 with SIMI and other organizations. The SDS report would indicate that accused No.9 had given reaction to points of SIMI and being involved in SIMI activities, involved with activities of HUJI and bomb site in future to be in Delhi to which he had given very high reaction, receiving of fund for bomb explosion from Lashkar-e-Taiba and SIMI and the blast being carried out in Mumbai

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train and Samjota Express train. According to the expert, the reaction given by accused No.9 to the aforesaid point is indicative of his involvement in the aforesaid activities. Of course, the opinion of the expert is to be used only for the corroboration. The Court having found that there is sufficient evidence against accused No.9 in participation of the Halol terror camp, the evidence of the expert opinion is corroborative to the aforesaid facts. The argument that there is no substantive evidence which could be supported by corroborative evidences required to be rejected. With regard to the connection of accused No.9 with SIMI, the Court may refer to Exh.9248. The set of documents which are placed on record pertaining to the SIMI activity, wherein on page-21 of the aforesaid document, a report of Government authority which is a procedure undertaken for banning a terror organizations like SIMI and such report consisted of the name of accused No.9 associated with the SIMI activity which was banned for its secessionist movement.

16.28.23. The defense has questioned the manner in which these documents have come on record stating that exhibiting of these documents has not been done after following a procedure required and it is only from the custody of the accused at a later stage of trial that the documents have been produced and therefore, cannot be taken into consideration. In this regard, the Court may therefore refer to an order passed by the Sessions Court during the course of trial below Exh.9176. Exh.9176 is an application to exhibit the list of documents submitted with the list on behalf of accused No.38, 40 and 68. Amongst the list i.e. produced at item No.9 is a certified copy of the document titled connection of SIMI which were the documents given as a part of charge-sheet to accused No.68. A prayer was made in application Exh.9176 to

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exhibit these documents by taking the same on record and therefore, it is in this fashion the document has been exhibited by assigning a reasoned order dated 09.09.2020 and therefore, the document is the part and parcel of the evidence before the Court. Therefore, considering the documentary evidence regarding his name appearing in connection with SIMI and the report of the expert of SDS test is sufficient for the Court to believe the connection of accused No.9 with SIMI. In turn, the role of SIMI is also evident in the organization of the terror camp. The Court may thereafter, refer to the camp at Vagamon, wherein accused No.9 has been convicted by the Ernakulam Court for the participation of accused No.9 in the Vagamon camp. The effect of such conviction has already been dealt with by the Court in a separate chapter dealing with the issue of applicability of Section 300 of Cr.P.C. and issue estoppel. Accordingly, the Court is of the view that the evidence before this Court in the form of confession by accused No.76-Imam Manjar is sufficient to establish the circumstance of participation of accused No.9 in Vagamon coupled with the conviction by the Sessions Court at Ernakulam.

16.28.24. Therefore, the prosecution has led sufficient evidence to convict the accused No.9- Kamruddin @ Raja @ Abdulla Chandmohammad Nagori for the charges. Accordingly, the conviction of accused No.9- Kamruddin @ Raja @ Abdulla Chandmohammad Nagori for the offence is confirmed.

16.29.In case of Mohammad Naushad @ Mohammad Irshad Saiyed (Karnataka) (A-46)

(Appellant No.7 in Criminal Appeal No. 1917/2022)

16.29.1. In case of accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed, he has been convicted for various offences

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by the trial Court and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.29.2. Learned Senior Advocate Shri Asim Pandya commenced his hearing for accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed. In present offence, he is arrested on 05-01-2009.

16.29.3. At the outset, learned Senior Advocate took this Court to the past by submitting that the appellant-Mohammad Naushad is also an accused in a trial conducted by Sessions Court, Mangaluru in Sessions Case No.60 of 2009, wherein accused No.1-Jahid @ Javed Kutubuddin Shaikh with other 12 accused was convicted by judgment and order dated 10-04-2017 and was sentenced for life imprisonment.

16.29.4. The judgment in Sessions Case No.60 of 2009 was challenged in Appeal being Criminal Appeal No.1206 of 2017 with Criminal Appeal No.820 of 2017, which came to be partly allowed by judgment and order dated 14-11-2022.

16.29.5. The Sessions Court convicted him for various offences of UAPA, Explosive Act, IPC and Arms Act and was sentenced to rigorous imprisonment under various punishing sections, the maximum being rigorous imprisonment for life. The High Court in Appeal though set aside the conviction for offences under UAPA, Arms Act and IPC, but upheld the conviction of the appellant-Mohammad Naushad for offences under Section 5(a) of the Explosive Substances Act and was sentenced to 10 years of rigorous imprisonment.

16.29.6. Learned Senior Advocate has therefore argued that the allegations against the appellant-Mohammad Naushad in the present case are very much the same as he faced in the Mangaluru trial. He faced the same section of UAPA, Explosive Act, IPC and Arms Act and the allegations being identical like holding of explosive material, waging

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war against the Nation, being member of a banned group SIMI. All these allegations being tried, the appellant-Mohammad Naushad may not be called upon to face the same accusation again, and invoked Section 300 of the Code of Criminal Procedure as well as Article 20(2) of the Constitution of India.

16.29.7. The Court is of the opinion that before adverting to the facts regarding this appellant-Mohammad Naushad, it would be appropriate to examine this issue. For this, the Court has taken into consideration the judgment rendered, both by the Mangaluru Sessions Court and Karnataka High Court, which the learned Senior advocate has made available for the Court's perusal. The fact that the prosecution was launched against all the accused on the ground that all the accused being members of SIMI or I.M. had conspired at various places in Karnataka, collected jihadi material using book, pamphlets, C.D., DVD etc. and possessed illegal explosive and explosive substances in a house Haleyangadi in Mangaluru Taluka and planned to cause bomb-blast in various places throughout India including Ahmedabad and Gujarat. The Sessions Court did convict the appellant-Mohammad Naushad for all the offences charged with however, the High Court interfered to uphold the conviction for possession of the explosive substance and therefore, the case against the appellant-Mohammad Naushad to be in possession of the explosive substance was clearly established.

16.29.8. The argument invoking Section 300 of the Code of Criminal Procedure and Article 20(2) of the Constitution of India needs to be outright rejected as the conviction in Mangaluru case was for a complete different facts alleged than the incidents of bomb explosion in Ahmedabad and planting in Surat. Merely because, the allegations in Mangaluru case, touches upon a conspiracy hatched there referred to one

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of the objects to cause bomb blast in Ahmedabad and Gujarat does not bring about the commonality of charges between the two different and completely unrelated incidents by facts as well as by timings.

16.29.9. The Court is of the opinion that the investigation in present case is completely on different set of facts and also different set of witnesses to prove the charge and the role. Therefore, the acquittal by the Karnataka High Court for offences under UAPA or other provisions will have no bearing on present proceedings.

16.29.10. Learned senior advocate has thereafter, submitted that arrest of the appellant-Mohammad Naushad itself is questionable as according to learned senior advocate when appellant-Mohammad Naushad was arrested, there was no credible information or evidence with the Investigating Officer connecting the appellant-Mohammad Naushad with the present offence and only because he was arrested in Mangaluru case, he has been arraigned as accused in this case.

16.29.11. The Court finds that on this issue, it would be pertinent to consider the evidence of the Investigating Officer who has affected the arrest, the Investigating Officer has deposed about the reasons for affecting the arrest however, in the cross-examination of the Investigating Officer, no question on behalf of the appellant-Mohammad Naushad is put to the Investigating Officer regarding there being no credible information for supporting arrest.

16.29.12. Thereafter, learned senior advocate has submitted that there is absolutely no role attributed to the appellant-Mohammad Naushad as no specific act is mentioned either in conspiracy, or collecting of material for bomb or planting of bomb. Therefore, chain of circumstances is not complete for the appellant-Mohammad Naushad.

16.29.13. Learned senior advocate has thereafter, assailed the nature of

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evidence against the appellant-Mohammad Naushad, it is submitted that the evidence of point out panchnama at Exh.8529 cannot be treated as a panchnama which can be considered as relevant evidence under Section 27 and/or under Section 8 of the Evidence Act.

16.29.14. It is submitted that the panchnama at Exh.8529 was executed at the behest of two accused i.e. the present appellant-Mohammad Naushad and accused No.47-Ahmedbava @ Abbu Abubkar Barelvi. They were taken in same jeep at a same time. Therefore, the execution of this panchnama is unknown to the procedure of investigation.

16.29.15. This panchnama is also not good evidence as the panchnama has not lead to discovery of any material connecting the offence. Moreover, prior to panchnama at Exh.8529 already through a co-accused, the panchnama Exh.2757 is executed on 28.08.2008.

16.29.16. By the panchnama, the prosecution has tried to connect the appellant-Mohammad Naushad with the house being house No.D/34, River view Society, from where bomb explosion materials were found.

16.29.17. The only fact established by the panchnama is about his pointing out a particular house otherwise, there is no evidence about him staying in the house with other accused. Hence, according to learned senior advocate, the prosecution has not established anything on the basis of this evidence. The Court has dealt with the issue regarding admissibility and relevance of the panchnama in a separate sub-chapter titled “Panchnama under Section 27 of Indian Evidence Act” under the Chapter “Issues”.

16.29.18. Another set of evidence is pertaining to stay of the appellant-Mohammad Naushad in Abhilash Guest House in Kunnur in a fake name. It is submitted even if this fact is accepted to be proved, still there is no connection of Kunnur stay with the offence. There is no conspiracy

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alleged in Kunnur, or any part of any offence committed there. There is no connection of Kunnur with Vagamon where alleged conspiracy took place and that the appellant-Mohammad Naushad is not even accused in the trial at Ernakulam. The fact of his presence in the area where the terror camp was organized, is an important circumstance.

16.29.19. Another evidence is pertaining to travel from Puna to Surat. According to prosecution, the appellant-Mohammad Naushad travelled on 25.07.2008 from Pune to Surat, which is nearby date to incident of blast. The panchnama at Exh.8532 is pointing out the Satnam Travels from where the ticket was purchased for travel. This panchnama is not exhibited by examining the independent panch witness and hence, the fact of travel from Puna to Surat is not established.

16.29.20. Learned senior advocate has therefore, argued that all the evidences and circumstances put together do not prove the case of prosecution against the appellant-Mohammad Naushad. There is no evidence that the appellant-Mohammad Naushad is involved in meeting with co-accused for conspiracy or procuring of any articles for making the bombs or also for spreading any hatred or jihadi material to wage war against the State. It is argued that it was the duty of the prosecution to get the best evidence. The fact that the prosecution has not put any evidence in the form of electronic or document to establish the offence and adverse inference be drawn that the prosecution had no credible evidence and therefore, put up this case based on inadmissible evidence.

16.29.21. Learned Senior Advocate has once again reiterated his submission regarding the trial at Mangaluru and the offence alleged in the present case ought to have been tried alongwith trial at Mangaluru. For this, learned senior advocate has referred to Section 221 of the Code of Criminal Procedure and submitted that when the trial/investigation of

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Mangaluru case was in progress, the present offence was also registered and therefore, as the investigators of both offences were aware of the ongoing procedure in Mangaluru case, the investigators ought to have clubbed the investigation so that the appellant- Mohammad Naushad would have faced a single trial as the same is provided in Section 221 as well as Section 300 of the Code of Criminal Procedure.

16.29.22. The Court is of the opinion that in preceding paras, the argument has already been dealt with in connection with Section 300 of Code of Criminal Procedure and Article 20(2) of the Constitution of India. Similarly, the argument invoking Section 221 is also not accepted, as the said trial can be invoked only when the offence is arising out of a single act or series of acts of such nature. The nature of offence and the facts which can be proved would constitute a single offence and in that case, accused may be charged with having committed all or any of such offences. Here in the facts of the present case, as is observed by this Court in the preceding paras, the prosecution in Mangaluru case was launched on a complete different set of facts and different set of evidence and witnesses, whereas the present offence of conspiracy has its root in terror camp organized at Vagamon and later on various other meetings constituted conspiring, where the act amounting to offence which was tried by Mangaluru was not in question. Only because the nature of offences are identical does not mean that both the incidents investigated and tried at Mangaluru and the incidents which were investigated and tried in Ahmedabad and Surat blast are tried as one incident or series of the same incidents.

16.29.23. With regard to the point out panchnama vide Exh.8529, learned senior advocate has reiterated that no value can be attached to such panchnama as it is a ready-made panchnama. The panch witness'

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evidence cannot be treated as credible evidence because the timings mentioned by the witness in his deposition does not match with the timing mentioned in the panchnama.

16.29.24. The Court finds that with regard to the timing, questions that were posed to the witness, there is no specific mention with regard to which of the panchnama the question is posed as the witness was also a panch witness in the panchnama being Exh.2814. Moreover, the questions that were posed were not with regard to the timing of the panchnama, but with regard to which session of the day that he was summoned for witnessing the panchnama, the Court has perused the evidence of this witness as PW No.458-Dipak Ramchandra Mali, who was examined vide Exh.2814. This witness has in his deposition given detailed content of the panchnama. and both, Exh.2814 and Exh. 8529 have also been extensively cross-examined. The Court may observe that earlier also when the witness was examined, inadvertently, panchnama Exh.8529, was not mentioned for which vide an order passed below Exh.8518, witness was recalled to prove panchnama Exh.8529. On both the occasions, the witness has been extensively cross-examined, but the Court does not find anything objectionable to disregard the evidence of this witness, especially on the basis of timing of execution of panchnama.

16.29.25. Learned senior advocate has thereafter, reiterated his arguments with regard to the panchnama vide Exh.8532, which is executed at the behest of appellant- Mohammad Naushad to point out the place, from where he had travelled from Pune to Surat and recovery of handwriting.

16.29.26. The Court may consider the submissions made by learned Additional Advocate General for the State that House No.D-34, River

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view assumed importance as accused No.63-Mohammad Tanvir led police to this house and when this house was searched through panchnama at Exh.2757 on 28.08.2008, relevant articles/objects were found including plastic barrels-Can smelled like petrol amongst other articles as mentioned in the panchnama. Upon examination, it was opined that there was presence of highly explosives.

16.29.27. It is submitted that other relevant aspect of House No.D-34 is that the owner of this house namely Liyakatali was examined at Exh.8078 and during the course of Test Identification Parade, he had identified accused No.44-Mohammad Akbar Chaudhari through Test Identification Parade at Exh.3090 and Executive Magistrate being PW No.576-Kirtanbhai Chaturbhai Patel vide Exh.3076. The case of the prosecution is that accused No.44-Mohammad Akbar Chaudhari has taken this house on rent from witness. It is submitted that accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari are also connected with House No.D-34, River View society, the submissions with respect to this house have also been made in the submissions of accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari. It is submitted that accused No.43-Anik Saiyed, accused No.44-Mohammad Akbar Chaudhari and accused No.45-Fazle Rehmaan have also been implicated by the prosecution on the ground that they stayed at Sherpura House and were spotted with Silver Coloured Wagon R and Black Coloured Wagon R. As per the case of prosecution, the case reflects different sequels of conspiracy starting from Vagamon Camp and even prior thereto, and continuing thereafter. In that regard, both House No.D-34, River View house and the Sherpura House of witness Gulam constitute and important link in the chain of conspiracy. It is submitted that accused No.46-Mohammad Naushad as

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well as accused No.47-Ahmed Bava were brought from Mangalore Jail and were arrested on 05.01.2009.

16.29.28. It is submitted that accused No.32-Asif Shaikh was connected with House namely Ashoka Muse, situated at Pune and submissions with respect to this house have already made in submissions of accused No.32-Asif Shaikh. It is further submitted that accused No.45-Fazle Rehmaan, who is from Maharashtra, is also connected with house of Ashoka Muse. It is submitted that accused No.32-Asif Shaikh is from Pune, Maharashtra, whereas accused No.46-Mohammad Naushad is from Karnataka. Hence, considering the travel details of Satnam Travel, Pune, travel of accused No.46-Mohammad Naushad with accused No.32-Asif Shaikh from Pune to Surat gets support from each other and are also consistent with each other.

16.29.29. The Court has perused the panchnama Exh.8531 drawn at Abhilash Tourist Home, Station Road, Kunnur City (Kerala) on 14.01.2009. During the said panchnama, owner of Hotel Abdula Haji Yusuf was present when pages of room register were seized including relevant entry. It is submitted that entry of room No.201 is relevant, which shows the name of S. Ismail, who is resident of Mangalore. The said entry is in the handwriting of accused No.46-Mohammad Naushad and bore signature of occupant as S. Ismail, recorded in Room Register, which was made by accused No.46-Mohammad Naushad. This Register was seized. As panch witnesses were not found and explained about it in the dropping Pursis. This panchnama stands proved through Investigating Officer being PW No.1155-Narayansih Bhavansinh Parmar vide Exh.8517.

16.29.30. It appears that above-referred disputed room register of Abhilash Tourist Home, Kerala was sent for Forensic examination. The

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FSL Officer had taken specimen of accused No.46-Mohammad Naushad at Exh.7981 as well as natural handwriting of accused No.46-Mohammad Naushad at Exh.7983. The disputed room register at Exh.7980 as well as specimen at Exh.7981 and natural handwriting of accused No.46-Mohammad Naushad were sent through forwarding letter at Exh.7979 to handwriting expert and upon receipt of opinion of handwriting expert at Exh.7984, it is proved that disputed handwriting and signature in Room Register of Abhilash Tourist Home were found to be of accused No.46-Mohammad Naushad. The handwriting expert's opinion is proved by handwriting expert being PW No.1113-Maheshkumar Manubhai Vadgama vide Exh.7970. This would further establish that accused No.46-Mohammad Naushad though from Karnataka had stayed at Kerala in a fake name from 14.07.2008 to 16.07.2008, which is proximate period to the occurrence of bomb-blast dated 26.07.2008. This would also assume importance as many conspirators belong to State of Kerala. The above evidentiary material is also supported by evidence of investigating officer as PW No.1155-Narayansih Bhavansinh Parmar vide Exh.8517.

16.29.31. The Court has perused the panchnama at Exh.8530 drawn on 10.01.2009. The first part of panchnama was drawn at Bird Garden Police Station, Pune City, Maharashtra. During the said panchnama, panchas, police personnel as well as accused No.46-Mohammad Naushad were present. Accused No.46-Mohammad Naushad agreed to make voluntary disclosure and to point out traveller's office, etc. and pursuant to it, second part of panchnama was drawn. During the course of second part of panchnama, accused No.46-Mohammad Naushad led all to a place Traveler's office namely Satnam Travels through Sasun Hospital, Pune Railway Station, Ruby Hall, etc. area. accused No.46-

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Mohammad Naushad also made disclosure that that he and accused No.32-Asif Shaikh got tickets from there and boarded luxury bus and went to Surat. Person of Satnam Travels named Vijaykumar Bajirao was interrogated about travel details of these two persons i.e. accused No.46-Mohammad Naushad and accused No.32-Asif Shaikh dated 23.07.2008, to which he has stated that he would give his deposition later. Accused No.46-Mohammad Naushad also pointed out a place opposite to Satnam Travel's office, from where he boarded luxury bus at night on 23.07.2008, which was near to Kalyani Medical Store and Rockline Bar and Restaurant. This panchnama stands proved through investigating officer; PW No.1155-Narayansinh Bhavansinh Parmar vide Exh.8517. Therefore, the circumstance of travel of the accused from his native to the cities where the blasts were planned and that too, in proximate period to the incident is proved. This circumstance will have to be seen with the other set of evidence to establish the participation of the accused in the conspiracy.

16.29.32. The Court has also perused the panchnama Exh.8529 drawn on 07.01.2009. The first part of Panchnama was drawn at DCB Police Station, Surat, where accused No.46-Mohammad Naushad as well as accused No.47-Ahmed Bava were present and they disclosed about relevant fact relating to the incident, which they would like to divulge. Pursuant to it, second part of the panchnama was drawn. During the course of drawing of this Panchnama, accused No.46-Mohammad Naushad led police and panchas to a house, identified as D-34, River View Society (hideout) through Saiyadpura Pumping Station, Variyali Bajar, Dhastipura, Khadipul. On pointing out this place, accused No.46-Mohammad Naushad disclosed that he, Riyaz, accused No.43-Anik Saiyed, accused No.44-Mohammad Akbar Chaudhari Akbar and accused

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No.45-Fazle Rehmaan stayed at this place before 26.07.2008.

16.29.33. The Court finds that this panchnama Exh.8529 was proved through panch witness being PW No.458-Dipak Ramchandra Mali vide Exh.2813, who in paragraph 4 of his deposition deposed that after he was recalled on application made at Exh.8518, he being one of the panchas to a panchnama as narrated hereinabove i.e. Exh.8529. This panch witness has fully supported the panchnama. This witness was cross-examined by defence and in paragraph-15, he has deposed that accused No.46-Mohammad Naushad and accused No.47-Ahmed Bava had taken House No. D-34 on rent prior to 5 to 6 months. This panchnama stands further proved and supported by evidence of investigating officer being PW No.1155-Narayansih Bhavansinh Parmar vide Exh.8517. This panchnama therefore, draws connection of the accused with the hideout.

16.29.34. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed. The prosecution has been able to establish the role of the accused in the conspiracy by establishing the circumstances of his connect with the hideout and his presence there in the proximate time of the incident as discussed above. The Court has therefore, no reason to interfere with the conviction recorded.

16.30.In case of Ahmed Bava @ Abu S/O Abubakr Barelvi (Karnataka) (A-47)

(Accused No.30 in Criminal Confirmation Case No. 2/2022 and Appellant No.24 in Criminal Appeal No. 1710/2022)

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16.30.1. In case of accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others. The role attributed to this accused is to be the part of conspiracy and the evidence of the prosecution is of his connection with the hideouts, both at Surat and Ahmedabad.

16.30.2. Learned advocate Shri Dr. Yug Mohit Chaudhry appearing for accused No.47-Ahmed Bava @ Abu Abubakr Barelvi submitted that the accused was arrested on 05.01.2009 by way of transfer warrant from Mangalore and he has been in police custody in each of the offences till 15.06.2009. It is submitted that the accused, in fact, is in custody from 03.10.2008 when he was arrested in Mangalore in connection with another offence registered at Panambur Sub Division Police Station, Mangalore. According to the learned advocate, the only evidence against accused No.47-Ahmed Bava is the so-called discovery panchnamas, which led to pointing out of two houses, (i) House No.10, Al-mahamadi Society, Ahmedabad and (ii) House No. D/34, River View Society, Surat. According to the learned advocate, these two evidences are not even sufficient to frame a charge against accused No.47-Ahmed Bava, yet, sentence with serious consequences has been inflicted.

16.30.3. Learned advocate has directly taken this Court to the panchnama Exhibit-7950 and submitted that though the panchnama was written in Gujarati, the accused had no knowledge of Gujarati language. Moreover, in the very document, there is no mention that the writing of panchnama was at the behest of accused No.47-Ahmed Bava and that he had made the narration in Hindi and the same was reduced in Gujarati. There is no mention in this document that accused No.47-Ahmed Bava was given to understand about the contents of the document in Hindi

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language. Therefore, the pointing out panchnama Exhibit-7950 appears to have been done in a mechanical manner and therefore, cannot be treated as an evidence.

16.30.4. Learned advocate also submitted that this panchnama cannot be treated to be panchnama under section 27 of Cr.P.C. at all as the requirement to attract section 27 is the discovery of a new fact connected with the offence. Such discovery necessarily must be beyond the knowledge of the Investigating Officer. However, the very house, namely, House No.10, Al-mohamadi Society, even before accused No.47-Ahmed Bava had pointed it out to the Investigating Officer, nine other accused over the period between 19.09.2008 to 16.01.2009, had disclosed details with regard to the very house to the Investigating Officer. Therefore, the Investigating Officer was very much aware of the existence of this house and its connection with the offence. It is further submitted that even after the present Panchnama Exhibit-7950, later on also, panchnamas of similar nature have been executed at the behest of three other accused.

16.30.5. It is argued that even if the disclosure is made voluntarily by accused No.47-Ahmed Bava on the basis of which Exhibit-7950 is executed, still, it does not fulfil the requirements of section 27 of Cr.P.C. as there is no recovery of any material object connecting the disclosure made by accused No.47-Ahmed Bava. It is submitted that neither the panch witness nor the Investigating Officer have identified accused No.47-Ahmed Bava during the course of their deposition.

16.30.6. The other set of evidence is panchnama Exhibit-8529 where accused No.46–Mohammad Naushad @ Mohammad Irshad Saiyed and accused No.47-Ahmed Bava had jointly pointed out House No.D-34, River View Society. The first challenge to such document, according to

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the learned advocate, is the joint execution of panchnama though different exhibit numbers are given but the narration in the panchnama itself would indicate upto a point that both the accused were taken jointly and from thereon to the house identified they were taken separately, which is an artificial difference, which cannot be accepted. Here also, neither the panch witness nor the Investigating Officer have identified. Learned advocate submitted that prior to the voluntary disclosure of this house as the place of conspiracy and preparation of bombs, on two occasions, through accused No.63 – Mohammad Tanvir @ Talha Mohammad Akhtar Pathan and accused No.43 – Anik @ Khalid Shafik Saiyed and accused No.44 – Mohammad Akbar @ Said @ Yakub @ Vinod Ismail Chaudhari, the panchnamas were drawn at Exhibits-2757 and 7946 respectively. Therefore also, there is no new disclosure to the Investigating Officer.

16.30.7. Learned advocate has, thereafter, submitted about procedural discrepancies by submitting that panchnama Exhibit-8529 was drawn on 07.01.2009 where PW-458 Dipak Ramchandra Mali was the panch witness and was examined at Exhibit-2813. However, during his examination in chief on 28.04.2015, this witness has not referred to Exhibit-8529. It is only after an application was given for recalling him on 29.09.2019 that the evidence in connection with Exhibit-8529 was led through this witness. Learned advocate has submitted that even if Exhibit-8529 is to be believed as voluntary disclosure, there is no seizure of any material object, which would link the disclosure statement to the crime.

16.30.8. It is submitted that the landlord of the house has been examined at Exhibit-8087; however, he does not identify accused No.47-Ahmed Bava to be one of the occupiers of the house and therefore, there

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is no substantive evidence to directly link accused No.47-Ahmed Bava with both the houses.

16.30.9. Lastly, it is submitted that the Court needs to consider that the pointing out panchnama of accused No.47-Ahmed Bava of house No.D-34, River View Society was jointly executed with accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed, who has been awarded life sentence. Simillar treatment is required to be given to accused No.47-Ahmed Bava. Learned advocate has referred to the decision in case of Prakash Nishad reported in 2023 (16) SCC 357 that in case where the recording of disclosure by the accused is not made in the language understood by the accused, then the correctness of such statement is doubtful.

16.30.10. Learned Additional Advocate General for the State has submitted that both the accused i.e. accused No.46-Mohammad Saiyed and accused No.47-Ahmed Bava are from state of Karnataka and both were apprehended through transfer warrant from Mangalore jail as both were in judicial custody with respect to trial, pending before concerned Court Dakshina Kannada, Mangaluru in Sessions Case No.60 of 2009, wherein accused No.46-Mohammad Saiyed and accused No.47-Ahmed Bava were convicted for the offence punishable under Sections 16 (1) (b), 17, 18 of Unlawful Activities (Prevention) Act, Explosive Act, 1884, Indian Penal Code and Arms Act. It is submitted that accused No.46-Mohammad Saiyed and accused No.47-Ahmed Bava had preferred Criminal Appeal before the High Court of Karnataka at Bengaluru, which came to be decided on 14.11.2022, whereby, High Court of Karnataka had convicted accused No.46-Mohammad Saiyed and accused No.47-Ahmed Bava for 10 years for offence under Section 5 (a) of the Explosive Substance Act 1908. Judgment delivered by High Court

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of Karnataka is also placed on record by accused persons. It is submitted that the judgment is required to be seen in the context of provisions of Evidence Act as well as scheme of Cr.P.C, which had been elaborated earlier for accused persons who are convicted by Kerala Court. Further, accused No.47-Ahmed Bava has also pointed out house D 34 River View Society as accused No.46-Mohammad Naushad @ Mohammad Irshad Saiyed.

16.30.11. It is submitted that evidentiary material against accused No.47-Ahmed Bava is same as accused No.46-Mohammad Saiyed. It is submitted that accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari are from Puna, Maharashtra. accused No.44-Mohammad Akbar Chaudhari is also identified by Liyakat Ali, owner of House No.D-34 River View in Test Identification Parade at Exh.3090. accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari as well as accused No.45-Fazle Rehmaan who are from Maharashtra are also connected with Sherpura house, as well as silver coloured Wagon R and black coloured Wagon R. In view thereof, accused No.47-Ahmed Bava, who is from Karnataka has strong connection with accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari as they also disclosed and pointed out house no. D 34 River View Society, Surat. accused No.43-Anik Saiyed and accused No.44-Mohammad Akbar Chaudhari are also connected with Sherpura house so also with silver coloured Wagon R and black coloured Wagon R and this circumstance equally applies to accused No.45-Fazle Rehmaan.

16.30.12. The Court has considered the rival submissions of the parties. In the opinion of the Court, the Court having perused the panchnama Exh.7950 dated 17.02.2009 drawn between 15:15 hours to 16:40 hours

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by Crime Branch Police Station, Ahmedabad City. The first part of the panchnama was drawn at Crime Branch Police Station in the presence of accused No.47-Ahmed Bava, where he disclosed about what had happened during conspiratorial period and during the said panchnama two police personnel and panchas were present. The second part of the panchnama was drawn, where he led all from Gaikwad Haveli Compound to Jamalpur cross roads passing Sabarmati River, Sardar bridge, Paldi cross roads, Paldi AMTS bus stand and stopped the vehicle near parking of Paldi AMTS bus stand. accused No.47-Ahmed Bava has disclosed that on 14.07.2008, at the said place, he and Yasin came from Puna in luxury bus and arrived in the noon and stayed there for around 3 to 4 hours. When they deboarded the bus, one person was present to receive them, who accused No.47-Ahmed Bava and Yasin in a rickshaw to one house.

16.30.13. Thereafter, accused No.47-Ahmed Bava led Police panchas and others through Paldi cross roads, Sabarmati River, Sardar bridge, Jamalpur cross roads, Chandola, Goodluck Barrel market and ultimately, he pointed out house of Al- Mohammadi Society and disclosed that on 14.07.2008 from Paldi bus stand, they came to this house and stayed for two three days in Al-Mohammadi house. Further, on the same day, other persons (two to three) also came there. accused No.47-Ahmed Bava also disclosed that person, who came to receive them at Paldi bus stand was person known as Rizwan, whom he later known as Kayamuddin Kapadia (accused No.37) and the house of AL-Mohammadi society as pointed out by accused No.37-Kayamuddin Kapadiya, is house No.10. This panchnama Exh.7950 stands proved through panch witness as PW No.1111-Satish Vamanrao Pavnikar at Exh.7949 and Investigating Officer being PW No. 1163-Mayur Jagmalbhai Chavda at Exh.8638.

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16.30.14. The Court finds that there is relevance of House No.10, Al-Mohammadi house as when this house was pointed out by accused No.1- Jahid Shaikh on 19.09.2008 vide panchnama Exh.6656, different articles were seized including broken CD (computer disc) bearing chance print. Upon examination by FSL officer, it was opined by finger print expert at Exh.6727 that the same was of accused No.38-Mohammad Saif Sheikh. It is also pertinent to state here that over and above the broken CD, few other articles like article Mark J1, J2 and K were also found containing Nitrate and Nitrate radicals so also utensils which were found to be purchased by accused No.8-Yunus Mansuri. It is also pertinent to note that accused No.37-Kayamuddin Kapadiya also has also pointed out 10 Al-Mohammadi Society house. The court is not inclined to believe this argument that since the investigating officer knew about this house due to previous panchnama through previously arrested accused therefore the fact of pointing out of this hide out can not be treated as a circumstance against the accused, these arguments have been consistently made by the defence. However if such an argument is to be accepted then it is the repsonsibility of the defence to put necessary questions to the panch witnesses as well as the I.O. In the Cross examination of the panch it is not coming out at all that the I.O. virtually coaxed or forced the accused in to voluntary disclosure of the hide out or that the I.O himself imported his personal knowledge of the Hide out and managed to make the entry in the panchnama by putting words in the mouth of the accused or the panch witness. In absence of even any question on this line merely putting a question to the I.O. about his knowledge of the hide out due to previous panchnama will not automatically lead the court to presume that the panchnama was created by the I.O. without really executing it. More over the hide out being a

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common place pointed out by various accused at different point of time when they were respectively arrested only strengthens the case of the prosecution about the pointed out place being used as a hide out. Even in the cross examination of the panchwitness there is no line of questioning about the panchnama being creation of the I.O. (see sub-chapter "Panchnamas under Section 27 of Indian Evidence Act")

16.30.15. The Court finds that House No.D-34, River view constitute an importance circumstance as accused No.63-Mohammad Tanvir Pathan led police to this house and this house was searched through panchnama at Exh.2757 on 28.08.2008. The articles seized therein, were sent for Forensic examination, wherein articles marked as A9 and C2 contained Ammonium, Nitrate and Nitrite as well as Petroleum Hydro Carbons Oil, which are highly explosive. During the said search, other articles like kerba, smelling like petrol were also found. In view thereof, so far as house no. D 34 is concerned, accused No.46-Mohammad Saiyed, accused No.47-Ahmed Bava and accused No.63-Mohammad Tanvir Pathan are directly connected with this house, so also accused No.44-Mohammad Akbar Chaudhari and accused No.43-Anik Saiyed, as they also pointed out D 34 River View house of Surat through panchnama Exh.7946 dated 28.11.2008.

16.30.16. The Court finds that these three places referred to hereinabove, namely, D-34 River View House, Sherpura House and House No.10 Al-Mohammadi Society, constitute important links in the chain of conspiracy. Therefore, the connection of a conspirator with any of these sequels to the conspiracy, is a relevant circumstance. Once participation in the conspiracy is established, the act committed by few of the conspirators in furtherance would be attributable to all the conspirators connected, directly or indirectly, with the various

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circumstances forming part of the conspiracy and would make them liable.

16.30.17. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.47-Ahmed Bava @ Abu S/O Abubakr Barelvi. The Court has therefore, no reason to interfere with the conviction recorded.

16.31.In case of Sarfuddin @ Sarfu S/O E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim (Hyderabad) (A-49)

(Accused No.31 in Criminal Confirmation Case No. 2/2022 and Appellant No.25 in Criminal Appeal No. 1710/2022)

16.31.1. In case of accused No.49-Sarfuddin @ Sarfu S/O E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.31.2. Learned Senior Advocate Tejas Barot has submitted on behalf of accused No.49-Sarfuddin @ Sarfu S/o E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim in Sessions Case No.38 of 2009, who is the appellant in Criminal Appeal No.1710 of 2022 and accused No.31 in Criminal Confirmation Case No.2 of 2022. By the impugned judgment and order, the appellant- Sarfuddin @ Sarfu S/o I.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim has been sentenced to capital punishment and has preferred present Appeal.

16.31.3. Learned Senior Advocate for the appellant has thereafter referred to the charge at Exh.32 and has submitted that the allegation as against this accused is that of preparation of timer chip for the timer bomb and that the only evidence as against such allegation is Exh.8592;

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a demonstration panchnama in the form of a confessional statement of the accused who is a resident of Kerala and is conversant in Malayalam and English. In the said panchnama, he has stated in English about the preparation of the timer circuits and he has demonstrated the same before the F.S.L. Officers, and the circuit and the hand drawn diagram were seized. The accused with respect to the preparation of timer bombs apart from him and his father; Abdul Sattar @ Iti Sainuddin has named two persons, namely, Abdul Rahim @ Maftaf and Umar Haji @ Nasir who had helped in preparation of timer chips however, they have not been named as accused and even his father; Abdul Sattar has been acquitted.

16.31.4. Thereafter, the Learned Senior Advocate for the appellant has drawn attention of the Court to Exh.8594; being a diagram and submitted that it is prepared in English and that there is no reference, 'identifier' mark or any other marking on the diagram by the F.S.L. Officer or by the accused. It is further submitted that there is no correction in the diagram and it appears to have been made in one go. It is also submitted that there appears to be no endorsement or statement indicating that the contents of the diagram had been explained to the accused.

16.31.5. Thereafter, reference has been made to Exh.5588 which is the letter of the Investigating Officer wherein the FSL Officer was summoned for the purpose of carrying out the demonstration panchnama which is followed by the report of the FSL Officer wherein it appears that the whole process had been videographed. It is contended that although such videography had been carried out, it was not brought on record.

16.31.6. Thereafter reference has been made to the deposition of PW

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No.1136-Sujata Prakash Majmudar at Exh.8149 who is the investigation officer with respect to the Surat incidents and it is submitted that she was in discussion with BHEL around nine months before the arrest. In this regard, reference has been made to Exh.8099; the report received from the Central Research Laboratory of BHEL and Exh.8594; the diagram prepared. It is submitted that for the panchnama, the parts required for assembling the device had been obtained by the police and that the panchnama itself had been jointly prepared in the presence of four to five persons. It is submitted that the diagram was made during the course of the panchnama and that thereafter the Investigating Officer brought the necessary components upon being asked by him, upon which he built the device which came to be sent to FSL for examination. Exh.5644 is the opinion of the FSL and it is contended that the component namely, 16F 628A PIC chip had not been asked for by the accused. Therefore, it is contended by the Learned Senior Advocate for the appellant that the said chip had been brought by the Investigating Officer allegedly on the basis of the BHEL letter.

16.31.7. It is further submitted by referring to the cross examination at Para 7 and Para 17 of the deposition of the Investigating Officer; PW No.1136-Sujata Prakash Majmudar at Exh.8149 that although the diagram prepared by this Investigating Officer had been sent to BHEL, but such diagram has not been exhibited. It is also submitted on the basis of the aforesaid paragraphs of the cross examination that it clearly appears that the microchip and other components had been obtained at the instance of the accused and that the Investigating Officer does not recollect the source from which it was obtained.

16.31.8. Learned Senior Advocate for the appellant has thereafter drawn attention of the Court to the deposition of the panch witness; PW

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No.1162-Jay Harshadrai Panchal at Exh.8591. It is submitted that although the panchnama records the presence of FSL Officers and that they made observations after the circuit was made, the said FSL officers have not signed thereby casting doubt with respect to their participation in the said procedure. It is further submitted that the said panchnama at Exh.8592 was not recorded in a language that was known to the accused and that no testing of the circuit had been carried out at the spot. Learned Senior Advocate for the appellant has thereafter drawn attention of the Court to Para 12 of the deposition of this panch witness; PW No.1162-Jay Harshadrai Panchal and it is submitted that no rough sketch had been prepared by the accused and that it was made in the first attempt itself. By referring to Para 15 of the deposition, it is submitted that the panch witness was unable to identify all the individual components and it clearly appears that no marking was made on the chip to establish that it was made in the presence of the panch witness nor there was any record of the sequence or time taken for its preparation. It is also submitted that there is no explanation with respect to the procurement of various components or with respect to who procured the same and it is submitted that even the bills for procurement have not been produced. It is also contended that there is no signature by the panchas in order to establish that the said chip had been prepared by the accused in the presence of the panch witnesses.

16.31.9. It is submitted that the 16F 628A PIC is a programmable microcontroller which would require coding, however, there is no evidence on record to show that this accused No.49-Sarfuddin @ Sarfu actually possessed the technical knowledge required in order to write the code to programme such a chip.

16.31.10. It is further submitted that a link is required to be established

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so as to connect the accused with the offence however, in the present case, there appears to be a break in the said link which is as under:

i. There is no evidence to show that the accused possessed requisite knowledge of coding which is necessary in order to programme the chip.

ii. There is lack of evidence to prove as to how the chip and other components had been procured,

iii. There is no evidence on record to show as to whom the chip was handed over by this accused once it had been allegedly prepared.

iv. Although the accused had clearly stated in the panchnama that apart from himself and his father; Abdul Sattar @ Iti Sainuddin two other persons, namely, Abdul Rahim @ Maftaf and Umar Haji @ Nasir had helped in preparation of timer chips however, they have not been named as accused and even his father; Abdul Sattar has been acquitted.

v. Moreover, the diagram appears to be accurate and it becomes difficult to believe that it had been made by a person who was uneducated.

vi. Supervision of FSL expert throughout the whole procedure of drawing of the diagram and making of the circuit.

vii. It clearly appears from the document at Exh.5588; being the letter of the Investigating Officer wherein the FSL Officer was summoned for the purpose of carrying out the demonstration panchnama followed by the FSL report that, the whole process had been videographed. However, the same has not been brought on record.

16.31.11. Therefore, it is submitted that in view of the aforesaid, it cannot be said that the diagram was drawn by the accused and it is contended that the role of the FSL appears to be that of creating supporting evidence on the basis of the BHEL Report at Exh.8099. Further, it is also submitted that although the presence of FSL Officers is

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clearly coming out from the evidence of the Invesigating Officers, panchas and other witnesses, there is no signature on the documents by the FSL Officers which raises a suspicion.

16.31.12. It is further contended by drawing attention of the Court to the BHEL report at Exh.8099 and the additional observation therein, that the knowledge of programming was compulsory for designing a timer using PIC chip. However, the panchnama does not record that the said 16F 628A PIC chip had been programmed by the accused. In this regard, it is submitted that although in the FSL Report at Exh.5644, an opinion is given that the IC is programmable and can be used as a timer device; there is no material to establish that any such programming had been carried out by the accused. Therefore, it is contended that in the absence of such programming, mere presence of a programmable IC cannot establish that the circuit was functional and that it had been prepared by the accused.

16.31.13. In this regard, reference has been made to the deposition of Investigating Officer; PW No.1163-Mayur Jagmalbhai Chavda at Exh.8638, particularly to Para-14 of the deposition and has submitted that during the panchnama, the preparation of circuit was carried out wherein materials were procured by the police and the circuit was assembled in the presence of Investigating Officer, panch witnesses and FSL officers. However, there is no reference with respect to the programming of the chip having been carried out by the accused.

16.31.14. It is further submitted that at the time of calling the panch witnesses, they were not informed about the preparation of such a diagram. Also, if the accused did possess the requisite technical skill, there was no necessity to first prepare a diagram and he could have directly assembled the said device. Therefore, it is contended that the

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preparation of the diagram appears to be an afterthought and cannot be attributed to have been made by the accused. It is further submitted that the Investigating Officer had already obtained the opinion of BHEL regarding the nature of the device as early as August 2008. It is also contended that although the said procedure is said to have been videographed, the same has not been produced on record.

16.31.15. Thereafter, reference has been made to Exh.5644; being the FSL Report and it is submitted that although there is an opinion in the report that programming is essential for such a device, there is no evidence on record to show that such programming had been carried out by the accused. It is further submitted that even as per the FSL report, the circuit contained in the sample prepared during the panchnama is of a different type from the circuit which had been used in the Ahmedabad serial blasts and therefore, the said circuit has no nexus with the said blasts. It is further submitted that even with respect to the IC used in the Surat incidents, there is no material on record to establish similarity in its programming and therefore, no nexus is established between the circuit prepared during panchnama and the device which has been used in the offence.

16.31.16. Learned Senior Advocate for the appellant has thereafter referred to the deposition of the FSL Officer; PW No.835-Hitesh Jayantilal Trivedi at Exh.5631 wherein it is deposed that the electronic components mounted on PCB of Parcel No.1 was examined alongwith the circuit diagram which had been forwarded alongwith the forwarding note by the Investigating Officer. It is submitted that the diagram was part of the material that was forwarded by the Investigating Officer and that the report was thereafter forwarded to the Investigating Officer. Therefore, it is contended that as the opinion of the FSL is based upon

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the material that was provided during investigation and when the preparation of such a diagram is itself in dispute, the opinion of FSL cannot be considered so as to connect the accused to the offence.

16.31.17. Learned Senior Advocate has thereafter referred to the findings of the trial Court regarding the applicability of Section 27 of the Indian Evidence and has submitted that an error has been committed by the trial Court by placing reliance on the panchnama under Section 27 of the Indian Evidence Act, as the requirements for application of Section 27 have not been fulfilled qua this accused.

16.31.18. It is further submitted by drawing attention to the findings qua this accused at Page 6638 of the impugned judgment that the trial Court has recorded absence of direct evidence with respect to several allegations qua this accused and has proceeded on the basis of 'anumaan' (inference) that the accused might have been present at the meetings and might have had some role in preparation of the device. Therefore, as such finding is on the basis of inference (anumaan) and not on the basis of any substantive evidence produced on record, it is submitted that there is no evidence so as to connect the accused to the offence. It is further submitted that there is no evidence to establish a link between this accused and other co accused to sustain the finding that the accused was a part of the conspiracy and to hold this accused collectively liable.

16.31.19. It is further submitted that there is no evidence on record to establish as to how this accused came to be implicated in the offence, and that no incriminating evidence was available at the time when he was arraigned as an accused in the offence. It is submitted that when this accused was apprehended in Bangalore, the Investigating Officer had undertook investigation and that no recovery or discovery of any article

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or any material connected with the offence had taken place from his house or place of work. It is submitted that there is no evidence on record apart from the demonstration panchnama and the circuit diagram and that, even insofar as the panchnama is concerned, it is merely corroborative in nature and not a substantive piece of evidence. Further, neither any investigation had been conducted at his hometown nor any evidence has been produced in order to establish the visit with the co-accused so as to connect this accused to the offence.

16.31.20. It is submitted that each incriminating circumstance should be established conclusively however, in the facts of the present case, the only evidence which is relied upon is the demonstration panchnama, FSL Report, and a comparison with the chip of the Surat device. It is submitted that therefore, there is no inquiry or evidence which is sufficient so as to implicate the present accused in the offence.

16.31.21. Thereafter, with respect to circumstantial evidence, Learned Senior Advocate for the appellant has placed reliance on the judgment of the Apex Court in the case of ***Hanumant Govind Nargundkar v/s. State of M.P.*** reported in ***1952 SCR 1091*** to submit that in a case consisting of circumstantial evidence, each circumstance from which the conclusion of guilt is to be drawn should be fully established and that all the facts so established, must be such as to exclude every other hypothesis except the guilt of the accused. In this regard, reliance has also been placed on the judgment of the Apex Court in the case of ***Sharad Birdichand Sharda v/s State of Maharashtra*** reported in ***1984 (4) SCC 116*** wherein the five golden principles with respect to circumstantial evidence have been laid down in Para 153 of the said judgment. Thereafter, reference has been made to the decision of the Apex Court in the case of ***Aftab Ahmad Anasari v/s State of Uttaranchal*** reported in ***2010 (2) SCC 583***,

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particularly Para 12, wherein it was held that suspicion howsoever strong, cannot take the place of proof and that conjectures cannot take the place of legal proof in a case which is based on circumstantial evidence. Lastly, in this regard, reliance has been placed on the decision of the Apex Court in the case of ***Satye Singh and Anr. v/s State of Uttarakhand*** reported in ***2022 (5) SCC 438*** particularly, Para 16 and 17 of the said judgment. And by placing reliance on these aforesaid judgments, it is submitted that in the facts of the present case, the incriminating circumstances have not been conclusively established so as to exclude every other hypothesis other than the guilt of the accused and to connect the accused with the offence.

16.31.22. Thereafter, Learned Senior Advocate for the appellant with respect to the contention that the videography which was conducted has not been produced, has placed reliance on the judgment of the Apex Court in the case of ***Tomaso Bruno and Anr. v/s State of Uttar Pradesh*** reported in ***2015 (7) SCC 178***, particularly, Para 26 to Para 28 of the said judgment, wherein it was held that in case of withholding of best evidence, the Court should draw an adverse inference and conclude that the evidence was withheld as it was not in favour of the prosecution and the defence would have been strengthened. It is further submitted that the evidence against the accused would be put under serious doubt and that the accused cannot be sentenced on the basis of such doubtful evidence.

16.31.23. Thereafter, reliance has also been placed on the judgment of the Apex Court in the case of ***Mohammad Inayatullah v/s State of Maharashtra*** reported in ***1976 (1) SCC 828***, wherein it was held that for the purpose of Section 27 of the Indian Evidence Act, only 'so much of the information' is admissible as relates distinctly to the fact thereby

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discovered and that in the facts of the present case, the demonstration panchnama does not lead to a discovery of a new fact and therefore, the same cannot be considered to be an admissible piece of evidence under Section 27 of the Indian Evidence Act.

16.31.24. Lastly, Learned Senior Advocate for the appellant has advanced submissions with respect to granting of sanction under Unlawful Activities Prevention Act (UAPA) contending that it has been granted without due application of mind. It is submitted that sanction under Section 45 of UAPA has to be granted "only after considering the report of the authority" and upon "independent review of the evidence" by such authority and that such a requirement is not an empty formality and requires objective consideration. In this regard, reliance has been placed on the judgment of the Apex Court in the case of ***Fuleshwar Gope v/s Union of India*** reported in ***2024 (0) AIR (SC) 4684***, particularly Para 37 and Para 40 onwards wherein the term "independent review" has been interpreted as a "re-examination, scrutiny or critique of something which is not dependent or subject to control by any other factor or authority" and it has been further observed that granting of sanction under UAPA requires due application of mind and is not an empty formality and that the sanctioning authority is required to consider the material which has been collected during the process of investigation and should satisfy itself before granting such sanction.

16.31.25. It is further submitted that the time prescribed under Rule 3 of NIA Rules, 2008 has not been adhered to and it thereby vitiates the sanction which has been granted.

16.31.26. It is to be noted that although the issue of sanction has been raised, Learned Senior Advocate for the appellant has not taken this Court through the evidence as to how the sanction has been brought on

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record or as to how the witness has deposed regarding the subjective satisfaction. The issue of sanction has been argued by other senior advocates for the defence and the same has been answered in the separate sub-chapter of "Grant of Sanction" in the Chapter "Issues".

16.31.27. A very specialized role has been attributed to this accused of possessing a special knowledge of assembling an important component of the explosive device.

16.31.28. Learned Additional Advocate General for the State has submitted that as per appeal preferred by accused No.49-Sarfuddin @ Sarfu he has mentioned his two addresses namely Kerala and Hyderabad. accused No.49-Sarfuddin @ Sarfu was arrested on 15.04.2009 with respect to an FIR bearing C.R. No.I-203 of 2008 registered with Maninagar, Police Station, and for few days he had remained under police remand. He was also arrested in connection with other FIRs. He was produced before the Court of Magistrate, however, he was continued on police remand until 07.05.2009.

16.31.29. The prosecution has relied upon Yaadi which was sent to FSL office for attending panchnama proceedings at Crime Branch Police Station, which was produced on record vide Exh.5588. Furthermore, on the back side of the Yadi, FSL Officer namely Mr. Hingrajiya and Mr. Trivedi, also confirmed the preparation of the diagram and timer circuit by accused No.49-Sarfuddin @ Sarfu in their presence, and the same was also signed by both officers.

16.31.30. The prosecution has relied upon the deposition of FSL officer being PW No.830-Amrutlal Hingrajiya vide Exh.5566, who in para-21 of his deposition at Page-37 has deposed that the panchnama at Exh.5588 was drawn at the instance of accused No.49-Sarfuddin @ Sarfu on 04.05.2009 at Crime Branch Police Station. During the course

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of the aforesaid panchnama, accused No.49-Sarfuddin @ Sarfu had prepared timer circuit diagram and also prepared PCB (Printed Circuit Board). He has deposed that he and other FSL officer namely Mr. Trivedi had signed on it. The case of the prosecution is that the above referred timer circuit i.e. Muddamal Article was prepared by accused No.49-Sarfuddin @ Sarfu, is programmable. If such type of circuits are programmed, then with the aid of detonator and explosive substance, it would make complete IED i.e. Improvise Explosive Devise.

16.31.31. It is submitted that the defence has challenged the acts of accused No.49-Sarfuddin @ Sarfu on various grounds, of which one ground is non-production of videography, depicting the acts of accused No.49-Sarfuddin @ Sarfu regarding his preparation of the diagram and timer circuit. It is submitted that so far as videography is concerned, there is no mention about it in the panchnama, and during the course of cross examining either the panch, the investigator or the FSL officer, no questions have been put to them regarding the videography of acts of accused No.49-Sarfuddin @ Sarfu. In view thereof, the non-production of the videography, by itself, would not be sufficient to discredit the acts of accused No.49-Sarfuddin @ Sarfu.

16.31.32. It is submitted that the acts of accused No.49-Sarfuddin @ Sarfu relating to drawing of diagram and making circuit, are nothing but providing information, which signifies the act or fact of informing, and would thus fall within the ambit of Section-27 of Evidence Act. It is submitted that that amongst the conspirators, accused No.11- Sibli @ Sabit is a Computer Engineer from Kerala, accused No.12-Safdar Nagori is an Engineer from Madhya-Pradesh and accused No.13- Hafiz Hussain is Civil Engineer from Karnataka. In view of the above, accused No.49-Sarfuddin @ Sarfu is conspirator, par with other conspirators in

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the present case.

16.31.33. The Court finds that the the timer circuit prepared by accused No.49-Sarfuddin @ Sarfu was found from live bombs, which were recovered from Surat. Pursuant to which, the FSL officer had opined that live bomb containing, such timer circuit has supported the case of prosecution. The only difference is that, for the purpose of executing the blast, the timer circuit is required to be programed, except this, there is no difference between the timer circuit prepared by accused No.49-Sarfuddin @ Sarfu and those recovered from the live bombs bombs in Surat proceedings.

16.31.34. The Court has perused the panchnama at Exh.8592 drawn on 04.05.2009 between 14:30 to 17:30hrs at Crime Branch Police Station, in one of the FIRs proceedings registered at Maninagar, police station. The said panchnama was drawn in the presence of accused No.49-Sarfuddin @ Sarfu, FSL officers, panchas and police, whereby, accused No.49-Sarfuddin @ Sarfu had disclosed his name and address and thereafter, showed his voluntariness to prepare electric timer chips, for which articles/objects such as micro controller, diode and others as asked by accused No.49-Sarfuddin @ Sarfu were brought and given to him. accused No.49-Sarfuddin @ Sarfu had also asked for blank papers, pencil and scale, which were given to him. Upon receiving it, accused No.49-Sarfuddin @ Sarfu had prepared circuit diagram on the blank paper, and thereafter, with the help of such articles/objects, accused No.49-Sarfuddin @ Sarfu had prepared timer circuit. The Timer circuit prepared by accused No.49-Sarfuddin @ Sarfu was put in a closed plastic box and at that time, signatures of panchas and police were taken on slips as well as on circuit diagram.

16.31.35. The aforesaid panchnama at Exh. 8592 stands proved

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through the deposition of the panch witness being PW No.1162-Jay Panchal at Exh.8591, who has fully supported the acts done by accused No.49-Sarfuddin @ Sarfu as mentioned in the panchnama. He had also admitted their signatures on panch slips affixed to box, in which timer circuits were placed on record vide Exh. 8593. He was also shown the Muddamal list, Exhibit 2034, whereby Serial No. 1 is the timer circuit prepared by accused No.49-Sarfuddin @ Sarfu, which was seized under the panchnama. The panch witness also admitted the signature of the other panch, Aamirbhai, as well as the signature of the police personnel, Shri Chavda. The panch witness was further shown the diagram of the timer circuit, which was also included in the Muddamal list. Muddamal Article-2 also bears the signatures of both the panch witnesses as well as the police officer, Shri Chavda, and the same has been placed on record vide Exh. 8594.

16.31.36. Thereafter, the panch witness was subjected to cross examination, and nowhere in the cross examination his credibility was impeached. He confirmed in the cross examination that the articles required and asked by accused No.49-Sarfuddin @ Sarfu for preparation of timer circuit were brought by police persons. He was asked which articles were used by accused No.49-Sarfuddin @ Sarfu for preparation of timer circuit, to which he answered that wires, solders and circuit were used. He further confirmed the preparation of the timer circuit diagram in the presence of panch witness, the panch witness was also confronted to spell out the full name of COB, to which he answered 'Chip On Board' and 'Clock On Board'. Similarly, he explained I.C. means Internal Circuit and as on today he did not remember the meaning of I.C is Integrated Circuit. Lastly, he empathetically denied that it is not true that timer circuit and diagram were not prepared in his presence.

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16.31.37. The Court finds that the defence has tried to confuse the act of accused No.49-Sarfuddin @ Sarfu of preparing timer circuit and diagram with the correspondence of the Investigating Officer at Exh.8098 with Ms. Majmudar, who forwarded the timer circuit diagram to Bharat Electronic for the purpose of obtaining their opinion, pursuant to which the opinion was also received from Bharat Electronics, which is on record vide Exh.8099.

16.31.38. The defence has contended that the act of preparation of accused No.49-Sarfuddin @ Sarfu is based on photograph of timer circuit forwarded by the Investigating Officer to Bharat Electronics. The act of accused No.49-Sarfuddin @ Sarfu is entirely independent of the confusion raised and advanced by the defence during the course of their arguments.

16.31.39. The defence has raised contentions regarding the number specified on the Integrated Circuit (IC). It appears that all the articles required, asked, and instructed by accused No.49-Sarfuddin @ Sarfu were provided to him, and therefore, the number mentioned on the IC pales into insignificance, as whatever was asked for, was provided to accused No.49-Sarfuddin @ Sarfu. Therefore, attributing any specific number to the IC would not be sufficient to impeach or discredit the act and fact of information provided by accused No.49-Sarfuddin @ Sarfu through the preparation of the diagram and timer circuit.

16.31.40. The Court finds that accused No.49-Sarfuddin @ Sarfu has given his statement dated 17.03.2020, wherein he had stated that he did not know any language other than his mother tongue i.e Malayalam. He has also stated that it is shocking and surprising that allegation levelled against him is for preparing some electronic themes, for which he is ignorant. Accused No.49-Sarfuddin @ Sarfu was further asked to

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explain panchnama at Exh.8592 and circuit diagram at Exh.8594, to which he replied that it is not true and that, the panchnama was not made in his presence and he has also denied making of timer circuit. The defence of accused No.49-Sarfuddin @ Sarfu with respect to the making of timer circuit as well as preparing of diagram runs counter to his cross-examination of relevant witnesses like panch witness, FSL officers and investigating officer and most importantly, his written further statement, as referred above, wherein he has stated that he did not know any language, except his mother tongue, is false, as during the course of deposition of panch witness being PW No.1162-Jay Panchal vide Exh.8591, it has come on record that accused No.49-Sarfuddin @ Sarfu knows English. It has also come on record that accused No.49-Sarfuddin @ Sarfu gave application in English and has also made his signature in English, which is placed on record at Exh.0113. The same falsifies his further statement that he did not know any language other then his mother i.e. Malayalam. Furthermore, in his further statement at Exh.0171 at Page 4604, there is an endorsement in English signed by accused No.49-Sarfuddin @ Sarfu in English. In view thereof, accused No.49-Sarfuddin @ Sarfu's explanation denying his authorship regarding the preparation of the timer circuit and diagram is false. IN the opinion of the court the accused has played an important role in the conspiracy due to his technical knowledge of preparing the most important part of the explosive device by which the explosion device or the bomb can be triggered and blown of. This highly technical knowledge of the accused is demonstrated by the panchnama. This panchnama been exhibited through the witness and its evidentiary value is discussed under a different chapter of “Panchnamas under Section 27 of Indian Evidence Act”.

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16.31.41. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.49-Sarfuddin @ Sarfu S/O E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim. The Court has therefore, no reason to interfere with the conviction recorded.

16.32. In case of Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan (Uttarpradesh) (A-50)

(Accused No.32 in Criminal Confirmation Case No. 2/2022 and Appellant No.26 in Criminal Appeal No. 1710/2022):

16.32.1. In case of accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.32.2. Learned Senior Advocate Shri Thipsay submits that the role attributed to accused No.50 is of plainting a bomb laden bicycle at Mittal Chambers near Naroda Circle, Ahmedabad, which is one of the locations where the bomb had exploded in Ahmedabad. At the outset, learned Senior Advocate submitted that the accused was arrested after almost a year on 04.07.2009 by way of transfer warrant. The accused was lodged in Jaipur Jail, Rajasthan for his involvement in an offence registered with Manekchowk Police Station. It is submitted that the accused was also one of the accused in Jaipur bomb blast case; however, in Criminal Appeal No.216 of 2022 and allied cases, the Rajasthan High Court has decided the death reference wherein, this accused has been acquitted.

16.32.3. Learned Senior Advocate submitted that the entire case of the

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prosecution is based on two panchnamas. However, none of the panchnamas, viz. Exhs.6070 and 5549, can be treated to be panchnama under Section 27 of the Evidence Act and therefore, the voluntary disclosures made therein cannot be treated as admissible evidence.

16.32.4. Learned Senior Advocate has, thereafter, assailed the point out panchnama Exh.6070. By this panchnama, the prosecution has tried to establish the connection between accused No.50 and the hide-out house being House No.10, Al-Mohammadi Society. According to the disclosure, this house was used as a hide-out and accused No.50 had also resided there. However, this disclosure cannot be believed since prior to execution of Exh.6070 on 08.07.2009, the disclosure so made is without discovery of any physical object and has been reduced to mere statement in presence of the police and is, thereby, hit by sections 25 and 26 of the Indian Evidence Act. It is also argued that sub-section (2) of section 162 of Cr.P.C. will also not save this statement made under the garb of panchnama.

16.32.5. It is submitted that the panchnamas may also not be relied upon by invoking section 8 of the Indian Evidence Act as the pointing out of the house does not constitute a conduct, which is connected with the offence and there is no recovery or discovery, which would lend confirmation to the conduct recorded under the panchnama.

16.32.6. It is argued that the police had prior knowledge of House No.10, Al-Mohammadi Society as on multiple occasions (for ten times) point out panchnamas of various accused have been executed, which has led the Investigating Officer to the same house. Therefore, the voluntary disclosure would not amount to any fact as contemplated under Section 27 of the Evidence Act.

16.32.7. In this connection, it would be appropriate to mention here

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that the Court has dealt with in detail the issue of panchnama under Section 27 in a separate sub-chapter titled “Panchnamas under Section 27 of Indian Evidence Act” under the chapter “Issues”. The Court observes that the incident having taken place on 26.07.2008 and the arrest of the accused having been made on 04.07.2009 and admittedly, the accused is not a native of Ahmedabad and his pointing out of the very same house being House No.10, Al-Mohammdi Society as one of the hide-outs displays the mental fact of knowledge of the place. The voluntary disclosure has led the panch team to House No.10 where PW No.869 Nitesh Mohanbhai Vaishya Exh.6069, who is the panch witness of panchnama Exh.6070, has deposed before the Court about the disclosure made volutarily by accused No.50 and leading the panch team to House No.10, Al-Mohammdi Society, which co-incidentally happened to be the same house pointed out by other co-accused.

16.32.8. The fact that the panch witness has deposed about the disclosure of a mental fact of knowledge of the house cannot be neutralized by the submission that the Investigating Officer was already aware of this house. In the beginning of the panchnama, it is unknown to the Investigating Officer as to where the accused, who is making the voluntary disclosure, would lead unless in the second part of the panchnama, it is recorded where the accused has led the panch team. It is only at that stage that the Investigating Officer becomes aware of the mental fact of knowledge of the accused of House No.10. In absence of anything to the contrary, even after the cross-examination of the panch witness as well as the Investigating Officer, the Court cannot be led to presume that as the Investigating Officer knew about House No.10, Al-Mohammadi Society and hence the Investigating Officer has created the panchnama Exh. 6070.

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16.32.9. On a combined reading of Exh.6070, the deposition of PW No.869 Nitesh Mohanbhai Vaishya at Exh.6069 and the deposition of PW No.1163 Mayur Jagmalbhai Chavda at Exh.8638 who is the Investigating Officer, the voluntary disclosure of the fact of knowledge of the house situated in Al-Mohammadi Society being one of the hide-outs is established. The Court has also discussed elsewhere as to how the house in Al-Mohammadi Society is connected with the offence and is established as a house, which was used by the co-accused and the articles discovered from accused No.10, Al-Mohammadi Society are connected with the offence and bomb blasts.

16.32.10. Learned Senior Advocate has then assailed in similar fashion Exh.5549, which also is a point out panchnama at the behest of accused No.50 under which he pointed out the location situated at Mittal Chambers at Naroda Circle in Ahmedabad where he has parked a bomb laden bicycle, which also exploded. It is argued that though there is an explosion but, no death is reported out of this explosion. Learned Senior Advocate has assailed this panchnama by submitting that accused No.50 is a non-Gujarati and knows only Hindi and Urdu whereas, the panchnama is recorded in Gujarati and therefore, the voluntary disclosure recorded under this panchnama is doubtful. It is also submitted that the site of the blast was within the public domain and therefore also, under the panchnama Exh.5549, accused No.50 leading the panch team to this very location cannot be treated as a new disclosure so as to attract section 27 of the Evidence Act.

16.32.11. Here also, it is pertinent to observe that the blast having taken place at Mittal Chambers on 26.07.2008 whereas, the accused was arrested on 04.07.2009 and despite the accused being an outsider, under the panchnama, he has voluntarily disclosed to lead the panch team to

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the exact site even after a period of about one year. Therefore, the argument that the accused has not led to a new discovery will have to be discarded. Again, as per the deposition of PW No.825 Bharatkumar Shankarlal Parmar at Exh.5548, the panch witness has deposed about voluntary disclosure in the first part of the panchnama and it is only at the stage of recording of second part of panchnama that the accused, who is not acquainted with Ahmedabad, has been able to lead the panch team to the exact location of the blast near Mittal Chambers, which is a disclosure of mental fact of knowledge of accused No.50 to a place (a location) and therefore, the required criteria, as discussed under the sub-chapter of "Panchnama under Section 27 of Indian Evidence Act" are fulfilled and therefore, the voluntary disclosure of the mental fact about his knowledge will have to be treated as an evidence under Section 27 as well as Section 8 of the Indian Evidence Act.

16.32.12. The submission that no deaths were reported as a result of the explosion at Mittal Chambers is out-rightly fortuitous. Otherwise, as a part of the very conspiracy, on the same day, blasts have occurred at various places in Ahmedabad resulting into 56 deaths for which the accused is also responsible.

16.32.13. Learned Additional Advocate General for the State has submitted that the importance of House No.10-Al-Mohammadi Society has already been submitted earlier and therefore, to put it again briefly, house No.10 of Al-Mohammadi Society is another sequel to conspiracy where, as per case of prosecution, bombs were prepared, different cars used in commission of the offence were brought here and loaded with bombs, and prepared bombs were given to different accused in bags which were ultimately tied to cycles for the purpose of commission of offence. On search to this house, relevant objects such as, a broken

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compact disc (CD) bearing a chance print of accused No.38-Mohammad Saif was found and some other objects-articles containing nitrate and Nitrate radicals were also recovered. Several accused persons are connected with this house, some pointed out this house and they had shown their relevant conduct with respect to this important circumstance. Certain articles as such, utensils found from this house also indicate the involvement of accused No.8-Yunus Mansuri. There is also an evidentiary material of owner of this house and two other witnesses implicating accused No.37-Kayamuddin Kapadiya and others for the purpose of taking this house on rent, as well as the circumstance of identification such accused in Test Identification Parade proved through Executive Magistrate.

16.32.14. It is submitted that the place pointed out by accused No.50-Saifur Rehmaan where the bomb laden cycle was parked is the scene of offence, for which FIR came to be registered at Vatva Police Station through I-C.R No.218 of 2008, pursuant to information given by Kadarbhai Karimbhai Ajmeri.

16.32.15. The Court has considered the panchnama Exh.5549 drawn on 17.07.2009 by Crime Branch Police station, Ahmedabad City. During the course of first part of the panchnama drawn at Police station, accused No.50-Saifur Rehmaan disclosed that he could point out the place where he and one another of his native place named Mohd. Arim khan @ Junaid (absconder) of UP had placed a bomb laden cycle. He further voluntarily disclosed that if he was taken to Al-Mohamadi Society, he could point out the relevant place. Pursuant thereto, the second part of panchanama was drawn and accused No.50-Saifur Rehmaan led the police party to house no.10 of Al-Mohammadi Society. Accused No.50-Saifur Rehmaan disclosed that he and Amir khan

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(absconder) had taken bomb laden bags from the said house and thereafter, proceeded towards the main road. Thereafter, accused No.50-Saifur Rehmaan then led the police party through Barrel Market and nearby places and pointed out the route by which they travelled in a shuttle rickshaw to Narol Circle. He also pointed out the place from where Arim Khan (absconder) had brought a cycle and thereafter, the bomb laden bag carried by accused No.50-Saifur Rehmaan was tied to the Govender of the cycle. Accused No.50-Saifur Rehmaan and Arim khan (absconder) then proceeded to another place and parked the bomb laden cycle there. One examination, the place was found to be near Mittal Sales and Service, Mittal Chamber, the National Highway Road and ATM of Axis Bank. The aforesaid panchanma Exh.5549 stands proved through panch witness being PW No.825-Bharatkumar Shankarlal Parmar vide Exh.5548 and the Investigating Officer being PW No.1154-Usha Rada vide Exh.8340.

16.32.16. The Court has also considered the panchnama at Exh.6070 drawn on 08.07.2009 by Crime Branch Police station, Ahmedabad City. The first part of the panchnama was drawn at Crime Branch Police station, where accused No.50-Saifur Rehmaan voluntarily disclosed that he would like to state and show relevant aspects relating to bomb blast incident which took place in Ahmedabad in July, 2008. Accused No.50-Saifur Rehmaan further disclosed that he had travelled from Delhi to Ahmedabad and that he could point out a house, if he was taken to the Railway Station. Pursuant thereto, the police party and the panch witnesses proceeded to Ahmedabad Railway Station Compound. Upon reaching this place, accused No.50-Saifur Rehmaan disclosed that he alongwith one Mohd. Saif (acquitted accused) and others had arrived there from Delhi and were taken from there in a rickshaw to a house by

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one person whose name he does not recollect. Thereafter, accused No.50-Saifur Rehmaan led the police party to Sarangpur, New Cloth Market, Kankaria Football ground and other places and ultimately reaching to Al-Mohammadi Society and pointing out one house where he had stayed alongwith other accused and prepared bomb. The fact that the house is connected with the bomb making activity is ofcourse established by other set of evidene, the deposition of the witnesses, the confessional statement and also the discovery of the material objects. Accused No.50-Saifur Rehmaan further disclosed that on the day of incident, a silver coloured Wagon R car and a While coloured maruti Fronti were parked near the said house and these cars were used for planting bombs and were thereafter taken by other persons whose name is not known to accused No.50-Saifur Rehmaan. Accused No.50-Saifur Rehmaan also disclosed that he had subsequently returned to Delhi by train and the tickets for the travell were managed by Ateek Bashar (absconder) and his associates. The house pointed by accused No.50-Saifur Rehmaan was found closed. The aforesaid panchanma stands proved through evidence of panch witness being PW No.869-Nitesh Mohanbhai Vaishya vide Exh.6069 and the Investigating Officer as PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638. This entire sequence is required to be appreciated in the context of larger conspiracy of engaging accused from out station for this particular task. Several witnesses have deposed to this fact

16.32.17. Considering the aforesaid evidence on record, the Court finds that accused No.50-Saifur Rehmaan had not only pointed out house no.10-Al-Mohamadi Society, which was used by the accused persons in furtherance of the conspiracy, but he had also pointed out the place where the bomb laden cycles were parked. These circumstances

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establish the role of accused No.50-Saifur Rehmaan in the conspiracy which was in furtherance of a common object of mass killing by causing blasts. For fulfilling and achieving the ultimate object of mass killing, all the conspirators acted on the instruction of their masters and like accused No.50-Saifur Rehmaan, the other co-conspirators also fulfilled their respective role by doing one or the other act for the purpose of achieving the object of conspiracy.

16.32.18. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.50-Saifur Rehmaan @ Saifu @ Saif Abdul Rehmaan. The Court has therefore, no reason to interfere with the conviction recorded.

16.33. In case of Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim (Kerala) (A-59)

(Appellant No.8 in Criminal Appeal No. 1917/2022)

16.33.1. In case of accused No.59-Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.33.2. The case of prosecution against accused No.59- Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim is that this accused has participated in the Terror camps organized at Vagamon and also in Forests of Pavagadh in Halol, Gujarat. This accused has been convicted by the Ernakulam Sessions Court for the terror camp at Vagamon.

16.33.3. Learned Advocate Shri Hriday Buch has submitted that mere presence is not sufficient to convict accused for the offence. It is submitted that the prosecution has failed to attribute any overt act for

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making or planting of bombs or participation in any of the meetings alleged as conspiratorial meeting.

16.33.4. Learned Advocate has then argued that there is no admissible evidence even to establish the participation of accused No.59-Mohammad Ansar in the camp. It is submitted by learned Advocate Shri Buch that only evidence is the confessional statement of the co-accused, which is not an admissible evidence on which conviction can be based.

16.33.5. Therefore, according to learned Advocate though there are more than one co-accused, who have given confessional statement, still it cannot form basis of conviction especially for such a serious sentence. It is also submitted that confessional statement of co-accused being accused No.35-Rafiyuddin Kapadiya cannot be considered as an evidence at all as the confessional statement under Section 164 of Cr.P.C. was recorded by the Magistrate after administering oath, hence, even the trial Court has discarded this evidence.

16.33.6. Referring to the evidence in the form of confessional statement under Section 164 of Cr.P.C. given by the co-accused being accused No.2-Imran Shaikh, accused No.21- Mehandihasan @ Vikki and accused No.35- Rafiyuddin Kapadiya. The Court may take into consideration Sections 10 and 30 of Indian Evidence Act, which are the provisions specifically to deal with the factual situation.

16.33.7. Admittedly, the Ernakulam Court has recorded conviction of accused No.59- Mohammad Ansar (see Exh.9421), where the Ernakulam trial Court has tried accused No.59- Mohammad Ansar as accused No.5 and has convicted for offence under UAPA as well as IPC and Explosive Act. Thereby, establishing his presence in the terror training camp at Vagamon.

16.33.8. The Court under the chapter of 'Issues' and under the sub-

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chapter of 'Confessional statement of co-accused' has assigned a detailed reason that in the facts of this case, confessional statement of the co-accused will be treated as admissible in evidence and therefore, perusing the evidence of confessional statement of the co-accused. The participation of the co-accused was found to be established in the terror training camp at Vagamon and also at the similar camp in forest of Pavagadh in Halol.

16.33.9. The confessional statement refers to the nature of terror training imparted and also the participants participating in fanatic disclosure of taking revenge against Hindus. The presence and participation in the opinion of the Court is sufficient to make the accused a 'conspirator' to the offence (see Sub-chapter conspiracy under Chapter 'Issues').

16.33.10. The fact that the camp in the forest of Pavagadh in Halol for terror training is well established by plethora of evidence over and above the confessional statement of co-accused.

16.33.11. The Court may refer to Exh.6443, which is the pointing out panchnama of Halol camp, where accused No.35-Rafiyuddin Kapadiya has made a voluntary disclosure and pointed out the Halol camp site. This panchnama Exh.6443 is proved by the deposition of the panch witness being PW No.900-Himesh Pravinchandra Mehta vide Exh.6442.

16.33.12. Learned Additional Advocate General for the State has relied on confessional statement of accused No.2-Imran Shaikh vide Exh.8619 to implicate accused No.59-Mohammad Ansar as one of the participants of Vagmon Terror Training Camp. It is submitted that accused No.59-Mohammad Ansar is from the State of Kerala and that several other participants of the camp were also from Kerala. So far as the activities conducted at Vagamon camp are concerned, it is submitted that the

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prosecution has already elaborated upon the same while making submissions against accused No.2-Imran Shaikh and few other accused.

16.33.13. On the basis of the very evidence the court finds that accused No.2-Imran Shaikh has referred to accused No.59-Mohammad Ansar as "Nadwi Ansar",and that accused No.59-Mohammad Ansar has also played an active role in the camp alongwith other accused namely, accused No.12-Safdar Nagori, accused No.10-Amil Parvaz, Taukir (absconder), accused No.11-Shibily, accused No.15-Mufti and accused No.13-Adnan, who delivered Jehadi speeches and also gave training regarding survival in the jungle. It is evident that like accused No.11-Shibily, even accused No.59-Mohammad Ansar is from Kerala. and that accused No.59-Mohammad Ansar was also arraigned as A-5 in Kerala Court proceedings and came to be convicted for offences punishable under Sections 10, 20 and 38 of UAPA, Section 120 B of I.P.C and Section 4 of Explosive Substance Act, 1908.

16.33.14. The Court has considered the confessional statement of accused No.2-Imran Shaikh for the purpose of examining the participation of accused No.59-Mohammad Ansar in Halol Terror Training camp. It clearly states that accused No.59-Mohammad Ansar Nadvi, who had attended the Kerala camp, had also attended the Halol camp. So far as the activities carried out by participants of the Halol camp are concerned, the same had already been discussed earlier while making considering the case against accused No.21-Mehandihasan and other accused persons.

16.33.15. The Court finds that in so far as the holding of Halol camp is concerned, it is established not only through confessional statements of accused persons, but also through independent evidence of Idris, who is the Munjavar of Khundpir Dargah and three other local witnesses

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namely, Ambalal, Pravin Bhai and another. There is also evidence regarding the identification of certain accused during Test Identification Parade, proved through the Executive Magistrate. Witness Idris has also identified certain accused during the course of his deposition and has also deposed regarding he having permitted to provide stay at Khundpir Dargah on reference of one Dr. Sadab. Therefore the holding of the terror camp in forests of pavagadh is well established by evidence.

16.33.16. The Court has also considered the confessional statement of accused No.76-Manjarimam, which is on record at Exh.9021, given by accused Manzar Imam from Ranchi, Jharkhand. Upon perusal of the confessional statement, the Court finds that accused No.76-Manjarimam has named accused No.11-Shibily as one of the active participants of the Vagamon Camp. He has also named Taukir (absconder), accused No.10-Amil Parvaz and also accused No.15-Mufti. It appears that these persons are also named by accused No.2-Imran Shaikh in his confessional statement as persons who delivered Jehadi speeches during the camp. It also appears that accused No.76-Manjarimam was also arraigned as A-34 in Kerala Court proceedings and came to be convicted therein like accused No.59-Mohammad Ansar.

16.33.17. The Court has also perused the confessional statement of accused No.35-Rafiyuddin Kapadiya at Exh.8619, who has implicated accused No.59-Mohammad Ansar in Halol camp by referring to him as 'Ansar @ Nadwi'. Accused No.35-Rafiyuddin Kapadiya has also termed this camp as a SIMI camp, which is a relevant circumstance. The Court finds that accused No.35-Rafiyuddin Kapadiya pointed out the place of Halol camp through panchnama Exh.6443 drawn on 17.11.2008, which has already been discussed while considering the case against accused No.35-Rafiyuddin Kapadiya. Though the confessional statement of A-35

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Rafiyuddin Kapadiya is recorded by the Ld. Magistrate after administering Oath and therefore cannot be treated as an substantive evidence yet for the reasons given the court would rely upon it as it has been exhibited and also corroborated by other evidence, for the purpose of strenghtening the relience on the other set of evidence.

16.33.18. The Court also finds that the place of Halol camp constitutes one of the sequels to conspiracy. Upon perusal of the record, it also appears that accused No.1-Jahid Shaikh led investigators to the said place and upon search, many objectionable articles were found and seized, supporting the case of the prosecution that the camp had actually been conducted there.

16.33.19. The Court has also considered the confessional statement of accused No.21-Mehndi Hasan who is from Rajasthan. Accused No.21-Mehndi Hasan has specifically stated in his confessional statement that when participants started arriving to attend the Halol camp and came to the Dargah, accused No.59-Mohammad Ansar was assigned the duty of receiving the participants. Accused No.21-Mehndi Hasan has also stated about accused No.59-Mohammad Ansar, by referring to him as 'Nadwi Sahab', and stated that he alongwith others imparted training such as trekking and was actively participating in the Halol Camp, as in the Kerala camp. Accused No.21-Mehndi Hasan has also stated that accused No.59-Mohammad Ansar delivered takrir during the camp. The role therefore of this accused was a Trainer in the camp.

16.33.20. Thus, upon considering the evidence on record i.e., the confessional statements of various accused, which state about the presence and active participation of accused No.59-Mohammad Ansar in both the camps, it is sufficiently established that accused No.59-Mohammad Ansar had not merely attended the camps, but had also

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actively participated by receiving the participants, imparting training and delivering speeches. Therefore, the role of accused No.59-Mohammad Ansar in the conspiracy which was with a common object of mass killing by causing bomb blasts stands sufficiently established.

16.33.21. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.59-Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim. The Court has therefore, no reason to interfere with the conviction recorded.

16.34.In case of Asif @ Hasan S/O Bashiruddin Shaikh (Maharashtra) (A-32)

(Accused No.21 in Criminal Confirmation Case No. 2/2022 and Appellant No.5 in Criminal Appeal No. 727/2024):

16.34.1. In case of accused No.32-Asif @ Hasan S/O Bashiruddin Shaikh, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.34.2. Learned advocate Mr. Somnath Vatsa in connection with accused No.32-Asif @ Hasan Shaikh submitted that the first arrest is in a Bombay case from where he was arrested in C.R. No.236 of 2008 at Shahibaug Police Station. The role is that of hiring of the hideouts and as a part of conspiracy, to use the I.C. and program it for the explosive device. This accused has accompanied co-accused i.e., accused No.51-Dr. Anvar Bagvan with agent Akhtar to land lord Reza. He submits that with regard to this accused, he advances the same arguments as that for previous accused-Fazal-E-Rehman. In this case, two prosecution

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witnesses have identified accused No.32-Asif @ Hasan Shaikh in Test Identification Parade (Exh.3179) on 09.01.2009 as a person, who accompanied Anwar Bagvan for the purpose of hiring of the premises of Ashok Muse. It is though submitted that even if accused No.32-Asif @ Hasan Shaikh is believed to be associated with the house, there is no evidence on record as to how the house is connected to the offense. There is no recovery or discovery of any incriminating material or any activity that has come on record which took place within that house.

16.34.3. Thereafter, learned advocate has submitted that the present accused is attributed with the role of integrated circuit (I.C.) which was important component of the bomb. However, the evidence in this regard is not an admissible evidence to establish the same. The evidence is the panchnama Exh. 6508 dated 29.11.2008 which only records what the accused No.32-Asif @ Hasan Shaikh orally describes about his knowledge of functioning of I.C., but mere knowledge is not sufficient to implicate. The prosecution ought to have established actual putting into use such knowledge and how the accused has transmitted it on such a large scale basis. There is no evidence as to how and when the I.C. was procured.

16.34.4. The prosecution also ought to have established that the I.C., which is of no use unless programmed then in this case how and who programmed the I.C. so as to make it effective.

16.34.5. Exh.6507 is evidence of PW No.910; Ushakant Chimanlal Mistri, who is the panch of the panchnama of the I.C. which was preserved, according to learned advocate, there is no purpose of this panchnama as for what reasons Police Constable-Fulsingh came to the spot with I.C. in a sealed jar is not known.

16.34.6. However, the Court having perused Exh.6507, it is deposed

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by witness that what was shown is the circuit in which there is an I.C. and in that I.C., time has to be set by use of digital timer machine and the accused orally explained the manner in which digital timer machine is connected to the I.C. and the time can be set after setting of the time in the I.C. a detonator and explosives are connected and then a 9 volt battery connected, the power of which will be supplied as per the time set to trigger the detonator and the blast.

16.34.7. Though witness has been cross examined with regard to language, sealing and about the witnesses' own knowledge about the circuit and battery operation however, nothing substantial is coming out to doubt the deposition or to consider him as a tutored or biased witness. What this witness has demonstrated is the disclosure of the knowledge of the accused as to effective use of various components and his knowledge specifically to set a time for device to explode.

16.34.8. Learned advocate has submitted that the investigation had already sent questionnaire to Bharat Electronics Limited vide Exh. 8098 and in response to the questionnaire, BEL had submitted its reply vide Exh.8099 and the entire questionnaire is pertaining to the I.C. The argument, therefore, is that considering the date on which the Investigating Officer at Surat received the response from BHEL, the investigation officer was aware about several facts regarding I.C., particularly, the chip being programmable and containing the program and therefore, the investigation qua the present accused, nothing new was discovered and therefore, the panchnama Exh.6508 is hardly of any relevance. It is submitted that even if the panchnama is to be believed, then also, there is a gap qua the investigation about how the chip was programmed and whether the appellant is having any role in it. Therefore, the fact that the chip is programmable is an information

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which was already available on the basis of BHEL report and FSL report.

16.34.9. Learned advocate has further argued in this context that 78 accused were tried however, it is only the present appellant is attributed to have a knowledge and has been chosen for the task of programming the chip. Therefore, the prosecution ought to have brought on record the fact of actual programming of the chips in large quantity and association with co-accused so as to put such chip in active use.

16.34.10. According to learned advocate, the only connection that the prosecution draws is the point out panchnama vide Exh. 8530, which is drawn at behest of co-accused Naushad and during this panchnama, he points out the place where he had boarded the travel bus alongwith the present appellant for travelling from Pune to Surat. Apart from this, there is no further investigation though the contemporaneous material would have been available from the travel's office still there is no investigation about recording statement for the travel office or seizure of any documents pertaining to such travel.

16.34.11. It is also submitted that the point out panchnama without there being any recovery or discovery and that too such panchnama being executed post arrest, cannot be treated as a relevant evidence by usage of Section 10 of the Indian Evidence Act and therefore, learned advocate submitted that insofar as the present accused No.32-Asif @ Hasan Shaikh, there is no evidence connecting him with the offense and for the role that the prosecution is attributing to the appellant there are in fact contradictory evidences attributing similar roles to different accused persons by different set of evidences. This makes the case of prosecution unreliable.

16.34.12. In this very regards, learned Advocate has referred to

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Exh.6508, which is a document by which the prosecution attributes the act of setting of "time" in the explosive devise in the I.C. by referring to Prince make clock. It is argued that erroneously the Sessions Court has taken into consideration Exh.6546; panchnama attributing the Mechanism of time setting to this appellant; Asif whereas Exh.6546 is the panchnama drawn at the behest of accused No.31-Mohammad Arif.

16.34.13. In this regard, the Court has taken into consideration Page-6570 of the judgment. The Court was referring to the evidence of the PW No.1155-N.B. Parmar; I.O. vide Exh.8517 what got the panchnama executed through accused No.31-Mohammad Arif and the actions recorded in the panchnama is also that of accused No.31-Mohammad Arif. This fact is referred in the judgment at Page-6566 while referring to the evidence of PW No.988; Nimesh Bhanuprasad Brahmbhatt vide Exh.6871, PW No.835- Hitesh Jayantilal Trivedi vide Exh.5631 and therefore, on Page-6570 mentioned to accused No.32-Asif @ Hasan Shaikh in discussion of evidence of the Investigation Officer has to be a 'typo' and in place of accused No.31-Mohammad Arif, accused No.32-Asif @ Hasan Shaikh is mentioned. Such a mention was made only to give a continuity to the role, which was attributed to this accused. Both the panchnamas Exh.6546 and Exh.6508 are executed on the same day and demonstrate the similar actions of the accused, but both are drawn independently on separate times and have different panch witnesses. These panchnama in facts demonstrate a 'fact' of knowledge, which was within special knowledge of the accused, which has come on record. This evidence therefore cannot be discarded as being irrelevant.

16.34.14. This is an important circumstance of meeting of minds, with commonality of the knowledge to prepare the explosive device is on record and therefore, the argument that there has to be direct evidence on

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the record that the accused actually committed an act of setting the time with the use of digital time setting device, cannot be accepted as the 'act' of setting up the device with explosive with use of I.C. and clock, which amounts to offence in fact, is an act towards the conspiracy and not be expected to be done in full public view, but obviously be done in a clandestine manner.

16.34.15. Learned Advocate has also reiterated his argument about the accused being from Maharashtra and not acquainted with Gujarati and the panchnama being in Gujarati and there being no noting within the panchnama about what is recorded in panchnama is being explained to accused in language known to him has put the investigation and also the content of the document in doubt. So, can such a document be used as a admissible piece of evidence?

16.34.16. Learned Additional Advocate General for the State has submitted that accused No.32-Asif @ Hasan Shaikh is involved by PW-967/Exh.6780 namely Reza resident of Puna. The witness is a owner of a flat situated in Ashoka Muse Society Puna bearing flat No. Sh-302 and through this witness another witness Akhtar Hanif has given his flat on rent to a person namely Doctor Anwar Bagvan (accused No.51). Accused No.51-Doctor Anwar Bagvan has taken on rent this flat for its occupation by his family members and agreement to that effect was also executed. When accused No.51-Doctor Anwar Bagvan came for rental arrangement, he was accompanied by one another person, who he introduced as his brother. On completion of rental term, the witness instructed accused No.51-Doctor Anwar Bagvan to vacate flat premises but under the guise of Ramzan, accused No.51-Doctor Anwar Bagvan requested for extension of the agreement and during the period of extension, Bombay Police searched his flat and he came to know from

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them that his tenants were arrested. He was also told that jihadi material and material for preparation of bomb was seized from them. Bombay Police recorded his statement and he was also handed over rent agreement to them. Ahmedabad police also came to witness and they instructed witness to come over to Ahmedabad. Ultimately, the witness had gone to Ahmedabad at the address given to him which was a place known as old Collector Office Compound, Ahmedabad. He had participated in the Test Identification Parade and gave his identity card to the Saheb, who was present there. During the course of Test Identification Parade, he had identified a person, who came to his place alongwith accused No.51-Doctor Anwar Bagvan when he came for the purpose of execution of an agreement. The person was identified by witness namely Asif @Hasan shaikh as recorded by the Magistrate. It is submitted that the said person Asif is accused No.32-Asif @ Hasan Shaikh in the present proceedings and accused No.32-Asif @ Hasan Shaikh was introduced by accused No.51-Doctor Anwar Bagvan as his brother. Subsequent to it, he was subjected to interrogation by Ahmedabad Police. The witness was also called upon to examine xerox copy of the rental agreement, which he examined on the basis of terms of agreement as well as photo of him and accused No.51-Doctor Anwar Bagvan alongwith signatures of them. This agreement is submitted through application Exh.6779 and Mark A. Though witness identified accused No.32-Asif @ Hasan Shaikh in the course of Test Identification Parade, which is Exh.3179, but failed to identify accused No.32-Asif @ Hasan Shaikh during the course of deposition on the explanation of lapse of time.

16.34.17. It is submitted that accused No.32-Asif @ Hasan Shaikh is also involved by PW-965/Exh. 6776 namely Akhtar Hanif, a resident of

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Puna. This witness was interrogated by Ahmedabad Police who has deposed that he was caretaker of flat No.302 Ashoka Muse, a flat owned by above witness Reza Exh.6780. The witness further deposed that this flat was took on rent by a person named Dr. Anvar Bagvan (accused No.51) and his brother accused No.32-Asif @ Hasan Shaikh. The witness also stated that person named accused No.32-Asif @ Hasan Shaikh, who was taken by witness to the above flat and the flat was shown to him. Also, accused No.32-Asif @ Hasan Shaikh was taken to witness Reza and accused No.32-Asif @ Hasan Shaikh was introduced by accused No.51-Doctor Anwar Bagvan as his brother. During the course of rental arrangement, accused No.51-Doctor Anwar Bagvan told that he was going out and his brother would occupy the rental flat. The witness further stated that on phone call from witness Reza on 21.12.2008, he learnt about police alongwith one madam having come to their flat. The police arrested persons as blasting material was found from the flat. The witness was subjected to interrogation by Bombay police and police sealed the flat. In January, the witness was instructed to come to Ahmedabad Court, where he gave his identity proof as asked and the witness was subjected to Test Identification Parade and during the course of such Test Identification Parade, the witness identified person whose name was accused No.32-Asif @ Hasan Shaikh who took on rent flat of Ashoka Muse. Though witness successfully identified in Test Identification Parade Exh.3179 which is also proved through Executive Magistrate Exh.3159, witness failed to identified accused No.32-Asif @ Hasan Shaikh during the course of his evidence but could not identify.

16.34.18. The Court has considered submissions of the parties. In the opinion of the Court, so far as, this house i.e. flat No. 302 of Ashoka

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Muse is concerned, the above referred witnesses clearly stated about this flat being occupied by accused No.51-Doctor Anwar Bagvan and has introduced accused No.32-Asif @ Hasan Shaikh as his brother and there is one more person who is introduced by accused No.51-Doctor Anwar Bagvan, as his friend. It is submitted that the Court has perused deposition of PW-966/ Exh.6777, Asfaq Ahmed Saiyaed of Puna. The witness is Real Estate Consultant and is interrogated by Ahmedabad Police on 21.12.2008, The witness has stated that for the purpose of rental arrangement of the above referred flat of Ashoka Muse, accused No.51-Doctor Anwar Bagvan, whose name is Anvar Bagvan came with one person who was fair in skin and of medium height was introduced as friend of accused No.51-Doctor Anwar Bagvan.

16.34.19. The Court finds that this witness was subjected to Test Identification Parade in January 2009 and was called upon to identify a person, to whom the witness knew as person and to whom the flat was given. During the course of Test Identification Parade, according to witness, accused No.51-Doctor Anwar Bagvan was not present and the person who came as a friend of accused No.51-Doctor Anwar Bagvan was identified by witness as a person whose first name is F and last name is Durani as a person who came with accused No.51-Doctor Anwar Bagvan as his friend. This person who is identified by witness as a person whose first name is F and last name is Durani is as such accused No.45-Fazale Rehman @ Saluddin Musaddikkhan Durani of Pune, Maharashtra.

16.34.20. The Court finds that though witness successfully identified him in Test Identification Parade, but failed to identified him during the course of his deposition because of lapse of time and growing of beard. During the course of cross-examination, more particularly in para 7., the

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witness has reiterated about accused No.51-Doctor Anwar Bagvan, who came with his friend. All these three accused, who are connected with flat No. 302 of Ashoka muse, from where explosive material for making bomb was found as well as one article identified as electronic circuit was found from a motorcar i.e. black Wagon R, referred hereinabove loaded with substantive explosive substance and this electronic circuit was one of them and being shown to accused No.32-Asif @ Hasan Shaikh, who then demonstrated and described functioning of this electronic circuit, till the stage of explosion.

16.34.21. It appears that above referred evidence of witness Exh.6777 named Asfaq Saiyeed, who has identified accused No.45-Fazale Rehman during the course of Test Identification Parade as a person who came as a friend of accused No.51-Doctor Anwar Bagvan was compelled to give an explanation under Section 313 of Cr.P.C. about his identification to which accused No.45-Fazale Rehman explained that the witness identified with the aid of police and the witness and accused No.45-Fazale Rehman, both came together from jail to the place of Executive Magistrate. This explanation was given at the stage of further statement, is nowhere brought on record during the course of cross-examination to any relevant witness by accused No.45-Fazale Rehman.

16.34.22. The prosecution would rely on the evidence of witness Akhtar Hanif Exh.6776, named Reza at Exh.6780 so far as, arrangement of rental agreement of flat No. 302 of Ashoka muse by accused No.51-Doctor Anwar Bagvan as well as his brother accused No.32-Asif @ Hasan Shaikh. So far as, accused No.32-Asif @ Hasan Shaikh is concerned, there is one more circumstance of panchnama Exh.6508, but evidence of Akhtar at Exh. 6776 and Reza at Exh.6780 would be equally applicable to accused No.51-Doctor Anwar Bagvan and accused No.32-

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Asif @ Hasan Shaikh. However, the Sessions Judge has not believed the case on this count against accused No.51-Doctor Anwar Bagvan and State has not challenged the acquittal of accused No.51-Doctor Anwar Bagvan. Even then, State would strongly rely on the evidence of these two witnesses, which cannot be discarded, merely because on the basis of this, accused No.51-Doctor Anwar Bagvan is acquitted. On this legal aspect prosecution would rely on the decision of Supreme Court in case of ***Brathi Alias Sukhdev Singh Versus State Of Punjab reported in 1991 (1) SSC 519***. Relevant part of the judgment is reproduced here under:

"8. ....In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. ***I****n Sunder Singh's case (AIR 1962 SC 1211) (supra), this Court has held that the provisions of sec. 423(1)(a) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are convicted. In considering the evidence as a whole, the appellate court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the*

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absence of an appeal by the State Government….."

16.34.23. The Court finds that the prosecution has also placed and proved panchnama Exh.6508 against accused No.32-Asif @ Hasan Shaikh. This panchnama is dated 29.11.2008 which was drawn by C Division Police Surat at DCB Police Station, Surat between 12:00 to 13:00 hours demonstrating time setting-timer in IC Circuit. During the course of this panchnama, in a transparent plastic jar-cover which was sealed in condition containing electronic circuit was produced. Accused No.32-Asif @ Hasan Shaikh was present in police station, who referred object containing in plastic jar-cover as programmable circuit and gave other particulars about it based on shown programmable circuit. He had explained in detailed regarding working and functioning of this circuit made with battery, detonator etc, till the time of its explosion. Panchnama Exh.6058 is proved through PW-910/Exh. 6507 and Investigating Officer PW-1155/Exh.8517. The Investigation Officer also deposes about sealed plastic jar-cover as referred in the panchnama having being brought by Police person named Phulsingh Makanbhai.

16.34.24. It appears that the prosecution has also placed reliance on above referred police person named Phulsingh bhai Makanjibhai Chaudhary who was examined as PW-1020/Exh. 7021. As per the evidence of this witness, in July 2008 he was working with Kapodra Police station as Police Constable and in November 2008, he was working as Crime writer Head. On 26.07.2008, because of explosion of bomb in Ahmedabad, alert was declared in Surat and on 27.07.2008 witness was in patrolling team headed by P.S.I B R. Halpati. On 29.11.2008, on telephonic instruction received by witness, Muddamal articles like programmable IC circuit chips in sealed condition which was seized in the matter of F.I.R registered with Kapodra Police Station

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vide C.R. No.175/2008, was given to Assistant Police Commissioner and the same was returned to him as it is and was given back and deposited in Police Station.

16.34.25. The Court finds that prosecution has also placed reliance on panchnamna Exh.2385 drawn by Kapodra Police Station, Surat city on 27.07.2008 between 16:00 to 20:25 hours at Sitanagr Chokdi, Opp. Puna General Hospital, Main Road, which clearly states about one black colour Wagon R motorcar number GJ-6-CD-3569 was found at that place and in presence of officers of Bomb Disposal Squad, window panes of motorcar were broken and doors of motorcar were open. The said panchnama was drawn in the presence of F.S.L Officers as well as panchas. From the motorcar, different objects-articles more than 32 were found which would include articles like detonator, Prince Company clock, Ammonia Nitrate paste, wires, petrol, multimetre for the purpose of checking wires, printed circuit board, integrated circuit with timer programmer lock, batteries and many such objects and articles. Recital of panchnama also states about the articles found from inside the car and some articles were collected for the purpose of its scientific examination by F.S.L Officers which would include item Mark A-11, described as electronic circuit. The case of the prosecution that the item Mark A-11 is the same which was subjected to demonstration during panchnama Exh.6508 through accused No.32-Asif @ Hasan Shaikh.

16.34.26. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.32-Asif @ Hasan S/O Bashiruddin Shaikh. The Court has therefore, no reason to interfere with the conviction recorded.

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16.35. In case of Mohammad Arif Nasim Ahmed Mirza Azamgadh (U.P.) (A-36)

(Accused No.22 in Criminal Confirmation Case No. 2/2022 and Appellant No.16 in Criminal Appeal No. 1710/2022):

16.35.1. In case of accused No.36-Mohammad Arif Nasim Ahmed Mirza, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.35.2. Learned Senior Advocate Shri Abhay Thipsay has made submissions on behalf of accused No.36-Mohammad Arif Nasim Ahmed Mirza. The role of accused No.36-Mohammad Arif is to be part of conspiracy by undertaking recce and planting the bombs in the Khadia area, where serial blasts took place at approximately same time as other serial blasts in Ahmedabad.

16.35.3. According to learned Senior Advocate, the evidence against this accused is merely in the form of point out panchnama and the witness whose evidence is not reliable considering the seriousness of offence.

16.35.4. Learned Senior Advocate assailed the evidence of eye-witness PW No.936-Sunil Patel vide Exh.6613 as the statement of this witness was recorded on 07-12-2008 coincidentally, the same date on which the panchnama Exh.6024 was drawn. It is submitted that on the very day the accused was taken to the location of the business of the witness and therefore, there is a doubt there the witness must have been made acquainted with the accused. It is also argued that the deposition in all cannot be relied as the location of business of PW No.936 is such that it is unlikely to see the activities in a crowded area. The witness deposed that he saw two outsiders moving around on two occasions. Moreover,

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the area is so crowded that witness cannot be be sure of seeing these to accused. He submits that as the witness has failed to identify the accused in the Court, the evidence is of no consequence even if the Test Identification is conducted successfully.

16.35.5. In this connection with the identity of accused, the Court has discussed in detail the evidence of Test Identification, is admissible in the facts of present case under the sub-chapter of "Identification" under the chapter of "issues".

16.35.6. Learned Senior Advocate also submitted that the process of Test Identification is also doubtful as for the identification five dummy persons were brought. The process was conducted in haste on 10.12.2008 which was the day on which remand period of the accused to expire. From the evidence of Investigating Officer, PW No.1154-Usha Bachubhai Rada vide Exh.8340, a report for Test Identification was made on 10.12.2008 and the witness was summoned to remain present at 2.30 p.m. through the sub-oridinate. The Test Identification Parade conducted by 3.15 p.m.. According to learned senior advocate, it is too less a time and that the remand period was to expire at 3.30 p.m. The Court has therefore, considered the deposition of PW No.588-Laxman Keshvalal Parghi, the Executive Magistrate vide Exh.3130. He has referred to Exh.3149 and 3150, the communication for Test Identification Parade. The Court does not find anything unusual to caste doubt on holding of Test Identification particularly, where an Executive Magistrate has deposed to holding of Test Identification and it is also in consonance with evidence of eye witness and the evidence of Investigating Officer in support merely on timings of panchnama, the genuineness of t Test Identification cannot be doubted.

16.35.7. The other evidence being panchnama Exh.6062 where

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accused No.36-Mohammad Arif wanted to disclose something voluntarily and therefore, PW No.866-Ramesh Gabbubhai Shah vide Exh.6061 and co-panch Laxinarayan were summoned. The panch team was led by accused No.36-Mohammad Arif to the three locations where blast had taken place. It is argued that the bomb sites were in common knowledge. It is required to be noted that accused is of Azamgadh. The bomb-blast is on 26.07.2008 and accused No.36-Mohammad Arif was arrested on 21.11.2008 only if he is aware of the sites on account of his role that he will be able to identify the exact place of blast location after five months of the incident. Merely because Investigating Officer is aware of such location, cannot create a doubt that contents of the panchnama is manipulated by Investigating Officer to make it appear as a disclosure panchnama in absence of any such questions put either to Investigating Officer or the panch witnesses and answered as such to caste any suspicion. The Court is inclined to believe the voluntary disclosure under which accused No.36-Mohammad Arif has identified the location of three blasts within Khadia area of Ahmedabad.

16.35.8. It is also observed that within the same panchnama, accused No.36-Mohammad Arif has also led the team to the house No.10 of Al-Mohamadi Society which is the hideout use by the accused. The accused being an outsider, was still able to lead the panch team from this house through the exact route which it took for recce and thereafter, ended the trip near a shop Durga Foot Ware in Sarangpur, where three bicycles were parked by co-accused.

16.35.9. According to learned senior advocate, as there was no seizure of material object, it is not a panchnama under Section 27 of the Indian Evidence Act. The Court has already discussed about the pointing out panchnama in the nature of offence the “material object” recovery is not

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absolute the "fact" discovered as per the requirement of Section 27 can be a "mental fact" about the knowledge of the accused about the place and its association of the place with the offence. As in a offence of conspiracy, there would obviously be no "recovery" of any "physical object".

16.35.10. The other panchama assailed by defence is panchnama vide Exh.6024 by which accused No.36-Mohammad Arif voluntarily disclosed the exact location of where he had planted the bomb laden bicycle at three different spots, where the bomb exploded.

16.35.11. It is submitted that panchnama vide Exh.6024 is drawn to fill up the lacuna of Exh.6062 as Exh.6062 was exhibited on 06.12.2008 and Exh.6024 on 07.12.2008. Therefore, whatever disclosure was made on 06.12.2008 ought to have been covered under the panchnama of that day only. Therefore, it is doubtful why the panchnama on next day was necessary. For this, the Court may refer to these two panchnamas vide Exh.6062 and Exh. 6024. The contents itself would demonstrate the variation in voluntarily disclosure which is the panchnama vide Exh. 6062 on 06.12.2008. The discovery was for the hide out and the route undertaken for conducting recce. It is pertinent to observe here that the accused are from Azamgagh and not from Ahmedabad. Therefore, it is relevant to bring on record the knowledge of accused No.36-Mohammad Arif about the route for recce and it will be covered under Section 27 of the Evidence Act. Exh.6024 is proved by PW No.860-Jagatsing Javansingh Rajput vide Exh.6023. PW No.860, a panch witness alongwith co-panch Anna Jagannath has deposed about the contents of panchnama and the voluntarily disclosure. Accused No.36-Mohammad Arif first wanted to be taken to house No.10-Al Mohamadi Society from there he led the team to shop named Durga Footware in

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Sarangpur. It is from this spot, where three bicycle were parked by co-accused, out of which one was taken by accused No.36-Mohammad Arif alongwith the bag of bomb to another spot. Accused No.36-Mohammad Arif therefore led the team to Raipur Chakala Police Chowki and identified a location near Everest Auto Centre where the bicycle with bomb was parked.

16.35.12. Referring to his general arguments on Section 27 panchnama, it is submitted that these two panchnamas are hit by Sections 25 and 26 of the Indian Evidence Act and also by Section 162 of Cr.P.C.

16.35.13. From the record, it appears that the accused is a native of Azamgadh in U.P. and as a part of conspiracy was to undertake recce of crowded places in Ahmedabad and then parked the bomb laden bicycles and return. The accused was arrested from Lucknow where he was arrested in another offence at Wazirganj Police Station. It is therefore, prayed that a case is made out for clear acquittal.

16.35.14. Learned Additional Advocate General for the State has submitted that before placing evidentiary material against accused No.36-Mohammad Arif, who is from Uttar Pradesh, the prosecution would rely on evidence of eye-witness being PW No.936-Sunil Shantilal Patel, who was examined vide Exh.6613 and was doing business of phenyl near to Gokhale Pan House.

16.35.15. It is submitted that the prosecution would also rely on panchnama Exh. 6062 drawn on 06.12.2008 from 13.00 hours to 15.00 hours. On this day and time, accused No.36-Mohammad Arif was at Crime Branch Police Station and voluntarily intended to show certain places. He referred to doing recce while mentioning name of accused No.27-Abdul Rajik and two other persons Mohammad Khalid and Mohammad Salman (both absconder). During the course of second part

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of this panchnama, accused No.36-Mohammad Arif led police to show through Chandola Talav and Beral market and also passing through Nabi Nagar, R. M. Pan Parlor and pointed out one house, which is House No.10 Al-Mohamdi society. He also referred to this house in context of accused No.27-Abdul Rajik and other two absconders as well as accused No.75- Mohammad Rafiq. Thereafter, accused No.36-Mohammad Arif led police and panchas to a place called Bhut Ni Ambli near Petrol Pump, Astodia and a place called Shri Ram Cha Ghar and Shree Ram Pan Ghar, where accused No.36-Mohammad Arif took tea and smoke Cigarette and thereafter, also led to a place named Gokhale Pan House, Raipur Darwaja, where absconder Khalid ate pack of Gutkha and accused No.36-Mohammad Arif also led to a place called Sarangpur Chakla, a crowded area where vegetable lorries used to gather to sell vegetables. accused No.36-Mohammad Arif also led to a place near to Sarangpur Bridge and going further towards Ashirvad Shoe Market pointed out a shop named Durga Footwear, where three cycles were dropped. Panchnama Exh.6062 is proved through PW No.866-Rameshbhai Gabbubhai Shah, vide Exh.6061 and Investigating officer PW No.1154-Usha Bachubhai Rada, vide Exh.8340.

16.35.16. It is submitted that prosecution would also rely on one another panchnama Exh.6024 drawn on 07.12.2008 from 09.00 hours to 11.00 hours. The first part of this panchnama was drawn at Police Station in presence of accused No.36-Mohammad Arif during which, accused volunteered to show places from where he took cycle and planted cycle loaded with bomb. During the course of second part of the panchnama, witness volunteered and said that on 26.07.2008, he came to House No.10, Al-Mohmadi Society and from there, he and other two absconders Khalid and Salman took bags of bomb and from Beral

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Market went to Sarangpur in rickshaw and from there he went to a place known as Durga Footwear from where out of three cycles, one cycle was taken from there. Thereafter, accused No.36-Mohammad Arif led police to a place where other cycles were planted, which is place called M. Narandas Medical Store. The prosecution has proved this panchnama Exh.6024 through PW No.866-Rameshbhai Gabbubhai Shah vide Exh.6061 and Investigating Officer PW No.1154-Usha Rada vide Exh.8340.

16.35.17. The Court has considered the submissions of the parties. In the opinion of the Court, on 26.07.2008, bomb blast occurred near Gokhale Pan House and M. Narandas Medical Store and an FIR was registered at Khadia Police Station, which include third place where third bomb blast has also occurred at a place within Sarangpur Chakla. Pursuant to this incident, investigator drew panchnama of scene of offence at Exh.1718 on 27.07.2008 between 00.15 hours to 03.30 Hours. On bare reading of this panchnama, it clearly appears that at the scene of offence which are two different places, two damaged cycles are found near Gokhale Pan House and M. Narandas Medical Store, which is primarily relevant for submission against accused No.36-Mohammad Arif. The panchnama also includes area where third blast also took place almost at the same time at a place called Sarangpur Chakla in the same manner and this third place is also near to earlier two places. Consequent to the incidents of Khadia Police Station, as per the investigation material, five persons lost their lives and 46 persons suffered injury besides property loss.

16.35.18. The Court also perused deposition of PW No.936-Sunil Shantilal Patel vide Exh.6613, who deposed that on 26.08.2008, he was at the place Gokhale Pan House, Raipur Chakla and at around 12

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O'clock, he saw two boys, which he knew that they are from other States. Thereafter, on the same day, in the post noon at around 4 to 5 O'clock, witness was near to Gokhale Pan House and he saw those two boys, whom he saw in the morning with cycle. From these two boys, one boy parked his cycle near Gokhale Pan House and the other boy parked his cycle near M. Narandas Medical Store. The witness stated that post bomb blast, people ran helter-skelter and witness also was frightened. The witness distinctly deposed that blast had happened through these two cycles. Some persons were injured, ambulance was called and witness left the place and went home informing his mother about it and mother responded not to involve himself in all these and hence, the witness did not talk on it.

16.35.19. The witness deposes that after around four months, he knew through newspaper that persons involved in Raipur Chakla bomb blast are apprehended and hence witness told about what he saw on the day of blast to some elders and also said to them that he had seen two boys involved in it and witness was advised to inform about it to the Crime Branch and, hence, witness and the elders went to the police station and informed about it. The witness saw one lady police officer and he communicated to her about the things which he saw on the day of incident, which ultimately led to bomb blast. The police inquired whether he can identify those two persons, to which the witness replied that two persons whom he saw were of 20 to 22 years of age and were looking like collegians.

16.35.20. It appears that few days thereafter, police informed witness for attending Court of Executive Magistrate on 10.12.2008 and thereafter witness was subjected to Test identification parade and he was called upon to identify person, whom he saw on the day of incident and

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dropped cycle at the two places referred hereinabove. The witness successfully identified one person who was brought out from dummy persons by holding his hand and on inquiry from Executive Magistrate, his name was Mohammad Arif Mirza of Uttar Pradesh. Witness was also subjected to police interrogation thereafter.

16.35.21. The Court finds that though witness successfully identified above-referred person who is accused No.36-Mohammad Arif from UP, he could not identify accused No.36-Mohammad Arif during the course of his deposition and the reason assigned by it is described by the witness is that when he saw two persons, they were young and without beard and mustaches and today accused persons shown to him are mostly having beard are also wearing specs and caps and hence, he is unable to identify.

16.35.22. The Court finds that witness was subjected to cross-examination and during it, to a suggestion that it is not true that witness has not disclosed appearance of persons, their skin colour, clothes, height and hence, witness had disclosed about persons, he saw on the day of blast.

16.35.23. Hence, credibility of witness is challenged by suggesting that witness is doing wrong in his business and to save himself from police proceedings for doing wrong in business, the witness has given false evidence and he has denied about it. The defence had simply made allegation about doing wrong in business by witness without putting on record, as such, what was the scale of business of witness, etc., but, regardless of the fact that witness was doing business of phenyl standing near to these two shops itself shows that witness is doing business on very small scale who would hardly be scared of police.

16.35.24. So far as one aspect of witness not immediately reporting to

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the police, the prosecution would rely on the observation made in the case **Kartar Singh v/s. State of Punjab, reported in, (1994) 3 SCC Page 569.** Relevant para-288 of the judgment is extracted and reproduced hereunder:

> "*Generally speaking, when the accused persons are of dead character, the witnesses are unwilling to come forward to depose against such persons fearing harassment at the hands of those accused. The persons who are put for trial under this Act are terrorists and disruptionists. Therefore, the witnesses with all the more be reluctant and unwilling to depose at the risk of their life……*"

16.35.25. The Court finds that the defence has tried to discredit evidence of this witness by relying upon Map Exh.3415 collectively. The witness Exh.6613-Sunilbhai is not asked any question based on this map. By relying on such Map, defence has argued about placement of witness is such place that he could not have seen two persons planting cycle at the place of bomb blast. However, the credibility of witness can be impeached by cross-examining him and asking him whether he was in a position to actually see those two persons or not. When witness was not even shown any Map, then defence cannot pre-suppose based on Map that witness would have stood at a particular point as pointed from and therefore, he could not have seen the incident. Such type of arguments are to be treated as absolutely vague and the only way to appreciate evidence of witness Sunilbhai is to examine it in its entirety and not on any other piece of material namely Map.

16.35.26. Though defence has relied on the Map, which according to prosecution, is totally unwarranted as witness has not asked anything based on the Map, more particularly in context to showing of Map and based on it placement of accused. Even otherwise, prosecution has examined PW No.696-Pravinbhai Bhagvanbhai Muliyana vide

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Exh.3413, a Revenue Officer, who actually prepared Map vide Exh.3415 and no substantive cross- examination on it from any of the accused.

16.35.27. There is an evidence of an eyewitness against his accused who has deposed that it was the accused who had planted the bomb laden bicycle at the location where the blast took place. Despite the cross examination, the Court find the evidence of the eyewitness to be reliable.

16.35.28. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.36-Mohammad Arif Nasim Ahmed Mirza. The Court has therefore, no reason to interfere with the conviction recorded.

16.36.In case of Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh (Uttar Pradesh) (A-38)

(Accused No.24 in Criminal Confirmation Case No. 2/2022 and Appellant No.18 in Criminal Appeal No. 1710/2022)

16.36.1. In case of accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, he has been convicted for various offences by the trial Court, and has been sentenced to death penalty in Sessions Case No.38/2009 and others.

16.36.2. Learned Senior Advocate Mr. Abhay Thipsay has argued on behalf of accused No.38- Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh. The role attributed to the accused is that he has played active role in conspiracy and staying in the hide out for making bombs and placing the cycle laden with bomb/explosives at certain locations.

16.36.3. According to learned Senior Advocate, the case is based on (a) a point out panchnama Exh.5794 where accused No.38-Mohammad

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Saif pointed out House No.10 of Al-Mohamadi Society, as a place where bombs were made and accused has stayed, (b) point out panchnama (Exh.6087), the locations where the bomb laden cycle were parked, (c) PW No.933-Shaikh Mohammad Rashid vide Exh.6602 identifying this accused as person, who came to his shop and was residing in the area though outsider and (d) finger print on a broken CD recovered from House No.10 of Al-Mohamadi Society. It is the argument for accused No.38- Mohammad Saif that none of the above has been established by leading a cogent evidence, but are the evidences created post arrest.

16.36.4. Reverting to the general submissions made in the context of Section 27 panchnama, it is submitted that Exh.5794 cannot be treated as panchnama under Section 27 as there was no discovery of any new 'material fact' as the Al-Mohamadi house was already within the knowledge of Investigating Officer and being in presence of Investigating Officer, is clearly hit by Section 25 and 26 of Evidence Act as well as Section 162 of Cr.P.C. and also, no recovery of physical object was made during the panchnama.

16.36.5. In this connection, the Court has already dealt extensively with the reasons for treating the voluntary disclosure in the point out panchnama as an admissible evidence, still adverting to the two point out panchnamas, which contain voluntary disclosure of a fact directly connecting the accused. PW No.842-Harish @ Bholu Mahadevbhai Pursani is examined vide Exh.5793 and he has deposed about the voluntary disclosure of accused No.38- Mohammad Saif, who offered in front of prosecution witness to disclose the house in which he had resided alongwith his friends; Chota Sajid and Bada Sajid with whom he came to Ahmedabad. He being outsider asked the Police Party to first take him to Railway Station from where he will take the party to the

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location of the house. He deposes that according to wish of accused No.38-Mohammad Saif, he was taken to the Railway Station from where he led to the House No.10 of Al-Mohamadi Society. Of-course, accused No.38- Mohammad Saif did disclose about the bombs being prepared there, which even if excluded from the voluntary disclosure, still there were sufficient evidence in the form of discovery panchnama under which bomb making articles have been seized from the same house albeit a separate panchnama, which is also proved by leading evidence. According to the Court, the voluntary disclosure by the accused deposed to by a panch witness lead to the disclosure of place existing in real i.e. House No.10 of Al-Mohamadi Society, as also mental fact of knowledge of the accused of the very location and hence, voluntary disclosure connecting to the discovery, will have to be accepted as an evidence. Therefore, the prosecution has been able to establish the connection of the accused to House No.10 of Al-Mohamadi Society and the activity conducted therein.

16.36.6. Similarly, Exh.6087 is the point out panchnama of the accused identifying the location, where bomb laden cycles were parked. It is pertinent to observe here that serial blast took place on 26-07-2008. Accused No.38-Mohammad Saif was arrested on 27-10-2008 and the point out panchnama at Exh.6087 was drawn on 05-11-2008. Therefore, the site where the blasts took place was in the knowledge of Investigating Officer, but the question is whether the accused who planted this bomb is leading to the same site is this purpose of the pointing out panchnama. It cannot be presumed that because the site was in knowledge of Investigating Officer, it is automatically in knowlege of accused of the same place or when the accused made voluntary disclosure, the Investigating Officer was confident or knew that accused

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No.38-Mohammad Saif is going to lead him to the very place of which he has a knowledge. It is only after the accused lead him in the second part of panchnama (Exh.6087) to the same site that it came on record that the blast site which is on record by the scene of offence the panchnama is identical to the location led to by accused No.38-Mohammad Saif.

16.36.7. PW No.873-Shailesh Prabhudasbhai Dabhi vide Exh.6086 has deposed about the voluntary disclosure by accused No.38-Mohammad Saif. In their presence, he gave his own name and discovery to show the exact location, where exchange of cycle laden with bomb took place with co-accused. He also proceeded to disclose the very location, where the bomb laden cycles were located and locations were identical to the places where the bombs had exploded or discovered. Learned Senior Advocate has tried to point out that there is a discrepancy in the location as the point of location in the panchnama referred to 'Ashapura Travels' while the Investigating Officer; PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638 has referred to the spot as near to 'Jyoti Mobile'. In the opinion of the Court, there is variation only on the name in the point of reference, but the location where the bomb blast site is located is the same.

16.36.8. The argument advanced by learned senior advocate is that there is a specific act attributed of planting of bomb at Firdosh Baugh police line, which is not proved but the Court is of the opinion that the very offence is an outcome of a conspiracy. Therefore, the accused being a part of conspiracy and his role cannot be seen in isolation as an individual offence.

16.36.9. Learned senior advocate thereafter, argued to discard the evidence of a witness PW No.933-Shaikh Mohammad Rashid vide

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Exh.6602 and the Test Identification Parade panchnama vide Exh.3412 of this accused through PW No.933-Shaikh Mohammad Rashid on the ground that it was only on the inquiry made by same Investigating Officer that the prosecution witness stated that as he may have seen the accused for six or seven times, he will be able to identify.

16.36.10. In this connection, it is necessary to refer to a background deposed by the very PW No.933-Shaikh Mohammad Rashid, who runs a shop in the vicinity of Al-Mohamadi Society and knew the people of the locality and accused No.38-Mohammad Saif being from Delhi and not from the locality, the prosecution witness would in natural course isolate out an outsider. It is in this background, PW No.933-Shaikh Mohammad Rashid has deposed that during the investigation he had indicated that he will be able to identify such person pursuant to which, the prosecution witness was summoned for the Test Identification Parade vide Exh.3142 and prosecution witness was able to identify accused No.38-Mohammad Saif. This is an important circumstance to support the case of prosecution about accused No.38-Mohammad Saif being an occupant of House No.10 of Al-Mohamadi Society.

16.36.11. Here the arguments by learned senior advocate that the land lady has not produced any documentary evidence of renting out premises or identifying accused No.38-Mohammad Saif as a person with whom she dealt with, is of no assistance to accused No.38-Mohammad Saif, as the work of procuring premises was assigned to some other accused.

16.36.12. Learned AAG on behalf of the State has placed reliance on the panchnama at Exh.6656 dated 19.09.2008, recorded at House No.10, Al-Mohammadi Society, Danilimda, Ahmedabad. This panchnama was drawn pursuant to voluntariness shown by accused No.1-Jahid S/O

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Kutubuddin Shaikh to point out aspects relating to bomb blast which occurred in Ahmedabad on 26.07.2008. During the course of the panchnama, accused No.1-Jahid S/O Kutubuddin Shaikh took all persons to House No.10 Al- Mohammadi Society and as the house was found locked, the lock was broken open and on opening it, all persons entered the house and search was carried out. Among the articles recovered during the search, item no.12 which is a broken computer disc (CD) found on the floor, was found bearing marks of chance finger print.

16.36.13. The prosecution has also relied on the evidence of PW No.958-Anil Bhai Prajapati at Exh.6720, Senior Fingerprint Expert working with FSL Gandhinagar who has deposed that he was present at the time of above referred panchnama at House no.10 Al-Mohammadi Society and that during the search at this place, among the articles recovered, a broken CD was found on the floor bearing a chance print and it was marked as Mark A and was signed by him. On one another article, which is steel tin, on which another chance print was found, was marked as Mark B. It is submitted that on both these objects i.e. Mark A and B, photographer Nilesh Patel on instruction of Joshi Saheb, took photographs and witness received these photographs and the negative of it on 24.09.2008. This witness has also deposed about he having examined both the chance print i.e. Mark A and Mark B (photographs). It is submitted that the said panchnama through which broken CD was found (Exh.6656) is proved through PW-953/Exh.6655 and through the deposition of the Investigating Officer; PW-1154/Exh.8340.

16.36.14. In this regard, the prosecution has also placed reliance on the evidence of PW-1160/Exh.8585 named Rafikbhai Mansoori who works as finger operator at Crime Branch Ahmedabad and had taken finger prints of 47 accused persons and also on the evidence of PW-

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1161/Exh.8588; Bhupendra Singh who was working as finger print operator at Crime Branch Ahmedabad at relevant point of time.

16.36.15. It is further submitted that, accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, in his further statement at Exh.0160 had given threefold explanation to the finger print impression taken by witness Exh.8588. The first explanation given by accused No.38-Mohammad Saif is about his denial of his finger print impression, the second explanation given by him is finger impressions are not taken abiding with the provisions of law (that would amount to admission that fingerprints are taken), and the third explanation given is police persons used to take finger impression by instructing accused persons to put their finger impressions on different objects. It is submitted that the third explanation is vague and not understandable, and that no police officer have been cross- examined on this third explanation which is that the police persons were taking finger print impressions by instructing accused persons to put their fingers on different flat objects. Therefore, it is submitted that in so far as further statement is concerned, there is no explanation at all about witness Exh.8588 having taken finger print impression of accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, which according to prosecution would be an additional link in the circumstances alleged and established against accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh.

16.36.16. The prosecution has placed reliance on the panchnama at Exh.6656 relating to House No.10, Al-Mohammadi Society, from where broken CD bearing the chance fingerprint was recovered alongwith other articles and objects.

16.36.17. The prosecution has also placed reliance on the panchnama at Exh.5794, dated 03.11.2008, drawn by Crime Branch, Ahmedabad

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City. During the panchnama, accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh led investigator through different places i.e., accused No.38-Mohammad Saif pointed out place inside Kalupur Railway Station from where accused No.38-Mohammad Saif and two other persons Chota Sajid and Bada Sajid (absconder) boarded rickshaw and went to Gita mandir ST stand. Thereafter, accused No.38-Mohammad Saif directed police towards Sarangpur circle, ST circle, Khadia Darwaja and led police to ST (state transport) cross roads, a place from where accused No.38-Mohammad Saif was picked by accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, and further led police to Shalam Dargah Darwaja, Chandola lake barrel market, a place from where accused No.38-Mohammad Saif was taken to Al-Mohammadi Society by accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya and thereafter, accused No.38-Mohammad Saif led police through Nabi Nagar, R M Pan Parlour and to Al- Mohammadi Society and pointed out House no.10. The prosecution has proved this panchnama through PW-842/Exh.5793 and also through the Investigating Officer; PW-1163/Exh.8638. This panchnama therefore establishes the activity of this accused in furtherance of their role in the conspiracy which has been deposed to by an independent witness thereby, drawing connection of the accused with the house as well as the co-accused. It is pertinent to observe that accused being an outsider is able to lead the panch team to various locations amounts to recording of the mental fact of knowledge and association with the crime.

16.36.18. The prosecution has also relied on panchnama Exh.6087 drawn on 05.11.2008, by Crime Branch Ahmedabad. During the course of the said panchnama, accused No.38-Mohammad Saif led the police

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and panch persons to various places connected with the blasts which took place on 26.07.2008. accused No.38-Mohammad Saif led panchas and police from Gaikwad Haveli to Raipur Darwaja, Sarangpur bridge, Rakhiyal cross road and to Ajit mill Cross roads and at a place Neelkanth Restaurant, wherein he instructed police to stop car and pointed out place known as Ajit mill cross roads wherein he had allegedly received a cycle for the purpose of loading bomb from a boy of thin appearance; who is known to accused No.38-Mohammad Saif as Alam Jeb Afridi (accused No.75). Accused No.38-Mohammad Saif has also stated that, at this place there were two other persons with him i.e., Chota Sajid and Bada Sajid (absconder). Thereafter, accused No.38-Mohammad Saif led police to Hatkeshwar circle, Bag-e-Firdoz Police Line and after dropping out from police motor car and pointed out a place where accused No.38-Mohammad Saif, dropped cycle loaded with bomb. Thereafter, accused No.38-Mohammad Saif led police and panchas to Hatkeshwar road and on instruction as given by accused No.38-Mohammad Saif, car was driven further, and on instruction of accused No.38-Mohammad Saif, car was stopped at a place opposite to bus stand and after deboarding the car, accused No.38-Mohammad Saif pointed out bus stand where he and chota Sajid and bada Sajid (absconder) got gathered and this place is bus stop named Hatkeshwar Mahadev and near to it, he pointed out a shop name Ashapuri travels and opposite to it vegetable market where chota Sajid (absconder) parked cycle loaded with bomb and also pointed out a bus stand near Hatekeshwar circle from where accused No.38-Mohammad Saif as well as chota Sajid and bada Sajid (absconder) went to Ahmedabad Railway Station in rickshaw. The said panchnama Exh.6087 is proved through panch witness; PW-873/Exh.6086 and I.O. PW-1163/Exh.8638.

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16.36.19. The Court has perused the deposition of PW No.958-Anil Bhai Prajapati at Exh.6720 who has examined the chance prints and has deposed that for examining chance print mark A, he received finger print impression of both the hands of 47 accused persons and as per his Scientific Examination, has opined that the chance print found on the broken CD (Mark A) is that of Accused No.38-Mohd. Saif @Rahul S/o Shadab Ahmed @Mister Shaikh. This witness has also deposed that the other chance print found on the steel tin was found not fit for examination. The opinion of this witness was concurred by other Fingerprint experts namely; Shrimati N J. Soni, Shri. RR. Gameti, Shri. M K. Jaisar and Shri. S M. Joshi who also counter signed the opinion. This witness was also shown photograph of mark A along with negative and the enlarged photographs. On the back of this photograph, particulars about the FIR proceedings in which photograph was taken is noted as well as other details like the job number, date on which photo was taken i.e. 19.09.2008, etc were mentioned and all these photographs which were submitted have been duly exhibited at Exh.6722. This witness has also deposed about having received finger print impression of both the hands of 47 accused persons in which, finger print of accused No.38-Mohammad Saif is at serial no.34, and all other particulars received are shown to him and thereafter, exhibited at Exh.6725. This witness has also deposed about his opinion at Exh.6728.

16.36.20. This witness has also identified the broken CD which was seized as Muddamal article no.341 at serial no.38 and upon examining this broken CD, he identified the CD to be the same CD which bore his signature and handwriting and he has also identified the photographs of this CD. Inspite of extensive cross-examination, defence has failed to impeach the credibility of the witness and has not suggested anything to

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the witness about photographs (mark A) bearing finger impression (chance print) as not that of accused No.38-Mohammad Saif.

16.36.21. The Court has perused the evidence of P.W. No.1161-Bhupendra Singh at Exh.8588, who was working as a Fingerprint Operator, and has identified Exh.6725 which is the fingerprint impression of different accused persons and has deposed that the said finger prints shown to him were taken by him and bear the signature of himself and P.S.O. He has also specifically identified Serial No.32 of Exh.6725 as the fingerprint impression of accused No.38-Mohd. Saif @Rahul S/o Shadab Ahmed @ Mister Shaikh which was taken by him in the same manner like the fingerprints of other accused persons. It appears that inspite of extensive cross examination by defence, nothing substantial has come on record so as to impeach the credibility of this witness. Except a bare denial regarding taking of fingerprints of accused No.38-Mohammad Saif, there appears to be no material contradiction and the evidence of this witness clearly establishes that the fingerprints of accused No.38-Mohammad Saif were duly obtained and formed part of Exh.6725.

16.36.22. The Court finds that during the search of House No.10 Al-Mohammadi Society, the Fingerprint Experts, photographers and other officials were present, and the photographs of chance print found on broken CD were taken, enlarged for the purpose of examination and subjected to examination. Upon examination, the witness has given opinion that the chance fingerprint matched with the fingerprints of accused No.38-Mohammad Saif and the opinion of this witness was also concurred by all other Fingerprint Experts and the defence has failed to establish any illegality regarding the procedure or the opinion given by the expert. The presence of this fingerprint as per the expert's opinion

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strongly establishes the connect of this accused with the hideout house.

16.36.23. The Court has perused the evidence of Shaikh Mohd. Rashid PW-933/Exh.6602 who was running R.M. Paan Parlour near Barrel Market, Chandola Lake, which is near House No.10 Al-Mohammadi Society. The witness has deposed that he was acquainted with persons who were residing in the locality and that he could identify the customers who visited his paan parlor frequently. He has deposed that he told the police that he could identify such persons. He has deposed that he participated in the Test Identification Parade which was conducted at the Collector Office premises. He has deposed that during the Test Identification Parade, he identified one person by holding his hand and brought him out from the line of persons and stated that the person identified by him used had visited his parlour 6 to 7 times for purchasing ice cream and water pouch. Upon the witness identifying this person, Magistrate on asking his name person replied that his name is Mohd. Saif @ Shadab (accused No.38) of Delhi and thereafter this witness was subjected to police interrogation. Though the witness could not identify accused No.38-Mohammad Saif in Court, he explained that when he had seen accused No.38-Mohammad Saif earlier, he was much younger and the accused persons had undergone change in appearance, including growth of beard and hence, he could not identify. The witness has also deposed that he would be able to identify the accused, if he was shown a contemporaneous photograph.

16.36.24. The Court finds that the explanation given by this witness with respect to his inability to identify accused No.38-Mohammad Saif during trial is sufficient as he had already identified accused No.38-Mohammad Saif during the Test Identification Parade and by the time of his deposition, significant time had passed and there was a change in the

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appearance of the accused persons.

16.36.25. In the opinion of the Court, the circumstances alleged and proved against accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh, as referred herein above, establish his connection with other accused persons namely accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, accused No.27-Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri, accused No.1-Jahid S/O Kutubuddin Shaikh, accused No.8-Yunus S/O Mohammad Mansuri and other accused persons. The Court finds that accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh was a conspirator and was involved in achieving the ultimate object of conspiracy i.e. mass killing.

16.36.26. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.38-Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh. The Court has therefore, no reason to interfere with the conviction recorded.

16.37. In case of Zishan Ahmed @ Zishan Isan Ahmed Shaikh (Vadodara) (A-39)

(Accused No.25 in Criminal Confirmation Case No. 2/2022 and Appellant No.19 in Criminal Appeal No. 1710/2022)

16.37.1. In case of accused No.39-Zishan Ahmed @ Zishan Isan Ahmed Shaikh, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.37.2. In case of accused No.39-Zishan Ahmed @ Zishan Isan Ahmed Shaikh has been charged for the offence as per the Chapter

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'Charges framed and Sections invoked' for his role in parking of bomb laden bicycle in a crowded area of 'Om Pan Parlour' in Maninagar, Ahmedabad. This accused has handed over the bicycle to absconding accused Mirza Sadabbeg, which ultimately exploded leading to filing of C.R. No.I-205 of 2008.

16.37.3. According to learned Senior Advocate Mr. Abhay Thipsay, the only evidence against accused No.39-Zishan Ahmed is the two pointing out panchnamas, one pointing out spot, where the bomb laden cycle was parked and another evidence is the panchnama of identifying the cycle involved in the blast in the office of FSL. It is submitted that the panchnama of identifying the spot cannot and is rightly not relied by the trial Court.

16.37.4. Learned Senior Advocate has therefore, assailed Exh.8648 panchanama drawn on 02.11.2008 as the panch witnesses are not examined and therefore, proved by the Investigating Officer PW No.1163-Mayur Chavda, which is impermissible. It is argued that the panchnama which is supposedly recorded by a panch cannot corroborate the theory of an investigating officer if the panch is not examined at all.

16.37.5. It is also argued that panchnama is inadmissible under Section 27 of the Evidence Act as there is no discovery of physical object rendering the content of panchnama hit by Sections 25 and 26 of Indian Evidence Act and Section 162 of Cr.P.C.

16.37.6. Therefore, the circumstance of accused No.39-Zishan Ahmed's connection with the parking of cycle laden with bomb is not established. Moreover, the spot identified by the accused No.39-Zishan Ahmed was within the knowledge of the Investigating Officer as the scene of offence panchnama was already drawn vide Exh.1752 and Exh. 1741.

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16.37.7. Also, the circumstance that accused No.39-Zishan Ahmed performed recce with co-accused and the spot from where bicycles were picked was already known to Investigating Officer through a panchnama made at behest of accused No.42-Mohammad Shakil Yaminkhan Luhar on the same day i.e. 02.11.2008.

16.37.8. Learned senior advocate has offered similar arguments in connection of the 2nd panchnama relied against accused No.39-Zishan Ahmed being Exh.6079 of identification of the cycle in the office of FSL as the panchnama Exh.6079 only mentions that accused No.39-Zishan Ahmed identified the bicycle placed by them in Maninagar are being statement before the police is hit by Section 162 of Cr.P.C. Also, as there is no discovery of any material object, hence no confirmation of the facts narrated in panchnama, it is also hit by Sections 25 and 26 of Indian Evidence Act.

16.37.9. Learned Senior Advocate went to the extent of arguing that this particular panchnama is a fabricated one and went onto compare the timings of two panchnamas, Exh.6318 where time is of 10.30 to 12.30 pm, whereas panchnama Exh.6079 was executed in Gandhinagar at 1.00 pm and considering the distance between Ahmedabad and Gandhinagar, it is not possible to reach within half hour for the Investigating Officer; PW No.1163-Mayur Chavda. Attention is drawn to deposition of PW No.871-Mohanbhai, who deposed that PW No.1163 was already present when he was summoned and it took 5-10 minutes in preliminary conversation. Further, casting doubt on drawing of panchnama.

16.37.10. It is further argued that there is a discrepancy in sealing of the cycle even while inter-departmental transfer. FSL Officer PW No.837-Nikunj Narharibhai Brahmbhatt vide Exh.5677, who has deposed that when one department examined the cycle (Physician

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Department) and sent to another Department (Chemistry Department), a seal is applied. Both the cycles, a black one and blue one were examined by both the Departments before 04-11-2008 (date of panchnama), however, there is no mention of removing of departmental seals in panchnama and when brought to the Court as muddamal, there were seals applied. Moreover, to access the cycle in FSL custody, written authorization from FSL is necessary, but there is no reference to such authority before the panchnama.

16.37.11. In this connection, reference is also made to panch witnesses PW No.871-Mohanbhai Vardhraj Naykar vide Exh.6078 stating that the cycle was lying in one room to which access was provided by FSL Officer; PW No.840-Janmohammad Fakirbhai Mansuri vide Exh.5700 and PW No.840 has deposed, but has not referred to this activity at all. Moreover, PW No.871-Mohanbhai Vardhraj Naykar has failed to identify the accused in the Court.

16.37.12. In the opinion of the Court, the execution of the panchnama cannot be doubted on the basis of the timing mentioned in the two panchnamas and the travel time from Ahmedabad to Gandhinagar particularly when the panch witness has deposed about the execution of the panchnama and even from the cross examination, the Court does not find panchnama to be fabricated.

16.37.13. With regard to deposition of PW No.840 not mentioning his act of leading the Investigating Officer to the room where cycles were kept at FSL Office, it was only a ministerial work performed of unlocking and showing them the store room, which does not mean the panchnama is fabricated.

16.37.14. Learned Additional Advocate General for the State has relied on the panchnama at Exh.1741 drawn on 27th July, 2008 between 3:30

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hours to 5:00 hours. This panchnama is drawn at Maninagar Railway station near to AMTS bus stand. This is the panchnama of scene of offence and pointing out of different articles-objects, wherein one cycle of Chetak Industries was found. This panchnama is proved through panch witness being PW No.335-Montu Damodarbhai Sharma vide Exh.1740. The prosecution has also relied on panchnama Exh.1731 drawn on 27.07.2008 which also is a scene of offence panchnama drawn within Maninagar Area, near to Jawahar Chowk, Shivani Complex, wherein Avon company's ranger cycle was found in a damaged condition. This panchnama is proved through panch witness PW No.334-Hiteshbhai Prajapati vide Exh. 1730.

16.37.15. It is submitted that during panchnama Exh.1752 which was carried out at Om Pan House, near Asopalav tree, which is opposite to Anna Tea Stall, Maninagar, wherein two cycles (1) blue coloured Ranger Hero cycle and (2) black coloured old cycle in a damaged condition were recovered. This panchnama is proved through panch witness being PW No.336-Kavaljitsing Jogindarsing Arora vide Exh. 1751.

16.37.16. The prosecution has also submitted that the application given by accused No.28-Afzal @ Afsar S/O Mutallib Usmani which is brought on record through Exh.6620, a communication from Ahmedabad Central Jail to Session's Court which relates to accused No.28-Afzal, states about harassment and physical assault by I.M. (Indian Mujahideen) persons. It is further submitted that this circumstance is required to be seen in the context of Email communication Mark A, produced in the deposition of PW-1150/Exh.8263, received almost at the time of bomb blasts, wherein Indian Mujahideen claimed responsibility for the bomb blast.

16.37.17. In the opinion of the Court, considering the above

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evidentiary material, more particularly regarding the two cycles, one Ranger of blue colour and the other of Chetak make, both found from the scene of offence, and those very cycles having been identified by accused No.39-Zishan Ahmed as same cycles which he had parked at the scene of offence loaded with bombs and which ultimately exploded, for which FIRs came to be registered, is sufficient to hold accused No.39-Zishan Ahmed as a conspirator. Therefore, the findings with regard to conspiracy recorded earlier for different accused persons would also be equally applicable to this accused No.39-Zishan Ahmed.

16.37.18. Furthermore, the above referred circumstances of recce of particular places, planting of bomb laden cycles resulting in bomb blasts, are required to be seen in the context of the evidence of PW No.957-Jakir Hussein vide Exh.6687, wherein during the course of conversation in the nature of an extra judicial, accused No.27-Abdul Rajik is stated to have informed this witness that persons belonging to Indian Mujahideen would provide the materials required for the bomb blasts. This evidence also referred to certain accused being in contact of persons of Indian Mujahideen, recce of places done by certain accused for the purpose of placing cycles, and the role played by certain persons belonging to Indian Mujahideen and from UP in placing cycles loaded with bombs. In view thereof, the circumstances referred to hereinabove fully supports the case of prosecution against accused No.39-Zishan Ahmed and also implicates him as a conspirator.

16.37.19. The Court has perused the evidence of panchnama at Exh.6079 drawn on 04.11.2008 between 13:00 hours to 14:15 hours at the office of F.S.L. Gandhinagar, wherein cycles were seized from different scenes of offence and were sent to F.S.L for examination. accused No.39-Zishan Ahmed, alongwith two other accused, were

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present and have volunteered to identify the cycles kept at the office of F.S.L. accused No.39-Zishan Ahmed identified one blue coloured Ranger cycle bearing distinct marks on it and stated that it was the cycle which was placed by him, loaded with bomb at Maninagar Cross Roads near to Pan galla and also near Asopalav tree. accused No.39-Zishan Ahmed also identified another cycle of Chetak make and stated that the same had been placed, loaded with a bomb, by accused No.39-Zishan Ahmed and person named Mirza Sadab Beg (absconder) near New Maninagar AMTS Bus stand. This panchnama was drawn in the presence of F.S.L Officers and stands proved through panchwitness PW No.871-Mohanbhai Naykar vide Exh.6078 as well as the Investigating Officer PW No.1136-Mayur Jagmalbhai Chavda vide Exh. 8638, and this is another incriminating circumstance against accused No.39.

16.37.20. The Court has also perused the evidence of panchnama at Exh.8648 dated 02.11.2008 drawn between 15:00 hours to 17:00 hours. The first part of the panchnama is drawn at Crime Branch Police Station, wherein accused No.39-Zishan Ahmed made a disclosure statement. During the course of second part of panchnama, accused No.39-Zishan Ahmed led police party and panchas to various places. He first led them to a place near Maninagar Railway Station and pointed out a cycle stand, from where on 26.07.2008 one black coloured cycle was taken by Mirza Sadab Beg (absconder) and accused No.39-Zishan Ahmed had also taken one blue coloured Ranger cycle. Thereafter, accused No.39-Zishan Ahmed led all near AMTS building and pointed out a place from where accused No.40- Ziyaur Rehmaan and accused No.42-Mohammad Shakil Yaminkhan Luhar had taken two cycles. Thereafter, accused No.39-Zishan Ahmed pointed out one electric post near AMTS building, where a bomb laden cycle was planted by Mirza Sadab Beg (absconder). He

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also pointed out the place near Maninagar Railway Station, near one pan galla and a Asopalav tree, where one blue coloured Ranger cycle was planted by Mirza Sadab Beg (absconder) after being handed over the cycle by accused No.39-Zishan Ahmed. The panchnama further records that accused No.39-Zishan Ahmed had conducted recce of this area and after that after planting the aforesaid two cycles, accused No.39-Zishan Ahmed and Mirza Sadab Beg (absconder) left the place in a rickshaw and went towards Kalupur Railway Station. Though the panch witnesses could not be examined inspite of serving summons, the panchnama stands proved through evidence of Investigating Officer PW No.1163-Mayur Chavda vide Exh.8638. The service of summons report has been produced at Exh.6076 and the details regarding non availability of panch witnesses are placed on recorded vide purshis Exh.9366. This evidence further supports the case of prosecution regarding role of accused No.39-Zishan Ahmed in conducting recce, transporting and placing of bomb laden cycles at different places of offence.

16.37.21. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.39-Zishan Ahmed @ Zishan Isan Ahmed Shaikh. This accused being an outsider of ahmedabad has conducted recce to identify the crowded spot for planting of bomb and then planted the bomb laden cycles leading to the blasts. The Court has therefore, no reason to interfere with the conviction recorded.

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16.38. In case of Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli (Uttarpradesh) (A-40)

(Accused No.26 in Criminal Confirmation Case No. 2/2022 and Appellant No.20 in Criminal Appeal No. 1710/2022):

16.38.1. In case of accused No.40-Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.38.2. Accused No.40-Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli, as per the case of prosecution is assigned role in the conspiracy to receive the bomb laden cycle from a particular place and plant the same in a crowded place in Mahalaxmi Area.

16.38.3. According to learned Senior advocate Mr. Abhay Thipsay, the prosecution has based their case on the two panchnamas identical to the case of accused No.39-Zishan Ahmed being panchnama at Exh.6318 dated 04.11.2008, wherein accused No.40-Ziyaur Rehmaan points out a location where he planted one bicycle and other being panchnama vide Exh.6079 dated same, where accused No.40-Ziyaur Rehmaan alongwith accused No.39-Zishan Ahmed and accused No.42-Mohammad Shakil Yaminkhan Luhar identified the bicycles used by them in the FSL office.

16.38.4. Learned Senior Advocate Mr. Abhay Thipsey has argued that Exh.6318, wherein accused No.40-Ziyaur Rehmaan pointed out the blast site cannot be treated as evidence by invoking Section 27 of the Indian Evidence Act as the disclosure made in the panchnama is in fact a statement before the police, therefore, hit by Sections 25 and 26 of Indian Evidence Act and also by Section 162 of Cr.P.C.

16.38.5. In this connection, this Court has already under the sub-

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chapter of 'Panchnamas under Section 27 of Indian Evidence Act' in chapter of 'issues' dealt with and assigned reasons as to why such pointing out panchnama would fall under Section 27 and how Sub-Section (2) of Section 162 would permit it to be treated as admissible evidence.

16.38.6. However, the Court may record the submission made by the defence in this regard that Exh.6318 has not led to discovery of any physical object hence, Section 27 is not applicable as the recovery of a physical object would have lend credence to the voluntary disclosure. It is submitted that in view of this fact, even Section 8 cannot be invoked.

16.38.7. Learned senior advocate has referred to Exh.1731, which is the scene of offence panchnama of Maninagar Police Station and has contended that in this panchnama, the Investigating Officer had knowledge of the exact place of blast and also the make of the cycle which was recorded in the panchnama itself. Therefore, Exh.6318 has not led to any new discovery unknown to Investigating Officer.

16.38.8. Learned senior advocate has then assailed Exh.6422, another pointing out panchnama where the location for picking up the bicycle bomb from near Roop Complex and performing recce of the area to identify the place of plant as the same is at behest of accused No.42-Mohammad Shakil and therefore, not applicable to accused No.40-Ziyaur Rehmaan. Accused No.42-Mohammad Shakil has made disclosure on 02.11.2008. It is argued that the panchnama Exh.6422 are verbatim and therefore, there is a clear indication of it being fabricated.

16.38.9. Reverting back to Exh.6318, learned Senior Advocate has drawn attention of the Court to Exh.6317, deposition of PW No.885-Narendrabhai Bechardas Kahar vide Exh.6317 and submitted that PW No.885 is a stock panch witness, who has stood as a panch witness in

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Exh.6318. For this attention is drawn to para-17 of the deposition to point out that the brother of PW No.885 was also a panch witness in another contentious matter of Akshardham Terror attack.

16.38.10. Learned Senior Advocate also doubted the process of panchnama as accused No.40-Ziyaur Rehmaan does not understand Gujarati, whereas panchnama is in Gujarati and therefore, it is doubtful that the so called voluntary disclosure is recorded appropriately.

16.38.11. Reiterating the arguments made for accused No.39-Zishan Ahmed even for accused No.40-Ziyaur Rehmaan, learned Senior Advocate has questioned the process of panchnama Exh.6079 the identification of the bicycle Avon in the custody of the FSL. It is submitted that the said cycle was in custody of the Physics Department of the FSL on 04.11.2008. PW No.843-Naimeshbhai Manubhai Soni vide Exh. 5799, FSL Officer of Physics Department deposed that he received the cycle as muddamal on 11.08.2008 and the same remained in his custody till 11.11.2008. Therefore, without his knowledge on 04.11.2008, the cycle lying in his custody could not be accessed, still in his deposition, he has claimed ignorance about Investigating Officer taking his authorization to execute panchnama at the same time, when it is the case of the prosecution that PW No.840-Janmohammad Fakirbhai Mansuri vide Exh. 5700 provided the access to cycle. The same cannot be believed as PW No.840 is from the Chemistry Department of FSL.

16.38.12. It is therefore, submitted that both the circumstances connecting accused No.40-Ziyaur Rehmaan to the receiving of bomb laden cycle and planting it in crowded area could not be established. Therefore, in both the cases of accused No.39-Zishan Ahmed and accused No.40-Ziyaur Rehmaan, the Court is prayed for clear acquittal.

16.38.13. Learned Additional Advocate General for the State has relied

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on the scene of offence panchnama Exh.1731 dated 27.07.2008 drawn within Maninagar Area, near Jawahar Chowk, Shivani Avenue Complex and opposite Laxmi Jewellers, from where, amongst different articles, one Avon company's ranger cycle in a damaged condition was found. This panchnama is proved through panch witness being PW No.334-Hiteshbhai Piraji Prajpati vide Exh. 1730.

16.38.14. Alongwith it, the prosecution has also submitted that application given by accused No.28-Afzal, which is brought on record through Exh.6620, a communication from Ahmedabad Central Jail to Sessions Court relating to accused No.28-Afzal, states about harassment and physical assault by I.M. (Indian Mujahideen) persons. It is further submitted that this circumstance is required to be further seen in the context of Email communication mark A, produced in the deposition of PW-1150/Exh.8263, received almost at the time of the bomb blast, wherein Indian Mujahideen claimed responsibility for the bomb blast. During the deposition of PW- 1150/Exh. 8263, the defence relied upon the said Email communication and cross-examined the witness on certain aspects. At that time, the prosecution has prayed that Email (Mark A) be exhibited. However, the trial Court did not exhibit the Email (Mark A). The prosecution has urged that since Email (Mark A) was referred to by the defence in cross-examination, the email as well as evidence of PW-1150/Exh.8623 ought to be considered. According to the prosecution, all these circumstances fully support its case regarding accused No.40- Ziyaur Rehmaan and many others as conspirators in the present incident.

16.38.15. In the opinion of the Court, there is commonality in the role attributed to accused No.39- Zishan Ahmed and accused No.40- Ziyaur Rehmaan and the evidences against them. The findings recorded in the

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case of accused No.39- Zishan Ahmed is common and applicable to accused No.40- Ziyaur Rehmaan. However, at the cost of repetition, the same are being referred to separately herein for independent evaluation of the role attributed to accused No.40- Ziyaur Rehmaan.

16.38.16. The Court finds that accused No.40- Ziyaur Rehmaan had volunteered to show the place from Maninagar Railway Station where he had planted the cycle and thereafter, pointed out the place at Maninagar Jawahar Chowk, Shivani Avenue Complex, opposite Laxmi Jewellers shop, during panchnama Exh.6318 dated 04.11.2008. This panchnama stands proved through the evidence of PW- 885/Exh.6317. The accused is an outsider, he has been arrested later in point of time still during the drawing of the panchnama he has led the panch team to the exact spot where bicycles were parked this voluntary disclosure in front of the independent panch and deposed to as such is an admissible evidence for the circumstance of mental fact of Knowledge of such locations which were in special knowledge of the accused. This special knowledge of the accused can come on record only by way of the panchnama and therefore the prosecution has been able to establish the connect between the place, the incident and the knowledge of the accused. Therefore proving the voluntary disclosure.

16.38.17. The Court has perused the evidence of panchnama at Exh.6079 drawn on 04.11.2008 between 13:00 hours to 14:15 hours at the office of F.S.L. Gandhinagar, wherein cycles were seized from different scenes of offence and were sent to F.S.L for examination. accused No.40- Ziyaur Rehmaan, alongwith two other accused, were present and have volunteered to identify the cycles kept at the office of F.S.L. accused No.40- Ziyaur Rehmaan identified Avon Company's Ranger Cycle and stated that it was the cycle which he had placed,

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loaded with bomb, near Jawahar Cross Roads, Jawahar Chowk, Shivani Building. This panchnama stands proved through panch witness PW No.871-Mohanbhai Naykar vide Exh.6078 as well as the Investigating Officer PW No.1136-Mayur Jagmalbhai Chavda vide Exh. 8638.

16.38.18. Considering the above evidentiary material, more particularly the recovery of cycle found from Maninagar Area, near Jawahar Chowk, Shivani Avenue Complex and the identification of that cycle by accused No.40- Ziyaur Rehmaan as the same cycle which he placed at scene of offence loaded with bombs and which ultimately exploded, the Court finds it sufficient to hold accused No.40- Ziyaur Rehmaan as a conspirator. Therefore, the findings with regard to conspiracy recorded earlier for different accused persons would equally apply to accused No.40- Ziyaur Rehmaan.

16.38.19. Moreover, the above referred circumstance of planting of bomb laden cycles and the explosion from it, is required to be seen in the context of evidence of PW No.957-Jakir Hussein vide Exh.6687, wherein during the course of conversation in the nature of an extra judicial, accused No.27-Abdul Rajik is stated to have informed this witness that persons belonging to Indian Mujahideen would provide the materials required for the bomb blasts. This evidence also referred to certain accused being in contact of persons of Indian Mujahideen, recce of places done by certain accused for the purpose of placing cycles, and the role played by certain persons belonging to Indian Mujahideen and from UP in placing cycles loaded with bombs. In view thereof, the circumstances referred to hereinabove fully supports the case of prosecution against accused No.40- Ziyaur Rehmaan and also implicates him as a conspirator.

16.38.20. Thus, in light of the aforesaid evidence, the Court finds that

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accused No.40- Ziyaur Rehmaan participated in the conspiracy by procuring, transporting and placing bomb laden cycles at different places of offence. The recovery of cycle from scene of offence, its identification by accused No.40- Ziyaur Rehmaan and the aforementioned panchnamas constitute as incriminating circumstances against accused No.40-Ziyaur Rehmaan establishing his involvement in achieving the object of larger conspiracy which is causing of bomb blasts.

16.38.21. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.40-Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli. And the role of this accused to have planted the bomb laden bicycle as a part of the conspiracy in the crowded location and causing one of the bomb blast in the series. The Court has therefore, no reason to interfere with the conviction recorded.

16.39. In case of Mohammad Shakil Yaminkhan Luhar (Uttarpradesh) (A-42)

(Accused No.27 in Criminal Confirmation Case No. 2/2022 and Appellant No.21 in Criminal Appeal No. 1710/2022)

16.39.1. In case of accused No.42-Mohammad Shakil Yaminkhan Luhar, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.39.2. Learned advocate Shri Hriday Buch submitted that the role attributed to accused No.42-Mohammad Shakil Yaminkhan Luhar is of parking the bomb laden bicycle at one of the blast sites and for this, the

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prosecution has relied upon the point out panchnama Exh.6421. The place where the cycle was parked by accused No.42-Mohammad Shakil is popularly known as "Maha Lakshmi". Learned advocate has submitted that over and above the general submissions made for not treating the point out panchnama as evidence against this accused, it is submitted that the panchnama drawn on 02.11.2008 was drawn after almost four months of the blast and therefore, the site of the blast was already known to the Investigating Officer.

16.39.3. Learned advocate has, thereafter, taken the Court through the evidence of PW-896-Durgesh Kanubhai Patel at Exh.6421 and assailed the same by submitting that the narration in the panchnama is in the nature of a confessional statement recorded in presence of police and is, therefore, not admissible. It is submitted that the cross-examination of this witness would indicate that the witness is either created or tutored as during the long gap of four months, no other evidence was available against accused No.42-Mohammad Shakil. Moreover, even prior to executing the panchnama Exh.6422, the panchnama for the very place was also drawn. Learned advocate has, thereafter, assailed the evidence of PW-871-Mohambhai Vardhraj Naykar Exh.6078, who is the panch witness of identifying three cycles which were used in the blast. According to the learned advocate, the joint panchnama itself is not a reliable piece of evidence and that from the perusal of the panchnama itself, it appears that no procedure was followed in applying the seal at the time of seizure or removal of the seals from the cycles, which were identified jointly by three accused persons. It is submitted that three cycles are planted. It is submitted that the cross-examination of the witness would indicate that the three different bicycles which were shown in the FSL were in open condition. Ordinarily, they should have

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been kept in sealed condition and there are no specific identification mark/s which would connect the accused having identified the very bicycle being the bicycle which was used for planting bomb. According to the learned advocate, except for these two point out panchnamas against this accused, there is no other evidence against the accused and therefore, the role attributed to accused No.42-Mohammad Shakil is not established.

16.39.4. It appears from the record that accused No.42-Mohammad Shakil was arrested on 27.10.2008 and has continued in remand between 27.10.2008 to 24.12.2008 and the role attributed to the accused is of having planted the bomb laden bicycle at "Maha Lakshmi". The evidence against the accused No.42-Mohammad Shakil is the panchnama Exh.6422 drawn on 02.11.2008, which was proved by the prosecution by examining PW No.896-Durgesh Kanubhai Patel Exh.6421, who has deposed about the voluntary disclosure of the place where accused No.42-Mohammad Shakil has received and planted the bomb laden bicycle. A perusal of Exh.6421 would indicate the complete narration of the manner of voluntary disclosure and thereafter, leading the team of investigation to the place. Though it is argued that the place was known to the Investigating Officer, it is pertinent to point out that the blast had taken place on 26.07.2008 whereas, the arrest of accused No.42-Mohammad Shakil was on 27.10.2008 and the panchnama was drawn on 02.11.2008 and therefore, when the first part of the panchnama was drawn, it was not within the knowledge of the Investigating Officer that the voluntary disclosure by the accused would lead him to the very spot where the blast had taken place. There is no line in the cross-examination either to PW No.896- Durgesh Kanubhai Patel Exh.6421 or the Investigating Officer which would suggest that even before the

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voluntary disclosure was made in front of this witness, the Investigating Officer had revealed as to where the team of investigation would be led to. It is only at the stage when accused No.42-Mohammad Shakil led the investigator to the point, which, according to the accused, was the site of blast, which was recorded in the second part of the panchnama, it became evident that the location indicated by accused No.42-Mohammad Shakil is identical to the one where the blast had taken place. Therefore, the mental fact of knowledge about the place where the blast took place was revealed only upon the recording in the second part of the panchnama, which was in consonance with the first part of the panchnama and therefore, in the opinion of the Court, the panchnama Exh.6422 is a panchnama which meets the requirement of section 27 of the Indian Evidence Act and therefore, deemed to be proved against the accused.

16.39.5. The prosecution has also relied on the panchnama Exh. 1752 drawn on 26-27 July, 2008 between 22:00 to 1:00 hours. The said panchnama is a scene of offence panchnama, drawn at Maninagar cross roads near Om pan house and near Asopalav tree, where bomb blast had actually occurred. This panchnama was drawn in the presence of panchas, police, Bomb Disposal Squad personnel and FSL officers. Amongst various articles-objects recovered and seized from this spot, a black coloured cycle in a damaged condition because of bomb explosion was recovered from near Mahalaxmi Market. This panchnama is proved through panch witness being PW No.336-Kavaljitsing Jogindarsing Arora vide Exh. 1751.

16.39.6. The prosecution has further submitted that, since accused No.42-Mohammad Shakil is from UP and two other accused i.e. accused No.39- Zishan Ahmed and accused No.40- Ziyaur Rehmaan are also

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from UP, the evidence of Jakir Hussein as well as the circumstance relating to communication made by accused No.28- Afzal @ Afsar S/O Mutallib Usmani from Jail to Sessions Judge regarding persons belonging to Indian Mujahideen, and the email which was received by Office of INDIA TV Ahmedabad from the source of unsecured Wi-Fi and IP address belonging to Ken Haywood, are also relevant. It is submitted that during the course of investigation, more particularly from the evidence of the Investigating Officer vide Exh.8340, it is revealed that sending of Email, claiming responsibility of bomb blast by Indian Mujahideen and sent to INDIA TV was an act of hacking unsecured Wi-Fi of IP address belonging to Ken Haywood, Bombay. Though the investigator interrogated Ken Haywood and recorded his statement, the prosecution could not examine him during trial as he was not available at his known address. However, this circumstance is sufficient for the court to reasonably infer about the involvement of the of an organisation Indian Mujahideen (IM).

16.39.7. The Court has considered the panchnama at Exh.6079 drawn on 04.11.2008 at FSL Office, Gandhinagar, in the presence of FSL Officer Shri. J F. Mansuri. From the panchnama, it appears that damaged cycles recovered from different scene of offence and seized under respective scene of offence panchnamas were kept at FSL Office, Gandhinagar. As accused persons had volunteered to identify the cycles, they were taken to the said place. During the course of panchnama, accused No.42-Mohammad Shakil was taken to that place and in presence of FSL persons, panchas and others, accused No.42-Mohammad Shakil identified an old black coloured Avon cycle in a bomb exploded damaged condition which was placed by him at Manianagar Cross Roads near Tea Stall and also near one tree. As per

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the case of prosecution, the said cycle was the very cycle which was recovered during the course of scene of offence panchnama. This panchnama stands proved through the evidence of Investigating Officer being PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638.

16.39.8. The Court has also perused the panchnama Exh.6422 drawn on 02.11.2008 by the Crime Branch Police, Ahmedabad City. The first part of the panchnama was drawn at the Crime Branch Police Station, where accused No.42-Mohammad Shakil was present and volunteered to show places relevant to the incident which took place on 26.07.2008. Accused No.42-Mohammad Shakil disclosed that if taken to Maninagar Railway Station, he could point out the relevant places. Pursuant thereto, the second part of the panchnama was drawn and accused No.42-Mohammad Shakil led panchas and police persons to Maninagar Railway Station, near AMTS bus stand. Accused No.42-Mohammad Shakil pointed out a complex, and stated that at this place, two cycles were placed earlier of which, one old black coloured cycle was taken by him. He further pointed out a place near Roop Complex where the said black coloured cycle was to be planted. Thereafter, accused No.42-Mohammad Shakil pointed out the place near Maninagar Railway Station and a tree where he had planted the black coloured bomb laden cycle on 26.07.2008. Accused No.42-Mohammad Shakil also disclosed that on 12.07.2008, he had conducted recce of the Maninagar are in Ahmedabad for the purpose of placing bomb laden cycle on 26.07.2008. The said panchnama stands proved through panch witness PW No.896-Durgeshbhai Kanubhai Patel at Exh.6421 as well as the evidence of Investigating Officer being PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638.

16.39.9. Therefore, the evidence on record establishes that accused

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No.42-Mohammad Shakil had conducted recce of the places, obtained and placed the bomb laden cycles at the scene of offence and has also identified both, the place and the cycles used for the purpose of causing the blasts. Therefore, in the opinion of the Court, his role in the larger conspiracy which was with a common object to cause bomb blast has been sufficiently established.

16.39.10. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.42-Mohammad Shakil Yaminkhan Luhar. The Court has therefore, no reason to interfere with the conviction recorded.

16.40. In case of Anik @ Khalid S/O Shafik Saiyed (Maharashtra)(A-43)

and

Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari (Maharashtra) (A-44)

(Appellant No.6 in Criminal Appeal No. 1917/2022)

and

(Accused No.28 in Criminal Confirmation Case No. 2/2022 and Appellant No.22 in Criminal Appeal No. 1710/2022)

16.40.1. In case of accused No.43-Anik @ Khalid S/O Shafik Saiyed, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and other accused No.44-Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

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16.40.2. Learned advocate Shri Hriday Buch has submitted that the role attributed to accused No.43-Anik @ Khalid is of being a part of the conspiracy by residing along with co-accused in one of the hide-outs located at Sherpura, Bharuch and by purchasing explosive article like petrol which was used for explosion. Learned advocate submitted that the evidence against accused No.43- Anik @ Khalid is that through him the point out panchnama was drawn being Exh.7936 purportedly under Section 27 of the Evidence Act, pointing out the house being D-34, River View Society, for which the prosecution has examined PW No.1110 Jignesh Himmatlal Shah Exh.7945. However, it is contended that this evidence cannot be treated to be under section 27 as other accused being accused No.44-Mohammad Akbar and accused No.63-Mohammad Tanvir, have also shown the same house in their respective point out panchnamas. Moreover, there is no recovery of any material object which would connect accused No.43- Anik @ Khalid with the offence.

16.40.3. The other evidence relied upon is that of PW No.1129 Bhavesh Bhupatbhai Thakkar Exh.8094, who is an auto consultant and a witness to the sale agreement of a two-wheeler at Exh.2804. However, there is nothing on record to connect the use of this two-wheeler in the offence.

16.40.4. Another evidence is that of PW No.1138 Gulam Rashid Pathan Exh.8165, who is the owner of Sherpura house, which also is another hide-out. However, according to the learned advocate, the evidence of PW No.1138 Gulam Rashid Pathan Exh.8165 connecting the house with the accused cannot be relied upon as in his cross-examination he has admitted that no document was executed for renting out the premises or for ownership. He has also deposed that he had not

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disclosed that three persons were residing in the house and has admitted that no rent receipt was issued. It is argued that from the evidence of this witness, it cannot be established that the house which was searched at the time of the panchnama was in the exclusive possession of accused No.43-Anik @ Khalid.

16.40.5. Another evidence relied upon against the accused is of PW No.1108 Abhishek Hrishikesh Shukla Exh.7938, in whose presence, a voluntary disclosure to show the shop from where the plastic can (kerbo) was purchased and the auto oil shop at Rampura. According to the learned advocate, the evidence of PW No.1108-Abhishek Hrishikesh Shukla at Exh.7983 is not reliable as neither there is any connection of purchase of plastic can or petrol with the plantation of bomb in Surat or the explosion of bomb in Ahmedabad. In any case, in absence of any documentary evidence regarding the purchase of said items, the accused cannot be connected to the circumstance of purchase of either items.

16.40.6. The Court has found that accused No.43-Anik @ Khalid was initially, arrested on 12.11.2008 in connection with the offence registered at Kapodara Police Station for planting of bomb and was later on arrested on 24.12.2008 in connection with the Ahmedabad blast case. The accused No.43- Anik @ Khalid is connected with this offence through the two hide-outs, one being the house at Sherpura and the other being the house in River View Society. Both these houses were hide-outs where the accused had conspired for preparing and planting the bombs and therefore, material objects were seized from Sherpura house through the panchnama Exh.6540 drawn on 02.09.2008 (prior to the arrest of accused No.43-Anik @ Khalid) at the behest of accused No.14-Mohammad Sajid Gulam Khwaja Mansuri, who, first in point of time, had identified and located the house under panchnama Exh.6540, which

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was proved through the panch witness. The articles which were seized in due course of investigation were sent to FSL, which submitted its report at Exh.5963 and from the report, it appears that traces of explosive material was found in the house.

16.40.7. To connect the present accused with the house, PW No.1138-Gulam Rashid Pathan has been examined vide Exh.8165 and through this witness, test identification parade was also conducted. Therefore, this witness establishes the fact that the Sherpura house, from where traces of explosive material was found, was shared by accused No.43-Anik @ Khalid with other co-accused.

16.40.8. The Court has also perused the evidence in the form of deposition of PW No.1108-Abhishek Hrishikesh Shukla Exh.7938, who is the panch witness to point out panchnama Exh.7939, by which accused No.43-Anik @ Khalid had pointed out the shop from where he had purchased the plastic can (kerbo). Thus, the plastic cans were found from the car which was laden with bomb and were found under the panchnama Exh.2413, for which FIR being II-C.R. No.176 of 2008 with Kapodara Police Station is registered. The plastic cans recovered from the car were forwarded to FSL along with other items and the FSL has given a report which is exhibited vide Exh. 5847. It appears that similar plastic cans were also found from another hide-out, i.e. house being D-34, River View Society during the panchnama Exh.2757, which was also sent for FSL and the report Exh.5776 is on record.

16.40.9. Learned advocate Shri Buch submitted that the role attributed to accused No.44-Mohammad Akbar is of being associated with the two hide-outs, one being at Sherpura, Bharuch and the other at River View Society, Surat, which he had occupied in the proximate period along with accused No.43–Anik @ Khalid and accused No.45–Fazle Rehmaan

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Musaddik Durrani. Learned advocate has submitted that his submissions qua accused No.44-Mohammad Akbar is identical to that of accused No.43–Anik @ Khalid in view of the similarities in the nature of role attributed and the evidence led. Learned advocate submits that reliance is placed by the prosecution on the evidence of PW No.1138 Gulamhussain Abdulrashid Pathan Exh.8165 to connect accused No.44-Mohammad Akbar with the Sherpura house as PW No.1138 Gulamhussain Abdulrashid Pathan Exh.8165, in his cross-examination, has admitted that there is no documentary evidence to establish his ownership or the fact of his renting out the premises to any of the accused as there are no rent receipts as well. It is submitted that the prosecution is trying to connect the articles found in the house, like electrical wires, etc. to the preparation of bombs; however, it is pertinent to point out that PW No.1138 Gulamhussain Abdulrashid Pathan Exh.8165 himself is an electrician by profession and therefore, when the house was searched, electrical goods and books lying thereto can be traced to PW No.1138 Gulamhussain Abdulrashid Pathan Exh.8165 and not to the accused having used the house as hide-out for preparing bombs.

16.40.10. Learned advocate has, thereafter, assailed the evidence of the prosecution in the form of point out panchnama where the accused has pointed out house No.D-34, River View Society vide panchnama Exh.7946. It is submitted that as it is a joint panchnama, the same cannot be treated as an evidence at all. It is submitted that this point out panchnama was executed along with accused No.43–Anik @ Khalid, who also pointed out the same house. It is submitted that merely pointing out of the house is of no consequence as it is an admitted position that during the point out panchnama, no one has entered the

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house to search the premises for recovering any material object connecting the accused with the crime.

16.40.11. Learned advocate has, thereafter, assailed the evidence of PW-1123 Liyakatali Gulamrasulhusain Shaikh Exh.8078, who is the landlord of the house of River View Society, Surat. The prosecution has tried to connect the house to accused No.44-Mohammad Akbar through one Yakub, whom the prosecution has not examined at all though he is a relevant witness. Moreover, even from the deposition of the landlord, PW-1123 Liyakatali Gulamrasulhusain Shaikh Exh.8078, it could not be established that accused No.44-Mohammad Akbar has occupied this house of River View Society and therefore, even if the said house is proved to be a hide-out, for the present offence, accused No.44-Mohammad Akbar cannot be connected to this house through any cogent evidence. Learned advocate has, thereafter, assailed the evidence of PW No.1123 Liyakatali Gulamrasulhusain Shaikh Exh.8078 with regard to identification of accused No.44-Mohammad Akbar as, according to the learned advocate, during the test identification parade, the witness has merely pointed out the finger towards the person but has not given any details. Moreover, during the course of deposition, the witness has failed to identify accused No.44-Mohammad Akbar and therefore, the prosecution has failed to establish the identity of accused No.44-Mohammad Akbar and to connect him with the house in River View Society.

16.40.12. It is the case of the prosecution which is established by cogent evidence that the house being No.D-34, River View Society was one of the hide-outs where conspiracy has taken place and bomb manufacturing articles were found. A point out panchnama, at the behest of accused No.44-Mohammad Akbar, is at Exh.7946 which was

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drawn on 28.11.2008, after the arrest of accused No.44-Mohammad Akbar on 12.11.2008, initially, in connection with the bomb plantation case registered with Kapodara Police Station and had continued in police custody for various offences till 12.12.2008 and thereafter, was arrested in connection with the Ahmedabad bomb blast case as well. The point out panchnama, therefore, was drawn when accused No.44-Mohammad Akbar was in police custody and wanted to make voluntary disclosure with regard to the hide-outs, which is recorded in the first part of the panchnama Exh. 7946. This exhibit is proved by examining PW No.1110 Jignesh Himmatlal Shah at Exh.7945 and after the voluntary disclosure recorded in the first part of the panchnama, the accused has led the investigating team to a place, which is recorded to be house No. D-34, River View Society in the second part of the panchnama. It is pertinent to observe that on 28.08.2008, accused No.63–Mohammad Tanvir Mohammad Akhtar Pathan, who was arrested prior to the arrest of accused No.44-Mohammad Akbar, had also in the point out panchnama under section 27 of the Evidence Act at Exh.2757 pointed out the very house and during this point out panchnama, various articles were recovered when the house was searched, which is evident from the primary report of the FSL at Exh.2767 and the final report of the FSL at Exh.5776 wherein, the presence of highly explosive material was found. Therefore, the mental fact of knowlege of house No.D-34, River View Society is a hide-out was the special knowledge of the accused, which came on record by drawing the point out panchnama under section 27 of the Evidence Act. The argument that accused No.63–Mohammad Tanvir Mohammad Akhtar Pathan, in the previously drawn panchnama, has also shown the same house is of no consequence in view of the fact that the present accused was arrested at a much later stage and he would not

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be aware of the panchnama drawn at the behest of accused No.63–Mohammad Tanvir Mohammad Akhtar Pathan. Moreover, till the drawing of the second part of the panchnama, the Investigating Officer would also not be aware of the fact as to what accused No.44-Mohammad Akbar is to lead by making voluntary disclosure, till, in the second part of the panchnama, the Investigating Officer was co-incidentally led to the same house being D-34, River View Society.

16.40.13. The Court may also take into consideration the evidence of PW No.1123 Liyakatali Gulamrasulhusain Shaikh at Exh.8078, who is the owner of house No.D-34, River View Society through whom the test identification parade has been conducted and in the test identification panchnama Exh.3090, accused No.44-Mohammad Akbar has been identified. His identification has been confirmed by the evidence of Executive Magistrate, PW No.575 Kirtanbhai Chaturbhai Patel Exh.3076.

16.40.14. The Court has found that prosecution has established the connect of accused No.44-Mohammad Akbar with the Sherpura house in view of the evidence of PW No.1138 Gulamhussain Abdulrashid Pathan at Exh.8165. This witness has not only deposed about the occupancy of the house by accused No.44-Mohammad Akbar but has also gone on to identify this house in the test identification parade at Exh.3165. A perusal of Exh.3165 would establish the identity of a accused No.44-Mohammad Akbar and it is further confirmed by the evidence of the Executive Magistrate PW No.589 Indraveer Vajubha Jhala Exh.3159.

16.40.15. The Court may also observe that Sherpura house was searched at the first instance when accused No.44-Mohammad Akbar had also identified the very house under Exh.6540, which was proved by PW No.917 Pinkesh Naginbhai Desai Exh.6539. During this

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panchnama, there is a preliminary report of the FSL at Exh.5586 and the final report of the FSL at Exh.5963.

16.40.16. The Court may also give due regards to the submission of the Learned Additional Advocate General for the State wherein the prosecution has relied on panchnama Exh.2413 drawn on 27.07.2008 between 18:15 hours to 22:30 hours by Kapodra Police Station for offence registered vide C.R.No.II-176 of 2008. This panchnama was drawn at Baroda Prestige, Dr. House building, Sonal Bhel shop, Varacha road. On bare reading of this panchnama, it appears that the same was drawn in the presence of panchas, police personnel, FSL Officers, from where, one maroon coloured Maruti Wagon R motor car bearing number GJ-6-CD-2908 was parked and on searching the car, different articles like three plastic kerba-can each containing petrol, relevant for accused No.43-Anik @ Khalid were found, which were narrated in the panchnama at serial No.10. During the course of panchnama, sample liquid i.e. petrol was also taken from this kerba which are mark ABC. The above referred articles namely sample liquid-petrol mark A B C from mark A9 alongwith other relevant articles were sent for Forensic Examination through forwarding letter vide Exh.5845, pursuant to which, opinion was received at Exh.5847, which establishes that sample liquid A B C as petrol.

16.40.17. It is submitted that the prosecution has also relied on panchnama at Exh.2757 drawn on 28.08.2008 between 12:15 hours to 16:40 hours drawn by Surat Police. The first part of this panchnama was drawn at Police Station in the presence of accused No.63-Tanvir Mohd. Akhtar Pathan and he wanted to disclose and point out some relevant places and articles. Pursuant to it, second part of the panchnama was drawn, during which he led all to one house through Variyari Bazaar,

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Paliya ground and few other places. The house pointed out by accused No.63-Mohammad Tanvir was found locked and upon verifying details of house, it was found that house is D 34 River View Society in the name of Liyakhat Ali Shaikh. As this house was to be searched and accused No.63-Mohammad Tanvir was not having keys, it was broken open. F.S.L persons and Finger Print Experts were also called and various articles were found, of which relevant article like three white coloured kerba having smell of petrol from it. During this search, many other articles were found which were subjected to forensic examination and some of the articles were found, which contained high explosive. The prosecution has also relied on panchnama Exh.7946 drawn on 28.11.2008 at the instance and behest of accused No.43-Anik @ Khalid, who has pointed out house of River view Society D 34. This panchnama is proved through panch witness PW No.1110-Jignesh Himatlal Shah vide Exh.7945 and Investigating Officer being PW No1155-Narayansinh Bhavansinh Parmar vide Exh.8517.

16.40.18. It is submitted that as both the accused No.44-Mohammad Akbar is connected with Sherpura house, the submissions made by the State with respect to accused No.43-Anik @ Khalid are made in common. Accused No.44-Mohammad Akbar is also connected with two particular cars and other two motor cars (stolen cars), the submissions made with respect to accused No.43-Anik @ Khalid are also applicable to accused No.44-Mohammad Akbar. Accused No.43-Anik @ Khalid is directly connected with house No. D 34 River View and hence, all the circumstances which would relate to D 34 River View, more particularly, on search of this house high explosive substance was found, would be applicable to accused No.44-Mohammad Akbar. So also, different accused persons, who are connected with house No. D 34 River View,

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would be equally be connected with accused No.44-Mohammad Akbar.

16.40.19. The Court has considered the submissions of the parties. As seen in the aforesaid paras regarding discussion of accused No.43 and accused No.44, the role attributed is identical and the evidence also is more or less identical and therefore, finding with regard to both the accused are recorded herein below.

16.40.20. The Court has perused the deposition of the Gulam Hussein of Bharuch examined at PW-1138/Exh.8165. The witness has stated that he has given his house on rent in the month July 2008 at Sherpuira village to a person namely Rafik Shaikh, for which Rafik Shaikh has given deposit money as well as keys of the house. Rafik Shaikh has come to witness with one silver coloured Wagon R, whose number as known to witness is GJ-06. From the evidence of witness Gulam Shaikh, it is established that person who gave his name as Rafik Shaikh, as such his real name is Fazle Rehman, who is accused No.45-Fazle Rehmaan from Maharashtra like accused No.43. It is also established from the evidence of this witness that the said house was used and occupied in the month of July 2008 by accused No.43-Anik @ Khalid and accused No.45-Fazle Rehmaan and one more accused i.e. accused No.44-Mohammad Akbar of Maharashtra. Identity of these three accused i.e. accused No.43-Anik @ Khalid, accused No.44-Mohammad Akbar and accused No.45-Fazle Rehmaan is established on the basis of Test Identification Parade vide Exh.3165 and also proved through Executive Magistrate being PW No.589-Indravir Vajubha Zala vide Exh.3159.

16.40.21. It appears that the said house was subject to search on 03.09.2008 at the behest of accused No.14-Mohd. Sajid @Saleem @Azamd @Saad S/o Gulam Khwaja Mansuri, resident of Surat as well as Bharuch. It is deposed that the witness went to Sherpura house upon

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being called by the police, where he found that the house was locked and keys were with the person to whom house was rented and hence, the lock was required to be broken to search the house. It is further deposed that Gulam, two police personnel and F.S.L officers were present and upon search of it, different articles were found as narrated in panchnama vide Exh.6540 and distinct marks like A, B, C,D and E were given, out of which articles A,B,C and D were sent for Forensic Examination and on the basis of opinion of Forensic, articles Mark A, B, C and D contained Ammonium Nitrate and Petroleum Hydro Carbon oil being high explosive and using it with detonators would cause explosion.

16.40.22. The Court has perused the evidence of witness-Bhavesh, who was examined at PW-1129/Exh.8094, who is resident of Katar Gam Road, Surat and in business of purchase and sale of second-hand two-wheeler scooters under the name of 'Jay Jalaram Auto Consultant'. Police interrogated this witness. The witness has two persons in his office namely Dinesh and Mukesh, through whom one person came to him on 23.07.2008 and he sold Honda Kinetic Scooter bearing number 3801 in a sum of Rs. 10,000/-to that person, for which sale note was executed. The said person had put his signature however, upon being asked in whose name the said scooter to be transferred, he replied that he would inform the witness tomorrow. The witness was shown document Exh.2804, which is a book containing documents in the hand writing of witness and the signature on revenue ticket is that of a person, who paid money and purchased scooter. The witness deposited the said book to the Police. As submitted by witness, Exh.2804 is a sale note of Kinetic scooter was seized and collected through panchnama vide Exh.2803 dated 29.08.2008 and this panchnama stands proved through Investigating Officer being PW No.455-Kishanbhai Govindbhai Tijvij

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vide Exh.2802.

16.40.23. The witness has described the appearance of purchaser of scooter as, aged between 22 to 25 years, of a particular height, black in colour, thin in body and having curly hair. The witness was subjected to Test Identification Parade for the purpose of identifying purchaser of Kinetic scooter. During the course of Test Identification Parade, witness identified one person, whose name was not known to him and deposed that he was unable to identify that person because of lapse of time. The prosecution has relied on Test Identification Parade Exh.3094, which established witness-Bhavesh identified a person, whose name is Anique S/o Shafeeq Sayyed @Khalid (accused No.43-Anik @ Khalid) as inquired by Executive Magistrate. This Executive Magistrate is also examined at PW-575/Exh. 3076 and during the course of his deposition, Executive Magistrate has deposed that witness Bhavesh has identified accused No.43-Anik @ Khalid.

16.40.24. The prosecution has also relied on panchnama Exh.7942 dated 16.11.2008 through which specimen signature vide Exh. 7943 of accused No.43-Anik @ Khalid was taken. The said panchnama stands proved through panch witness being PW No.1109-Vikas Balubhai Bhoi vide Exh.7941 and same is also further proved through Investigating Officer PW No.1155-Narayansinh Bhavansinh Paramar vide Exh.8517. The above referred specimen signature alongwith disputed signature of purchaser in sell note Exh.2804 were sent for Hand Writing Expert's opinion through Forwarding Letter Exh.7973 and pursuant to which, hand writing expert's opinion was received at Exh.7977 and also proved through evidence of Hand Writing Expert Shri Vadgama Exh. 7970. The prosecution has proved that disputed signature on sale note Exh.2804 is of accused No.43-Anik @ Khalid. In the opinion of the Court, it is

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sufficiently established that accused No.43 is the purchaser of Kinetic Scooter from witness Bhavesh.

16.40.25. So far as accused No.43 is concerned, the Court may refer to panchnama Exh.7939 drawn by Surat TO. Police on 20.11.2008 between 13:00 hours to 14:30 hours. The first part of the panchnama was drawn at DCB Police Station, Surat in presence of accused No.43-Anik @ Khalid, which contained relevant disclosure made by accused No.43-Anik @ Khalid. Accused No.43-Anik @ Khalid led panchas and police to a Rampura Auto Sales and Service through Sayeedpura Pumping Police Chowki, Lal Darwaja (Lal Gate), where accused No.43-Anik @ Khalid has made a disclosure statement that on 25.07.2008, he purchased 10 litres of petrol filled in one white colour can. Thereafter, accused No.43-Anik @ Khalid also led all to one unnamed shop through Lal Darwaja (Lal Gate) and Delhi Gate, which has been run by a person namely Pravinchand was present there, where plastic canes and other plastic articles were kept. On pointing out this place, accused No.43-Anik @ Khalid disclosed that on 25.07.2008 he purchased 5 to 6 Kerba of 10 litres. This unnamed shop was beside Modi Stores and a Rasna Traders. Thereafter, accused No.43-Anik @ Khalid led all and pointed out a petrol pump namely Nilam Petroleum, situated at Gotala Wadi, Bal Anath Ashram, which was run by one Jalal Bhai who was present at that time and disclosed that on 25.07.2008, he purchased further 10 litres of petrol which was filled in one another white can (kerba). The panchnama Exh.7939 is proved through panch witness being PW No.-Abhikesh Rushikesh Shukla vide Exh.7938 and through Investigating Officer being PW No.1120-Salimuddin Jalaluddin Tirmizi vide Exh.8049.

16.40.26. Considering the above evidentiary material against accused

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No.43-Anik @ Khalid, it appears that accused No.43-Anik @ Khalid is one of the key conspirators having link with many sequels to the conspiracy. Accused No.43-Anik @ Khalid, as recorded hereinabove is connected with Sherpura House of witness Gulam and thereby he is connected with accused No.45-Fazle Rehmaan, accused No.28-Afzal @ Afsar, accused No.14- Mohammad Sajid and accused No.44-Mohammad Akbar. As accused No.43-Anik @ Khalid is connected with other accused, is connected with Sherpura House is equally connected with one silver coloured Wagon R, whose number, according to witness Gulam, is GJ-06 and red coloured Wagon R. The case of the prosecution is that these two cars are stolen from Maharashtra and their registration number were tempered and ultimately these two cars were used for purpose of planting of bomb. The case of prosecution is that the stolen silver car after being loaded with bomb, parked at Civil Hospital which got exploded and other red coloured Wagon R was used for loading bombs and parked in the area namely Dr. House, Kapodra Police Station, which did not explode. Thereby, accused No.43-Anik @ Khalid is connected with not only these two cars, but two other cars as well. Accused No.43-Anik @ Khalid on the basis of evidentiary material referred hereinabove, is connected with purchase of plastic kerba and petrol which were found from one red coloured Wagon R parked in Surat containing three plastic kerba filled with petrol and three other kerbas which were found from the house no. D 34 River View Society, which smelled like petrol. Thereby, accused No.43-Anik @ Khalid is also connected with house No. D 34 and all other accused more particularly, accused No.63-Mohammad Tanvir and all others like accused No.46-Mohammad Naushad and accused No.47-Ahmed Bava, who are also connected with house No. D 34.

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16.40.27. In so far as accused No.44 is concerned, evidence of witness-Liyakat Ali as PW 1123/Exh.8078 is perused, who is a resident of Surat and owner of one house in River View Society. The witness has produced sale document vide Exh.8077/1 and 2 of River View house and 2 on record as mark A and mark B. The witness has deposed that in the year 2008, first floor of this house being House No.D 34 of River View society was given on rent to one Rashid Bhai and ground floor to one Marathi family, which was vacated within three month and thereafter, the said part of the house was given on rent and one Shareefbhai running grocery shop had brought tenant, whose name is Yakub as told and known by witness. The said tenant was around 25 to 30 years and told that his family is staying at Bombay. They decided the monetary terms for the giving the house on rent and the tenant was asked about photographs, but he told that he would give it when he would come with his family. Thereafter, the witness gave keys of his house to him and since then he did not come. The tenant has given the witness Rs.7000/- as deposit and told that he would give remaining amount later. The witness also stated that he has visited his tenant for 2 to 4 times, but he found the house locked. The witness was subjected to interrogation, witness is also subjected to Test Identification Parade and during the course of it, he identified one person-Yakub (accused No.44), whom he could not identify during the course of his deposition.

16.40.28. During the course of cross-examination, the witness firmly denies that it is not true that he has not given his house on rent to a person named Yakub and also firmly denies that it is not true that witness has not identified any such person (Yakub) during Test Identification Parade. It is pertinent to state here that, accused No.63-Mohamamd Tanveer has chosen not to cross-examine this witness. As

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per the evidence of this witness-Liyakat that he has identified one person (Yakub) during Test Identification Parade, prosecution has relied on this Test Identification Parade at Exh.3090 and during the course of Test Identification Parade, witness Liyakat was called upon to identify person, who has taken house of witness on rent. The witness identified one person and by holding his hand, the person was brought forward. The Executive Magistrate inquired about name of the person identified by witness and upon inquiry, it is found that person identified is accused No.44-Mohammad Akbar @ Yakub. The panchnama of Test Identification Parade stands proved through witness as well as Executive Magistrate as PW No.575-Kirtanbhai Chaturbhai Patel vide Exh.3076.

16.40.29. The Court finds that accused No.44-Mohammad Akbar is also connected with Sherpura house as he stayed and occupied Sherpura house and therefore, evidence of witness Gulam referred above for accused No.43-Anik @ Khalid, is required to be made applicable for accused No.44-Mohammad Akbar as well. Similarly witness Gulam also identified accused No.44-Mohammad Akbar alongwith two other accused, more particularly accused No.43-Anik @ Khalid.

16.40.30. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led, that there is sufficient evidence to support the charges framed against accused No.43-Anik @ Khalid S/O Shafik Saiyed and accused No.44-Mohammad Akbar @ Said @Yakub @Vinod S/O Ismail Chaudhari. The Court has therefore, no reason to interfere with the conviction recorded.

16.41. In case of Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/O Abdulbari Ansari (Madhya Pradesh) (A-66)

(Appellant No.9 in Criminal Appeal No. 1917/2022)

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16.41.1. In case of accused No.66-Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/O Abdulbari Ansari, he has been convicted for various offences by the trial Court for being part of the conspiracy by participating in the terror camp in the forests of Pavagadh in Halol, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.41.2. Learned advocate Shri Hriday Buch submits that the evidence against this accused only in the form of deposition of one witness, who is Munjawar of a Dargah located in Pavagadh where the accused person with co-accused had stayed during the training. However, it is submitted that the evidence of this witness cannot be relied upon for conviction as the witness has not identified this accused in the Court. Moreover, there is no Test Identification Parade through this witness.

16.41.3. The other evidence being confessional statement of accused No.35-Rafiuddin Kapadiya, where it is stated that accused No.66-Mohammad Safiq was part of the terror training camp. It is argued that this confessional statement may not be taken into consideration as it is recorded on oath.

16.41.4. Yet another evidence against accused No.66-Mohammad Safiq is the point out panchnama at Exh.7252, which accused No.66-Mohammad Safiq had recorded his voluntary disclosure to lead the police to a place, where the training camp had taken place. Learned advocate has argued that this panchnama is not a panchnama under Section 27 of the Evidence Act as it was not lead to disclosure of any material object.

16.41.5. Moreover, the camp site led by accused No.66-Mohammad Safiq is not for the first time, but each time also upon arrest of other co-

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accused, the Investigating Officer was led to this same camp. Therefore, the Investigating Officer was aware of the very place. So there is no discovery of a new fact.

16.41.6. Learned Additional Advocate General for the State has relied on confessional statement of accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya at Exh.8631, wherein he involves accused No.66-Mohammad Safiq as one of the participants of Halol Camp by giving his name as 'Shafiq'. He has stated that other participants from Madhya Pradesh are accused No.12-Safdar Nagori, accused No.9-Kamaruddin, accused No.10-Amil Parvaz, accused No.74- Abrar and others who were from different states. Accused No.35-Rafiyuddin Kapadiya has described this camp as SIMI Camp.

16.41.7. The prosecution has also relied upon panchnama Exh.6443 drawn on 17.11.2008 by Crime Branch Police, Ahmedabad City. Accused No.35-Rafiyuddin Kapadiya in his confessional statement has also pointed out a place of Halol Camp, which is proved through Panchnama Exh.6443.

16.41.8. It is submitted that the evidence of witness Idrish has to be considered in context of the confessional statement of accused No.35-Rafiyuddin Kapadiya, which involves accused No.37-Kayamuddin and accused No.16-Abbas from Bhuj, and the naming of these two accused in the said confessional statement of accused No.35-Rafiyuddin Kapadiya, is required to be seen in context of evidence of Idrish who had identified these two accused namely accused No.37-Kayamuddin Kapadiya and accused No.16-Abbas S/O Umar Sameja.

16.41.9. The Court has already discussed about the terror camp in forests of Pavagadh and the evidence to establish the same to be a part of conspiracy. The accused participating were subjected to various training

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including making of the bomb, firing etc. This circumstance has been well established by evidence of eye-witness discussed in chapter of "Appreciation of deposition of relevant witnesses". Therefore, the evidence of a witness Zakir to the conspiracy with an object to take revenge and as a part of conspiracy held camps and meetings. The point out panchnama under Section 27 of the Indian Evidence Act discussed under the chapter of 'Panchnamas under Section 27 of Indian Evidence Act'.

16.41.10. Point out panchnama vide Exh.7252 is proved by panch witness. PW No.1068-Pragneshbhai Govindbhai Rajput vide Exh.7251, wherein the witness has deposed to the voluntary disclosure by accused No.66-Mohammad Safiq to disclose the location, where the camp had taken place for training. Accused No.66-Mohammad Safiq thereafter, led the team to the exact spot where the training had taken place. As the accused had led the team, subsequent to an another accused having led Investigating Officer to same spot and discovery of various incriminating articles connecting to holding of training were seized. Of course, the subsequent panchnama would obviously not lead to recovery of the same articles again and again and therefore, the material objects recovered during the previous panchnama will have to be treated as recovery of this panchnama as well. Moreover, the voluntary disclosure would lead to the same place can only be known where accused No.66-Mohammad Safiq lead the team to the very identical spot. It would be pertinent to observe that this accused is not a local person but from M.P. therefore his knowledge of the location would certainly amount to discovery of a place where part of the offence of conspiracy has taken place. Merely because the police was aware of the spot, cannot discredit the panchnama, which otherwise brings on record the 'mental fact' of

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the knowledge of the location of the terror camp. The Court is therefore, inclined to accept the panchnama Exh.7252 as a panchnama under Section 27 of the Indian Evidence Act and the disclosure made of his participation in the very camp to be admissible and not hit by Sections 25 and 26 of the Indian Evidence Act or Section 162 of Cr.P.C. in view of exception carved out by Sub-Section 2 of Section 162 of Cr.P.C.

16.41.11. The Court has perused the evidence of one important witness from Halol Camp being PW No.1105-Idrish Gulabsha Fakir Diwan, at Exh.7923, who was the Munjavar of Khundpir Dargah, where the camp was held. In para-7, he has deposed that somewhere in the month of November, 2008, police officer namely Mr. Chavda came to him alongwith one accused named accused No.66-Mohammad Safiq. He further deposed that arrangement of participants for stay at Dargah was made at the instance of one Imran Shaikh, who is a resident of Taiwada, Vadodara as on 13.01.2008, accused No.2-Imran Shaikh came to him and upon Imran giving the reference of Dr. Sadab, arrangement was made by this witness, whereby he permitted 20 to 22 persons to stay at Dargah. They stayed there for two nights under the pretext of doing trekking in the Jungle. The witness also deposed that on 15th i.e. two days thereafter, Imran came and gave gift and charity. The witness further deposed that he was interrogated by police and he also deposed about accused No.66-Mohammad Safiq having stayed alongwith Imran at Dargah.

16.41.12. This witness has deposed that he would try to identify the persons, whose names were given by him in Court namely accused No.1-Jahid Shaikh, accused No.66-Mohammad Shafiq Ansari, accused No.74-Mohd. Abrar, accused No.16-Abbas Sameja of Bhuj. Upon being shown the accused persons, this witness was unable to identify accused

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No.66-Mohammad Safiq due to change in physical appearance however, he identified accused No.37-Kayamuddin Kapadiya and accused No.16-Abbas Sameja in Court. The witness Idrish has also given his statement under Section 164 of Cr.P.C, which has been dealt with by the Court under the chapter "Appreciation of deposition of relevant witnesses".

16.41.13. The Court has perused the panchnama at Exh.7252 drawn on 24.11.2009 through which accused No.66-Mohammad Safiq has pointed out Ek Minar Masjid to be the place where Halol camp was conducted and during the said camp, accused No.66-Mohammad Safiq and other accused offered Namaz and stayed at this place. The aforesaid panchnama stands proved through panchwitness being PW No.1068-Pragneshbhai Govindbhai Rajput vide Exh.7251 and also through investigating officer being PW No.1163-Mayurbhai Jagmalbhai Chavda at Exh.8638.

16.41.14. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.66-Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/O Abdulbari Ansari as the prosecution has been able to establish on record the participation of this accused in the terror camp at Pavagadh as a part of the conspiracy. The Court has therefore, no reason to interfere with the conviction recorded.

16.42. In case of Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed (Ahmedabad) (A-75)

(Accused No.37 in Criminal Confirmation Case No. 2/2022 and Appellant No.29 in Criminal Appeal No. 1710/2022)

16.42.1. In case of accused No.75-Mohammad Rafiq @ Javed @

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Alam Jeb Afridi S/O Maskur Ahmed, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.42.2. Learned advocate Shri Yug Chaudhry has made submissions on behalf of accused No.75. The case of the prosecution against accused No.75 is of participation in the terror camps held in the forests of Pavagadh in Halol in Gujarat; of taking part in the conspiracy and planning for storing of bicycles prior to the blast and thereafter, planting the bomb laden bicycles. The other role attributed to the accused is of purchase of gas cyclinders along with accused No.27 – Mohammad Ismail Mohammad Isaak Mansuri which were used as explosives. While accused No.27 had purchased those cylinders, this accused had waited outside the shop. Accused No.75 has been convicted for his participation in the terror camp at Vagamon and has been convicted under the judgment and order dated 14.05.2018 by the Special Court of NIA, Ernakulam in Sessions Case No.02/2011. He has been convicted under Sections 10 & 38 of the U.A.P.A., Section 4 of the Explosive Substances Act and Section 120B of IPC r/w. Sections 10 & 38 of the U.A.P.A. Amongst the various punishments, he has been convicted to undergo rigorous imprisonment for 07 years.

16.42.3. According to the learned advocate, the only evidence relied upon is of the point out panchnamas executed at the behest of the accused and confession of co-accused. It is submitted that the panchnama of co-accused have also been relied upon, as if the same have been executed under section 27 of the Evidence Act by accused No.75.

16.42.4. Learned advocate submitted that the accused was arrested on 21.04.2016, i.e. after about 08 years of the offence. He was taken in

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police custody for the various offences and was, thereafter, transferred to judicial custody on 15.05.2016. According to the learned advocate, the circumstances against the accused is the point out panchnama of the spots where the accused had stored the bicycles and the spots where he had planted the bomb laden bicycles; the other circumstance is the point out panchnama of the gas shop from where accused No.27-Mohammad Ismail Mohammad Isaak Mansuri had purchased the gas cylinder for use in the explosion and to which place the accused No.75 had accompanied; the other circumstance is the point out panchnama of the location from where the accused had received the bicycle; the circumstance of the role attributed by co-accused *(approver*) (sic.), PW No.957 Zakirhussain Abduljabbar Kureshi Exh.6687 the circumstance of the accused having attended Halol camp on the basis of evidence of PW No.981 Pravinbhai Hamirbhai Kataria Exh.6835 and lastly, the evidence against the accused in the form of confessional statement of accused No.2–Imran Ibrahim Shaikh and accused No.35– Rafiyuddin Sarfuddin Kapadiya.

16.42.5. Learned advocate has assailed the point out panchnama Exh.7387, which is proved by evidence of PW No.1082 Nalinbhai Jayantilal Jadawala Exh.7386. According to the learned advocate, his evidence cannot be taken into consideration in view of the fact that when PW No.1082 Nalinbhai Jayantilal Jadawala Exh.7386 was examined, accused No.75 was not in the Court and under exemption application Exh.7383, the accused was exempted from appearance, as he was in custody in Bangalore in connection with some other case. It is pointed out that in the cross-examination, the question with regard to identity was raised and application Exh.7388 was filed, which came to be allowed, thereby, requiring the production of accused No.75 in the

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Court; however, PW No.1082 Nalinbhai Jayantilal Jadawala Exh.7386 was never summoned and therefore, there was no cross-examination on behalf of accused No.75 in this regard. It is also submitted that the panchnama is highly unreliable as the same has been executed after about 08 years of the incident. Moreover, other accused have already pointed out the very spots under a separate panchnama. According to the learned advocate, the panchnama Exh.6808 was executed for the same spot. This was the spot where the bicycles which were used for planting of bombs were stored. According to the learned advocate, as there is no seizure of any material object, hence also, this panchnama cannot be treated as a panchnama under section 27 of the Evidence Act. Learned advocate has submitted that there is variation in the number of cycles mentioned in various documents. According to him, PW No.1082 Nalinbhai Jayantilal Jadawala Exh.7386 refers to one cycle being given to Kayamuddin, whereas, the panchnama refers that accused No.75, accused No.23–Aiyaz Razakmiyan Saiyed and accused No.27–Mohammad Ismail Mohammad Isaak Mansuri had given three cycles to Kayamuddin. Similarly, the panchnama refers to three cycles in Ambar Towers.

16.42.6. Learned advocate has, thereafter, assailed the other point out panchnama where accused No.75 has pointed out the shop from where accused No.27-Mohammad Ismail Mohammad Isaak Mansuri had purchased the gas cylinder. It is submitted that it was after a period of about 08 years of the incident. Not only that, the panch witness has not identified accused No.75 in the Court nor there is any seizure for linking the gas cylinder with the accused. It is submitted that even the case of the prosecution is that when accused No.27 - Mohammad Ismail Mohammad Isaak Mansuri had entered the shop, accused No.75 was

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waiting outside and therefore only, the witness (shop-keeper) has not been able to identify the accused to be one of the purchasers of the gas cylinder. He has referred to the entire case of associating accused No.75 with the gas cylinder shop as an after-thought and as the concerned witness was unable to identify the accused, a narration is built that the accused had waited outside.

16.42.7. Learned advocate has, thereafter, assailed the evidence of the panch witness by which two locations were identified being panchnama Exh.8000 proved by the prosecution through PW No.1114 Rajesh Jadavbhai Chauhan Exh.7999. Under this panchnama, there is a voluntary disclosure whereby accused No.75 had led the panch team to House No.10, Al-Mohammadi Society and two spots in the jurisdiction of Odhav Police Station where the bomb laden cycles were parked. Again, it is submitted that there is great delay and the pointing out of House No.10, Al-Mohammadi Society, being a hide-out, was already pointed out by several accused earlier. The pointing out of the spot of bomb laden bicycle is also of no consequence, as the spot of bomb blast, which was within the jurisdiction of Odhav Police Station, was known to the public at large and therefore, there was no new discovery by the accused which was unknown to the investigation. Over and above, no seizure was made during the panchnama and therefore, it cannot be treated as a panchnama under section 27 of the Evidence Act.

16.42.8. Learned advocate has, thereafter, assailed the point out panchnama Exh.7798, which is proved by PW No.1102 Santoshsingh Vishramsingh Rajput Exh.7797. Under this panchnama, the accused has made voluntary disclosure to lead the panch team to the place in Halol where the training camp was conducted. However, previously also, on several occasions, the very spot has been pointed out under various

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panchnamas and therefore, the location of training camp having been pointed out several times, the panchnama Exh.7798 cannot be treated as a discovery under section 27 of the Evidence Act.

16.42.9. The other set of evidence is the confessional statements of accused No.2 - Imran Ibrahim Shaikh and accused No.35– Rafiyuddin Sarfuddin Kapadiya. It is submitted that though the witnesses referred to holding of training camps at Vagamon and Halol, yet, accused No.2-Imran Ibrahim Shaikh, in his confessional statement, has not named accused No.75 as one of the participants in the training camp at Vagamon. Moreover, the confesssional statement of accused No.35–Rafiyuddin Sarfuddin Kapadiya has been discarded by the trial Court itself on the ground of it having been recorded on oath. Therefore, the confessional statement of accused No.35 will not fall in the definition of evidence at all. It is submitted that confessional statements, as argued during the general submissions, would be a very weak piece of evidence so much so that on the basis of such statements, conviction cannot be recorded and at best, it can be used only for corroboration of substantive evidence. It is submitted that as the substantive evidence against accused No.75 is only the point out panchnama, it also cannot be considered as a panchnama under section 27 of the Evidence Act as there is no substantive evidence which can be corroborated.

16.42.10. Lastly, learned advocate has assailed the vital evidence in the form of deposition of PW No.957 Zakirhussain Abduljabbar Kureshi Exh.6687 to submit that considering the deposition of this witness, he is required to be treated as an accomplice and therefore, no weightage can be attached to the evidence of PW No.957 Zakirhussain Abduljabbar Kureshi Exh.6687 though PW-957 Zakirhussain Abduljabbar Kureshi Exh.6687, in his deposition, has identified accused No.75 in the Court.

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It is submitted that there is a lacunae in the case of the prosecution even on the ground that the charge framed against accused No.75 being Exh.6944 was on 21.04.2018 whereas, the deposition of PW No.957 Zakirhussain Abduljabbar Kureshi Exh.6687 was recorded on 08.12.2017.

16.42.11. Learned advocate has, thereafter, assailed the evidence of PW No.981 Pravinbhai Hamirbhai Kataria Exh.6835. According to the learned advocate, this witness though has identified accused No.75 to be part of Halol terror camp, his deposition cannot be relied upon as the identification of the accused in the Court is after a period of about 10 years and through PW No.981 Pravinbhai Hamirbhai Kataria Exh.6835 there is no test identification parade to support the dock identification.

16.42.12. In view of the aforesaid submissions, learned advocate has prayed for clear acquittal, as according to him, there is no evidence on record to support his conviction.

16.42.13. Learned Additional Advocate General for the State has submitted that accused No.75-Mohammad Rafiq is from Juhapura, Ahmedabad. He was arrested on 21.6.2016 and subsequently he has been charge sheeted. Accused No.75-Mohammad Rafiq was in judicial custody alongwith other charge sheeted accused. During the course of the trial, while the recording of evidence was going on and prosecution witness No. 957-Zakir Hussain vide Exh.6687 was deposing before the Court on the aspect of identification, the said witness identified accused No. 75-Mohammad Rafiq, while he was sitting alongwith other charge-sheeted accused.

16.42.14. It is submitted that as this witness already identified accused No.75-Mohammad Rafiq, the Court has also put note in the deposition of this witness in para no.24. Thereafter, charges were framed against

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accused No.75-Mohammad Rafiq and he adopted entire evidence adduced by prosecution, till the date on which charges were framed, against him by filing purshis vide Exh.7241. It is submitted that the defence has in futility challenged this procedure as there is no illegality done or committed when accused No.75-Mohammad Rafiq voluntarily admitted recording of evidence and production of documents, prior to framing of charges against him. It is submitted that though the trial had proceeded for a long period, however, accused No.75-Mohammad Rafiq did not mention anything about there being any illegality of recording of evidence nor any prejudice being caused to him. The entire episode has taken place at the time of arguments on behalf of accused No.75-Mohammad Rafiq.

16.42.15. It is submitted that accused No.75-Mohammad Rafiq was also involved by witness being PW No.1151-Riyazhussain Siddiqui vide Exh.8265. The witness has given statement under Section 164 of Cr.P.C. vide Exh.8266. The witness was declared hostile, but submission with regard to admissibility of the evidence of this witness, more particularly, when this witness has given statement under Section 164 of Cr.P.C., which is supported by case law. This witness has involved accused No.75-Mohammad Rafiq at different places/gathering, when accused No.75-Mohammad Rafiq as well as other accuses persons i.e. Absconder-Taukir, accused No.15-Mufti Abubasar, accused No.37-Kayamuddin Kapadiya, accused No.27-Abdul Rajik, Mujeeb (deceased) and others were present.

16.42.16. It is submitted that accused No.75-Mohammad Rafiq is one of the principal conspirators, as he was involved through confessional statement of accused No.2-Imran Shaikh. Accused No.35-Rafiyuddin Kapadiya was also involved by witness Zakir, as on disclosure made by

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him, he led police and panchas and pointed out different places, where he and other co-accused placed bomb laden cycles. Upon placing reliance on the aforesaid evidence it is submitted that, accused No.75-Mohammad Rafiq was deeply involved in hatching of conspiracy as well as executing it and ultimately achieving the object of conspiracy i.e. successfully causing bomb blast which caused large scale disaster. The role of this accused would also fall within the ambit of Section 10 of the evidence**.**

16.42.17. The submissions regarding evidence of Zakir Hussain has been made in connection with other accused also. This witness has implicated accused No.75-Mohammad Rafiq in a meeting/gathering, which took place on 27.07.2008 i.e. after occurrence of bomb blast at Ahmedabad. Upon visiting the house of maternal uncle of accused No.75-Mohammad Rafiq by accused No.27Abdul Rajik, accused No.75-Mohammad Rafiq was watching TV and appeared to be frightened for the news of facial identification of some culprits was being telecasted. The witness has also deposed that the said gathering was kept at a distance and Abdul Rajik and accused No.75-Mohammad Rafiq talked with each other. The witness further deposed that on the instruction being given by Abdul Rajik, he dropped accused No.75-Mohammad Rafiq at accused No.1-Jahid Shaikh's house. The witness also involved accused No.75-Mohammad Rafiq in a conversation (extra judicial confession) which happened in railway coach when both were travelling together to Gwalior. Accused No.27-Abdul Rajik told to witness that recce had been conducted for choosing places of bomb blasts and that accused No.27-Abdul Rajik, accused No.75-Mohammad Rafiq, Mujeeb-deceased accused, accused No.37-Kayamuddin Kapadiya and Aiyaz (Approver) had placed bomb laden cycles.

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16.42.18. The Court finds that accused No.2-Imran Shaikh, in his confessional statement at Exh.8619, has involved accused No.75-Mohammad Rafiq in Halol Camp as of the participant amongst others by referring to him "Alamjeb Afridi" and details whereof have been submitted earlier. Likewise, accused No.75-Mohammad Rafiq was also involved by accused No.35-Rafiyuddin Kapadiya in his confessional statement at Exh.8631, as one of the participants of Halol camp. The confessional statement of Rafiuddin being on oath, may only be referred to by the Court to strengthen the existing evidence against the accused.

16.42.19. The Court has considered the panchnama Exh.7387 dated 23.04.2016 drawn by Crime Branch Police, Ahmedabad City. The first part of panchnama was drawn at police station in the presence of panchas, police and accused No.75-Mohammad Rafiq. Accused No.75-Mohammad Rafiq has disclosed about his voluntariness to point out different places where he and other accused persons placed cycles which were used in bomb blasts. Pursuant to it, the second part of panchnama was drawn, whereby accused No.75-Mohammad Rafiq led panchas and police to different places such as, (1) Unique Apartment (2) Amber Tower (3) Narol Circle (4) Hanumanji Temple passing through different areas. While pointing out these places, accused No.75-Mohammad Rafiq disclosed that these are the places, where he, co-accused No.37-Kayamuddin Kapadiya, accused No.23-Ayaz Razakmiyan Saiyed (approver) and deceased accused Mujib Shaikh had placed cycles which were used for commission of bomb blasts. The aforesaid panchnama Exh.7387 was proved through panch witness being PW No.1082-Navinbhai Jayantilal Jadawala vide Exh.7386 and through Investigating Officer being PW No.1116-Kanubhai Narotamdas Patel vide Exh. 8014.

16.42.20. The Court has also considered the panchnama Exh.8000

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drawn on 26.04.2016 by Crime Branch Police, Ahmedabad City, wherein accused No.75-Mohammad Rafiq has made a voluntary disclosure to point out certain places, from where he obtained bomb and cycle as well as planted cycle and thereafter, he pointed out House of Al-Mohammadi Society and place near Gomtipur Shital Cinema and also place of vegetable market near Rajendra Park Canal i.e. place of 'Pakodi Ni Laari'. During this panchnama, accused No.75-Mohammad Rafiq also pointed out place near Khodiyarnagar opposite Mayur Dairy. The aforesaid panchnama stands proved through panch witness being PW No.1114-Rajeshbhai Jadvabhai Chauhand vide Exh. 7999 and Investigating Officer being PW No.1116-Kanubhai Narotamdas Patel vide Exh. 8014.

16.42.21. The Court finds that accused No.75-Mohammad Rafiq during panchnama Exh.7937 dated 27.04.2016 pointed out a place namely ‘Deluxe Stove Shop’, situated near Kalupur Gujarati Municipal School and has made disclosure that Abdul Rajik has purchased Gas Cylinder from the said shop. Further, Abdul Rajik has also purchased Golden Click Gas Bottle from the said shop and Mukhtyarbhai Primaswala PW-926/Exh.6574, who is doing business in the name of ‘Deluxe Stove shop. During the Test Identification Parade at Exh. 3136.

16.42.22. The Court finds that in the panchnama at Exh. 6087 dated 05.11.2008, wherein accused No.38-Mohammad Saif has made voluntary disclosure about planting of bombs, he involved accused No.75-Mohammad Rafiq. Moreover, when accused Mujib Shaikh (deceased) has made disclosure during panchnama at Exh. 6808 dated 11.08.2008, he also involved accused No.75-Mohammad Rafiq for handing over cycle by accused No.75-Mohammad Rafiq and other accused. The aforesaid panchnama stands proved through panch witness

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being No.873-Shaileshbhai Prabhudasbhai Dabhi vide Exh.6086 and Investigating Officer being PW No.1163-Mayurbhai Jagmalbhai Chavda vide Exh.8638.

16.42.23. The Court also relies upon panchnama at Exh.7798, which is point out panchnama executed on 01-05-2016 upon belated arrest of this accused. This panchnama is proved by examining panch witness being PW No.1102-Santoshsingh Rajput vide Exh.7797, who has deposed in conformity with the content of the panchnama by deposing regarding willingness of himself and his co-panch; Jyotisingh Tomar to be the panch to the voluntary disclosure made by accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed. In the first part of the panchnama, voluntary disclosure is made to reveal the place, where Terror training camp had organized in the forests of Pavagadh. In the second part of panchnama, it is recorded and as deposed by the panch witness that the accused lead the panch team within the forests of Pavagadh to places, where activities had taken place, which included the Khundpir Dargah and other sites, where different activities had taken place. Though it is argued that the same site was pointed out in other panchnama, the Court has already under the chapter of "Panchnamas under Section 27 of Indian Evidence Act" discussed the admissibility of panchnamas, which are drawn subsequently and connecting the same to the previous panchnama, discussion of which has already been done elsewhere and previous panchnama leading to recovery of material object connecting to the conspiracy to commit the crime. The Court would therefore, hold that disclosure panchnama vide Exh.7798 would fall within the bracket of Section 27 of the Evidence Act and therefore, disclosure made whether it amounts to confession or not will have to be acted upon as admissible

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evidence.

16.42.24. The Court finds that though the panch witness has been extensively cross examined, there is nothing to doubt the deposition of this witness, which in turn also is supported by evidence of the Investigating Officer; Mr. K. N. Patel (P.W. 1116/ Exh.8014). Though an attempt has been made by the prosecution that Investigating Officer was already in know of the location, however, as discussed elsewhere, knowledge of Investigating Officer would not automatically lead the Court to presume that the panchnama is fabricated by putting the information out of knowledge of Investigating Officer. Particularly, when independent panch witness has deposed to contents of the panchnama, which clearly records that it was only at the time of executing of second part of the panchnama that it comes on record about the knowledge of the accused about very place, where Terror camps were organized, which coincidentally is the same place, which were lead by the other co-accused during their respective pointed out panchnama.

16.42.25. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against a accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed. The accused has therefore played an important role in the conspiracy and has acted in furtherance in parking the bomb laden cycles at the scene of offence leading to bomb blasts The Court has therefore, no reason to interfere with the conviction recorded.

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16.43. In case of Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan (Gujarat and Maharashtra) (A-78)

(Accused No.38 in Criminal Confirmation Case No. 2/2022 and Appellant No.30 in Criminal Appeal No. 1710/2022)

16.43.1. In case of accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan, he has been convicted for various offences by the trial Court and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.43.2. With regard to accused No.78-Tausifkhan @ Atiq S/o Sagir Ahmedkhan Pathan, learned Senior Advocate Shri Mihir Desai submitted that the appellant-Tausifkhan @ Atiq is origin of Gaya in Bihar and was arrested on 13.09.2017 and was thereafter, sent to judicial custody after police custody in various offences on 02.01.2018. Learned senior advocate submitted that against the present appellant-Tausifkhan @ Atiq, the role attributed is to have remained present in Halol Camp and one meeting in Ahmedabad at the residence of Samuddin's Nana. However, with regard to his presence in Vagamon, there is no evidence against him. Moreover, he is not even made an accused in a separate trial which took place in Ernakulam Court in connection with the alleged terror camp at Vagamon.

16.43.3. Learned Senior Advocate has then referred to relevant portion of the judgment Exh.9521 on Page No.4756 and particularly Page No.4767 to submit that a wrong finding of fact is written that role of accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan is based on confessional of accused No.2-Imran Ibrahim Shaikh. However, the entire evidence of accused No.2-Imran Ibrahim Shaikh does not name the accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan having played any role.

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16.43.4. Learned senior advocate submitted that there is no credible evidence to establish the presence of appellant- Tausifkhan @ Atiq in Halol Camp as there is no Test Identification Parade of this accused, perhaps his arrest being made almost after a period of nine years. The prosecution has relied upon three chance witnesses, none of them have identified the present appellant-Tausifkhan @ Atiq to be the person who was present at the Halol Camp nor the Munjavar of the Dargah at Halol has named or identified the appellant- Tausifkhan @ Atiq. Learned senior advocate has therefore, taken us to the deposition of Munjavar PW No.1105-Idrish Gulabsha Fakir Divan, who was examined vide Exh.7923 and submitted that there is no reference to the name of appellant-Tausifkhan @ Atiq though this witness has given name and identity of other accused, who according to the witness were genuinely present at the Camp in Halol, but the name of the appellant-Tausifkhan @ Atiq is not being given which established that the presence of the appellant-Tausifkhan @ Atiq is doubtful.

16.43.5. At the outset, the submission of the accused that no one refers to his name as being present in the Halol camp, the Court may refer to the confessional statement of accused No.2-Imran Shaikh at Exh.8619, where clearly accused No.78-Tausif is shown to be present at the Halol camp. This will have to be viewed in conjunction with the disclosure panchnama (Exh.7398) drawn at the behest of the accused about holding of the terror training camp at Halol.

16.43.6. Another evidence which is relied upon is a point out panchnama at Exh.7392, which is attributed to the present appellant-Tausifkhan @ Atiq. According to learned senior advocate, this point out panchnama cannot be treated as a panchnama under Section 27 of the Evidence Act as it is the 7th panchnama in the line and such panchnama

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has not led to any discovery of a new fact as the Investigating Officer already had the knowledge of this place. Learned senior advocate has therefore, referred to panchnama at Exh.6480, which is the point out panchnama attributed to accused No.1-Jahid and Exh.6443 a point out panchnama attributed to accused No.35- Rafiyuddin, both of which were undertaken much prior to the point out panchnama at Exh.7392 by the present appellant-Tausifkhan @ Atiq.

16.43.7. Exh.7391 is the panch witness, who was examined as PW No.1083-Mahendrabhai Vishnubhai Patil to prove the point out panchnama at Exh.7392. Learned senior advocate submits that this witness though has narrated the activities which were recorded in the panchnama and repeated by the panch witnesses in his deposition will have to be excluded from being an admissible evidence.

16.43.8. The prosecution has relied upon the evidence in the form of Exh.8631, which is the confessional statement of accused No.35-Rafiuddin. It is submitted by the defence that even if the confessional statement is regarded as an evidence, it cannot be treated as an evidence against the appellant-Tausifkhan @ Atiq as even as per the statement, Rafiuddin was at the Halol Camp for only two hours and therefore, within these two hours, it is highly unlikely that he would have come across with all the participants of the Halol Camp and would know them by name despite meeting for the first time.

16.43.9. Referring to Exh.6480, a point out panchnama of accused No.1-Jahid, is taken into consideration still this panchnama does not refer to any activity undertaken by the appellant-Tausifkhan @ Atiq as in the very panchnama in para-2, acts have been attributed to the co-accused. It is submitted that in para-2, the name of the appellant-Tausifkhan @ Atiq does not appear to have undertaken any activity

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including delivering of religious discourse or instigation.

16.43.10. Learned senior advocate has thereafter, referred to Exh.7053, which also is a point out panchnama at behest of accused no.16-Abbas s/o Umar Sameja and submit that in this point out panchnama also, no role is attributed to the appellant-Tausifkhan @ Atiq for delivering any lecture or instigation, but the same has only been attributed to one of the accused Safdar Hussain @ Hussainbhai @ Iqbal s/o Jaharul Hasan Nagori. Similarly, learned senior advocate has pointed out to Exh.7252, point out panchnama of accused No.66-Mohammad Safiq @ Dadabhai @ Thakur @ Rafiq @ Ali S/o Abulbari Ansari, Exh.6528, point out panchnama of accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/o Babukhan Maniar, Exh.7798 point out panchnama of accused No.75-Mohammad Rafiq @ Javed @ Aslam Jeb Afridi S/o Maskur Ahmed and Exh.7392 point out panchnama by accused No.78-Tausifkhan @ Atiq S/o Sagir Ahmedkhan Pathan and submitted that in all these panchnamas there is no allegation of delivering provocative speech attributed to the appellant-Tausifkhan @ Atiq though all these panchnamas attributes delivery of provocative speeches to co-accused Nagori. It is also submitted that the wordings contained in all the aforesaid point out panchnamas are so identical to each other that actual execution of the panchnama can be doubted.

16.43.11. In this connection, the Court finds that such submission need not be accepted at the outset as each of the panchnama has been executed in presence of different panch witnesses at different period of time and have been proved before the Court by examining the different panch witnesses and confirmed by the concerned Investigation Officer. The Court also finds that when panch witnesses were being cross-examined, there is no line of cross-examination to suggest that the panch

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witnesses were the stock panch witnesses and could create doubt on the actual execution of panchnama.

16.43.12. Submission of learned advocate entirely proceeds on the footing of comparative evidence with the co-accused person namely point out panchnama regarding the delivery of provocative speeches though mention the name of co-accused person, but does not mention the name of the present appellant- Tausifkhan @ Atiq. However, this is not an argument sufficient to overlook the evidence which otherwise is available on record and which supports the case of the prosecution of the appellant-Tausifkhan @ Atiq having delivered provocative speeches.

16.43.13. Learned Senior Advocate has argued that though the Court has believed that this accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan was present in the meeting at Ahmedabad at residence of Samsuddin's Nana, there is no credible evidence in this regard.

16.43.14. It is submitted that there are witnesses, who have deposed about such meetings and also named, who participated in these meetings, but accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan is not named. Learned Senior Advocate has referred to deposition of PW No.957-Zakirhussain Abduljabbar Kureshi at Exh.6687 and PW No.1141-Aiyaz Razakmiya Saiyed at Exh.8191, both of whom have extensively mentioned about this meeting, but both the witnesses do not name accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan to be part of the meeting.

16.43.15. It is also submitted that entire theory of a meeting at residence of Samsuddin's Nana is a got up theory, as there is no evidence to connect accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan, a different set of evidence in the form of point out

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panchnama is got up against accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan being Exh.7385. This panchnama was executed on 05-12-2017. Though for the first time, the place was mentioned to the Investigating Officer by this witness; PW No.957-Zakirhussain Abduljabbar Kureshi way back in 2008, as also by way of Section 164 statement of only witness; Riyazhussain at Exh.8266, but was declared hostile. Therefore, much before 2017, the prosecution was aware of this place, but waited till 2017 to carry out point out panchnama at Exh.7385 by the present accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan. This creates doubt of this evidence.

16.43.16. Learned Senior Advocate has submitted that even if the panchnama at Exh.7385 is proved by the panch witness, the only admissible part is his pointing to the house, but no one has entered the house and there is nothing to indicate how accused no.78-Tausifkhan @ Atik S/O Sagir Ahmedkhan Pathan has played any role.

16.43.17. Moreover, Exh.9263 is the evidence of defence witness No.1, who is the occupier of the said house and he has deposed that no such meeting ever took place.

16.43.18. Learned Additional Advocate General for the State has relied upon the confession statement of accused No.2-Imran Shaikh vide Exh.8619. It is submitted that detailed submission regarding the confessional statement of accused No.2-Imran Shaikh has been made earlier. It is submitted that accused No.2-Imran Shaikh has implicated accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan in his confessional statement as one of the participants of Halol Camp by referring to him as ‘Tauseef’.

16.43.19. The prosecution has also relied upon the evidence of witness Idrish vide Exh.7923. It is submitted that detailed submission regarding

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the evidence of Idrish has been made earlier. It is submitted that the witness has also given his statement under Section 164 of Cr.P.C., which is on record at Exh.7924. The prosecution has further submitted that this witness in his deposition has referred to accused No.78-Tausifkhan as the person who was brought to him by a police officer named Zala Saheb in the year 2007.

16.43.20. The Court may discuss the evidence of panchnama Exh.7385 drawn on 05.12.2017 by Crime Branch Police Station. First part of panchnama is drawn at police station in presence of police and panchas as well as in presence of accused No.78-Tausifkhan. On disclosure of accused No.78-Tausifkhan about he intending to say and show something relating to July, 2008 bomb-blast of Ahmedabad and also indicating about showing place. Second part of the panchnama is drawn and as per instruction and direction given by accused vehicle was drove and accused No.78-Tausifkhan took all concerned to a place Dariyapur. Tambu Choki and going ahead of it, accused No.78-Tausifkhan pointed out house of two floors where meetings were held. The place shown by accused No.78-Tausifkhan was found open and person named Amid Husenbhai Shaikh resident of same house i.e. Dariyapur, Limbdi Chawk, Dhalgarvad was also present. Panchnama Exh.7385 is proved through panch witness Exh.7384 and investigating officer Exh. 8576.

16.43.21. The Court has also perused the panchnama Exh.7392 drawn on 01.12.2017 by Crime Branch Police, Ahmedabad City. The first part of panchnama was drawn at police station in presence of police, panchas and accused No.78-Tausifkhan. During the course of Panchnama accused No.78-Tausifkhan voluntarily disclosed that he could point out the place of the camp if he is taken near to Pavagadh. Pursuant to it, the second part of panchnama was drawn and accused No.78-Tausifkhan

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was taken towards Halol-Pavagadh Road through Vadodara Express. Near Halol Crossroads, accused No.78-Tausifkhan directed to stop the vehicle and got down from the vehicle with police and panchas and, thereafter, he directed vehicle to drove further. After driving vehicle further, accused No.78-Tausifkhan led the concerned persons to Khundpir Dargah. Inside the Dargah, a person named Gulabsha was found present. He also pointed out the Dharamshala inside Dargah and disclosed that in the year 2008, accused No.78-Tausifkhan and his companions have stayed at this place. He also pointed out another Dharamshala, the handpump, the place where they used to bath and offer Namaz. Thereafter, from that place accused No.78-Tausifkhan drove all concerned persons towards Minar Masjid, where a person named Narvatbhai was found working. Thereafter, accused No.78-Tausifkhan also led them to a place where makeshift tents were put up. Furthermore, he also pointed out Helical Vav and few other places as described in the Panchnama Exh.7392. The aforesaid panchnama stands proved through panch witness vide Exh.7391 and investigating officer vide Exh.8576.

16.43.22. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.78-Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan, where the accused has participated in the terror camp at Halol as a part of conspiracy and has also remained present in the meetings at Ahmedabad which is established by the prosecution on the basis of the evidence as discussed. The Court has therefore, no reason to interfere with the conviction recorded.

16.44. In case of Fazle Rehmaan @ Rafik @ Salauddin S/O

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Musaddik Durrani (Maharashtra) (A-45)

16.44.1. In case of accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.44.2. Learned advocate submitted that Learned advocate Mr. Somnath Vats appears for accused Nos.1, 3, 13, 26, 32, 45 and 70.

16.44.3. Learned advocate Vats has initiated his arguments for accused No.45-Fazal-E-Rehman @ Salauddin @ Rafik Musaddikkhan Durani, who has been awarded capital punishment. He submits that even as per the case of prosecution his name does not appear in any of the confessional statements. His presence is not there in any of the terror camps at Vagamon, Halol or meetings at Ahmedabad. Moreover, there is no role in planting of bomb.

16.44.4. The appellant was arrested in present offense by way of transfer warrant as he was already in custody in Bombay.

16.44.5. The role attributed to the appellant is purchase of various hardware articles like nails, nuts and bolts and galvanized metal sheets and purchase of cloth. Moreover, some role in staying or renting of premises, knowledge of the activity of co-accused, stay at three hotels with co-accused and seen with offensive vehicles cars in Ahmedabad.

16.44.6. It is submitted that all these circumstances are established on very weak pieces of evidence. The nature of evidence are the ‘pointing out’ panchnama and test identification.

16.44.7. With regard to association of appellant with the car, it is submitted that evidence in this connection is the evidence of Vanaz Fuel Pump, whose employee was examined as witness and the bill book was seized by investigating officer. He drew attention to bill at Exh.6501

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pertaining to vehicle with registration number 9719 and submitted that such bill is not an evidence to connect vehicle with fuel station as there is a mismatch in the rate of fuel, the quantity filled and overall payment made. Other issue raised is that employee of fuel station PW No.856-Shirishkumar Thakorbhai Gami was examined on 02.02.2017 vide Exh.6012 whereas, bill at Exh.6501 was produced on record by a list at Exh.6493 on 09.08.2017, therefore, after the evidence of PW No.856-Shirishkumar Thakorbhai Gami. This witness does not refer to Exh.6501 though it is a bill from the same fuel station. Another argument is that there is no explanation of the investigating officer as to what information they possessed about connection with Vanaz. As the police witness PW No.1157-Rajendrasinh Ranjitsinh Sarvaiya, who was examined vide Exh.8566 only states that he was assigned the duty to collect the bill from Vanaz by his superior Shri Parmar and said Shri Parmar is either not examined or has not revealed anything about it.

16.44.8. One more reason why Shri Vats argues that the connection between the accused and Vanaz fuel pump remains unestablished is the broadcast of the detail of vehicle was only for one of the vehicles, whereas there may be some clue from during investigation but no other clue to involve the other vehicles. Therefore, there is no reason for investigating officer to take accused No.45 (Fazal-E-Rehman) to Vanaz. However, it is pertinent to observe that the accused when arrested was subjected to interrogation and the investigating officer already had the details of the cars which were involved in the offense and their credentials. The natural cause was to trace the car movement with the help of fuel station which in the present case was a gas filling.

16.44.9. In this regard, this Court may refer to evidence of Investigating Officer PW No.1155-Narayansinh Bhavansinh Parmar,

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who was examined vide Exh.8517. In para-31 he refers to arrest of accused no.45 (Fazal-E-Rehman) on 12.11.2008 and remand upto 24.11.2008. On 17.11.2008, as yadi (Exh.3083) forwarded to Executive Magistrate, Surat to hold Test Identification Parade of accused No.45 with other two accused through witnesses Radheshyam, Jayesh Manu, Abbas Ibrahim and Anwar Ali and Test Identification Parade was organized on 18.11.2008 (Exh.3084). Exh.3086 is the Test Identification Parade which is held on 18.11.2008 and concluded at 13:00 hours. Therefore, the real identification of accused No.45 was through these witnesses.

16.44.10. Learned advocate appears to have been confused with the Test Identification Parade held at behest of the hotel staff. It is a fact that on 18.11.2008 the accused No.45 as a part of investigation was taken to the hotels however, the same is done after the Test Identification Parade through the witnesses for sale of hardware and cloths. Moreover, the identification at the hands of the witnesses; employees of the hotel is of no consequence as it was the accused who had led the panchas to the hotels where the panchnamas were also drawn.

16.44.11. So far as the arguments of defense that the accused was taken around the town without covering his identity, the panchnamas drawn do indicate that the face of the accused was covered when being taken for the Test Identification Parade.

16.44.12. At this stage, learned advocate has relied on two decisions of the Apex Court, first being in case of ***Prakash Nishad @ Kewat Zinak Nishad v/s. State of Maharashtra, reported in, 2023 (16) SCC 357*** relying on para-44 on the issue of Test Identification Parade emphasizing the opportunity available to witness to observe the accused and where accused has been shown to witness even by photo, the Test

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Identification Parade is not of any use to prosecution.

16.44.13. He has argued that the witness has referred to presence of police during Test Identification Parade therefore, any narration in the panchnama including the identification part would be hit by Section 162 of the Cr.P.C.

16.44.14. Further, emphasizing the point, learned advocate has referred to decision of Apex Court in the case of ***Ramkishan Mithanlal Sharma v/s. State of Bombay, reported in, AIR 1955 SC 104***, referring to para-08 and 14. According to learned advocate, anything that transpires during the execution of the panchnama including the fact of pointing out anything or recovery or discovery, anything even if it is by a signed language then also, it is a communication recorded in the panchnama executed in presence of the police and thus, hit by Section 162 of the Cr.P.C. this is an interesting argument is advanced to interpret the panchnamas drawn be it a test identification panchnama, pointing out panchnama or discovery panchnama etc. If this argument is to be accepted and applied to facts then it would mean that the accused during executing the panchnama leads the team to any place or premises while signaling the directions to reach the place then the recording of the entire process to reach the spot will become a statement of fact hit by Section 162 of the Cr.P.C. Such a narrow interpretation rendering Section 27 of Indian Evidence Act meaningless is not envisaged by the Legislature.

16.44.15. The main thing the Court may consider is that, the judgment in case of **Ramkishan** (**Supra**), where the facts of the case pertain to executing of the Test Identification panchnama in the presence of the police. Therefore, the observation made by the Apex Court in para-20 and 21 would be more relevant for our case. The Apex Court observes that in para-21 as under:-

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"21. This argument would have availed learned Attorney-General if after arranging the test identification parade the police had completely obliterated themselves and the panch witnesses were left solely in charge of the parade. The police officers would certainly arrange the parade, would call the persons who were going to be mixed up with the accused in the course of the parade and would also call the Panch witnesses who were to conduct the parade. But once the Panch witnesses were called for the purpose the whole of the process of identification should be under the exclusive direction and supervision of the Panch witnesses.

If the Panch witnesses thereafter explained the purpose of the parade to the identifying witnesses and the process of identification was carried out under their exclusive direction and supervision, the statements involved in the process of identification would be statements made by the identifiers to the Panch witnesses and would be outside the purview of sec. 162.

In the case of the identification parades in the present case however the police officers were present all throughout the process of identification and the Panch witnesses appear only to have been brought in there for the purpose of proving that the requirements of law in the matter of holding the identification parades were fully satisfied. Not only were the police officers present when the identifying witnesses were brought into the room one after the other and identified the accused, they also prepared the Panchnama, read out and explained the contents thereof to the Panch witnesses, and also attested the signatures of the Panch witnesses which were appended by them at the foot of the Panchnama.

The whole of the identification parades were thus directed and supervised by the police officers and the Panch witnesses took a minor part in the same and were there only for the purpose of guaranteeing that the requirements of the law in regard to the holding of the identification parades were satisfied. We feel very great reluctance in holding under

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those circumstances that the statement, if any, involved in the process of identification were statements made by the identifiers to the Panch witnesses and not to the police officers as otherwise it will be easy for the police officers to circumvent the provisions of sec. 162 by formally asking the Panch witnesses to be present and contending that the statements, if any, made by the identifies were to the Punch witnesses and not to themselves.

We are therefore of the opinion that the test identification parades in regard to the accused 4 which were held between the 16th January and the 22nd January 1952 attracted the operation of sec. 162 and the evidence of identification at those parades was inadmissible against accused 4."

16.44.16. Accused-Fazal-E-Rehman is also known by alias name and prosecution has sought to prove this by producing on record the registers of the three hotels being Exh.6517 of Hotel Narmada for period between 02.07.2008 to 04.07.2008, Hotel Harimangla, Exh. 6516 between 04.07.2008 to 05.07.2008 and hotel Reven Exh.6518 between 08.07.2008 to 09.07.2008.

16.44.17. He then referred to point out panchnama at Exh.6857, which pertains to travel of appellant from Pune to Ahmedabad or Pune to Baroda. Three tickets were seized and on such tickets, two different names are reflected, Rafik and Prateek. Therefore, prosecution has not been able to clarify about the names on ticket. Moreover, the very ticket bears a mobile number which the investigating officer ought to have investigated the mobile number, such investigation could have pointed towards the innocence of accused and therefore, the investigation does not appear to be fair. Moreover, there is complete mismatch of travel dates and the date of entries made in the hotel register as also the destination. There is no explanation by prosecution that though the tickets of travel on dates between 04.07.2008 to 09.07.2008 from Pune

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to Ahmedabad or Baroda how come the presence of accused is shown at Bharuch through the entry in hotel register, therefore, only fact is believable.

16.44.18. Another aspect argued is the connection between the silver coloured car with accused which is also doubtful as the theft of the vehicle is on 07.07.2008 from Mumbai, but on same day accused is shown to travel from Pune to Ahmedabad.

16.44.19. It is also argued that the prosecution has brought on record the travelling of the car from Mumbai to Ahmedabad on the basis of the communication of the investigation officer which National Highway Authority of India. He referred to Exh.5322, the letter of investigating officer and Exh.5323, the reply of National Highway Authority of India. He drew attention of the Court to a particular entry pertaining to vehicle No.2908. This vehicle was shown to be seized on 27.07.2008 however, the entries show movement of the vehicle No.2908 on Expressway on 30.07.2008 clearly indicating that the vehicle No.2908 entry given to prosecution is of a different vehicle. Therefore, qua other vehicles also in absence of the registered series the case of prosecution of vehicle movement is not believable.

16.44.20. One more argument on the issue of evidence of Exh.5323 pertaining to other vehicle also cannot be accepted as the admissible evidence is that Exh.5323 is a computer system generated entry-exit details of specified vehicles and therefore, would need Section 65B of Information Technology Act certificate. There is no such certificate under Section 65B of the IT Act. Therefore, clearly evidence is inadmissible. He has referred to PW No.802-Kamlesh Ramniklal Vasant, who was examined vide Exh.5321 who is the representative of National Highway Authority of India and admitted Exh.5323 to be a computer

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printout. Even from the evidence of investigating officer-Chavda, Exh. 8638 in para-53 of cross he has been questioned about the vehicular movement of specified vehicles between Ahmedabad and Baroda, but no investigation for travel between Mumbai to Ahmedabad or Baroda, though there were several toll booths in between. Therefore, the investigation is left halfway. Therefore, there is a gap in investigation for bringing the vehicles from Bombay to Ahmedabad or Surat or using the same for the crime.

16.44.21. In the opinion of the Court, the fact that the vehicle was used and the same was theft vehicle from Mumbai is established, on basis of evidence and therefore, the travel of the vehicle from Mumbai to Ahmedabad is really not a relevant circumstance. Moreover, the movement of the car on highway is not to be associated with the movement of the appellant with the car on the highway as the case of the prosecution is that the work of procuring the vehicle was with the other co-accused.

16.44.22. Thereafter, learned advocate has submitted on the issue of hideouts allegedly used as a part of conspiracy. Prosecution relies on the pointing out panchnama at the behest of accused No.45-Fazal-E-Rehman. Exh. 6816 on 12.12.2008 of the houses at Sherpura and Lukman Society, it is argued that there is inconsistency in theory of prosecution itself. In Exh.6540 a panchnama dated 02.09.2008 by co-accused Mohammad Sajid arrested on 16.08.2008, stated that Sherpura house was rented by co-accused Taukir. Moreover, the investigating officer while executing Exh. 6816 did not enter the premises to recover a discover any article and the previous panchnama at Exh.6540 was already within knowledge of same investigating officer who executed Exh.6816 on 12.12.2008, therefore, no new fact is discovered by

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investigating officer. Therefore, the panchnama at Exh.6816, taking the investigating officer to Sherpura house and then to Lukman, where these accused meet Mohammed Sajid is no new discovery. He has referred to decision in case of ***Renuka Prasad v/s. The State Represented by Assistant, Superintendent of Police (supra), reported in, 2025 SCC OnLine SC 1074***, wherein the Supreme Court has held in para-39 as under:

> *"39. The clothes and machetes allegedly, worn by A5 & A6 and used by them to commit the crime, were recovered on the confession statement of A3, the alleged conspirator. True, there were blood stains on the clothes and the machetes, which were found to be of 'O' group, matching the blood group of the accused as found from the post-mortem report. A3, we have pertinently observed is not alleged to have committed the crime proper, i.e. the hacking of the deceased victim. There is also no independent evidence to prove that A5 & A6 handed over the clothes and the machetes to A3. The confession statement of A3 that the clothes and machetes were handed over to him by A5 & A6 is the history, which has to be cogently proved by evidence aliunde. The fact discovered is the concealment of the clothes and the machetes, by A3, which fact of concealment has to be connected to the actual crime. In the present case neither are the clothes or machetes connected to A5 & A6 who are alleged to have committed the crime nor is A3, an alleged conspirator even accused of having been involved in the crime proper, that is the murder of the deceased. Further, it was not even verified whether the clothes recovered fit A5 & A6, in which context they owe no explanation insofar as the blood found on the clothes. Confessions allegedly made by A1 regarding the sites where the conspiracy was hatched and the money transacted does not lead to any discovery of fact. The narration about the conspiracy and the money transactions are not admissible and the mere pointing out of*

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two sites does not lead to any discovery of fact, when the narration is eschewed."

16.44.23. PW No.1084-Saeed Mohammad Hayat, who was examined vide Exh.7395 is the witness for renting of the premises at Lukman-33 and Test Identification Parade of Fazal-E-Rehman through this witness. It is argued that though there is reference to an individual name "Saad" and "Makbul" who played role in renting, there is no investigation qua these persons.

16.44.24. Similarly, for the premises of Sherpura PW No.1138-Gulamhussain Abdulraseed Pathan, who was examined vide Exh.8165, who is also witness for the Test Identification Parade vide Exh.3165. This prosecution witness connects Rafik with the silver car but his deposition is not reliable as he mentions three persons in Exh.3165, but in deposition he says that only one person is responsible for hiring. Therefore, there is a discrepancy in the version of same witness.

16.44.25. He has argued that even if silver car which was seized there is no immediate investigation for finding contemporaneous documentary evidence connecting the vehicle with some identity papers.

16.44.26. Learned advocate has again submitted that investigation officer has not taken care of following the leads to investigate important and relevant aspects. It is submitted that owner of one of the premises at Sherpura is PW No.1138-Gulamhussain Abduraseed Pathan, who was examined vide Exh.8165 specifically mentioned about been contacted by mobile phone on at least two occasions, once even after the blast by Rafik also known as Fazal-E-Rehman. The investigating officer ought to have investigated the mobile numbers to ascertain that Rafik is same as Fazal or Rafik is a separate individual. This witness did mention in deposition about his phone being taken and all his mobile numbers were

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given to investigating officer. Therefore, failure to investigate has left a gap in correct identity of accused Fazal.

16.44.27. In this regard, the Court is of the opinion that when the person was identified during the test identification parade during investigation and even without name he is identified with conformity, there was no need to inquire about the mobile connectivity of the witness with the accused. This witness also connects the accused with the Red Wagon R Car in para-4 of the deposition.

16.44.28. It is argued that though attempt is made to connect the appellant with the Wagon R Car, the witness in para-3 has stated about presence of Rafik on 8th or 9th of July, 2008, but at the same time the travel date on the ticket of Neeta Travels from Pune is also of approximately same day. However, the Court finds that Exh.6800 the tickets show the travel date of 01.07.2008, 07.07.2008 and 18.07.2008, and therefore, do not overlap with the date mentioned by PW No.1138-Gulamhussain Abduraseed Pathan.

16.44.29. Learned advocate submitted that the test identification by witness Nazir in Exh.3165 is also doubtful though according to Gulamhussain, it was Nazir who took Fazal-E-Rehman to Gulamhussain for renting the premises. Nazir did not identify the three individuals for renting, but as individuals who used to visit for tea. In this connection, if the content of Exh.3165 is perused, then it is recorded that the reason why Nazir was able to identify them was because they used to regularly visit to have tea at his tea stall. Hence, he had sufficient opportunity to observe the accused whom he identified.

16.44.30. It is also argued that there is inconsistency in connecting the accused with the car as according to PW No.1138-Gulamhussain Abduraseed Pathan, when accused came to give deposit, he referred to

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Silver Wagon R car and thereafter, to Red Wagon R Car on two three days prior to blast. This in itself is not sufficient to doubt the deposition of witness or substantiate discrepancy as the two cars seen by witnesses were several days apart. Moreover, no question are put in this regard in the cross-examination.

16.44.31. Learned advocate has thereafter, referred to PW No. 947-Hamidbhai Umarbhai Memon, who was examined vide Exh. 6640., who is a petrol pump owner, who connects the accused to the vehicle as he came there to fill petrol. According to learned advocate, how name of Hamid as witness surfaced is not answered by investigation. It is submitted that the Investigating Officer ought to have interrogated the pump attendant as a witness, who is more likely to interact with accused, when he filled petrol and not this witness; owner of pump. Moreover, the fuel was filled on 15.07.2008 to 17.07.2008 whereas this accused is shown travelling from Pune to 18.07.2008 and therefore, he is not the accused who went to petrol pump. The Court has considered the deposition of this witness who clearly deposed that this accused had come to his pump to fill petrol in Wagon R Car 9718 between 15.07.2008 to 17.07.2008. He has also produced the bill book in xerox and has produced from his bill book the dates mentioned by this witness does not overlap with the dates mentioned in the ticket of Neeta Travels.

16.44.32. The Court may refer to PW No.948-Irfan Gulammoyoddin Shaikh, who was examined vide Exh. 6642, who runs a garage near the petrol pump. The accused Fazal-E-Rehman had led the police to the garage and PW No.948-Irfan deposed that he had repaired the car for Fazal-E-Rehman. This prosecution witness had taken Fazal-E-Rehman on his scooter to the place where the car broke down at the bungalow in Sherpura. It is this witness, who informed accused that the tank had no

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petrol and hence, he asked the accused to get the petrol filled.

16.44.33. Learned Advocate has thereafter submitted regarding the renting of master house and connection with Fazal-E-Rehman, Exh.6544 is a pointing out panchnama executed on 28-11-2008. The prosecution relies on this panchnama that the master house was rented by Fazal-E-Rehman, it is submitted that panchnama at Exh.2806 was executed on 04-09-2008, which also is a pointing out panchnama attributing accused No.63; Tanvir with the role of renting of the master house. Further, there is no recovery or discovery from this master house to be treated as panchnama under Section 27 of Indian Evidence Act.

16.44.34. He further submitted that prosecution has executed Test Identification Panchnama Exh.3108 through the owner and the son of the owner of master house, and in this Test Identification Panchnama, another co-accused Kayamuddin was identified. Therefore, the theory that the house used for master house was rented by the appellant; Fazal-E-Rehman is under doubt.

16.44.35. He also pointed out one more lapse of investigation as Exh.2851 in the pointing out panchnama by Tanvir pointing out 8 P.C.O. from where he has contacted Rafik on a particular mobile number. The investigation failed to follow the lead of the mobile number, which could have ascertained whether the individual contacted by Tanvir was actually Rafik and that Rafik and Fazal-E-Rehman are the same person.

16.44.36. Learned Advocate has thereafter argued regarding renting of the premises known as ‘Ashoka Muse’. This premises was rented by Accused No.51-Dr.Bagvan, who is acquitted. Three witnesses examined in this connection is the owner PW No.967-Reza Aamad Nabatiyan, Exh.6780 and two agents/ brokers PW No.965-Akhtarmohammad Hanif Memon, Exh.6776 and PW No.966-Asfaq Ahmed Saiyed, Exh.6777.

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16.44.37. PW No.967-Reza Aamad Nabatiyan, Exh.6780 in his deposition has deposed that he had rented the premises 'Ashoka Muse' flat to Anwar Bagvan through Agent; Akhtar Memon and an agreement for 11 months was made, when he first met Bagvan there was another boy with him whom he introduced as his brother. He was paid monthly rent for 10 months and for 11th month, he was to deduct from deposit, but due to reasons conveyed to him about children's exam and Ramzan, he extended the period by two months and before expiry of said two months, the Bombay Police ordered to seal the flat. He was called for Test Identification Panchnama and has identified Asif Anwar Husain as the boy who accompanied Anwar Bagvan.

16.44.38. Thereafter, the Court has perused deposition of PW No.965-Akhtarmohammad Hanif Memon, Exh.6776, who acted as a broker, his deposition is identical to that of PW No.967-Reza Aamad Nabatiyan, Exh.6780 and has identified accused; Asif. Similarly, evidence of Agent; PW No.966-Asfaq Ahmed Saiyed, Exh.6777 is also consistent with house owner Reza and broker Akhtar. In Test Identification, he has identified the boy accompanying Anwar Bagvan.

16.44.39. All the three witnesses are consistent in their depositions that they were informed about Mumbai Police activity and recovery of Jihadi material and bomb making material from that house which is indicating a larger conspiracy. The Court is making this observation in view of the fact that there was some coordination between the three groups, the Indian Mujahideen of Azamgarh, Indian Mujahideen Pune group and SIMI, Gujarat.

16.44.40. It is submitted that the panchnama Exh. 6857 was drawn on 21.12.2008 by Crime Branch Ahmedabad city. The first part of panchnama was drawn at Police station in the presence of A-45, wherein

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he volunteered to point out a place, from where he booked ticket for travelling from Puna in the month of July i.e. on 01.07.2008, 07.07.2008 and 18.07.2008. During the course of the second part of the panchnama, A-45 led Police through BMW's showroom and upon his instruction, the police vehicle was stopped, where they found around 10 to 11 offices of travel booking. A-45 also pointed out office namely 'Nita volvo'. On entertaining into the office, person namely Rahul Kumar Parriyani was present, who gave details about travel of A-45 on 01.07.2008, 07.07.2008 and 18.07.2008. The witness has also stated that A-45 had booked tickets of luxury bus for Vadodara and Ahmedabad. During the second panchnama, xerox copies of tickets dated 01.07.2008, 07.07.2008 as well as18.07.2008 were produced. The carbon copy of tickets were collected from a travel office and the name of travel company is 'A K Travels', where panch witness found showroom of BMW. It is submitted that Panch witness being PW No.986-Akbar Sorathiya, who was examined vide Exh. 6856 for the purpose of proving panchnama Exh.6857. For proving aforesaid pnchanama, Investigating officer being PW No.1154-Usha Rada has been examined vide Exh. 8340.

16.44.41. However, learned Advocate for the accused has argued that this evidence cannot be treated as an evidence against accused; Fazal-E-Rehman.

16.44.42. Learned advocate has referred to Exh. 2816 which is a panchnama though submitted as being a point out panchnama, but in fact being a panchnama of seizing the bill book of purchase of cloth. According to learned advocate, the muddamal Pavti bears date of 29.08.2008, whereas the panchnama is drawn on 30.08.2008 referring Bill No.67 (Exh. 6027) by referring to Exh.6026 deposition of PW

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No.861-Ramesh Manelal Jindal, who was examined vide Exh.6026, who is working at Jindal Cloth, argument is advanced that, it is the prosecution witness, who has given page number on bill book at the time of preparing panchnama. In the opinion of the Court, the deposition actually mentions that at the time when the bill book was handed over the page numbers appearing were written by him. Same is the meaning if the panchnama is also perused in so far as the date is concerned, the muddamal pavti does contain a date of 29.08.2008, whereas the panchnama is on 30.08.2008. However, the Court is of the opinion that this mismatch does not make the seizure doubtful, especially where fact of seizure of the bill book and its time is established by way of oral evidence of witnesses and the panchnama.

16.44.43. Learned Additional Advocate General for the State has relied on the evidence of witness being PW No.971-Rahul Parriyani vide Exh. 6799. The witness was from Kolhapur Maharastra and working in a travel company name 'Nita volvo' at Puna. The witness was booking tickets of Nita Travels and Patel Travels. This ticket is in two copies, whereby original ticket handed over to the the concerned passenger and the he kept remaining copy (carbon copy) in his record. He deposed that the police came to his office on 21.12.2008 consisting of one lady officer, two three other officers, two persons in civil dress and one accused were present. The name of the accused is accused No.45-Fazle Rehman. He further deposed that the police inquired about the procedure of ticket booking and mentioned three dates. Thereafter, he checked tickets and found carbon copies of it, where upon he produced carbon copy of three tickets, which was booked in the name of Rafik. The witness identified three tickets- at Serial No.1 to 3 of muddamal list of SC No. 393 of 2009. The witness has also identified his handwriting on

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a tickets at Exh. 6800 dated 01.07.2008, 07.07.2008 and 18.07.2008. He deposed that due to lapse of 9 years, he was not in a position to identify the person, who was brought by police, if he was shown to him.

16.44.44. It is submitted that as discussed earlier in the evidence of A-28 and A-14, A-45 had also rented the house of PW-1138/Exh.8165, Gulam Pathan at Sherpura and stayed in the house in the name of 'Rafik Shaikh'. He deposed that that A-45 met him subsequent to the 2nd day 7th or 8th of July, 2008. According to this witness, A-45 came with silver coloured Wagon R No. GJ-06. He further deposed that two to three days prior to the bomb blast, he has seen Rafik in possession of a red-colored Wagon R. He also identified A-45, A-44 and A-43 as persons who stayed in his house. It is submitted that if the evidence adduced against A-37 concerning the procurement of multiple SIM cards through the utilization of forged documents, is perused, it appears that the prosecution has established that A-45 and other accused were in contact with each other during the conspiracy. Moreover, if evidence against accused No.14-Sajid Mansuri is perused, then he made voluntary disclosure and pointed out a house of Gulam Pathan i.e Sherpura. The panchnama at Exh.6540 was drawn, wherein certain articles were found and FSL Officer vide Exh. 5963 had opined that there was a presence of Ammonium nitrate and petroleum hydrocarbon Oil.

16.44.45. The prosecution has also relied upon the deposition of PW-962/Exh.6747, who is a salesman of Metro Shoes company has implicated accused No.63-Mohammad Tanvir and A-45 as his customer, who used to purchase from his shop. The witness was unable to identify both the persons due to lapse of time. However, this evidence connects both the accused to be in company of each other during the proximate time. In view thereof, A-45 was deeply involved in carrying stolen

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motor cars used for loading bomb in it for the purpose of bomb blast. A-45 was also implicated in flat, situated at Ashoka Muse, Puna and was also concerned with purchase of different articles used for the purpose of preparing bomb, some of bombs were also recovered from the stolen motor cars which were used for loading bomb, which remained unexploded. Evidentially material against A-45 connects him with different other conspirators as like A-43, A-44, A-37, A-28, A-69, A-70 and A-63.

16.44.46. It is submitted that the defense has raised the issue with regard to Challan/Billbook, wherein reference is made specifically to Indigo Cloth, whereas, the cloth Takas recovered from the vehicle comprised Yellow, Maroon, Brown and Blue colours, however, all Takas are not of Indigo colour. If the cross examination of witness PW-861/Exh.6026 Ramesh Bhai Jindal, who is a partner of 'Jindal Silk Mill; is perused, wherein he had identified the Indigo cloth being sold at his shop. This witness in Para No. 6 has also deposed that the said cloth is manufactured at his shop. From the aforesaid, it clearly appears that Indigo is the quality and not the colour and therefore arguments of defense is not believable.

16.44.47. The Court has perused the deposition of PW-861/Exh.6026 Ramesh Bhai Jindal. He has deposed that when Police came to him, he checked old cash memo of Jindal Silk Mills in the name of one Rafik Bhai, which he gave to Police, which was seized during panchnama at Exh. 2816 dated 30.08.2008. This witness has identified handwriting of his partner Radheshyam Bhai on the said bill, which is on record at Exh. 6027. This witness had identified his writing on Page No 1 to 91 of billbook (cash memo), when Serial No. 73 of Muddamaal Article list at Exh. 2350 was shown to him. He deposed that on Page No. 67, name of

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Rafik Bhai, Indigo 248, Rs. 9.75 meter, Rs. 2418 were written in the handwriting of his partner Radheshyam Bhai. The witness also identified his signature on last page of billbook/cashbook. He also identified Muddamaal Article Serial No. 19 of list at Exh. 2350 i.e. indigo quality cloth, which is of his shop. It is pertinent to note that this Muddamaal cloth Taka was found from the car during Panchnama of scene of offence at the time of drawing of panchanama at Exh. 2413. Billbook/cashbook of Jindal Silk Mill was seized under panchnama at Exh. 2816. The said panchnama stands proved through panch witness being PW No.459-Shankarbhai Badane vide Exh.2815 and Investigating Officer being PW No.1155-Narayansinh Bhavansinh Parmar vide Exh.8517.

16.44.48. The Court finds that during the drawing of the panchnama at Exh.2789, the cashier of Vanaj Auto LPG Gas Station, namely Shirishbhai Thakorbhai had produced the relevant invoice book containing Bill No. 21250, dated 25.07.2008, issued in respect of vehicle bearing Registration No. GJ-06-CD-2908. The said bill was produced on record vide Exh.6009, which was proved by evidence of PW-856/Exh.6012 Sirish Bhai. The aforesaid panchnama of recovery of bill stands proved through deposition of panch witness being PW No.450 Alpesh Ambubhai Valand vide Exh. 2788 and Investigating Officer being PW No.1157-Rajendrasinh Ranjitsinh Sarvaiya vide Exh.8566.

16.44.49. Furthermore, the Maruti Wagon-R vehicle, bearing registration number GJ-06-CD-2908, the bill whereof was recovered from Vanaj auto, is Maroon in colour. The said vehicle was found containing four live bombs, with three plastic Kerba filled with petrol, Yellow, Maroon, Brown, Blue cloth Takas measuring 48 meters

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alongwith and other material. The said recovery was affected from scene of offence situated beneath the doctor's residential premises, opposite the parking area of Sonal Bhel Shop, during the course of the drawing of the Panchnama at Exh. 2413.

16.44.50. The said Vanaj auto LPG Station was pointed out by A-45, during the course of panchnama at Exh. 6502 dated 21.11.2008. During this panchnama, in presence of the panch witnesses, A-45 has made disclosure about he and accused No.63-Mohammad Tanvir filled up gas in Wagon-R car bearing registration No. GJ-6-CD-9719 and carbon copies of bill including bill no. 18654 dated 10.07.2008 of vehicle no. GJ-6-CD-9719 were recovered from Vanaj auto LPG Gas Station. The said point out panchnama of recovery of bill at Exh. 6502 was proved by prosecution through panch witness being PW No.909-Brijesh Bhupendrabhai Dudhwala vide Exh. 6500. The Car bearing number No.GJ-6-CD-9719 was ultimately used for blast at Trauma Centre, Civil Hospital. Further, the car bearing No.MH-06-AF-9719 was stolen, for which an FIR at Exh. 6832 came to be registered. FSL report of car plate is produced on record vide Exhs. 6456, 6457 and 6459.

16.44.51. The Court has perused the deposition of witness being PW No.966-Asfaq Saiyed vide Exh.6777, who is a real estate consultant and runs a firm in the name of 'Alfa Communication Real Estate Consultant. The said witness was interrogated on 21.12.2008. He deposed that in the year 2007, a customer namely Dr. Anvar Baghban (A-51) alongwith one fair skin and tall person had come there, inquiring to take flat on rent. The said witness has deposed that he went to Akhtar Meman office alongwith doctor and his companion. They have been shown Ashoka Mues flat in H block, which was was liked by accused No.51-Dr. Anvar baghban and his friend like and hence, they decided to take the said flat

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on rent. Dr. Anvar told this witness that he was a doctor by profession and a person of family. Thereafter, the terms of rent were fixed, registered agreement was prepared and the keys of the flat were given to Dr. Anvar bhai. According to accused No.51-Dr. Anvar baghban, the fair-complexioned person who accompanied him was his friend. After interrogation of this witness, he was called upon for test identification parade and was asked to identify two persons with whom he discussed and finalized the rent. During the course of the identification parade, this witness has identified one person, was brought out from line of dummy persons, by holding his hand and the witness mentioned that his name would start from Alphabet "F" and his surname was Durani, however the witness did not know his full name. Though the witness has identified this person as A-45 however, he could not identify A-45 on the ground of lapse of 10 years as the said person had grown his beard. The witness has already known accused No.51-Dr. Anvar baghban. The Test identification parade is on record vide Exh. 3182 and the same was proved through Executive Magistrate being PW No.589-Indravir Vajubha Zala vide Exh. 3159.

16.44.52. The Court has perused the deposition of PW-949/Exh.6643, Valibbhai Noorbhai Mansuri, who is a broker. The witness has deposed that police came to him on 12.12.2008 alongwith one accused and asked him whether he could recognize the said accused?, to which the witness told the police that he had received a call for a flat and hence, he recognized him. Upon receiving the call, the witness took him to Vaddala from Hotel Narmada to show house, but he did not like the house and he mentioned his name as 'Rafik'. The Court find that there is no substantial cross examination of this witness and credibility of this witness is not impeached by defense. The presence of A-45 was

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established in Bharuch. Moreover, A-45 has made disclosure about renting of house and thereafter, pointed out one house namely master house, situated at Surat during the course of panchnama at Exh. 6544 on 28.11.2008. The aforesaid panchnama stands proved through witness being PW No.918-Amar Sureshsinh Rajput vide Exh. 6543 and investigating officer being PW No.1155-Narayansinh Bhavansinh Parmar vide Exh.8517.As discussed in evidence against A-37, PW No.864-Abdulfarid Abdulrashid Shaik (owner of master house) and PW-1016-Mohammad Shakir Shaikh (son of Abdul Rashid) have identified A-37 as a person, who rented their house.

16.44.53. The Court has considered the deposition of PW.984/Exh. 6851 Radheshyam Thakkar, who is doing business of clothes in the name of 'Jindal Silk Mills' at Hariom Market, Surat. The name of his partner is Ramesh Bhai Jindal, who was examined as PW-861 vide Exh.6026. He deposed that the police came to him on 2.10.2008 inquiring that whether two persons had purchased clothes from his shop, to which he replied that several people had purchased clothes, however, he would be able to identify him, if produced before him. The witness was shown Exh. 6027, which he identified as Challanbook-billbook. He deposed that he had handed over the first page of the Challan to the customer and that this is the carbon copy thereof, bearing his own handwriting, which he identifies.

16.44.54. The witness deposed that name of Rafik Bhai was written in the Challan book and that he had sold 248 meters of Indigo cloth to the said Rafik Bhai at the rate of Rs. 9.75 per meter worth Rs.2418. During the said transaction, two persons had come to him, one was small with pimple marks on his face and of Wheaties colour and other person was long and tall. The witness has identified A-63 and A-45 during the test

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identification parade at Exh. 3082 carried out on 06.10.2008 and Exh. 3086 carried out on 18.11.2008, who purchased clothes from him. The aforesaid identification parade panchnamas are proved by prosecution through Executive Magistrate being PW No.575-Kirtanbhai Chaturbhai Patel vide Exh. 3076. The witness identified the cloth sold by him, which are Yellow, Brown, Maroon and Blue in colour and were recovered from car loaded bombs during the course of panchnama at Exh. 2413.

16.44.55. The Court finds that the first travel ticket Exh. 6800 is dated 01.07.2008 for travelling to Baroda is in the name of accused No.45-Fazle Rehmaan. Upon perusing the record, the presence of A-45 was established in Hotel Narmada, situated at Bharuch, Narmada cross road. Hotel register of Hotel Narmada is on record at Exh. 6517, which was proved through PW-945/Exh.6637 Irfan Dauva, who at the relevant time was serving in Hotel Narmada, who has given evidence with regard to hotel register at Exh. 6517, wherein entry No. 966 was of Rafik Shaikh. The witness has identified his own handwriting and the signature of Rafik Habbi Shaikh. The date of arrival Rafik Habib Shaikh mentioned in Exh. 6517 in entry No. 966 is 02.07.2008 and the date of departure is 04.07.2008.

16.44.56. Further, upon perusing the record, the presence of A-45 was also established in Hotel Hari Mangala, situated at GNFC Cross Road, Bharuch. Hotel register of Hotel Hari Mangala is on record at Exh. 6516 which is proved through PW-944/Exh.6636 Bhavin Baria, who at the relevant time, was working in Hotel Hari Mangala, who has given evidence with regard to the aforesaid hotel register at Exh. 6516, wherein entry No. 8946 was in the name of S K Rafik and the date of arrival is mentioned as 04.07.2008 and the date of departure is

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05.07.2008.

16.44.57. Upon perusal of second travel date mentioned in the ticket vide Exh. 6800, it appears that the same pertains to Ahmedabad dated 07.07.2008. Thereafter, presence of A-45 was established at Hotel Revan, situated at Kasak, Bharuch. Hotel register of Hotel Revan is on record at Exh. 6518, which was proved through PW-946/Exh.6638 Gulam Bhai Patel,w who is an owner, who has given evidence with regard to hotel register Exh. 6518, wherein entry serial No. 219 was in the name of Rafik S K. and the date of arrival is mentioned as 08.07.2008 and the date of departure is 09.07.2008.

16.44.58. The Court finds that hotel registers of Hotel Hari Mangala, Hotel Revan and Hotel Narmada were seized during the course of panchnama which is placed on record at Exh. 6519. The aforesaid panchnama stands proved through PW-912/Exh.6515 Yogesh Pandya, who has identified his signature and the signature of the other Panch witness on the hotel register at Exhs. 6516, 6517 and 6518. The Mamlatdar has affixed his seal on the aforesaid hotel registers, which were seized by the investigating officer Mr. Mayur Chavda on 12.12.2008. With respect to the xerox copies of the aforesaid hotel registers, which were taken by PW-1077/Exh.7352 Mr. Sindhi on 17.10.2008. The defense has contended that the prosecution has not produced the xerox copy and that even the original is not compared with xerox copies. However, upon perusal of Exhs. 6516, 6517 and 6518 , the Court finds that there is endorsement of Police Inspector, Crime Branch Ahmedabad City dated 17.10.2008 on the aforesaid three register pages. Therefore, it can be said that when xerox copies of aforesaid three registers were taken by PW-1077/7352 Mr. Sindhi on 17.10.2008, the original registers had been examined.

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16.44.59. The Court finds that during the course of panchnama at Exh. 6526, specimen handwriting and signature of A-45 Fazle Rehman were taken. The aforesaid panchnama Exh. 6526 was proved by prosecution through PW-913/Exh.6524 Ramesh Bhai Ahir, before whom specimen handwriting and signature of A-45 were taken. Moreover, during the course of the aforesaid Panchnama, a specimen handwriting comprising one paragraph was taken from A-45, as his natural handwriting. The disputed documents i.e. entries in registers of Hotel Hari Mangala, Hotel Revan and Hotel Narmada as well as specimen writing and signature as also natural handwriting of A-45 were sent for opinion of handwriting expert through forwarding letter vide Exh. 6892, who gave his opinion vide Exh. 6893 that the person who made standard writing and signature is the same person who made the disputed writing and signature. The aforesaid opinion was proved by prosecution through handwriting expert Mr. KP Vyas-PW-990/Exh. 6886. Thus, it is established that A-45, after travelling from Pune in a different name, had stayed at these three hotels, made entries and signed in the Hotel registers.

16.44.60. The Court has perused the deposition of PW-983/6846 Naresh Bhai Ambalal Mehta who at the relevant time was doing his business in the name of 'Hardik Ply and Hardware' at Bharuch, situated in Patel super market, station road Bharuch. The witness was selling plywood, hardware, nails, sheets and building related goods. This witness has deposed that when Surat Police came to him and inquired about the person who had purchased sheet from his shop, he answered that several customers used to come to his shop and hence, he could not recognize everyone, however, he could recognize, if he is shown to him. Thereafter, the said witness went to Magistrate in Killa at Surat and during the test identification parade, this witness identified A-45 from

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amongst the persons standing in line, as the person who purchased sheet as well as nails. This witness has deposed that the name of person identified by him is Fazle Rehman (A-45). The Defence has contended that no metallic residue was found from the River View Society and therefore it could not be said that the witness has sold the sheet. However, upon perusing the evidence of Bomb Defusal Squad witness at Exh.8156, particularly Para Nos. 2 to 8, there is reference to metallic sheet. Moreover upon perusing the FSL report at Exh.5714 and other FSL report of Surat case, a boat shaped wooden structure was found along with metallic sheet and therefore, argument of the defence hereby stands rejected.

16.44.61. The Court has also perused the evidence of PW-947/Exh.6640 Hamid Bhai Memon, who runs a petrol pump near Sherpura Gam, Bharuch, who has deposed that Police came to his petrol pump on 12.12.2008 along with one accused namely Fazle Rehman (A-45). The witness has further deposed that this witness said that he had filled up petrol of Rs.300/- in Wagon-R car, from there bearing Registration No.9718 or 9719. This witness has produced copy of page from the Billbook and upon being shown he has identified the petrol pump Bill No. 162 dated 17.07.2008 in which car No. 9719 and Rs.300 is written, which is on record at 'Mark-A'. In the cross examination, suggestion was put forth to this witness regarding no such person having come to the petrol pump, this witness has replied that it was Fazle Rehman (A-45) who told him that he had come during 15.07.2008 to 17.07.2008.

16.44.62. Thereafter, the Court has also perused the evidence of PW-948/Exh.6642 Irfan Shaikh, who was running a garage at Sherpura, Bharuch and has deposed that when the police came to him on

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12.12.2008 along with one accused namely Fazle Rehman (A-45). This witness has recognized this accused-Fazle Rehman as the person who had came to his garage for repairing of motor car in the month of July. He has deposed that he had went along with this accused-Fazle Rehman to Sherpura, where his Maruti Wagon-R car was lying. This witness had repaired the said Wagon-R car which was off white in colour. During his deposition, he has deposed that if the person who came alongwith the Police was shown to him, he would be unable to identify due to lapse of time.

16.44.63. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.45-Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani. The Court has therefore, no reason to interfere with the conviction recorded.

16.45. In case of Gyasuddin @ Gyasu Abdulsalim Ansari (Ahmedabad) (A-5)

(Accused No.5 in Criminal Confirmation Case No. 2/2022 and Appellant No.2 in Criminal Appeal No. 1710/2022)

16.45.1. In case of accused No.5-Gyasuddin @ Gyasu Abdulsalim Ansari, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.45.2. Learned Senior Advocate has then proceeded to make submissions in connection with accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari. According to learned Senior Advocate the facts of present appellant is identical to that of accused no.18-Javed Ahmed Sadir Ahmed Shaikh. He is arrested on 16-08-2008 and after remand in

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connection with several FIRs, was sent to Judicial custody on 29-01-2009.

16.45.3. The allegations against accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari are that he was present at the Terror camp at Vagamon in Kerala. He is also shown to have participated in several meetings held in Ahmedabad.

16.45.4. It is then submitted that accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari as named as accused No.17 in the trial in Ernakulam Court being Sessions Case No.2/2011/NIA in the Special Court for NIA Cases, Ernakulam, Kerala (Exh.9421) and has been acquitted by Ernakulam Court. Learned Senior Advocate has drawn attention of this Court to Exh.9421 at Page No.186 where the Ernakulam Court has recorded benefit of doubt on the ground that accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari is identified by only one witness.

16.45.5. The evidence cited against accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari is the Confessional statement of accused No.2-Imran Ibrahim Shaikh at Exh.8619. Learned Senior Advocate has submitted that accused No.2-Imran Ibrahim Shaikh names him to have seen this accused twice in his statement and that too at station and that a fake name is allotted to him, but he is not shown to be present at Halol camp.

16.45.6. It is submitted that Exh.8631 is a confessional statement of accused No.35- Rafiuddin Sarfuddin Kapadia and he does name 15 accused who were present at Halol camp, but does not name accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari. Moreover, the chance witnesses have not identified as to have seen the accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari in the group at the camp in Halol. Therefore, the prosecution has not established the presence of

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accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari at Halol camp. Accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari therefore, cannot be attributed for any action in Halol camp.

16.45.7. For presence of accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari in Ahmedabad meetings, the evidence of PW No.957-Zakirhussain Abduljabbar Kureshi at Exh.6687 is relied upon. The witness says that he was present at the meeting at Samsuddin Nana's residence, but this witness does not name accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari to be present there, but he is shown to be present at four other meetings and in this meeting also, he is not attributed with any role of delivering speech or instigating religious sentiments, only his presence is shown.

16.45.8. In this regard, it is submitted that the theory of meetings in Ahmedabad itself is not acceptable, as the prosecution had recorded statement of two witnesses for establishing presence in meeting, both witnesses were labeled as Secret witnesses and have not been examined as witnesses at all.

16.45.9. Out of the 10 meetings, accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari is shown to be present only in four meetings and the last meeting being in June and thereafter, there is a long gap.

16.45.10. It is also submitted that PW No.957-Zakirhussain Abduljabbar Kureshi himself having participated in the meetings at Ahmedabad, still he is treated as witness, therefore, this accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari should also be treated as a witness only.

16.45.11. It is also submitted that in fact in one meeting allegedly taken place under a bridge, accused no.5- Gyasuddin @ Gyasu Abdulsalim Ansari has played a role of pacifying the co-accused.

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16.45.12. Learned Senior Advocate has submitted that the impugned judgment is erroneous as there is complete miss-appreciation of evidence in so far as holding that accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari was present in Halol camp despite no evidence at all.

16.45.13. It is submitted that though evidence in form of confessional statement of accused No.2-Imran Ibrahim Shaikh and accused No.35-Rafiuddin Sarfuddin Kapadia are relied, but accused No.35- Rafiuddin Sarfuddin Kapadia has not named accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari.

16.45.14. Lastly, learned Senior Advocate has taken this Court through the relevant portion of the impugned judgment on Page No.3277 and Page No.6431 regarding the nature and appreciation of evidence. He also took this Court to Page Nos.6764 and 6852 for the mitigating circumstances and the antecedents.

16.45.15. He has therefore, prayed for clear acquittal of this accused no.5-Gyasuddin @ Gyasu Abdulsalim Ansari.

16.45.16. Learned Additional Advocate General for the State submitted that accused No.5-Gayasuddin of Ahmedabad, is one of the conspirators along with other accused persons.

16.45.17. It is submitted that accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari is involved by witness Jakir Hussein in the initial conspiratorial meeting which took place in November, 2007 at the place of secret witness one Ibrahim Ansari. This meeting took place at a place called Kamdar Medan during night hours and this meeting was attended by few other accused like accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh and accused No.27- Mohammad Ismail @ Abdul Rajik. During this meeting, accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh read the Quran and also talked about Qayamat and Jehad.

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16.45.18. It is submitted that according to the witness, one another meeting also took place at the same place i.e. at the place of Secret witness one Ibrahim Ansari in January, 2008. This meeting was attended by other accused like accused No.4-Samsuddin S/O Shahabuddin Shaikh, accused No.23-Ayaz Razakmiyan Saiyed, accused No.2-Imran S/O Ibrahim Shaikh, accused No.1-Jahid S/O Kutubuddin Shaikh and also accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari. During this meeting, accused No.27-Mohammad Ismail @ Abdul Rajik did taqrir and during this taqrir, accused No.27-Mohammad Ismail @ Abdul Rajik exhorted that in the year 2002 many Muslims have lost their lives for which they should take revenge and he also talked about Jehad.

16.45.19. It is submitted that this witness further states that somewhere in the month of March, another meeting took place at the end of Sarangpur bridge, which was attended by accused No.27- Mohammad Ismail @ Abdul Rajik, accused No.1-Jahid S/O Kutubuddin Shaikh, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari, accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh and one absconder Mujib. At the time of meeting, accused No.1-Jahid S/O Kutubuddin Shaikh and accused No.27- Mohammad Ismail @ Abdul Rajik were crying and stating that our brothers are arrested but you are (persons present in the meeting) not doing anything and we should show our strength to Police and we should also conduct an explosion in public against the Government. On the way back to home, accused No.27-Mohammad Ismail @ Abdul Rajik was asked by witness as to what happened to which accused No.27- Mohammad Ismail @ Abdul Rajik told to witness that SIMI activist are apprehended in Indore and therefore, for these atrocities committed on Muslims we have to take revenge.

16.45.20. It is submitted that this witness further deposed that in the

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month of June 2008, another meeting took place at the place of secret witness, Ibrahim Ansari during the night hours. This witness has stated that this meeting was attended by accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh, accused No.18- Javed Ahmed S/O Sagir Ahmed Shaikh and accused No.27- Mohammad Ismail @ Abdul Rajik. During this meeting, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh exhorted that there is no need to be afraid as SIMI activists are apprehended and we would establish Islamic regime.

16.45.21. It is submitted that so far as evidence of witness Jakir is concerned, he involves many other accused including accused no.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari as like accused No.1-Jahid S/O Kutubuddin Shaikh, accused No.4-Samsuddin S/O Shahabuddin Shaikh, accused No.6-Mohammad Aarif S/O Mohammad Iqbal Kagzi, accused No.8-Yunus S/O Mohammad Mansuri, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh, accused No.18- Javed Ahmed S/O Sagir Ahmed Shaikh, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, accused No.75-Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed, accused No.80 (Mujib now deceased), absconder Abdul Shubhan Taukir, accused No.23-Ayaz Razakmiyan Saiyed (approver) and Riyaz (hostile witness).

16.45.22. It is submitted that out of these accused named by this witness, some have attended Halol camp and there are also accused persons who have attended both the camps.

16.45.23. The Court finds that PW-957/Exh.6687 Jakir Hussein Qureshi, involved accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim

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Ansari in a initial meeting in November 2007. In this meeting accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari, accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh and accused No.27-Mohammad Ismail @ Abdul Rajik were present and accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh read the Quran as well as talked about Qayamat and Jehad. Thereafter, in January 2008, there was another conspiratorial meeting in which accused No.4-Samsuddin S/O Shahabuddin Shaikh, accused No.23-Ayaz Razakmiyan Saiyed, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari and accused No.1-Jahid S/O Kutubuddin Shaikh were present. At that time, accused No.27-Mohammad Ismail @ Abdul Rajik gave speech about the revenge of 2002 for death of Muslims and thereafter talked about jehad. After about 20 to 25 days, from accused No.4-Samsuddin S/O Shahabuddin Shaikh's Nana's house meeting there was another meeting wherein accused No.27- Mohammad Ismail @ Abdul Rajik, accused No.1-Jahid S/O Kutubuddin Shaikh, absconder Mujib, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari and accused No.18-Javed Ahmed S/O Sagir Ahmed Shaikh were present. At that time, accused No.27- Mohammad Ismail @ Abdul Rajik and accused No.1-Jahid S/O Kutubuddin Shaikh were crying and stated that our brothers were arrested. accused No.27- Mohammad Ismail @ Abdul Rajik and accused No.1-Jahid S/O Kutubuddin Shaikh told others and stated that we all must show our strength to the police and we should cause a blast in public to condemn the Government. The witness further stated that in June 2008, when accused No.27- Mohammad Ismail @ Abdul Rajik called him at Ibrahim Ansari's house, accused No.27-Mohammad Ismail @ Abdul Rajik, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari, accused No.18- Javed Ahmed S/O Sagir Ahmed

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Shaikh, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh were present. At that time, accused No.15-Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh told that though SIMI workers are arrested, we will establish Islamic Rule.

16.45.24. The Court also finds that this witness Jakir has also given evidence regarding other meetings in which the most important meeting which he had referred to is at the house of accused No.4-Samsuddin S/O Shahabuddin Shaikh's Nana's house which took place in March 2008. This witness Jakir has also given evidence about the conversation which would be in the nature of extra judicial confession of accused No.27-Mohammad Ismail @ Abdul Rajik which happened somewhere on 07.08.2008, when witness was travelling to Gwalior for picking up his wife and accused No.27- Mohammad Ismail @ Abdul Rajik met him at Ratlam and on his way to Naagda they both had conversation wherein accused No.27- Mohammad Ismail @ Abdul Rajik confessed so many things about present incident as deposed by this witness. This witness has also stated that while he remained in company of accused No.27-Mohammad Ismail @ Abdul Rajik on lot many occasions, accused No.27- Mohammad Ismail @ Abdul Rajik and other accused along with him used to keep distance from witness and that would be sufficient to believe prosecution though witness Jakir had a chance to go along with accused No.27- Mohammad Ismail @ Abdul Rajik whereby accused No.27- Mohammad Ismail @ Abdul Rajik attended lot many meetings which therefore was known to witness and on the basis of very categorical evidence of witness Jakir, he cannot be termed privy to the conspiratorial acts committed by accused No.27- Mohammad Ismail @ Abdul Rajik in the company of other accused. This witness in his deposition has also categorically refused about his involvement or

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participation in any of the conspiratorial meetings or acts. Even after the commission of bomb blast on 26.07.2008, he did visit some other accused persons with accused No.27- Mohammad Ismail @ Abdul Rajik but he categorically states that accused No.27- Mohammad Ismail @ Abdul Rajik and other accused persons were keeping distance from him and they were talking at a little distance from this witness.

16.45.25. The Court finds that the defence has termed this witness as accused, as investigators ought to have taken him as accused from the very beginning and even at the later point of time by arraigning him as accused but submission of defence are not acceptable. As witness himself on many occasions has either distanced him from others or others have distanced this witness on crucial occasions and events, considering the same witness cannot be termed as an accused.

16.45.26. One issue raised by the defence for assailing the reliability of this witness is delay of certain days to interrogate this witness by the I.O. This witness has rightly explained the circumstance about what caused the delay in his interrogation. Firstly, in a matter like this, where the crime is related to terror and terrorists are the perpetrators of crime, witnesses would be reluctant to come forward and subject themselves to the police investigation as either they are frightened, worried for them and for their family members and this witness has justifiable reason for not volunteering himself in the initial days as his wife was pregnant and was in the last stage of pregnancy. So far as delay of two months as alleged by defence is concerned, for recording of his statement by Police, prosecution has rightly explained that somewhere in the month of August or in the first week of the travel of this witness to Madhya Pradesh for getting back his wife, who was pregnant to Ahmedabad at her matrimonial home. And after he came back, he himself volunteered

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and visited the police station and subjected himself to interrogation after his interrogation by police which happened on 17.10.2008 and his statement before the Metropolitan Magistrate U/s 164 of Cr.P.C which came to be recorded on 24.10.2008 i.e. Exh.6688.

16.45.27. Defence has tried to suggest and put forth their defence that the brother of witness Abbasbhai is the informer of Crime Branch Police and therefore witness is planted by police. This suggestion and defence is firmly denied by the witness. Prosecution is right in saying that, if the case of defence was that, brother of witness Abbasbhai being an informer of Crime Branch Police, investigator would not have taken 2 to 3 months to interrogate him as, if witness was to be planted in October 2008, he could have been very easily planted at the earlier opportunity time.

16.45.28. The Court finds that the witness has further denied suggestions put forth by the defence that from 20.08.2008 to 25.11.2008, the witness was in illegal custody of crime branch police. The witness has also denied the suggestion of defence that prior to six months from the time of his deposition in the court, he was under the surveillance of police persons and he had deposed on the instructions of police. Prosecution has rightly submitted that if the case of defence is that the witness was planted because of his brother Abbasbhai being informer of Crime Branch then where is the question of putting surveillance prior to six months of the deposition of the witness. The witness in para 50 of the cross-examination, was asked a question by defence as to what talk accused No.27- Mohammad Ismail @ Abdul Rajik had with him and the answer given by the witness is that the talk relates to taking revenge for the human loss suffered by Muslims in the year 2002 and to commit Jehad.

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16.45.29. The Court is of the opinion that considering the entire deposition of witness Jakir Hussein, there is no reason to believe that he should have been an accused of the case nor that he is a planted witness. Credibility of the evidence of witness could be impeached while cross-examining witness and as referred herein above. Defence has tried their best by putting a volley of questions to discredit him as he being a planted witness, pocket witness, purchase witness but defence has miserably failed to impeach even little credibility of the witness. Hence, prosecution is right in submitting that he is a natural witness and even if submissions of defence are to be accepted about him being an accomplice then even evidence of this witness gets broad corroboration from other evidentiary material. The evidence of witness Jakir Hussein is also required to be seen with his statement which he gave before Metropolitan Magistrate U/s 164 of Cr.P.C. The witness has fully supported the statement given by him before Metropolitan Magistrate.

16.45.30. The Court also finds that accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari is involved by accused No.2-Imran S/O Ibrahim Shaikh in his Confessional Statement Exh-8619, U/s 164 of Cr.P.C. As per accused No.2-Imran S/O Ibrahim Shaikh, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari attended Vagamon Training Camp.

16.45.31. The confessional statement of accused No.2-Imran S/O Ibrahim Shaikh vide Exh.8619 recorded by Metropolitan Magistrate U/s 164 of Cr.P.C. As per the confessional statement of accused No.2-Imran S/O Ibrahim Shaikh, accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari attended Vagamon camp along with many other accused. So far as activities, etc conducted at this camp is concerned, it has been elaborated earlier. Dummy name received by accused No.5-Gyasuddin @ Gyasu S/O Abdulsalim Ansari is Abu Hanif. accused No.5-Gyasuddin

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@ Gyasu S/O Abdulsalim Ansari is also one amongst many accused in the Kerala Session's Court proceeding and he is arraigned as accused no.17 in Kerala proceedings. Though acquitted, the acquittal appeal is pending.

16.45.32. In view of the aforesaid discussion and evidence against accused No.5-Gyasuddin @ Gyasu S/o Abdul Saleem Ansari it is established that accused No.5-Gyasuddin @ Gyasu S/o Abdul Saleem Ansari has been participant in the conspiracy even from the stage of initial conspiracy, which took place at Vagamon, Kerala and thereafter, as discussed hereinabove, consistently, presence of accused No.5-Gyasuddin @ Gyasu S/o Abdul Saleem Ansari is established during the period of offence.

16.45.33. The Court finds that there is sufficient evidence on record to support the conviction of accused No.5-Gyasuddin @ Gyasu S/o Abdul Saleem Ansari and therefore, conviction recorded by the Special Judge qua accused No.5-Gyasuddin @ Gyasu S/o Abdul Saleem Ansari is not interfered with. The conviction is therefore confirmed.

16.46. In case of Accused no.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar (Indore, Madhya Pradesh)

(Appellant No.10 in Criminal Appeal No. 1917/2022)

16.46.1. In case of accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar, he has been convicted for various offences by the trial Court, and has been sentenced to imprisonment for life in Sessions Case No.38/2009 and others.

16.46.2. Learned Senior Advocate Mr. Mihir Desai has submitted regarding accused No.74-Mohammad Abrar @ Munna @ Ismail @

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Abdulla @ Ibrahim S/O Babukhan Maniar, who is awarded life sentence. According to learned senior advocate, there are two types of evidences against this appellant-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim, a test identification by the chance witness and another a point out panchnama by the accused himself.

16.46.3. At the outset, he has submitted based on decision of Apex Court, the five principles for test identification.

(1) The time lapse between the incident and the test identification parade.

(2) Period between the arrest and the test identification parade.

(3) Witness having given description beforehand.

(4) The identification in the Court being the substantive evidence and not the test identification parade.

(5) The ratio between the accused against dummy person must be 1:9.

It is submitted that in the facts of this case, the witness had seen the accused in casual manner as a part of the group and not as committing of any offense on 13/14.01.2008. The appellant-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim was arrested on 03.04.2012 and even after the arrest, the test identification parade took place on 06.06.2012, therefore, its almost after four years after witness saw accused for first time; that too briefly and not in the act of committing any crime and two months after the arrest.

16.46.4. Therefore, according to learned senior advocate, the test identification parade is not a reliable evidence to establish the identify of the appellant- Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim to be present at the Halol Camp beyond doubt.

16.46.5. It is submitted that as per Exh.4085, the ratio of accused to dummy is 1:5. He has relied upon the decision of this Court in case of ***State of Gujarat v/s. Rajput Anil Mangaldas, reported in, 2018 SCC***

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Online Guj 436 and submitted that the Gujarat Police Manual also prescribes proportion to be 9:1 and the test identification parade must be conducted in accordance with such Rules prescribed, if not, then it can not be treated as reliable evidence.

16.46.6. The test identification parade is a step of an investigation and is a corroborative piece of evidence. The ratio prescribed under the manual only provides for observing the same as a guideline and a matter of prudence. For this, the Court may refer to the observation of the Apex Court in case of ***State of Mahrashtra vs. Suresh Thomas reported in 2000 (1) SCC 471*** wherein para-22 it is observed that, if the potholes are to be fettered out from the proceedings of the Magistrate's holding such parades, possibly no Test Identification Parade can escape from one or two lapses. Therefore, if a scrutiny is to be made from that angle alone, the resultant parade will be treated as vitiated and every TIP would be rendered unusable. Therefore, it is provided in the same para, it is observed that it is for the officer conducting the tip to ensure that the object of holding tip which is, to enable witness to satisfy themselves that the accused whom they suspect is really the one who is seen by them and at the same time satisfy the I.O. that, the suspect is the real person whom the witness has seen and in this process, if there is dilution of modality in holding the Parade, then such relaxation would not impact the purpose for which the parade is held. In this context, the Court has also referred to the judgment of Budhsen v/s. State of U.P. reported in 1970 (2) SCC 128. Therefore, the Court has to look at the test identification panchnama and the evidence of the witness together to decide on the credibility of the evidence.

16.46.7. The Court may take into consideration PW No.981-Pravinbhai Hamirbhai Katariya, who was examined vide Exh.6835, who

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is the Jeep driver plying the Jeep on that road and his presence on the route being natural. He has explained the reason for him being there at the place which is a valid reason. He has deposed that when they heard noises, they went towards it by crossing a fencing and found 15 to 20 persons engaged in activity of training of crawling on elbow and firing towards the ballon targets; speaking in Hindi and this was in broad day light.

16.46.8. This witness has deposed about undertaking test identification parade on various occasions including on 06.06.2012 (Exh.4085) and has properly deposed as to how he has undertaken the identification when six persons were standing in line. It is pertinent to observe when the witness removed the appellant-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim from the line, the accused disclosed his name to be Mohammad @ Munno, which is not the correct name of the accused and discloses that the accused had deliberately mislead.

16.46.9. The deposition further records that upon being asked as to how he was able to identify to which he answered to the Magistrate that the appellant- Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim is the person, who was there near the Tent at Helical Vav.

16.46.10. Of course, this witness did not know the appellant by name and he did not identify the appellant in the Court, where he made an attempt to identify virtually on the screen.

16.46.11. However, the Court finds the evidence of the test identification panchnama and this witness reliable. The reason is that, in the cross-examination of this witness, he was questioned about the description which was given by him or not, to which a specific answer was given in para-28 that before undertaking test identification parade,

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he had given the description of the accused persons. Through cleverly the question was posed as to whether at the very first time when police asked him whether he had given the description of persons, he had identified to which he answer that at first time description was not given. However, immediately thereafter he has narrated that about the appearance of these persons in the statement he had given to police prior to the test identification parade.

16.46.12. Learned Senior Advocate has thereafter submitted that evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 can also not been considered to be reliable evidence, as he is chance witness and had wandered into site of the camp in search of his cattle. Learned Senior Advocate has drawn attention to Para-26 of the deposition and contended that very specific question was asked that for the first time in the year 2008, when he met certain Police persons, who had questioned him about tent at the site and at that time there were five to six Police persons, but presently, he would not be able to give description of any of such five Police persons. Therefore, when the witness is not able to describe Police persons, who had met him in the year 2008 during investigation, this witness cannot be relied upon for the Test Identification Parade. Deposition of this witness had taken place in the year 2018, whereas Test Identification Parade at Exh.4085 had taken place on 06-06-2012, which is much nearer to the period when the witness had seen the accused persons.

16.46.13. The Court may once again refer to Exh.4085, where PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 has also undergone Test Identification Parade and the Court has perused contents of Exh.4085, wherein amongst six dummy persons; accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O

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Babukhan Maniar was made to stand and was given opportunity to stand in the place with clothes of his choice. The care was taken that the dummy persons were of approximately the same age and structure and outwardly appearance. Despite this, accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar was correctly identified in the panchnama.

16.46.14. The Court may also take into consideration deposition of PW No.784- Danaji Bhuraji Rajput at Exh.4082, who is Executive Magistrate, who had conducted Test Identification Parade vide Exh.4085. In Para-9 of evidence in chief, he has identified content as well as signature on the panchnama. In Para-4 of the deposition, he has given details of present accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar being summoned for Test Identification Parade and also having passed on the instruction to his peon for calling for five individuals of similar age, height and appearance, as well as clothing and were accordingly brought. As PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 was called for identification and after recording his details, he was called upon to identify the accused, whom he correctly identified from amongst the persons standing in queue. The witness also deposes in Para-5 to indicate as to why the witness PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 was able to identify accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar. At that time, PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 narrated to him that in January, 2008 around Uttrayan Season, while he was grazing his cattle and was looking for strayed buffalo, he came across the group of persons, who were undergoing some training and upon seeing PW No.972-Ramkabhai Devkaranbhai Kesariya at

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Exh.6802 they threatened him to go away. This version is confirmed even by the deposition of PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 in his deposition.

16.46.15. In the opinion of the Court, considering the evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya at Exh.6802 along with Test Identification Parade at Exh.4085 and the deposition of Magistrate of Test Identification Parade at Exh.4082, the Court is inclined to believe identification of this accused being established by the prosecution as an individual, who was part of the group at Halol.

16.46.16. Learned Senior Advocate has thereafter referred to Exh.6528, which is pointing out panchnama attributed to accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar and submitted that same cannot be treated as panchnama under Section 27, as accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar is fifth person in the sequence, who had led the Police Team to the camp allegedly conducted at Halol and previously other accused persons through whom the pointing out panchnama executed, had already shown the site of this camp and therefore, there is no discovery of new fact, which was not known to Investigation Team.

16.46.17. It is submitted that in any case of the matter, only portion of pointing out to site, where allegedly Terror training camp had taken place, can be treated as an admissible, whereas portion of the panchnama, which refers to the fact of undergoing of any training, cannot be treated to be as an admissible part of the panchnama. It is submitted that the panchnama refers to various activities, which included delivery of Jihadi lectures. However, even from the panchnama, it is not coming out that this accused No.74-Mohammad Abrar @ Munna @

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Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar had participated in delivering any Jihadi lectures or participated in any other activities.

16.46.18. It is submitted that even if accused's presence is there at the camp, thereafter accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar had left for Ujjain never to return or participate in any other offence.

16.46.19. Exh.6528 was exhibited vide PW No.914- Mukundbhai Jivanlal Jadav at Exh.6527, learned Senior Advocate has submitted that execution of panchnama is in great doubt, as in the Court, PW No.914-Mukundbhai Jivanlal Jadav was unable to identify this accused, though throughout execution of panchnama, accused and the panch witness were together and therefore, there is a chance that the panchnama was executed not in presence or at behest of the accused himself, but by someone else. The Court may take into consideration pointing out panchnama at Exh.6528 proved by PW No.914- Mukundbhai Jivanlal Jadav and for this purpose, the Court may take into consideration deposition at Exh.6527, PW No.914- Mukundbhai Jivanlal Jadav, who in his deposition, has deposed the manner in which, he was summoned for carrying out the panchnama, while he was on walk with his friend and co-panch; Prathmesh Patel. This witness has deposed as to what has transpired in the office of the Crime Branch, where the present accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar aged about 32 years was present and had made disclosure that in January, 2008, there was Terror Training Camp in the forest of Pavagadh, place which he will be able to disclose. Accordingly, the Police Party had proceeded in the Government vehicle as per the directions given by the present accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar. This

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witness also stated that the first part of the panchnama was signed by both the panchas as well as the Police and proceeded as per the directions given by the accused. The accused had signaled directions till they reached the Dargah namely "Khundpir Dargah", which was identified by the board placed there. It is also recorded in his deposition that the accused took them over to various places in that area, where they used to undertake their routine activities and offer 'Namaz' and that they used Tata Sumo Vehicle for traveling to and fro and on the last day of the Training, Safdar Nagori had given Jihadi lecture. It is also deposed that the accused had taken them to another spot known as Ekminar Masjid, where they used to offer 'Namaz' during the camp and yet another place at 'Helikel Vav', which was a quarry like area, where they had established camp and trained for crawling on stone surface and shooting by air gun. They had also trained for swimming in the lake and rope climbing.

16.46.20. Submission of learned Senior Advocate regarding non-identification by this witness of accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar is of no consequence, as he is panch witness, who during the course of panchnama, accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar was introduced to him at the time of disclosure.

16.46.21. Learned Senior Advocate has thereafter taken this Court through portions of the impugned judgment, wherein discussion of evidence against accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar has been narrated and submitted that the Court has committed an error in holding that in considering the knowledge of the accused about the places, where the

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training camps were held as an admissible evidence. Learned Senior Advocate has thereafter submitted that another set of evidence, which the prosecution has put up against this accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar is confessional statement of accused No.35-Rafiuddin Sarfuddin Kapadia at Exh.8631. It is submitted that no further submissions for confessional statement of accused No.35-Rafiuddin Sarfuddin Kapadia is necessary as the Special Court itself has discarded confessional statement at Exh.8631 of accused No.35-Rafiuddin Sarfuddin Kapadia on the ground that the same was recorded on Affidavit and therefore, cannot be admitted as evidence. Other evidence at the behest of the accused No.35-Rafiuddin Sarfuddin Kapadia is pointing out panchnama at Exh.6443. Even Exh.6443 cannot be treated as an evidence against accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar as in this panchnama, nowhere name of accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar is appearing. Moreover, there is discrepancy of the period during which accused No.35-Rafiuddin Sarfuddin Kapadia has stayed at the camp site, as in Exh.6443, it is recorded that accused No.35-Rafiuddin Sarfuddin Kapadia had stayed for two days from 13-01-2008 to 15-01-2008, whereas in Exh.8631, confessional statement, accused No.35-Rafiuddin Sarfuddin Kapadia has stated that he was at the camp only for two hours. Both Exh.6443 and Exh.8631 are within a span of short duration as Exh.6443 was dated 17-11-2008, whereas Exh.8631 was dated 04-02-2009.

16.46.22. Learned Senior Advocate has therefore submitted that looking to the overall evidence placed on record in so far as the present accused is concerned, except for the presence at Halol, no other

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evidence is appearing and even presence at Halol is highly doubtful, as the evidence is not sufficient to establish his presence. It is submitted that even if his presence is established, still there is nothing to link accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar to have undertaken any action particularly. The issue has cropped up with regard to Exh.8631 being confession of accused No.35-Rafiuddin Sarfuddin Kapadia on Affidavit, where the prosecution has drawn attention to Exh.8157 being application by the prosecution to summon the Hon'ble Judges, who have recorded statement under Section 164 of Cr.P.C. including the Hon'ble Judge, who had recorded confession at Exh.8631. This application was allowed, however, from the record, it appears that evidence of Hon'ble Judge has not been recorded and that there was application at Exh.9018 by the defence for the same purpose that is to examine the Hon'ble Judge, who had recorded Exh.8631, which application came to be rejected.

16.46.23. The Court may consider Exh.8278 being an application given by the prosecution to exhibit all the statements recorded under Section 164 of Cr.P.C. Below such application, the Special Court had passed the detailed order, which has attained finality and accordingly, the document; Exh.164 statements have been thereafter exhibited. The Court has also taken into consideration Exh.9367, which is Dropping Pursis by the prosecution, wherein for the reasons stated therein, the prosecution witnesses have been dropped. However, the Court does not find name of the Hon'ble Magistrate Mr. G. M. Patel, who is amongst witnesses, whose names have been dropped.

16.46.24. Learned Additional Advocate General for the State has relied upon panchnama Exh.6528 drawn by the Crime Branch Police. It is submitted that the first part of panchnama was drawn at the Police

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Station in the presence of panchas, police and accused No.74-Mohammad Abrar @ Munna. Upon the disclosure made by accused No.74-Mohammad Abrar @ Munna that he could point out the place of the camp if he was taken to Halol crossroads, the second part of panchnama was drawn. accused No.74-Mohammad Abrar @ Munna was thereafter, taken to Halol Crossroads and, as per the directions given by accused No.74-Mohammad Abrar @ Munna, he led the police party towards Pavagadh and stopped the vehicle near a Dargah. He further led them inside Dargah, where there was signboard of Hajrat Khundpir Dargah Trust. Upon entering Dargah, a person named Idrish Gulabsha Fakir was found present. accused No.74-Mohammad Abrar @ Munna led them to the Mazar and a Dharamshala, where he and others stayed. He also pointed out a place where they used to bathe, which was near a handpump and washrooms. Thereafter, accused No.74-Mohammad Abrar @ Munna also pointed out one Minar Masjid and further led them towards a place like jungle where makeshift arrangement like tent was made. He also pointed out the place known as Helical Vav and ultimately to a place where the camp was arranged. The aforesaid panchnama stands proved through panch witness vide Exh.6527 and investigating officer vide Exh.8638.

16.46.25. The prosecution has also relied on the confessional statement of A35, which is at Exh.8631, wherein accused No.74-Mohammad Abrar @ Munna has been involved by accused No.35-Rafiuddin Kapadiya as one of the participants in Halol Camp by naming him as ‘Abrar’. It is submitted that the detailed submissions on confessional statement of accused No.35-Rafiuddin Kapadiya have been made earlier.

16.46.26. The Court may now refer to the evidence of witness-

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Idrish vide Exh.7923, who has implicated accused No.74-Mohammad Abrar @ Munna as one of the persons who came along with accused No.2-Imran Shaikh and others. The witness has deposed to this effect in para-8 of his deposition. This witness has also identified certain accused persons namely accused No.37-Kayamuddin Kapadiya and accused No.16- Abbas S/O Umar Sameja as persons, who had come alongwith accused No.2-Imran at Khundpir Dargah. During cross-examination of this witness, particularly in paragraph 16, it has come on record that some of the persons named by this witness were also visiting Khundpir Dargah prior to January, 2008 and during January, 2008. However, the witness could not state the names of all such persons or the exact time during which they stayed at Dargah.

16.46.27. The Court further finds that the witness has denied the suggestion put to him in paragraph 22 of his cross-examination that Imran Shaikh had not come to the Dargah in January, 2008 on the reference of Dr. Sadab. In paragraph 27, the witness has deposed that he had informed the police regarding handing over the keys and in para-28 he has confirmed that he permitted the concerned persons to stay at Khundpir Dargah, when Imran from Taiwada came with the reference of Dr. Sadab. The Court has under the Chapter of "Appreciation of deposition of relevant witnesses" has given a finding that PW Idris at Exh.7923 is a reliable witness to the circumstance of holding of terror camp in forests of Pavagadh and participation of accused persons in this camp.

16.46.28. The Court has also considered the evidence of PW No.972-Ramkabhai Devkaranbhai Kesariya vide Exh.6802, who has implicated accused No.74-Mohammad Abrar @ Munna. The deposition of this witness has been discussed in detail by the Court under the

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chapter of 'Appreciation of deposition of relevant witnesses. So far as, accused No.74 is concerned, this witness has deposed that he was subjected to test identification parade and that during the course of test identification parade, he identified a person named Munna, whom he had seen near the tent. However, so far as accused No.74-Mohammad Abrar @ Munna is concerned, though this witness has not identified him during the course of Test Identification Parade, but he has correctly identified accused No.12-Safdar Nagori and accused No.8-Yunus Mansuri. The aforesaid test identification parade is placed on record at Exh.3061 and stands proved through evidence of Executive Magistrate being PW No.784-Danaji Bhuraji Rajput vide Exh.4082.

16.46.29. The Court has also perused the evidence of witness Pravinbhai, vide Exh.6835. The deposition of this witness has been discussed in detail by the Court under the chapter of 'Appreciation of deposition of relevant witnesses'. The Court finds that like witness Ramkabhai, this witness was also subjected to a test identification parade. During the course of test identification parade, he identified one person from the line of persons and stated that he had seen the said person near Helical Vav besides the tent. Upon inquiry by the Executive Magistrate, the person who was identified, disclosed his name as Mohd. @ Munno. The said Test Identification Parade is on record at Exh.3061 and stands proved through the evidence of Executive Magistrate being PW No.784-Danaji Bhuraji Rajput vide Exh.4082.

16.46.30. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.74-Mohammad Abrar @ Munna @ Ismail @ Abdulla @ Ibrahim S/O Babukhan Maniar that the accused has participated in the Halol terror

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camp as a part of conspiracy. The Court has therefore, no reason to interfere with the conviction recorded.

16.47. In case of Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya (Vadodara) (A-37)

(Accused No.23 in Criminal Confirmation Case 2 of 2022, Accused No.17 in Criminal Appeal No.1710 of 2022)

16.47.1. In case of accused No37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya, he has been convicted for various offences by the trial Court, and has been awarded death penalty in Sessions Case No.38/2009 and others.

16.47.2. Accused No.37-Kayamuddin Kapadiya is represented by learned Advocate Dr. Yug Chaudhary. The role attributed to this accused is to be in thick conspiracy, where in each stage, this accused has played a crucial role. His role seen in hiring of hide outs in Al-Mohamadi Society and Umraonagar in Vatva, purchase of bomb making material, staying connected with co-accused by using coin telephone boxes, cyber cafe instead of routine mobile phone to avoid being traced, planting bomb at identified locations and also participating in Terror camp and meetings.

16.47.3. According to learned Advocate the evidence led by the prosecution against this accused is point out panchnama of places of hide out, training camps as well as the bomb sites, evidence of the witnesses and evidence of approver.

16.47.4. Learned Advocate has argued that accused No.37-Kayamuddin Kapadiya was first arrested in these offences on 04-12-2008 in Shahibaug Police Station Case and after being arrested in various other offences, he was sent to judicial custody on 03-07-2009.

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The charge-sheet was filed post 31-12-2008 the date on which Section 45 (2) was made effective still the first charge-sheet was filed on 17-01-2009, which was with the Sanction under Section 45. However, there was no report of review authority as contemplated under Section 45(2). In this connection of applicability of Section 45(2), the Court has dealt with the issue raised in sub-chapter of 'Grant of sanction' under Chapter of 'Issue'. The Court does not find any illegality in the grant of sanction so as to vitiate the trial.

16.47.5. Learned Advocate has assailed evidence of eye-witness being PW No.1115-Mohamadumar Usmanbhai Mansuri vide Exh.8002, PW No.1117-Asif Usmanbhai Shaikh vide Exh. 8019 and PW No.1131-Mohammadrafiq alias Baba Iqbalbhai Shaikh vide Exh.8118, firstly on the ground that they are close friend of one Bherubhai, who is Police informer and known for making arrangements in getting such witnesses. However, though questions were posed to the witnesses in this regard, the answer given by witnesses in the deposition does not suggest role of said Bherubhai for this Court to conclude that they were got-up witnesses. Another argument offered is lapse of five months before the witness surfaced. It is argued that on 07-12-2008, the Investigating Officer accidentally came across these witnesses and Investigating Officer is unable to state the manner in which these witnesses were identified. Obviously, the reason apparent is the investigation was going on, as on 07-12-2008, when the statement of the witnesses were recorded and these accused were arrested on 04-12-2008 and therefore, it was only upon the interrogation of this accused that the names of the witnesses surfaced. Therefore, the defence has clearly tried to raise the contention that there is no explanation of six months delay in finding out these witnesses and such argument therefore need to be rejected

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outrightly. Moreover, though it is argued that Investigating Officer is unable to answer about how he came to know about this witness, the perusal of Exh.8287 particularly Para-104, no question to that effect has been posed to the Investigating Officer.

16.47.6. Learned Advocate has also argued to discard the evidence of PW No.1115-Mohamadumar for no identification of accused No.37-Kayamuddin Kapadiya in Court nor holding of the Test Identification Parade. It is pertinent to observe that the witness has deposed that he knew accused No.37-Kayamuddin Kapadiya from childhood and therefore, at the relevant time, there was no question of Test Identification Parade as he knew the accused by his name. Moreover, in so far as Identification in Court again for the same reason of being childhood friend and that too after gap of 10 years, the issue of identification is of no consequence.

16.47.7. Similarly, learned Advocate has assailed evidence of another witness PW No.1117-Asif on the ground that this witness has himself participated in the crime, therefore, being an accomplice, his evidence be discarded. If this submission is made by learned Advocate then the Advocate on behalf of accused No.37-Kayamuddin Kapadiya is accepting the fact as narrated by PW No.1117-Asif to have taken place where PW No.1117-Asif is also participating, meaning thereby the role of accused No.37-Kayamuddin Kapadiya automatically gets confirmed. This is only from an argument perspective. This witness has given this version under statement recorded under Section 164 of Cr.P.C., however, the Court finds that Exh.8020 statement under Section 164 is recorded after administering the oath. However, thereafter, since the witness has deposed on oath as a witness and covering the narration of the statement under Section 164 as well and has withstood the cross examination.

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16.47.8. The Court has already discussed the evidence of both PW No.1115-Mohamadumar and PW No.1117-Asif is detailed under the Chapter of 'Appreciation of deposition of relevant witnesses' and their versions are also in conformity with the other witnesses and supporting the case of prosecution.

16.47.9. Learned Advocate has thereafter assailed the evidence of PW No.1131-Mohammadrafiq and submitted that his evidence also cannot be believed or required to be discarded as this witness after the evidence in chief had not returned to the Court for being cross examined. It is submitted that even trial Court has discarded the evidence. According to the Court, the evidence to whichever extent has been recorded on oath, if perused, is supporting version of other witnesses and is not damaging their version in any manner. Both PW No.1117-Asif and PW No.1131-Mohammadrafiq giving their depositions have identified accused No.37-Kayamuddin Kapadiya thereby establishing direct evidence of accused No.37-Kayamuddin Kapadiya with the offence. The Court in a separate Chapter of 'Appreciation of deposition of relevant witnesses' has in detail recorded the version of a witness and therefore, the role is clearly established.

16.47.10. With regard to the renting and occupying the hideouts, House No.10 Al-Mohammadi Society in Ahmedabad, PW No.943-Kukhrajbanu (sic.) Mohammadyakub Sheikh is examined vide Exh.6629. She is the land lady of House No.10 Al-Mohammadi Society and has identified in the Test Identification Parade proved through Executive Magistrate PW No.589-Indravir Vajubha Zala vide Exh.3159. Learned Advocate submitted that this witness cannot be believed as she has not identified accused No.37-Kayamuddin Kapadiya in the Court. Also in the deposition, she has admitted that no document for rent was there nor she

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has produced any evidence to establish that she is the owner of the house. She has also denied that she has checked about the identities of the accused, who had rented the premises. Thereafter, other evidence connecting accused No.37-Kayamuddin Kapadiya with the house is PW No.928-Mohammed Ibrahim Afzal Shaikh vide Exh.6586 who has acted as a broker for renting the premises. Learned Advocate has referred to the cross-examination to submit that in July, the house was given and in September, it was seized. Therefore, he deposed wrongly that the house was given on rent for five to six months. Moreover, there was no Test Identification Parade or Identification in the Court. This witness being the broker and having played the role as such his evidence to the circumstance of hiring of the hideout is sufficient to corroborate the evidence of land lady, who has identified accused No.37-Kayamuddin Kapadiya as her tenant and the deal struck through the broker. Of course, there are other witnesses to the circumstance of hiring and occupying House No.10 Al-Mohammadi Society as an hideout such as, PW No.939-Mohammed Amin vide Exh.6619, the Tea Stall owner in whose shop the meetings with the broker and sub-broker took place and the evidence of PW No.952-Mohammed Arif vide Exh.6651, who acted as a sub-broker and also played a role in brokering the deal for the House No.10. The combined reading of the evidence of PW No.943-Fukhrajbanu, PW No.928-Mohammad Ibrahim Mohammad Afzal Shaikh vide Exh.6586, PW No.939-Mohammed Amin and PW No.952-Mohammed Arif mentioned herein above connect the accused with the house used as hideout.

16.47.11. Similarly, for the hideout house in Umraonagar, Vatva, the prosecution has examined PW No.1106-Firoz Dilawar Shaikh vide Exh.7929. He is the house owner and had rented upper floor of the

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house. This witness according to the learned Advocate is not reliable as he has wrongly identified accused No.1-Jahid Shaikh as accused No.37-Kayamuddin Kapadiya and that there was no Test Identification Parade. Also in cross, he is not able to confirm his ownership of the house.

16.47.12. It is pertinent to observe here that when this very house was searched, articles connecting to bomb making was recovered. Moreover, this witness has deposed clearly giving description of accused No.37-Kayamuddin Kapadiya as Kayamuddin, the fat man who came with co-accused Shuban Taukir with reference of Said-ur Rehman. This witness also deposes about their routine activities and other accused who used to visit them. Moreover, though he identified accused No.1-Jahid Shaikh as accused No.37-Kayamuddin Kapadiya, perusal of the deposition would indicate that immediately he has rectified and then identified accused No.37-Kayamuddin Kapadiya correctly. Therefore, his evidence is sufficient to establish the connection of accused No.37-Kayamuddin Kapadiya with this house used as a hideout.

16.47.13. Yet another house being the Master House in Surat the prosecution has examined PW No.864-Abdul Farid Abdul Rashid Shaikh vide Exh.6037. It is submitted that there has been no material found in the Master house in Surat to connect it in any manner with the explosion or bomb making. It is argued that the witness did not identify accused No.37-Kayamuddin Kapadiya in the Court and Test Identification Parade is also not reliable as accused No.37-Kayamuddin Kapadiya was shown to witness before being identified in the Test Identification Parade.

16.47.14. Firstly, the Court finds that the witness has deposed about accused No.37-Kayamuddin Kapadiya taking the room on rent in Surat. PW No.864-Abdul Farid Abdul Rashid Shaikh is the owner of the house.

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The argument about witness being shown to accused No.37-Kayamuddin Kapadiya before Test Identification Parade is not substantiated. Perusal of the Test Identification panchnama vide Exh.3108 was proved by examining the Executing Magistrate PW No.579-Dharmesh Kanaiyalal Patel vide Exh.3106. Even perusal of Exh.6037, the deposition of house owner would establish that he has identified accused No.37-Kayamuddin Kapadiya amongst seven dummies as a person who hired the premises. In the cross-examination, it is evident that no question was posed by learned Advocate Mr. M. M. Shaikh for accused No.37-Kayamuddin Kapadiya, about he being shown repeatedly. In fact, the question posed and answered to the effect that during the investigation of the serial blasts, the Police were showing him several photographs of many persons.

16.47.15. With regard to the evidence of occupying the hotel in Pune where prosecution has examined PW No.930-Kishorbhai Somabhai Ravat vide Exh. 6590, learned advocate submits that even if the defence admits to all the evidence still it has no connection with the blast and that the stay in Pune is recorded on 19.10.2008 which is after the blast. This evidence demonstrates the conduct that accused No.37-Kayamuddin Kapadiya being from Vadodara is not available for investigation but appears to be on the run and in Pune. This establishes the conduct of A-37 post the offence.

16.47.16. Learned advocate then assailed the point out panchnama drawn at the behest of accused No.37-Kayamuddin Kapadiya, over and above the arguments advanced on the issue of panchnama under Section 27 covered under the Chapter of “Panchnama under Section 27 of Indian Evidence Act”. It is submitted that the panchnama may not be treated as a disclosure under Section 27 as the panch witness has not identified the

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fact which was previously known to the Investigating Officer. It is also submitted that Section 8 of Indian Evidence Act also cannot be invoked. Panchnama vide Exh.6083 was drawn on 07.12.2008, where accused No.37-Kayamuddin Kapadiya led the panch team to House No.10-Al Mohamadi Society (hideout) and two other shops from where articles were purchased to assemble the bomb. It is submitted that PW No.872-Karnav Hemantbhai Patel who was examined vide Exh.6082. However, he has not identified accused No.37-Kayamuddin Kapadiya in Court. The disclosure made and recorded in panchnama cannot be treated as admissible in evidence. When accused No.37-Kayamuddin Kapadiya disclosed "the house where he stayed" and "the house where the bombs were made", the panchnama was drawn, but there was no recovery of "material object". Similarly, in connection with purchase of articles from shops where panchnama records "the place from where cylinders were bought to a place in Wagon R and parked in L.G.Hospital and Civil Hospital" cannot be treated as disclosure which can be admitted. It is also submitted that though various shop keepers have deposed to purchase but they have not identified accused No.37-Kayamuddin Kapadiya in Court nor have they been called for Test Identification Parade.

16.47.17. However, the Court finds that insofar as identity is concerned, two witnesses PW No.924-Sarfaraj Abdulrahim Ajmerwala vide Exh.6569 and PW No.927-Mohammad Rizwan Mohamad Hanif Dudhwala vide Exh.6583 have identified accused No.37-Kayamuddin Kapadiya. These two witnesses are the witness to procurement of barrels (carboy) and gas cylinders. Both these materials, were recovered from the scene of offence. Now, insofar as disclosure statement recorded in panchnama can be treated as evidence, the Court may put it in the

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bracket of requirement of Section 27 of Indian Evidence Act which requires a "fact" which is deposed. Here, the "fact" disclosed is deposed by the panch witness as has been recorded in panchnama. If there is variation in version narrated in panchnama and deposition, then such "fact" may not be considered by Court but when the "fact" narrated in panchnama and the "fact" deposed to are same then even if it is confession or not such fact can be proved. This being the language of Section 27, therefore, only the voluntary disclosure which are quoted hereinabove will have to be treated as proved fact which is discovered.

16.47.18. The other argument of non recovery of any physical object, the Court is of the view that the word "fact" which appears in Section 27 will have to be understood as is defined under Section 3 of the Evidence Act, which the Court has already reproduced more than once herein. Therefore, the "mental fact" of the knowledge of accused No.37-Kayamuddin Kapadiya which is his own special knowledge has come on record in the form of disclosure recorded in the panchnama and deposed to by the panch witness in the Court, assumes a form of evidence which the Court can act upon.

16.47.19. Therefore, when accused No.37-Kayamuddin Kapadiya points out the house No.10-Al Mohamadi Society as a hideout then the existence of such house at the location led to by the accused No.37-Kayamuddin Kapadiya by drawing panchnama vide Exh.6083, the existence of the house and the use of the same as a hideout is a circumstance proved and can be acted upon.

16.47.20. Learned advocate has thereafter, referred to panchnama Exh.3232, by which the application form of a swimming pool was recovered and PW No.603-Pintu Piraji Solanki vide Exh.3231. In the same sequence, PW No.923-Mudikkhan Muikkhan Pathan vide

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Exh.6566, who is the owner of the photo studio has deposed that the photo on the application form was taken in his studio. Though he identified the photograph, he has not identified accused No.37-Kayamuddin Kapadiya. It is argued that this set of evidence is not relevant as it has no connection with the bomb-blasts.

16.47.21. The Court having perused Exh.3232, the application form having photo of accused No.37-Kayamuddin Kapadiya, but bearing some other name (muddamal article Exh.3233 slip) and the panchnama proved by panch witness being PW No.603-Pintu Piraji Solanki and another witness PW No.923-Mudikkhan Muikkhan Pathan, who identified the photograph on the application form as having being taken from his studio. Upon perusal of form vide Exh.3234, it appears that the application form having photograph of accused No.37-Kayamuddin Kapadiya, carried the fake name of "Asfak Shaikh". The combined reading of this evidence may not have a direct connection with the serial blast, but the fact that accused No.37-Kayamuddin Kapadiya attempted to hide his true identity is clearly established.

16.47.22. The other set of evidence relating to the attempt of accused No.37-Kayamuddin Kapadiya to hide his identity is the panchnama vide Exh.6353, drawn during the search of his father in law's house from where driving licence in the name of Pradhyuman Pandya was seized, which was used to buy mobile phone. It is submitted that this set of evidence is not reliable as both PW No.801-Azadahmad Sardarahmad Sheikh vide Exh.5319, the owner of mobile shop, did not identify accused No.37-Kayamuddin Kapadiya nor were the handwriting of accused No.37-Kayamuddin Kapadiya matched with the application form at Exh.8999. Similarly, PW No.893-Jitendra Babulal Jaiswal who was examined vide Exh. 6352 has not identified accused No.37-

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Kayamuddin Kapadiya through panchnama Exh.6353.

16.47.23. The Court may first consider the panchnama vide Exh.6353 which is proved by PW No.893-Jitendra Babulal Jaiswal. Through this witness, a driving licence in some other name, bill and a diary have come on record, which is then supported by evidence of PW No.801-Azadahmad Sardarahmad Sheikh, who produced bill of purchase of Classic Reliance 702 Model Mobile Phone at Exh.5302 and purchase of sim card. Though as argued, there is no deeper investigation still the circumstance of identity, producing phone/sim in some other name has been established for the Court to infer that the reason for such conduct is suggesting involvement in crime.

16.47.24. The prosecution has relied on another pointing out panchnama vide Exh.6075, which pertains to purchase of Batteries, Bulbs, wires, etc. Learned Advocate has assailed this panchnama on the ground that it does not lead to any disclosure of fact relevant to the offence. It is argued that the panchwitness PW No.870-Vishank Balavantbhai Patel vide Exh.6074 has not identified accused No.37-Kayamuddin Kapadiya in the Court and has not been called for Test Identification Parade. It is submitted that the panchnama was executed after 32 days of Police custody and items allegedly purchased are regular household articles and during the panchnama, there is no material object recovered. This argument is repelled by the State submitting that the disclosure of the knowledge of the place, which has connection with the offence, which is deposed by a witness is sufficient to connect the accused on the basis of such disclosure statement.

16.47.25. Panchnama vide Exh.6075 is executed on 12-12-2008, where it is recorded that accused No.37-Kayamuddin Kapadiya wanted to make voluntary disclosure of the places/shops from where certain

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articles were purchased to be used in assembling a bomb.

16.47.26. Of course, it has been argued that the articles so purchased are regular household articles. In the opinion of the Court, it is the part of the conspiracy where the regular household articles were to be used in such a manner which has devastating effect. Articles like nuts, bolts, ball bearing etc. were to be used as projectiles and also to avoid any attention being drawn that such household articles be put to such a use and for which there was already a training.

16.47.27. Upon the disclosure made by accused No.37-Kayamuddin Kapadiya, a panch team has been led by accused No.37-Kayamuddin Kapadiya to each of such shops and thereafter, in course of investigation, the statement of the shop keepers have been recorded, who have supported the fact of purchase of these articles. This disclosure has been deposed by the panch witness; PW No.870-Vishank Balavantbhai Patel. The witness deposed that accused No.37-Kayamuddin Kapadiya, who was in custody, made voluntary disclosure that he would identify the shops and from where he has purchased such articles. Thereafter, he has led the panch team to these shops. Therefore, the disclosure made regarding procurement of various articles is proved by his deposition. Of course, these articles have then been connected to the crime of bomb explosions by independent evidence, namely, the scene of offence from where such articles were recovered and the FSL Report. Therefore, the combined reading would lead the Court to conclude that the panchnama Exh.6075 is a disclosure of fact, which is evidence under Section 27.

16.47.28. Submission of the panch witness not identifying in the opinion of the Court is not relevant as there is no question of misidentity of accused No.37-Kayamuddin Kapadiya being tried. Moreover, it is during the panchnama itself that the PW No.870-Vishank Balavantbhai

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Patel was introduced to accused No.37-Kayamuddin Kapadiya at the Police station, therefore, his identification is of no relevance.

16.47.29. Learned Advocate has thereafter assailed evidence of PW No.927-Mohammad Rizwan vide Exh.6583, who is the owner of Royal Gas Stove and whose shop was disclosed in panchnama and from where gas cylinder which was used in the explosion was purchased. According to learned Advocate, this evidence is lacking, as there is no documentary evidence to support purchase nor accused No.37-Kayamuddin Kapadiya is identified in the Court. The perusal of the deposition vide Exh.6583 establishes the purchase of gas cylinder. Moreover, accused No.37-Kayamuddin Kapadiya is identified in the Test Identification Parade held on 15-12-2008 and proved by PW No.588-Laxman Keshavlal Pargi vide Exh.3130. The Court is therefore inclined to accept the evidence of purchase of gas cylinder against accused No.37-Kayamuddin Kapadiya and gas cylinder has been found at the site of explosion in the Hospitals.

16.47.30. The other shop pointed by accused No.37-Kayamuddin Kapadiya is the shop of PW No.1017-Vinod Jumani vide Exh.7010, who is the owner of S.K. Electrical from where 13 batteries and 50 bulbs were purchased. The perusal of Exh.7010 does not reflect anything against the accused nor does it establish that there was a purchase of 13 batteries from his shop. He has not identified accused No.37-Kayamuddin Kapadiya as purchaser of those 13 batteries. Similarly, for purchase of wire, in the opinion of the Court, evidence of PW No.1018-Mohanbhai Korani vide Exh.7011 is not useful as he claimed ignorance about accused No.37-Kayamuddin Kapadiya having made the purchase.

16.47.31. With regard to the evidence of participation of accused No.37-Kayamuddin Kapadiya in Pavagadh Halol Terror camp, learned Advocate has considered the evidence of three eye-witnesses of the

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camp being PW No.981-Pravinbhai Hamirbhai Katariya vide Exh.6835, PW No.1067-Ambalal Vechatbhai Bariya vide Exh.7231 and PW No.1105-Idrish Gulabsha Fakir Divan vide Exh.7923 by submitting that they are the chance witnesses and their deposition is full of discrepancies. The Court has already dealt with their evidence in detail under the Chapter of 'Appreciation of deposition of relevant witnesses".

16.47.32. Learned Advocate has also argued that the confessional statement of accused No.2-Imran Shaikh being Exh.8169 and confessional statement of accused No.35-Rafiyuddin Kapadiya (brother of accused No.37-Kayamuddin Kapadiya) at Exh.8631 cannot be relied upon being the confessional statement of co-accused. It is submitted that as the same have been retracted, the same cannot be used even for corroboration. Here also, the Court has already discussed in detail about the reliability of the confessional statement of co-accused as also retracted statement of co-accused in the separate Sub-Chapter of 'Confessional Statement and statement under Section 164 Cr.P.C.' under the Chapter "Issues".

16.47.33. With regard to Vagamon camp, learned Advocate submitted that only evidence is confessional statement of accused No.2-Imran Shaikh, however, such confessional statement is of no consequence as accused No.37-Kayamuddin Kapadiya was tried as accused No.22 in trial as NIA Court, Ernakulam and he has been acquitted. He referred to Exh.9421 in this regard.

16.47.34. Learned Advocate has thereafter assailed two vital evidences i.e. PW No.957-Zakirhusain Kureshi vide Exh.6687, this witness in fact an accomplice so his evidence cannot be relied. Another evidence of PW No.1141-Aiyaz Saiyed vide Exh.8191, who has turned approver. Learned Advocate has relied on the arguments made on the issue of

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approver. The Court has dealt with both the evidences in the subjects of 'Appreciation of evidence of eye-witness' and 'Approver' respectively. In overall submissions made by learned Advocate he has prayed that the prosecution has failed to establish any case against accused No.37-Kayamuddin Kapadiya and therefore, he deserves to be acquitted.

16.47.35. The Court at the outset in connection with this accused may refer to Exh.9338, where accused No.37-Kayamuddin Kapadiya has been examined as defence witness No.8. The perusal of the entire deposition of defence witness/accused No.37 does not inspire any confidence as it is running contrary to the version given by so many witnesses and in fact, appears to be admitted to disassociate himself from the offence completely and in this regard, he has deposed in the beginning of his deposition itself that on 31.03.2008 in the night hours, he was picked up by the Crime Branch, Vadodara and he was informed that the police officer from Madhya Pradesh are there to pick him up and thereafter, he was taken to a unknown place at Madhya Pradesh and was subjected to mental and physical harassment and Madhya Pradesh State, I.B. pressurized him to work on their behalf and that he would get chance to leave the country and earn money and if refuses, then he will be encountered. He thereafter, refers to being transferred to police of one jurisdiction to another and ultimately on 09.11.2008, he was brought from Bhopal to Ujjain by a DIG of STF, M.P. and when he was produced in the Court at Ujjain, he came to know that he has been wrongly associated with SIMI when he thought of bringing his illegal detention to the notice of the Court at Ujjain. He remembered threats given to him and therefore, did not raise the issue. The witness-accused has thereafter, referred to his transferred from M.P.Police to the Gujarat Police on 01.12.2008 through Delhi, where he came to know that his name has

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reflected in Delhi bomb blast also and therefore, he was taken in custody by Delhi Special Cell under the remand order passed by Delhi Court and therefore, taken to Tihar Jail. From there on 03.12.2008, he was brought to the Ujjain Court, where he was accompanied to the Gujarat Police and was brought to Ahmedabad. This deposition is completely against the evidence which is brought on record because if this deposition is to be believed, then accused No.37-Kayamuddin Kapadiya claims that when the incident took place on 26.07.2008, he was in custody on same police or the other, whereas there is plethora of evidence in the form of eye-witness who have deposed in the Court about not only the presence of the accused, but also his role in procurement of various articles. Not only that, his younger brother accused No.35-Rafiyuddin Kapadiya who has given confessional statement under Section 164 of Cr.P.C. being Exh.8631, wherein also, it is mentioned that accused No.35-Rafiyuddin Kapadiya himself being accompanied to accused No.37-Kayamuddin Kapadiya to the Halol Camp which was allegedly held in the month of January 2008. The Court having considered Exh.9338 in its entirety does not find any reason to rely upon the same for or against the prosecution of this accused.

16.47.36. The closer reading of Exh.9338, the Court also finds that accused No.37-Kayamuddin Kapadiya has deposed as Defence Witness No.8 that he was subjected to illegal detention by the Madhya Pradesh Police. From the evidence produced by the prosecution, it clearly established that since March 2008, when the Madhya Pradesh police came to apprehend A-37, he went underground and was absconding. The arrest of A-37 in the Madhya Pradesh case in November 2008 is not proved through any evidence, nor is there even a prima facie case against him that he was in illegal confinement of either Madhya Pradesh

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police or any other police. In view thereof, the evidentiary material regarding fraudulent procuring of sim cards, which is proved to have been fraudulently purchased by accused No.37-Kayamuddin Kapadiya on the basis of various evidences such as the application form for purchase of sim cards and writings found, which were compared with specimen and natural writings of accused No.37-Kayamuddin Kapadiya alongwith the opinion that accused No.37-Kayamuddin Kapadiya has forged this writing is an important circumstance. More particularly, such fraudulently purchased sim cards and mobile phone mark A to E were found to be in contact with each other, and mark A phone was also in contact with witness Gulam of Sherpura. These are the circumstance emerging against A-37 which require an explanation from the said accused. Considering the evidence of accused No.37-Kayamuddin Kapadiya in the context of his further statement and the cross-examination of relevant witnesses, there is is either no explanation or there is a mere denial, which now stands established beyond doubt as a false explanation. Hence, this constitutes as an additional link not only against accused No.37-Kayamuddin Kapadiya but also an additional circumstance against the defence at large, as neither accused No.37-Kayamuddin Kapadiya has explained the users of mobile phones mark A to E, nor has any other accused person attempted to detach themselves from this circumstance, more particularly accused No.43-Anik Saiyed, accused No.44-Mohammad Akbar Chaudhari and accused No.45-Fazle Rehmaan. Hence, this circumstance becomes one more sequel to the conspiracy. This circumstance against accused No.37-Kayamuddin Kapadiya is so strongly established by the prosecution that accused No.37-Kayamuddin Kapadiya, through his Ld. Advocate, ultimately ended up submitting that even if these circumstances are admitted, he

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cannot be implicated with the incident of bomb blast at Ahmedabad and bomb plantation at Surat.

16.47.37. Learned Additional Advocate General for the State has submitted that activities which took place at Kerala camp are elaborated including jehadi taqrir-speeches by different leaders, exhortation of doing practical work, one group doing execution of things and also keeping identity of each other absolutely secret and most importantly execution of mass killing. It is submitted that as all SIMI activists have participated in Kerala and Vagamon camp, these camps are to be designated as SIMI camps. The prosecution has also examined witness PW-998/Exh. 6950 namely Anil, who supports the case of prosecution by deposing that there being a camp at Vagamon, as stated by accused No.2-Imran Shaikh in confessional statement.

16.47.38. It is submitted that accused No.2-Imran Shaikh, in his confessional statement, has referred accused No.37- Kayamuddin Kapadiya, as one among eight persons, who attended the camp from Ahmedabad, including himself and accused No.37-Kayamuddin Kapadiya, accused No.14-Sajid Mansoori, accused No.6-Arif Kagzi, accused No.1-Jahid Shaikh, accused No.27-Abdul Rajik, accused No.5-Gayasuddin and accused No.18-Javed Ahmed. The confessional statement also states that secret name of accused No.37- Kayamuddin Kapadiya was Musa in the camp. So far as, admissibility, legality, acceptability of accused No.2-Imran Shaikh's confessional statement is concerned, detailed submissions on it are made in the submissions of accused No.2-Imran Shaikh.

16.47.39. It is submitted that accused No.37-Kayamuddin Kapadiya was arraigned in this Kerala NIA trial as A-22. The charges levelled against all the accused were framed under different offences under

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Sections 10, 20 and 38 of Unlawful Activities (Prevention) Act, 120 B of Indian Penal Code and also under Explosive Substance Act, 1908. On the basis of judgment submitted at Exh.9421, it is submitted that many accused are convicted by Kerala Session's Court for the offence punishable under Sections 10, 20 and 38 of UAPA as also 120 B of I.P.C and Section 4 Explosive Substance Act, 1908 for different term of sentence. accused No.37- Kayamuddin Kapadiya, who is A-22 in Kerala NIA proceedings is given benefit of doubt. It is submitted that the conviction appeals as well as acquittal appeals are presently pending before Kerala High Court. The prosecution has reiterated that incident of above NIA would not prohibit any prosecution which would fall under Section 300 (3) of Cr.P.C. It is submitted that accused No.76- Manjarimam @ Alam, whose confessional statement is relied by prosecution, is convicted in Kerala NIA proceedings, referred hereinabove and he was A-34 in those proceedings.

16.47.40. It is submitted that witness Jakir also involves accused No.37- Kayamuddin Kapadiya in an evidentiary material, which would be in the nature of extra judicial confession during the course of extra judicial confession between witness and accused No.27-Abdul Rajik which took place in a railway train journey. During the course of extra judicial confession, accused No.27- Abdul Rajik stated about idea of bomb blast which occurred in Ahmedabad city was of accused No.37- Kayamuddin Kapadiya and then absconder Taukir. He further states that they were in contact of Indian Mujahidin and accused No.27-Abdul Rajik was in contact with accused No.37- Kayamuddin Kapadiya and then absconder Taukir. The conversation also states about taking of revenge of 2002 by explosion of bomb and everything would be provided by Indian Mujahidin.

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16.47.41. It is submitted that the evidence of PW No.923-Mukidkhan Muidkhan Pathan vide Exh.6566, who is a photographer and running his photo studio in Manan Complex, Vatva in the name of 'Taskil Garden Studio' has deposed that when any person came to take photo, he handed over the photo and its negative to his customer and that the police has recorded his statement. He has deposed that again when police came to him and showed him one form alongwith a photo, to which after looking at the background of photo, he stated that the said photograph has been taken in his studio. During the course of the deposition, the witness was confronted with Exh.3234 (the Swimming Pool Membership Form, alongside the photograph annexed thereto), which was recovered and seized under the seizure Panchnama vide Exh.3232, the witness has identified the photograph, deposing that the same was captured in his studio. The witness conclusively identified the individual depicted in the photograph as accused No. 37, namely Kayamuddin Kapadiya. The approver gave evidence with respect admission in Swimming Pool by accused No.37-Kayamuddin Kapadiya. The approver also gave evidence regarding this form, which contained his handwriting and bore signature of accused No.37-Kayamuddin Kapadiya. The studio of this witness named 'Taksil Garden Studio' was pointed out by accused No.37-Kayamuddin Kapadiya.

16.47.42. It is submitted that the prosecution would also rely on evidence of Asif bhai Vora, who was serving in BATA Vapi, Surat, who is a resident of Anand and was examined as PW-1098/Exh.7769. The said witness and accused No.37- Kayamuddin Kapadiya are co-students and known to each other. accused No.37- Kayamuddin Kapadiya contacted witness in December 2007, his friend namely Abdul Shubhan and told him to permit him to stay at his house. Hence, accused No.37-

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Kayamuddin Kapadiya's friend Abdul Shubhan came and stayed at the house of witness. Few months thereafter, accused No.37- Kayamuddin Kapadiya and his friend Abdul Shubhan whose alias name is Taukir again came and both stayed at the place of witness. The witness was interrogated by police and his statement under Section 164 of Cr.P.C. is also recorded at Exh.7770. The witness was called upon to identify accused No.37- Kayamuddin Kapadiya, but he could not identify as he was not recognizable because of his beard and physical appearance. However, this would establish the association amongst the accused.

16.47.43. Thereafter, with respect to the connection of this accused with the STD/PCO at Surat, the prosecution has relied upon the panchnama at Exh.6495, wherein A-37 made a disclosure that he made a call to Taukir from STD PCO and thereafter, he had voluntarily pointed out Minaz Telephone, STD PCO booth situated at Nuttan Nagar Old Railway crossing, Vapi. PW-907/Exh.6094 Irshad Pathan, one of the panch witnesses to Exh.6495 has turned hostile. However, the aforesaid panchnama stands proved through the evidence of PW-1155/Exh.8517.

16.47.44. The prosecution has also relied upon the evidence of PW-1043/Exh.7060 Sirajuddin Ansari, who was running pan galla (stall) at Mungalisara, Surat and has deposed that during the year 2008-2009, one coin box phone of BSNL Company was kept at his stall and that on 12.02.2009, the police had come to his stall alongwith one person named Kayamuddin and inquired about the coin box phone, and recorded his statement. However, this witness was unable to identify the said person.

16.47.45. The prosecution with respect to the arrangement of hotel by A-37, has relied upon the panchnama at Exh.6497 dated 04.03.2009, wherein A-37 made a voluntary disclosure that he had booked a hotel room for stay of accused Taukir (now facing trial) and thereafter, pointed

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out hotel Vapi Intercontinental situated on National Highway, GIDC Vapi. During the said panchnama, PW-1122/Exh.8068 Ismail Bagga, who was serving at the reception of Hotel Vapi Intercontinental, produced the hotel register (Exh.6498), entry No. 1739 records the arrival date of Taukir A Shaikh on 19.05.2008 at 8:30 p.m. and his departure on 20.05.2008 at 10:00 a.m., and the said entry came to be seized under the panchnama. Though the panch witness of the aforesaid panchnama namely PW-908/Exh.6496 was declared hostile, but the prosecution has relied upon the evidence of the Investigating Officer PW-1155/Exh.8517.

16.47.46. It is submitted that A-37 in his examination in chief has deposed on the basis of what was told to him by his brother (A-35) and that the version of A-37 is nothing less than story telling as except the fact that A-37 as an accused was stating on oath, which is not only unbelievable but even incomprehensible, more particularly as A-35 at no point of time ever stated about what A-37 is saying in the name of A-35. It is also submitted that A-37, who is conscious about human rights and also aware the provisions of Right to Information Act, had such torture and illegal confinement actually taken place, would have not missed any opportunity of stating what is stated in his deposition at the earlier possible time.

16.47.47. The Court has considered the rival submissions of the parties. In the opinion of the Court, three very important witnesses namely Idris, Ambalal Baraiya and Pravin Bhai Katariya, who are natural witnesses for involving accused No.37- Kayamuddin Kapadiya and many others for participating in Halol camp. Also, one witness named Idris (Munjawar) had identified accused No.37- Kayamuddin Kapadiya during the course of his deposition i.e. dock identification. Witness Idris

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had also given his statement under Section 164 of Cr.P.C, which is proved by prosecution at Exh.7924 and other two witnesses Ambalal and Pravin Bhai who have identified accused No.37- Kayamuddin Kapadiya in Test Identification Parade.

16.47.48. The Court has perused the deposition of one another witness relating to Halol camp namely Mohd. Yunus Suleman Bhai of Vadodara, who was examined at PW-942/Exh.6625. He has deposed that he being in business of decoration under the name of Milan Farazkhana, and knew the work of repairing rubber stamp. He deposes that accused No.37- Kayamuddin Kapadiya came to him for taking bamboo stick and some 7 to 8 bamboo sticks were given to accused No.37- Kayamuddin Kapadiya and witness know Kayamuddin since 2-3 years. Though witness knew Kayamuddin, but he could not identify accused No.37- Kayamuddin Kapadiya in the Court and explained that back then, accused No.37- Kayamuddin Kapadiya had no beard and moustache, but today when the persons are shown to him, most of the persons had beard and mustaches and hence, he could not identify accused No.37- Kayamuddin Kapadiya.

16.47.49. The Court has also perused the deposition of PW-957/Exh. 6687- Jakir Hussein Qureshi, who would involve accused No.37- Kayamuddin Kapadiya in meeting, which took place at accused No.4- Samsuddin Shaikh's Nana's house. The witness would implicate many other accused namely accused No.4-Samsuddin Shaikh, accused No.6- Mohammad Aarif, accused No.8-Yunus Mansuri, accused No.15-Mufti Abubasar, accused No.27-Abdul Rajik, absconder Taukir and accused No.37- Kayamuddin Kapadiya in this meeting. The witness has also identified accused No.37- Kayamuddin Kapadiya during the course of his deposition. Witness Jakir also involves accused No.37- Kayamuddin

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Kapadiya, accused No.75-Afridi, Mujib (deceased accused) and accused No.27-Abdul Rajik based on extra judicial confession of accused No.27-Abdul Rajik in the incident of recce being conducted for choosing sites of bomb blast and placing bomb laden cycles.

16.47.50. With regard to use of cycle, the Court has perused the deposition of witness-Mohd. Rafik Shaikh as PW-950/Exh.6645, who runs a cycle repairing shop in the name of 'Shalam cycle repairing works'. The witness is interrogated by police on 01.02.2009 and subject of interrogation of witness relates to person who came to his shop for the purpose of cycle repairing. This witness was subjected to Test Identification Parade and during the course of Test Identification Parade, witness identified a person, who came to him for the purpose of cycle repairing and as that person was identified, Magistrate asked his name to, which he replied that he is Kayamuddin Kapadiya of Vadodara i.e. accused No.37- Kayamuddin Kapadiya. Though witness could not identify accused No.37- Kayamuddin Kapadiya during the course of his deposition, he has given valid and appropriate explanation for it, as lapse of time and growing of beard and mustaches.

16.47.51. In same sequence, panchnama Exh.5628 was drawn on 16.01.2009 between 13:00 hours to 14:30 hours, during which accused No.37- Kayamuddin Kapadiya pointed out two relevant places (1) a place known as Kamdar Medan from where accused No.27-Abdul Rajik gave a cycle loaded with bomb to accused No.37- Kayamuddin Kapadiya and (2) the place which is a place know as 'Janta Pan house' near Sarangpur Darwaja, from where this cycle was loaded with bomb which was parked and planted and ultimately exploded on 26.07.2008, for which F.I.R has been registered at Khadia Police Station. This panchnama Exh.5628 was proved through panch witness Exh.5627, who

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deposed about initial panchnama being drawn at Crime Branch Police Station, Ahmedabad City in presence of Investigating Officer Shri. Asari and also in presence of accused No.37- Kayamuddin Kapadiya and panch witness, who have fully supported the contents and case of prosecution as stated in Exh.5628. This panchnama further proved Investigating Officer Shri. Asari at Exh.8287. During the panchnama Exh.5534, accused No.27-Abdul Rajik pointed out place of recce as well as the place from where he rented cycle and made disclosure and involved of accused No.37- Kayamuddin Kapadiya. Moreover, during panchnama at Exh.6808, Mujib (deceased accused) pointed out place, where he parked cycle, who also made disclosure and involved accused No.37- Kayamuddin Kapadiya. Similarly, during panchnama Exh.7387, accused No.75-Mohammad Rafiq pointed out place, where he parked cycle. During this panchnama accused No.75-Mohammad Rafiq made disclosure and involved accused No.37- Kayamuddin Kapadiya. Moreover, during panchnama Exh.7597, accused No.75-Mohammad Rafiq also pointed out the place of Bapunagar Diamond Market where he planted cycle. During this panchnama accused No.75-Mohammad Rafiq made disclosure and also involved accused No.37- Kayamuddin Kapadiya. The case of prosecution is to see this circumstance in context of accused No.27-Abdul Rajik's extra judicial confession before witness Jakir, which relates to making of recce and planting of bomb laden cycle by confessing accused No.27-Abdul Rajik himself, accused No.37-Kayamuddin Kapadiya, accused No.75-Mohammad Rafiq and Mujib (deceased accused).

16.47.52. Evidence of approver Ayaz PW-1141/Exh/8191, who has given evidence against accused No.37- Kayamuddin Kapadiya. This witness himself being original accused has deposed about his association

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with many SIMI activists which would include accused No.6-Arif Kagzi. The witness also states about meetings of SIMI and post ban on SIMI, meetings of SIMI at secret places. Witness has also stated about different such SIMI meetings between 2005 to 2008. Witness also states about one important meeting in 2008 (March) at accused No.4-Samsuddin Shaikh's Nana's house at Dariyapur which was attended by SIMI persons across the country which would include accused No.6-Arif Kagzi, accused No.12-Safdar Nagori, accused No.11-Sibli, then absconder Taukir, accused No.37- Kayamuddin Kapadiya, accused No.15-Mufti Abubasar, accused No.27-Abdul Rajik and accused No.4-Samsuddin Shaikh. Witness Ayaz also involved accused No.37-Kayamuddin Kapadiya with other accused for the purpose of taking on rent one house, situated at Umraunagar, Vatva owned by person named Firoz Shaikh (PW-1106/Exh.7929). This house is visited by witness Ayaz and used by accused No.37- Kayamuddin Kapadiya, accused No.15-Mufti Abubasar and then absconder Taukir. During the course of investigation, this house was searched and articles like ball-bearing balls, bolts, wires and newspaper dated 22.05.2008 etc were found. Witness also deposes about Lal Darwaja swimming pool admission form filled in the fake name to get the admission having photograph of accused No.37- Kayamuddin Kapadiya and forged signature of fake person. This form bore handwriting of witness and also identified by witness and forged signature in the name of applicant forged by accused No.37- Kayamuddin Kapadiya also identified by witness. This forged document i.e. swimming pool admission form is seized from office of Lal Darwaja swimming pool and is also proved through vide Exh.3232. The witness also involves accused No.37- Kayamuddin Kapadiya as accused No.37- Kayamuddin Kapadiya stated about they having plan of

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bomb explosion. Witness also involves accused No.37- Kayamuddin Kapadiya in an event happened on 23rd July 2008, as on that day, accused No.37- Kayamuddin Kapadiya showed a place at Naroda Gam, where bomb was to be planted. accused No.37- Kayamuddin Kapadiya also instructed witness that 'when you are instructed to plant bomb witness has to plant bomb' at the place shown by accused No.37- Kayamuddin Kapadiya. Accused No.37- Kayamuddin Kapadiya thereafter, directed witness by giving him number for the purpose of contacting him (accused No.37- Kayamuddin Kapadiya) on 25th date for further plan. Witness also deposed that on the night of 25th July 2008, witness contacted through PCO on the number given by accused No.37- Kayamuddin Kapadiya and upon contact, phone was received by accused No.37- Kayamuddin Kapadiya and accused No.37- Kayamuddin Kapadiya instructed witness to stay there as he would come there. Thereafter, accused No.37- Kayamuddin Kapadiya came to the place of witness i.e. Gita Mandir bus stand and instructed that tomorrow i.e. 26th July is the day fixed for bomb blast. Accused No.37- Kayamuddin Kapadiya further instructed witness to come on the next day at 4 o'clock at Sarangpur and called him (accused No.37- Kayamuddin Kapadiya) on the same number. As instructed, witness came and through PCO contacted accused No.37- Kayamuddin Kapadiya on the number given which was picked by accused No.37- Kayamuddin Kapadiya and on instruction, witness went to Ajit Mill cross roads. The witness thereafter went to Ajit mill cross roads and again on instruction of accused No.37- Kayamuddin Kapadiya, he contacted on the same telephone number of accused No.37- Kayamuddin Kapadiya and this time phone was picked by accused No.27-Abdul Rajik. Thereafter, the deposed incident which happened

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also relates to accused No.27-Abdul Rajik, which would also implicate accused No.37- Kayamuddin Kapadiya. Witness also identifies accused No.37- Kayamuddin Kapadiya and other accused persons during the course of his deposition.

16.47.53. The Court has also perused the deposition of witness-Asif Shaikh of Vadodara as PW-1117/Exh.8019, who knows accused No.3-Iqbal Kasam Shaikh. He also deposed that through accused No.3-Iqbal Kasam Shaikh he knew accused No.37-Kayamuddin Kapadiya and they also used to meet. He further deposed that before 15 days from the bomb blast, accused No.3-Iqbal Kasam Shaikh called witness and informed witness that accused No.37- Kayamuddin Kapadiya has come to Vadodara and accused No.37- Kayamuddin Kapadiya wants to meet witness as well as Rafik (PW-1131) and thereafter, witness and Rafik went to meet accused No.37- Kayamuddin Kapadiya and accused No.3-Iqbal Kasam Shaikh at Gotri-Vadodara and from there to one another place at the matrimonial home of witness at Tandalja and on the terrace of house, accused No.37- Kayamuddin Kapadiya told witness about bomb blast planned to take place in Ahmedabad, Vadodara and Surat. accused No.37- Kayamuddin Kapadiya insisted for involvement of witness and Rafik which was denied. Witness also states that he and accused No.3-Iqbal Kasam Shaikh went to Ahmedabad and accused No.3-Iqbal Kasam Shaikh contacted accused No.37- Kayamuddin Kapadiya and they talked with each other and thereafter, accused No.3-Iqbal Kasam Shaikh took witness to Lal Darwaja, where Kayamuddin was present and all of them went to a garden. Thereafter, accused No.37-Kayamuddin Kapadiya purchased 50 shirts. The witness asked him that why this much shirts he purchased, to which accused No.37-Kayamuddin Kapadiya replied that he purchased 50 shirts as there is a

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function in the house of accused No.37- Kayamuddin Kapadiya and to give gifts to the guests, who are coming there. Then, they went to CTM and Kayamuddin dropped them. Thereafter, he did not know where accused No.37- Kayamuddin Kapadiya had gone. Thereafter, accused No.3-Iqbal Kasam Shaikh gave witness a packet for the purpose of handing over to accused No.37- Kayamuddin Kapadiya at Ahmedabad. The witness was also given telephone number of accused No.37-Kayamuddin Kapadiya. Witness and Rafik went to Ahmedabad and through PCO contacted accused No.37- Kayamuddin Kapadiya and upon contacting accused No.37-Kayamuddin Kapadiya told them to come at Narol and hence, witness and Rafik went to Narol and handover the packet to accused No.37-Kayamuddin Kapadiya. Thereafter, witness and Rafik went to the place of address given by accused No.37-Kayamuddin Kapadiya, where they heard some voices, to which accused No.37- Kayamuddin Kapadiya told them that they are guests of accused No.37- Kayamuddin Kapadiya and they would be staying in Ahmedabad for some days. Thereafter, they saw 2 cars stationed at that place. Witness and Rafik were told to help accused No.37- Kayamuddin Kapadiya, which was refused. Witness also gave his statement under Section 164 of Cr.P.C, which is provided through the deposition of the witness and which is duly exhibited vide Exh. 8020. During the course of the deposition, the witness has identified both accused No.3-Iqbal Kasam Shaikh and accused No.37- Kayamuddin Kapadiya. Witness, in the cross-examination, stated that whatever happened between witness Rafik, accused No.3-Iqbal Kasam Shaikh and accused No.37-Kayamuddin Kapadiya was known by his mother. The witness also states that he was subjected to Police interrogation and his statement was recorded. Witness is also subjected to cross-examination on the fact that

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why he did not disclose to the police about what happened to him even after bomb blast, to which he replied that he was frightened. Witness in the cross-examination also disclosed the fact that accused No.3-Iqbal Kasam Shaikh intimidated witness for implicating him and therefore, also the witness was scared. The witness also denies that he was kept in illegal confinement for 20 days by police.

16.47.54. The Court finds that PW-1097/Exh.7767-Mehtab Shaikh stated about one SIMI meeting, which took place at Limbayat, Surat, wherein accused No.4-Samsuddin Shaikh, accused No.8-Yunus Mansuri, accused No.6-Mohammad Aarif and accused No.12- Safdar Nagori were present. Moreover, witness stated that in the year 2008, accused No.37- Kayamuddin Kapadiya met him and at that time Taukirbhai (then absconder) was with him. He stated that they were looking for rented house. Even though witness knew accused No.37- Kayamuddin Kapadiya and other accused, he is unable to identify other accused, except accused No.4-Samsuddin Shaikh due to reason that there is no much contact with them. Looking to the evidence of this witness, it appears that this accused were members of SIMI and were present in the SIMI meeting though SIMI is banned terrorist organization and in the year 2008, accused No.37- Kayamuddin Kapadiya and absconder Taukir were looking for rented house.

16.47.55. The Court has considered the panchnama Exh.6083 drawn on 08.12.2008 between 00:30 hours to 05:30 hours by Crime Branch Police Station Ahmedabad City. The first part of panchanma was drawn at Police station situated at Gaikwad Haveli, where accused No.37-Kayamuddin Kapadiya, panchas and police persons were present. During the course of drawing of first part of panchanma, accused No.37-Kayamuddin Kapadiya volunteered to show certain relevant places

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which would be relevant to the case of prosecution and hence, pursuant to it second part of panchnama was draw and during the course of it, accused No.37- Kayamuddin Kapadiya first led panchas and police from Gaikwad Haveli through Behrampura Chawki, Chandola Lake to Goodluck barrel market and a place known as Jaybharat Process House in it. After deboarding the vehicle, accused No.37- Kayamuddin Kapadiya pointed out a (1) closed Godown, from where accused No.37- Kayamuddin Kapadiya and one another absconder chota Sajid purchased two barrel and other barrels were purchased by Salauddin, who is accused No.45-Fazle Rehmaan. So far as these barrels are concerned, they were used for the purpose of storing explosive substance and detonators. Thereafter accused No.37- Kayamuddin Kapadiya again led panchas and police persons to a place through Nabi Nagar and through R M pan Parlour to Al- Mohammadi society first lane and stopped the vehicle and after deboarding the vehicle, accused No.37- Kayamuddin Kapadiya pointed (2) one closed house which was found locked and was taken on rent and used for the purpose of preparation of bomb. Thereafter, accused No.37- Kayamuddin Kapadiya led panchas and police to a place which was situated outside Al-Mohammadi society, (3) a shop named Nilam electrical and services of this shop were taken for the purpose of electric work undertaken at Al-Mohhamdi Society. Thereafter, accused No.37- Kayamuddin Kapadiya again led all to Isanpur cross roads and from there to Vatva Saiyad Vadi and stopped at a place known as Silicon City and near to it, a complex-building named Manan Complex, wherein there is shop labelled (4) Taskil Garden Studio, this is the place where accused No.37- Kayamuddin Kapadiya got his photograph which were ultimately used for accused No.37- Kayamuddin Kapadiya's swimming pool application form. Thereafter,

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accused led all to a house situated at (5) Umraunagar, Vatva, which is house no.3 and this house was occupied by accused No.37- Kayamuddin Kapadiya, accused No.15-Mufti Abubasar and absconder Taukir. At this place, on the ground floor of this house, on inquiry, a person named Firoz Dilawar Shaikh was present through whom it was known that this house was given by him and he also identified accused No.37-Kayamuddin Kapadiya as a person occupying it. Thereafter, accused through Vatva cross roads led all to Isanpur village and pointed a shops named (6) Dharti Belt house and Chashma Ghar together with Evergreen Belt House. From these shops on 15.07.2008, mobile phones were purchased and sim cards of IDEA and Vodafone company were also purchased. It was also known that sim cards were purchased in the name of Desai Navinchandra and Navin Mohanlal Patel. Thereafter, accused No.37- Kayamuddin Kapadiya also led a place called Hari OM complex at Isanpur Gam and a shop named (7) Jay Ambe electric shop, from where table fan of Orient Company was purchased. Thereafter, accused No.37- Kayamuddin Kapadiya also led police persons to Bhulabhai Cross roads, Gita Mandir ST stand and up to Kalupur Police Station and pointed out a shop which was closed named (8) Royal Gas Stove from where two gas cylinders were purchased on 24.07.2008 and used for planting in two different motor cars. Thereafter, accused further led all to Swaminarayan Temple passing through Kalupur Police Station and oriental building and pointed out a shop from where one sim card of Vodafone, two sim cards of Airtel on 07.07.2008 by accused No.37-Kayamuddin Kapadiya and accused No.27-Abdul Rajik and one mobile phone of Nokia in the name of Raj Marketing were purchased from the shop named (9) OK Selection and thereafter, a place near to it as well as near Roopam Cinema from a shop named (10) Rajdhani Electronics,

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from where three mobile phones in the name of Raj Marketing were purchased. This panchnama Exh.6083 is proved through panch witness Exh.6082 and also through Investigating Officer at Exh.8638.

16.47.56. Accused No.37-Kayamuddin Kapadiya is involved by accused No.2-Imran Shaikh in his confessional statement as one of the participants of Vagamon camp. Accused No.2-Imran Shaikh in his confessional statement has also involved accused No.37- Kayamuddin Kapadiya as one of the participants of Halol training camp amongst many others as stated in confessional statement. In Halol camp, secret name of accused No.37- Kayamuddin Kapadiya was Abdul Kadir. The confessional statement also states about participation in Halol camp of accused No.37- Kayamuddin Kapadiya's brother accused No.35-Rafiyuddin Kapadiya. Confessional statement also states about all participants first went to Khundpir Dargah and the arrangement of staying there was being made by friend of accused No.2-Imran Shaikh namely Sadab Panwala through Munjawar of this Dargah named Idris Bhai. The statement further states about Munjawar Idris bhai not knowing anything motive of the camp much less about camp. Statement also refers to activities of Halol training camp similar to Kerala camp. Confessional statements clearly state about accused No.37- Kayamuddin Kapadiya having taught other participants as to how to prepare pipe and petrol bomb and also exhorted all to have intent to take revenge and most importantly statement clearly states about accused No.37-Kayamuddin Kapadiya went absconding from 31st March (2008).

16.47.57. The prosecution has also relied rightly on confessional statement of accused No.76-Manjarimam Aliimam at Exh.9021. accused No.76-Manjarimam Aliimam is one of the participants of Kerala camp and he clearly states that he joined SIMI and hence, he is a SIMI activist.

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He also named top SIMI leaders like accused No.12- Safdar Nagori, accused No.10-Amil Parvaz, accused No.11-Shibily and others. accused No.76-Manjarimam Aliimam is not named by accused No.2-Imran Shaikh in his confessional statement, which would justify the case of prosecution that all the attendees of Vagamon camp were not known to each other and their identity was to be kept secret. accused No.76-Manjarimam Aliimam also named other participants as accused No.12-Safdar Nagori, accused No.10-Amil Parvaz, accused No.11-Shibily, accused No.27-Abdul Rajik Abdul Rajik, accused No.15-Mufti Abu Bashar and others, who are also named by accused No.2-Imran Shaikh in his confessional statement. accused No.76-Manjarimam Aliimam also states about activities done at Vagamon camp like air gun shooting and giving of lectures on atrocities against Muslims in Gujarat Babri Masjid, sending innocent people to jail, RSS activism against Islam and many other things. accused No.76-Manjarimam Aliimam in his confessional statement also refers to the incident of Gujarat blast and stay of certain accused at his place and many other incidents of bomb blast across the country. The real brother of accused No.37- Kayamuddin Kapadiya who is accused No.35-Rafiyuddin Kapadiya has also given his confessional statement at Exh.8631, who also states that his brother accused No.37-Kayamuddin Kapadiya went to Kerala in training camp in the month of December 2007. He also states that their parents rebuked accused No.37- Kayamuddin Kapadiya, but accused No.37- Kayamuddin Kapadiya was not listening to them. accused No.35-Rafiyuddin Kapadiya also states that in January 2008, accused No.35-Rafiyuddin Kapadiya and accused No.37-Kayamuddin Kapadiya attended SIMI camp near to Champaner Dargah. It was accused No.37- Kayamuddin Kapadiya at this camp, who introduced accused No.35-Rafiyuddin

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Kapadiya with many other participants of Ahmedabad and Vadodara as well as from Rajasthan. accused No.35-Rafiyuddin Kapadiya also stated that in the month of March, 2008 police of Madhya Pradesh came in search of his brother accused No.37- Kayamuddin Kapadiya at Vadodara and upon knowing it, accused No.37- Kayamuddin Kapadiya left home and ran away. accused No.35-Rafiyuddin Kapadiya further states that his brother accused No.37-Kayamuddin Kapadiya had studied in Science up to standard 12th and he is having staunched ideology of SIMI. Through panchnama Exh.6443 dated 17.11.2008, accused No.35-Rafiyuddin Kapadiya also pointed out place of Halol camp.

16.47.58. The Court finds that accused No.37- Kayamuddin Kapadiya is involved by Mohammadumar Usmanbhai Mansuri (PW-1115/Exh.8002). The said witness as well as accused No.37-Kayamuddin Kapadiya, accused No.7- Mohammad Usman and accused No.2-Imran Shaikh are from Taiwada and are childhood friends. In para-2 of his deposition, witness also states that in the month of March-April, when Madhya Pradesh police came to Vadodara, accused No.37-Kayamuddin Kapadiya was wanted. He has also stated that accused No.37- Kayamuddin Kapadiya called him from Vapi and he said that he wanted to talk to his house and thereafter, he talked to witness that he would call at 8 p.m. Then at 8 p.m. accused No.37- Kayamuddin Kapadiya called witness again and witness gave phone to accused No.37- Kayamuddin Kapadiya's brother Rafiyuddin (accused No.35-Rafiyuddin Kapadiya) and his brother talked to accused No.37-Kayamuddin Kapadiya. In para-3 of the deposition, witness states that in the month of July 2008, accused No.37- Kayamuddin Kapadiya called him at Old Padra Road, Tandalja and in one restaurant accused No.37-Kayamuddin Kapadiya talked about taking of revenge for Godhra

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incident and also talked about explosion of bomb blast to be done in Vadodara and some places in Gujarat, for which accused No.37-Kayamuddin Kapadiya sought help of witness and also asked witness to do recce-surveillance for the purpose of finding out crowded places dominated by Hindu community, to which the witness denied. In para-4 of the deposition, the witness states that after commission of bomb blast incident, he saw in news involvement of accused No.37- Kayamuddin Kapadiya, accused No.7-Mohammad Usman, accused No.2-Imran Shaikh and accused No.3-Iqbal Shaikh in the incident. The witness has also given his statement under Section 164 of Cr.P.C at Exh.8003.

16.47.59. The Court finds that the evidence of PW-1131/Exh.8118-Mohd. Rafik of Vadodara is like evidence of PW-1117/Exh.8019, as they are paired witness. This witness has also given his statement under Section 164 of Cr.P.C at Exh.8119. The defence has purposely and intentionally frustrated their own rights of cross-examining of this witness, for which examining different applications vide Exh.8101, 8104, 8114, 8115, 8120 and 8124. Upon close examination the sequence of events as unfolded through these applications, the Court finds that defence was already aware about examining this witness, in spite of that, repeatedly they asked for adjournments immediately after examination-in-chief was finished, and the purpose of seeking such adjournment was only to ensure that witness could not stay in India as he was actually residing outside India and was running out of time and that was also known to defence. Hence, defence itself is responsible for not cross-examining this witness, as examination-in-chief involves accused No.37- Kayamuddin Kapadiya and others, also a case of conspiracy, therefore, examination in chief cannot be kept out of consideration from appreciation. Accused No.37- Kayamuddin Kapadiya is also prosecuted

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in a distinct offence registered at Kerala for arranging Vagamon camp alongwith many other participants like accused No.37- Kayamuddin Kapadiya from across the country, on the basis of FIR registered for this distinct offence at Ernakulam which was investigated by National Investigation Agency (NIA) through F.I.R bearing number (R.C. No.4/2010/NIA/DLI). Upon completion of investigation, Session Case was registered bearing Sessions Case No.2 of 2011/NIA. This case was conducted in the Special Court for NIA cases at Ernakulam, Kerala and judgment came to be delivered on 14.05.2018 (Exh.9421).

16.47.60. The Court has perused the evidence of PW No.924-Sarfaraz Abdulrahim Ajmerwala vide Exh. 6569, who runs business of plastic barrels in Goodluck Barrel Market. This witness was interrogated by police in relation to purchase of drums from his shop, upon which he stated that if someone had purchased drums from his shop, he could identify him. Therefore, this witness was subjected to Test Identification Parade on 17.12.2008, wherein he was called to the Court of Magistrate. During the course of Test Identification Parade, this witness has successfully identified accused No.37-Kayamuddin Kapadiya as the person who came to his shop for purchase of drums. However, during the course of deposition, he could not identify accused No.37-Kayamuddin Kapadiya, upon being shown to him as he had grown a long beard and also because of lapse of time. Test Identification Parade of this witness is Exh.3168 and Test Identification Parade is proved through Executive Magistrate being PW No.589-Indravir Vajubha Zala, who is examined vide Exh.3159.

16.47.61. The Court has perused the evidence of PW No.943-Kukhrajbanu vide Exh.6629, PW No.928-Mohammad Ibrahim vide Exh.6586 and PW No.952-Mohammad Arif vide Exh.6651. Out of

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aforesaid witnesses, witness-Kukhrajbanu is the owner of House No.10 of Al-Mohammadi Society, which was taken on rent by accused No.37-Kayamuddin Kapadiya. While taking this house on rent, other two witnesses i.e. Mohd. Ibrahim and Arif are also involved, as Arif, is the broker and Mohd. Ibrahim is the person, who is working in the Al-Mohammadi Society. Witness- Kukhrajbanu gave her house No.10 of Al-Mohammadi Society on rent to accused No.37-Kayamuddin Kapadiya through these two other witnesses. Witness-Kukhrajbanu identified accused No.37-Kayamuddin Kapadiya in Test Identification Parade at Exh.3168 as the person who took on rent her house and witness Mohd. Ibrahim has also deposed about he having gone with witness Arif bhai alongwith Kayamuddin for the purpose of giving House no.10 on rent and terms of rent were also decided to the knowledge of witness. This witness has described the appearance of Kayamuddin to be good looking, with straight hair, fair complexioned and wearing Jabbho Lengho. However, this witness could not identify accused No.37-Kayamuddin Kapadiya owing to lapse of time and as the physical appearance of the person shown to him during the course of his deposition has drastically changed, due to which this witness is unable to identify.

16.47.62. PW No.952-Mohammad Arif has also given evidence like PW No.928-Mohammad Ibrahim and has also deposed about himself going with Mohd. Ibrahim to Kukhrajbanu for the purpose of taking on rent, House no.10 of Al-Mohammadi Society by two persons who visited on 05.07.2008. PW No.952-Mohammad Arif had been subjected to Test Identification Parade wherein he identified accused No.27-Mohammad Ismail Mansuri as the person who had come to him for the purpose of taking on rent, House no.10 of Al-Mohammadi Society. The

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Test Identification Parade panchnama has been exhibited at Exh.3171 and stands proved through the evidence of the Magistrate; PW No.589-Indravir Vajubha Zala, who is examined vide Exh.3159. As per the case of the prosecution, witness Arif was visited by two persons namely; accused No.37-Kayamuddin Kapadiya and accused No.27-Mohammad Ismail Mansuri.

16.47.63. The Court has considered the panchnama at Exh.6656, which was drawn on 19.09.2008, upon the voluntary disclosure of accused No.1-Jahid Shaikh which led to pointing out of House No.10 of Al-Mohammadi Society. The aforesaid panchnama has been dealt with in the case against various accused such as; accused No.1-Jahid Shaikh, accused No.8-Yunus Mansuri and accused No.38-Mohammad Saif Sheikh**,** wherein utensils were recovered alongwith the recovery of a chance print on a broken CD, which was photographed and subjected to scientific examination. Upon finding presence of explosive substance, it was subjected to FSL Opinion, wherein it was opined that there was a presence of Nitrite and Nitrate Radicals from the articles seized and recovered from House No.10, Al-Mohammadi Society.

16.47.64. The Court has perused the evidence of PW No.1004-Mohammad Kaushar Mohammad Ibrahim Saiyed vide Exh.6978 (Secret witness T), who is doing business in the name of 'Nilam Electric', opposite Al-Mohammadi Society. He has deposed that police had come to him alongwith one person namely Rizwan Bhai. He also stated that he went to Al-Mohammadi Society to do electric and repairing work, for which Rizwan Bhai gave him Rs.40/- to Rs.50/- for labour. He further states that Rizwan Bhai himself has called this witness for this repairing work. The witness has given his statement under Section 164 of Cr.P.C before the Magistrate, which is on record at Exh.6979 and the witness

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identified his signature made on it. Due to lapse of time of 10 years, the witness was unable to identify the accused. The alias name of Accused No.37-Kayamuddin Kapadiya is 'Rizwan'. As stated earlier, accused No.37-Kayamuddin Kapadiya made disclosure and pointed out a place namely Nilam Electric Shop situated near Al-Mohammadi Society. The case of prosecution is that accused No.37-Kayamuddin Kapadiya went to Nilam Electric and witness Mohd. Kaushar went to house No.10 of Al-Mohammadi Society for the purpose of doing electric work. It establishes connection of A-37 with the House No.10 Al-Mohamadi Society.

16.47.65. Another circumstance is the pointing out of house at Umraonagar, Vatva by accused No.37-Kayamuddin Kapadiya. The owner of this house is PW No.1106-Firoz Dilawar Shaikh, who has been examined vide Exh.7929 has involved accused No.37-Kayamuddin Kapadiya, absconder Taukir and accused No.15-Mufti Abubasar as they occupied and stayed in this house. The witness has identified accused No.37-Kayamuddin Kapadiya and approver (accused No.23-Aiyaz Razakmiyan Saiyed) in Test Identification Parade also in the Court. The case of the prosecution is that accused No.37-Kayamuddin Kapadiya actually stayed at this house with other accused and accused No.23-Aiyaz Razakmiyan Saiyed (now approver) also visited this house. Evidence of Firoz Dilawar Shaikh at Exh.7929 was discussed in detail in the Chapter on "Appreciation of deposition of relevant witnesses". The approver also gave evidence about Umraonagar, Vatva House in detail. Moreover, during Panchnama at Exh.6434, accused No.15-Mufti Abubasar voluntarily pointed out House No.3 of Umraonagar, Vatva, where articles like nut, bolt, wires, ball-bearing balls, etc. were seized.

16.47.66. For the purpose of association of A-37 with the hideout, the

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Court may peruse the evidence of PW No.929-Rafikbhai Hussainbhai Abadal vide Exh.6587, who is running veg and non-veg food hotel in the name of 'Garib Nawaz'. The case of the prosecution is that accused No.15-Mufti Abubasar and two other companions had visited the said place for food. The witness has identified accused No.15-Mufti Abubasar in Test Identification Parade at Exh.3054 dated 27.08.2008. Executive Magistrate PW No.571-Ramanbhai Senghabhai Solanki vide Exh.3051 gave evidence with respect to Test Identification Parade however, witness was unable to identify accused No.15-Mufti Abubasar in Court due to growing of beard and change in physical appearance.

16.47.67. The Court has perused the evidence of PW No.927-Mohammad Rizvan vide Exh.6583, who is in business of gas cylinder since 1990 at Kalupur in the name of 'Royal Gas Stove Centre'. He has deposed that he used to deal in gas bottle weighing 2kg and 5kg of the company namely Power king and Bajaj. He has also deposed that on 05.08.2008, his shop was visited by Crime Branch police persons and he was interrogated with regard to the blast, which took place at Civil hospital and LG hospital as well about his dealing in gas bottles, to which the witness recollected that few days back, a person of a particular height, fair in skin and thin came to him and purchased two bottles worth Rs.1500/- as normally the customer would purchase only one bottle, whereas this person purchased two bottles. He has also deposed that that if the said person is shown to him, he could identify. Pursuant thereto, he was called at the Court of Executive Magistrate, situated in the compound of Collector office on 15.12.2008, where he was subjected to Test Identification Parade and he pointed out the said person who had purchased two 5Kg. gas bottles by holding hand. Thereafter, upon an inquiry being made by the Executive Magistrate, the

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said person was identified as accused No.37-Kayamuddin Kapadiya. He has deposed that due to lapse of 8 years and as there is change in physical appearance as well as the person having grown beard and also wearing spectacle, he could not identify accused No.37-Kayamuddin Kapadiya, however he has identified one gas bottle, produced at Muddamal List vide Exh.461 at serial No.60 as he was dealing in such types of bottles. During the cross-examination, it has also come on record that the reason for identifying accused No.37-Kayamuddin Kapadiya is that he had purchased two bottles and gave full money. On question being put to this witness that why he was unable to identify accused No.37-Kayamuddin Kapadiya, to which he replied that because at the relevant point of time, the person had grown beard. Even considering cross-examination, credibility of the witness is not impeached. The witness has identified gas cylinder as articles No.60 vide Exh.461. This damaged cylinder was seized from scene of offence panchnama being carried out at Civil hospital through Exh.1992. The witness was subjected to Test Identification Parade panchnama at Exh.3142 and the same was proved through panch witness being PW No.588-Laxman Kesvhalal Pargi vide Exh.3130.

16.47.68. The Court has also perused the panchnama at Exh.6075 dated 12.12.2008. Through this panchnama accused No.37-Kayamuddin Kapadiya identified the following different places, from where he purchased certain articles-objects, which were used for the purpose of making bombs as well as few other relevant articles used by him during the period of conspiracy and these places are as follows:

(1) Gujarat Tools, situated at Biscuit Gali, Pankor Naka, from where he purchased scissors and person of Gujarat tools was examined as witness being PW No.1037-Sabbirbhai Hussainibhai Rangwala vide Exh.7048.

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(2) Desai and Company, Electric material shop, situated at Gandhi Road, opp. Hotel Radhe, from where he purchased stripe connector.

(3) SK Electric, situated at Opp. Indian Bank, from where he purchased 13 nine-volt battery and 50 small bulbs and person of S.K. Electricals was examined as witness being PW No.1017-Vinod Sirumal Jumani vide Exh.7010,

(4) Mohan Electrics Stores, situated near Khadiya cross road, from where he purchased 7 metres thin wires, person of Mohan Electrics Stores was examined as witness being PW No.1018-Mohanbhai Gangaram Korani vide Exh.7011,

(5) J.K. Canvas Shop, situated near Panch Kuva Darwaja, from where he purchased canvas and person of J.K. Canvas Shop was examined as witness being PW No.1033-Salimbhai Kadarbhai Shaikh vide Exh. 7043.

(6) One shop near Municipal Zonal Office, from where he purchased Maruti Car cover and person of the said place was examined as witness being PW No.1032- Khalidahmed Shaikh vide Exh.7042.

(7) A.K. Traders, situated near Kadiyakui Circle, Saigara Pole, from where he purchased two sheets of black coloured plastic and person of A.K. traders was examined as witness being PW No.1034- Abdulkadir Punthawala vide Exh.7044,

(8) Shop of plastic packing material situated near Commercial Cloth Centre, from where he purchased blue coloured plastic bags, onwer of plastic material shop was examined as witness being PW No.1022-Shaileshbhai Kalidas Patel vide Exh.7024.

(9) Modern Enterprise situated between Saragnpur bridge to Kamdar Medan Cross road, from where he purchased one reliance mobile.

(10) Azad, Mobile Shop situated at Opp. Modern Enterprise, from where he purchased reliance mobile and person of Azad Telecom was

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examined as witness being PW No.801-Azadahmed Sardarahmed Shaikh vide Exh.5319. During his statement recorded, the witness has produced one carbon copy of bill from his bill book at Exh. 5320 and has identified his hand writing and signature on it. He has deposed that he has given original bill to the customer, who purchased mobile with sim.

16.47.69. On 22.12.2008, accused No.37-Kayamuddin Kapadiya has made a disclosure to point out a house of his father-in-law and from one vault of, one dairy, driving licence and original bill of Azad Telecom, which are in the name of Ashokbhai were recovered. This panchnama is on record vide Exh.6353, whereby accused No.37-Kayamuddin Kapadiya pointed out house of his father in law. The said panchnama stands proved through PW No.893-Jitendra Babulal Jayswal vide Exh.6352 and Investigating Officer being PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638. The original bill of Azad Telecom is produced record at Exh.6356. If the copy of bill produced by Azad Ahmed (PW No.801) which is on record at Exh.5319 and original bill recovered during panchnama at Exh.6353 is looked at, then it becomes clear that one bill is an original bill and other is the carbon copy of it. The aforesaid panchnama at Exh.6075 stands proved through panch witness being PW No.870-Vishank Balvantbhai Patel vide Exh.6074 and through Investigating Officer being PW No.1163-Mayur Jagmalbhai Chavda vide Exh.8638.

16.47.70. During conspiracy accused No.37-Kayamuddin Kapadiya used Cyber Cafe, situated at Suhana Apartment, Vejalpur. Moreover, accused No.37-Kayamuddin Kapadiya and accused No.1-Jahid S/O Kutubuddin Shaikh have used Inet Cyber Cafe, situated near NID, Ahmedabad. These facts are proved by prosecution by examined

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following witness:

16.47.71. PW No.956-Nayeemahmed Shaikh vide Exh.6673, who is running a Cyber Cafe at Suhana Apartment, Vejalpur in the year 2008. The police has interrogated this witness and thereafter, during Test Identification Parade at Exh.3154, the witness identified accused No.37-Kayamuddin Kapadiya as a person who has come to his Cyber Cafe. The witness identified accused No.37-Kayamuddin Kapadiya in Court also.

16.47.72. PW No.1062-Abdul Ajeem vide Exh.7219 of Inet Cyber Cafe situated near NID, Ahmedabad has implicated accused No.37-Kayamuddin Kapadiya and accused No.1-Jahid S/O Kutubuddin Shaikh for using his Cyber Cafe. The witness was unable to identify accused No.37-Kayamuddin Kapadiya and the person who came earlier with accused No.37-Kayamuddin Kapadiya in Court because as he had grown of beard and due to lapse of time. This witness has produced his Cyber Cafe register at Exh.3208, which was seized during panchnama Exh.3207. This witness, in his deposition, has stated that accused No.37-Kayamuddin Kapadiya, accused No.2-Imran Shaikh and accused No.7-Mohammad Usman Agarbattiwala have done their computer course when he was working at Vadodara.

16.47.73. The Court has also considered the evidence on record relating to the connection of A-37 with the master house (hideout). It appears from the record that on 28.11.2008, A-45 voluntarily disclosed before panch during panchnama Exh.2806 that, "I will show you the house in which I am staying on rent". Thereafter, during this panchnama, the accused pointed out master house building and after climbing the stairs, A-45 reached the 3rd floor of the building and pointed out a closed room at the end of lobby and disclosed that it had been taken on rent. The aforesaid panchnama stands proved by prosecution through

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PW-918/Exh.6543 Amar Rajput and the evidence of Investigating Officer being PW No.1155-Naryansinh Parmar vide Exh.8517.

16.47.74. Thereafter, in connection with the said master house (hideout), the Court has perused the evidence of PW-864/Exh.6037 Abdul Rashid Shaikh, who is the owner of said house, which is situated opposite Saiyedpura Pumping station, Sopariwala compound, Surat. According to the witness, master house had 20 to 25 rooms and in 2008, 7 to 8 rooms were vacant. The witness has deposed that his son used to keep the accounts of rent and deposit of the house. This witness has further deposed that on 09.07.2008 between 11 to 12, he received a telephone call from a person who wanted a room on rent. Upon inquiring, the caller told him that he was calling from Udhna, Limbayat. The witness asked him to come and meet him personally. Thereafter, the witness deposed that the said person came to his house and he had informed this witness that he had come from Ahmedabad. The witness showed him the rooms in master house and the said person chose room no.21 on the 3rd floor. The rent was fixed at Rs.3000/-rent and deposit at Rs. 10,000/-. The witness has deposed that on second day the said person came at his shop and when he went alongwith the said person at Sopariwala Compound, his son was present, whereupon he asked his son to take Rs. 10,000/- as deposit from that person and to make an entry in the diary regarding the rent of Rs.3,000/-. He also instructed his son to take the said person to the 3rd floor and to shift Udaybhai to the 4th floor. Thereafter, the witness went for prayer. During the Test Identification Parade at Exh.3108, this witness has identified A-37 before the Executive Magistrate as the person to whom he had rented the room.

16.47.75. The Court has also perused the evidence of PW-

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1016/Exh.7006 Mohd. Sakir Abdul Fareed Shaikh, who is the son of the aforesaid witness namely Abdul Rashid Shaikh (PW-864/Exh.6037), the owner of the master house (hideout). This witness has deposed that on 04.07.2008, while he was was having dinner, his father informed him that one person had come in the afternoon seeking room No.21 on rent and also informed him regarding the deposit and rent amount. On the next date, the witness took the said person to the room. At that time, the room had not been vacated by Udaybhai. According to the witness, with the help Udaybhai's wife and the said person, the household articles of Udaybhai were shifted to the room situated upstairs. The witness then asked the said person to lock the room until he brought the luggage. Accordingly, that person locked the room and an entry regarding the deposit and rent amount was made in the diary and handed over to him. According to the witness, the person who took the room on rent was fair and young. The statement of this witness in this regard had been recorded by the Police. The witness identified A-37 in Test Identification Parade at Exh.3108 which was conducted before the Executive Magistrate PW-579/Exh.3106 Dharmesh Patel, and he has identified him to be the person who had first come to him as a tenant and had given his name as Ashfaq.

16.47.76. Moreover, on 04.09.2008, during the panchnama Exh.2806, A-63 had made disclosure regarding one house which has been kept on rent by Rafiq and thereafter, he had also pointed out the master house (hideout). Considering the fact that a room in the master house was taken on rent by A-37, who is from Ahmedabad, during the conspiratorial period at Surat, which is the place where bombs were planted at different locations, and that the said house was also pointed out by A-45, who is from Maharashtra, as well as by A-63 of Surat and

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A-37, coupled with the fact that A-63 and A-37 are closely involved and implicated in two other important sequels to the conspiracy, namely D 34 River View Society and House No.10 Al-Mohammadi Society, the master house assumes relevance and importance. Furthermore, the owner as well as his son have deposed regarding A-37 having taken the room on rent. All the aforesaid evidence taken together, establishes that during the course of conspiratorial period, the said house was used by conspirators.

16.47.77. The Court has perused the the evidence of PW-1122/Exh.8068, Ismail Ibrahim Bagga, who was serving as supervisor at hotel Vapi Intercontinental and has deposed that he used to sit at the reception and made entries whenever guests arrived. He has further deposed that in the year 2009, Surat police came to the hotel alongwith Kayamuddin of Vadodara and asked for the hotel entry register for checking. Thereafter, the police checked the register and as instructed, the witness produced pg. no 174 and 175 of the hotel register to the police When the pages of the hotel register (Exh.6498) were shown to the witness, he identified it as the relevant pages of the hotel register of Hotel Vapi Intercontinental and also identified the seal of Tax Collector. The witness further deposed that entry no. 1739 was made by the customer who came to book the room. According to the witness after making the entry, the person left. After two hours, the said person returned, paid Rs.400/- in advance and informed him that at about 8:30 his guest would come. This witness has further deposed that thereafter, one man, women and infant came and stayed in room and that on the next day, at about 10:30 a.m. they checked out. This witness has further deposed that when the room was booked, he had asked the person to give a reference, whereupon, he informed that he was from Vadodara

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and that a person known to him, who had a BATA Showroom at Gunjan Cross road would give reference. Thereafter, the said person from BATA Showroom also came and gave the reference. Thereafter, specimen handwriting of A-37 was obtained on six blank hotel register pages under the panchnama Exh.6738 dated 06.03.2009. During the course of the aforesaid panchnama, A-37 also gave his natural writing. The aforesaid panchnama at Exh.6738 stands proved through PW-959/Exh.6737 Balwant bhai. The specimen handwriting of A-37 is placed on record at Exh.6739, whereas natural writing of A-37 is placed on record at Exh.6740. Thereafter, the disputed handwriting, namely entry No.1739 in Exh.6498, specimen handwriting at Exh.6739 and natural handwriting at Exh.6740 were sent through Forwarding Letter to Hand Writing Expert namely; PW-1113/Exh.7970, who upon examination, gave opinion at Exh.7987 that disputed handwriting of relevant register was written by A-37. This would therefore establish presence of A-37, at Vapi.

16.47.78. It appears that after the commission of offence while A-37 was absconding, he stayed at hotel Kamleshwar, Doodhbhatti at Puna on 19.10.2008. To prove this fact, the prosecution has examined PW-599/Exh.3212 Jaimin Ranpura, who is the panch of panchnama Exh.3222. During this panchnama, PW-970/Exh.6790 Satish Pardesi had produced visitor's register of Hotel Kamleshwar, which contained entry at serial no.961 which records the date of arrival as 19.10.2008 at 5:45 a.m. and checkout dated 20.10.2008 at 9:00 p.m. in the name of Sameer I. Kirani .

16.47.79. The Court has perused the evidence of PW-970/Exh.6790 Satish Pardesi, who has produced the hotel register of Hotel Kamleshwar, Puna, The witness has deposed with regard to Entry

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No.961 and the handwriting of the customer who made the said entry, as well as the recorded departure time, room number, number of occupants, and the amount paid. The said entry at Exh.3223 was duly proved to be the handwriting of the said witness. The witness further deposed that while he was on duty on 19.10.2008, he had allotted the room. According to this witness, the person who had come was a young collegian-type boy. However, during the deposition before the Court, this witness was unable to identify the accused due to lapse of time of about 10 years.

16.47.80. The Court has also perused the evidence of PW-969/Exh.6789- Sunil Agarwal, who is the owner of Hotel Kamleshwar with regard to the hotel register. The witness has identified the hotel register as well as Entry no.961, which was in the name of Sameer I. Kirani. The specimen handwriting and natural handwriting of A-37 at Exh.6429 were obtained during the panchnama at Exh. 6430. The said panchnama stands proved through PW-897/Exh.6428. The disputed document, specimen and natural of A-37 were sent for handwriting examination through Forwarding Letter Exh.6896. The handwriting expert K P. Vyas(PW-990/Exh.6886), has given his opinion at Exh.6897 that disputed document was written by A-37. Tis therefore establishes that A-37 had gone into hiding after the incident.

16.47.81. The Court has also perused the evidence of PW-930/Exh.6590, who was working at Nita Travel office, opposite Navchetan School, Shroff Chamber, Paldi during the year 2008. The witness has deposed that his duty hours were from 10:00 am to 9:00 p.m., and that he was engaged in the work of ticket booking and parcel service. The witness has further deposed that he had to deliver the parcels, which had come from Mumbai, Delhi, Pune, Rajkot etc. The

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witness has further deposed that whenever a person came to collect the parcel, he would inquire from where the parcel had come and upon verifying the name of the the said person, he handed over the parcel to him. The witness further deposed that two to three police persons had come to his Office and inquired about the parcel received from Pune. According to the witness, a cover in the name of Vishal had arrived and when the person came to collect the said cover, he asked him to produce his identity card. The said person replied that he had not brought his identity card. The witness further inquired from where the cover had come, whereupon the said person informed him that the cover in the name of Vishal had come from Pune and that he had come to collect it. The witness has further deposed that the said person called on the number which was mentioned on the said cover and spoke to the person on the other end and thereafter, handed over the phone to him. The witness inquired whether the cover in the name of 'Vishal' had been sent by him, whereupon the person on the other end informed him in Hindi that he had sent the cover from Pune to Ahmedabad, and asked him to handover the cover to the person who had come to collect it. Accordingly, the witness delivered the cover to the said person. The witness has further deposed that the person who had come to collect the cover was thin, about 25 to 26 years of age and fair in complexion. The witness has identified A-37 during the Test identification Parade at Exh.3168 as the person, who had collected the cover in the name of Vishal from Nita Travel Office. However, this witness was unable to identify A-37 in Court as back then, the said person was clean shaved and thin however, some of the persons shown to him during his deposition in the Court had beard, moustache and were heavily built and hence, he was unable to identify the person. The witness has further

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deposed that if photographs of the said person were shown to him, he could identify the said person. The Test Identification Parade at Exh.3168 stands proved through the evidence of the Executive Magistrate PW-589/Exh.3159. It is pertinent to note that while dealing with submissions made for A-45, the prosecution has also relied upon the circumstance connecting A-45 with the purchase of a ticket from Nita Travels, Pune.

16.47.82. The Court has perused the evidence of PW-1010/Exh.6990 Amarbhai Dodvani, who was running a business in the name of 'Anju Remote'. This witness has deposed that he was dealing in digital multimetres, mobile batteries, battery connectors, etc. The witness has deposed that on 08.12.2008, the police came to his shop alongwith one accused, namely Kayamuddin Kapadiya, who is a resident of Vadodara, and that he had purchased articles including a 9-volt battery from his shop. In the opinion of the Court, and as is evident from the F.S.L Report on record, 9-volt batteries were used in the bomb blasts.

16.47.83. It appears from the evidence of the prosecution witness as well as the confessional statement of the real brother of A-37, namely A-35, that somewhere in the month of March 2008, A-37 left his house, fled from Vadodara and remained absconding. It is a fact that the Madhya Pradesh Police was searching for A-37. However, the evidence led by the prosecution clearly establishes not only that A-37 was absconding, but also that he remained actively involved in different conspiratorial sequels of the conspiracy as elaborated by the prosecution in the present case, which involve A-37 in different acts which would incriminate him.

16.47.84. It has further been brought on record that A-37 had arrived at the Vapi Intercontinental Hotel to facilitate the accommodation of co-

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accused Taukir (presently facing trial) during the period from 19.05.2018 to 20.05.2018. It is also established that the relevant entries in the hotel register, recording the requisite particulars, were in the handwriting of A-37 as a guest. In view thereof, it is evident that A-37 was present at Vapi during the aforementioned period and had personally made the necessary entries in the said hotel register. One of the circumstances, which is narrated hereinabove, relates to Kamleshwar Hotel, wherein it is established beyond doubt that A-37 stayed in the said hotel for a period of two days in October 2008 through the opinion of Hand Writing Expert. Once again, the Court may refer to the deposition of Kayamuddin as defence witness (Exh.9338). The Court finds it the deposition itself is sufficient to disregard, disbelieve and discredit the entire case of A-37 as stated by him in examination- in-chief that he was in illegal confinement of different agencies of Madhya Pradesh police. It is also coming on record that after the arrest of A-37 was made by Madhya Pradesh police, he was produced before the Court at Ujjain on 10.11.2008, however, A-37 has not produced any material, which would prima facie reveal that he was in illegal confinement by different agencies of Madhya Pradesh police. Thereafter, on 22.11.2008, A-37 was also produced before the Court at Delhi, but there was no material produced by him, which would reveal that he had complained about his illegal confinement by different agencies of Madhya Pradesh police. Thereafter, when A-37 was arrested in the present case on 04.12.2008 and was accompanied by his lawyer, it does not appear from the record that A-37 has ever complained about his illegal confinement by different agencies of Madhya Pradesh. In the cross-examination of A-37, more particularly in para 61, the prosecution has also brought on record that wife of A-37 is graduate, father-in-law of A-37 was

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stenographer in Sachivalaya and there are many other members in the family of A-37, of whom, at least someone would have agitated about A-37 being in illegal confinement of different police agencies of Madhya Pradesh police for a period starting from last few days of March 2008 to November 2008. It has also come on record in the said paragraph, regarding the connection of A-37 with Surat. It has further come on record during course of cross-examination by prosecution more particularly in para 64 that A-37, right from the time of his production before the Court, was represented by advocate of his own choice, not only in the present proceeding, but also in the proceedings initiated by him before the Gujarat High Court as well as before Hon'ble Supreme Court, even upto the period of 2017 to 2018. A-37 has also disclosed the names of his advocate. It has also come on record that, in the proceedings pending before the Courts in Madhya Pradesh, in 2018, A-37 had appointed an advocate of his choice. A-37 was also attending the proceedings pending against him in Delhi and other Courts and until 2018, neither he nor anyone else on behalf of him, ever agitated about his illegal confinement by Madhya Pradesh police. It has also come on record in the cross-examination by prosecution, particularly in para 78 and 79 that A-37 had studied Human rights while in jail and had also obtained information by invoking Right to Information Act. Thus, inspite being conscious of his human rights and also aware about the provisions of Right to Information Act, A-37 did not even whisper about his illegal confinement by Madhya Pradesh police for almost seven months. It has also come on record in the cross-examination by prosecution, more particularly in para 80 that A-37 had filed an application in the present proceedings seeking that his conversations during the meeting with his advocates be kept confidential Even

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otherwise, in an application Exh.9350 dated 08.07.2009 submitted by A-37 before M.M Court No.11, A-37 had alleged his illegal confinement by Bhopal police only for a period of 12 days. In view of the aforesaid evidence, the allegation of A-37 regarding his alleged illegal confinement by the Madhya Pradesh police does not inspire confidence.

16.47.85. Further, A-37 in his examination-in-chief has deposed that he was beaten and harassed by Investigating Officers. He has also deposed that one police officer told him that the real culprits of bomb blast have escaped and they are not likely to be apprehended, and that the police had to show that the police had solved the case. A-37 has further deposed that the police officer told him that if A-37 accepts what the police wanted him to state, his brother would be released from the case and he too would be released. Apart from this, A-37 in his examination-in-chief, has made several other allegations of a similar nature which does not inspire confidence of the Court. In the opinion of the Court if all these incidents had actually occurred and A-37 had suffered so much atrocity at the hands of police, nothing has emerged on record to show that during the course of the trial he had ever made an application in that regard or even cross-examined any of the Investigating Officers on those lines. Hence, these allegations against the police appeared to be got up at a belated stage.

16.47.86. Further, upon perusing the deposition of A-37, particularly para 20, A-37 has deposed that he was made to write in the hotel register and also made to put his signature. It is pertinent to note that when prosecution examined the concerned witnesses of the said hotel, A-37 never challenged the deposition of such witnesses by suggesting that the hand wring and the signatures in the hotel register had been obtained from him during the course of his remand. It is also pertinent

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to note that A-37 did not cross-examine the witness on this line.

16.47.87. A-23 (approver) was granted pardoned after his statement came to be recorded on 11.03.2019 and the application was decided on 27.03.2019. Neither A-37 nor any other accused though not legally entitled to oppose the grant of pardon, had filed any application objecting the grant of pardon to A-23. Even thereafter, the defence had only filed an application seeking to keep the recording of the approver's statement in abeyance. A-37 alongwith few other accused also challenged the order granting pardon to A-23 by filing Revision application before the High Court. Even in the said application, nothing was stated regarding any conversation between A-23 and A-37. The High Court thereafter, upheld the order of Session's Court granting pardon and the evidence of approver came to be recorded and was concluded on 16.05.2019. Even during the course of examination, A-37 had not cross-examined the approver regarding the conversation between them which had taken place prior to A-23 giving his statement of approver. It appears that thereafter, on 23.05.2019, A-37 filed an application at Exh. 8246 raising several allegations. The timings of these allegations assumes significance as they had not been put forth either in the revision proceedings of even in the cross-examination of the approver. Having considering the evidence of A-37, the Court finds his version does not inspire confidence. It has also come on record that the prosecution witness Jakir Hussein gave his examination in chief on 07.12.2017 and 08.12.2017. Upon completion of examination in chief, his cross- examination was adjourned on application made by the defence. Thereafter, on 13.12.2017, A-37 alongwith some other accused filed an application before the Sessions Court seeking to implead Jakir Hussein as an accused and the same came to be rejected on 15.12.2017.

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Subsequently, A-37 and other accused challenged the order by filing a revision before the High Court.

16.47.88. During the pendency of the aforesaid revision proceedings, A-37, A-1, A-2 and A-57 filed an application before the Sessions Judge seeking the CCTV footages for the month of November 2017, the jail registers dated 30.11.2017 and 01.12.2017 alongwith certain other connected details. It was alleged in the said application that purpose of installation of CCTV cameras was to facilitate identification of accused persons by witness Jakir Hussein. The said application at Exh.6795 is signed by the aforesaid four accused. As a matter of fact, the evidence of Jakir itself shows that he already knew the accused persons who had filed the application Exh.6795 and had identified them during his examination in chief. If that was indeed the grievance of the accused persons, including A-37, such a contention would have been ordinarily raised prior to the commencement of examination-in-chief of Jakir Hussain and not after a lapse of more than two months. Upon perusing the record, it appears that the application came to be rejected and the said order was not challenged by A-37.

16.47.89. In view of the aforesaid discussion of evidence, the Court is independently of the view having perused the evidence led that there is sufficient evidence to support the charges framed against accused No.37-Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya. This accused has played a pivotal role in the entire crime where his involvement is reflected in evidence to be in the conspiracy at each stage. The Court has therefore, no reason to interfere with the conviction recorded.

17. Mitigating circumstances and F.S. under Section 313 of

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Cr.P.C.

17.1. In a trial, the stage of recording of further statement is an important stage from the point of view of the accused. It provides an opportunity to the accused to understand the nature of incriminating evidence against himself and has a chance to offer an explanation to any of such incriminating evidence and circumstances. Section 313 of Cr.P.C. provides for the recording of the further statement, popularly known as Further Statement under Section 313 of Cr.P.C.. The scope and object being to empower, the Court has to examine the accused and has to give him a chance to explain and, in a case, where the accused is undefended, to examine him in his interest ***(Basavaraj R. Patil v/s. State of Karnataka reported in AIR 2000 SC 3214)***. This process establishes a direct dialogue of the accused with the Court where it is also open for the accused to put-forth his version. In the case of ***Kalpanth Rai v/s. State reported in AIR 1998 SC 201,*** it has been made imperative for the Court to put every question individually and separately to the accused in a joint trial. It is obligatory for the accused also to offer his explanation to such incriminating circumstances and for the Court to consider the same.

17.2. In a Confirmation case or in an appeal against acquittal, the Court may examine as to whether or not the process under section 313 of Cr.P.C. is duly undertaken and whether or not the trial Court has taken into consideration the explanation offered by the accused. In the present trial, the Court finds from the record and proceedings that questions have been framed under Section 313 of Cr.P.C. These questions, in the opinion of the Court, are worded simply for a layman to understand. The questions cover each and every circumstance against the individual

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accused. It has happened that many of the questions are identically worded for some of the accused but, that appears to be out of common evidence and circumstance against such accused. However, there does not appear to be any skipping of exercise or that the exercise has been undertaken mechanically. The reason for the Court to conclude this is because of the variety of answers recorded for the accused to identically worded questions. Such questions were put and answered individually.

17.3. The Court finds that for all the accused tried, statements were recorded under Section 313 of Cr.P.C. and in each statement, approximately 4600 questions have been put to each of the accused and their answers have been recorded. A majority of the answers are recorded as 'denials'; however, there are instances where explanations have been offered. The trial Court, obviously, has taken into consideration all the explanations so offered. This Court has also segregated the explanations given to the questions to be considered herein-below accused-wise. However, where the accused has given denial or has claimed ignorance, there is no need, according to the Court, to deal with them, as the same exercise has already been conducted by the trial Court.

17.4. It is found that the questions and answers form of Further Statement is recorded in Gujarati. However, wherever needed, especially where the accused is a non-Gujarati, the facility of Translator has been utilized to assist the accused and their Advocates.

17.5. The Court may now refer to the explanation of the accused recorded under Section 313 of Cr.P.C.

<u>Accused No.1 – Jahid S/O Kutubuddin Shaikh (Exh.0123):</u>

17.6. This accused has offered an explanation that he is innocent and has no criminal antecedents and has nothing to do with the serial blasts. He has, thereafter, referred to the chronology of his arrest and remand period,

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where, according to him, he was physically and mentally tortured by hand-cuffing and covering his face with 'burkha' for 24 hours and was not permitted to sleep continuously for a period of 5-6 days. He was pressurized to admit to the crime. According to him, he has been acquitted in the Vagamon Camp case and that the Halol camp case is a got-up story.

17.7. In the opinion of the Court, the nature of statement recorded is of general denial and in view of the fact that to the questions which were posed to this accused about incriminating circumstances and evidence, he has simply offered denial or has claimed ignorance, the explanation so recorded, being general in nature with no specific answer to the incriminating circumstances and evidence, does not render the circumstances against the accused as unbelievable or doubtful.

Accused No.2 – Imran S/O Ibrahim Shaikh (Exh.124):

17.8. In response to the last question, this accused has stated that for the last about 11 to 12 years, he is in Sabarmati Central Jail and to establish his innocence, he wants to narrate his version, that - on 07.08.2008, one Police Constable, Pirmohammadbhai Makrani, came to meet him and informed him that the P.I. of Karelibaug SOG has asked to come and meet him. When he reached there, he was asked to sit silently and was threatened of being encountered. He was taken to an isolated place where he was made to meet several senior police officers. He was kept along with many other accused of his area and all of them were being ill-treated and illegally detained. The accused has given the chronology of his custodial remand and has stated that he was being ill-treated and despite his ill-health, he was being tortured. He has also explained that confessional statements were forcefully recorded and that the Magistrate had instructed him to exactly follow what the Police had asked him to do.

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17.9. In the opinion of the Court, the lengthy explanation so given cannot be accepted as the entire period of police custody was governed under the orders passed from time to time by the Magistrate before whom he was periodically presented, and during that stage, there does not appear to be any complaint of torture, etc. by the accused. The explanation given at this stage will not affect the incriminating circumstances gathered by the prosecution against him, particularly when, to each of the incriminating circumstance narrated by him, he has not offered any explanation, but has only denied or claimed ignorance.

Accused No.3 – Iqbal S/O Kasam Shaikh (Exh.125):

17.10. This accused has offered explanation in general by narrating that he is having his own grain-shop and was leading a peaceful life when he was summoned on 05-08-2008 to the SOG Office. From there, he was taken to an isolated place and thereafter, the police officers gathered to assault him physically. He was questioned about SIMI activities and was threatened to be encountered and was forced to admit that he belonged to SIMI. He was, thereafter, taken to some other isolated place, where he was produced before senior police officers and was given electric shocks. Essentially, the accused has made narration about his police remand period and the atrocities carried out by police on daily basis. Though the accused is not involved, he is wrongly implicated. Similarly, his friends - Asif Shaikh and Mohammed Shaikh, about whom he was inquired about, were rounded up and also tortured.

17.11. The record and proceedings would indicate that the accused, after being arrested, was produced before the concerned Magistrate from time to time and he was also represented by an Advocate. Therefore, the explanation offered by the accused is contrary to the record and proceedings since the record and proceedings reveal that remand orders

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were passed from time to time and that due procedure was followed, which included the physical examination of accused.

Accused No.4 – Samsuddin S/O Shahabuddin Shaikh (Exh.126):

17.12. This accused has either recorded denial against each and every circumstance or has claimed ignorance. He has refused to get himself examined as a witness, but has expressed his willingness for being examined as a defence witness. The explanation offered was recorded in English wherein, the claim made by the accused is that he is from the field of education and was serving as a Teacher in an Islamic School at Bharuch. Earlier also, he was arrested in Surat for participating in some education program on the allegation that it was part of SIMI activities but, was enlarged on regular bail by the High Court. In the year 2008, while he was doing the business of cotton yarn as an Executive peacefully, during a routine check-up by the police, he was asked to come to Dariyapur Police Station and after spending one night in the Lock-up, he was released and again on 30.07.2008, he was called to DCB Police Station for recording his statement and was permitted to leave after giving the statement. Once again, he was summoned on 08.08.2008 and was, thereafter, detained on 15.08.2008. He has alleged brutal and merciless torture by the police after his arrest on 16.08.2008. He has alleged that his signatures were obtained on blank pages by force.

17.13. He has also stated that he was offered to be made an 'approver', which he declined. With regard to the specific question of PW No.1141-Aiyaz Saiyed (Exh.8191) mentioning his name as an accused, he offered explanation that said PW No.1141 has given his name out of jealousy. Insofar as PW No.957-Zakirhussain Kureshi's version is concerned, the accused stated that the deposition of PW

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No.957 has been tutored by the DCB. He has also given details of his activities while in custody which, according to him, were very constructive and positive. The explanation, thus, offered by this accused is quite general in nature and again, his remand period has been monitored by judicial officers, who have not confirmed any of the allegations made by the accused. Insofar as the evidence of two witnesses are concerned, the explanation offered by him to such evidence does not inspire any confidence.

Accused No.5 – Gyasuddin @ Gyasu S/O Abdulsalim Ansari (Exh.127):

17.14. Almost 4612 questions have been posed to this accused under Section 313 of Cr.P.C., where he has recorded denial or has claimed ignorance about the nature of evidence and circumstances placed before him. However, in his explanation, he has stated that the evidence against him has been got-up. He was wrongly arrested and wrongly charge-sheeted, though during the investigation, no evidence was found against him. He has stated that he is not connected with SIMI and has never attended any such program or delivered any religious lectures / discourse and has claimed innocence of all the charges.

17.15. In the opinion of the Court, the explanation offered is very general in nature and there is no specific version as regards the incriminating circumstances put to this accused.

Accused No.7 – Mohammad Usman S/O Mohammad Anis Agarbattiwala (Exh.129):

17.16. The trial Court has recorded answers to approx. 4500 questions under Section 313 of Cr.P.C., a majority of which have been answered by way of denial. He has also declined to examine himself as a witness or to examine any defence witness.

17.17. In the general explanation offered, he has claimed innocence.

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He is not directly or indirectly connected with the blast, but in a surreptitious manner, on 07-08-2008, without any prior notice by SOG, Baroda, he was picked up from his shop and was taken to some unknown place, where he was continuously interrogated and pressurized to admit to the crime. He was given unbearable torture and was also assaulted physically. He was kept out of connection with his family for 05 days. Thereafter, he was brought to Ahmedabad in connection with the serial blast case. His head was always covered with 'burkha' and he was not allowed to sleep for several days together. The accused has given details of the period in police custody and has explained that only because of the false investigation by the police he has been roped in the serious offence. Otherwise, he is innocent.

17.18. In the opinion of the Court, the explanation offered is very general in nature and therefore, in absence of specific answer to specific incriminating circumstance against the accused, the general explanation is of no consequence.

Accused No.8 – Yunus S/O Mohammad Mansuri vide Exh.130

17.19. The further statement of this accused was recorded on 21-03-2020, where he was posed 4620 questions relating to incriminating circumstances and evidence against him but, the accused has either denied or claimed ignorance and has, lastly, declined to examine himself as a witness or to offer any defence witness. He has offered explanation that he has been wrongly involved in this offence though he is innocent and is not connected with SIMI activities. He has also denied any role in the training camp at Halol. He has explained the manner in which he was tortured, i.e. by not being allowed to sleep and was pressurized to admit to the crime by torture through electric shocks. He has denied that he has undertaken any discovery during his police custody and his

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identification in the Court of Magistrate is also erroneous and doubtful.

17.20. In the opinion of the Court, this accused has also given explanation in general and has not offered any specific explanation to the incriminating circumstances placed before him in the further statement.

Accused No.11 – Sibli @ Sabit S/O Abdul Karim Muslim (Exh.133):

17.21. The trial Court has posed 4615 questions with the Certificate that the proceedings under Section 313 of Cr.P.C. were recorded via Video Conferencing from Bhopal Central Jail. The Certificate also mentioned that the accused is not knowing Gujarati and was explained the questions in Hindi, to which he has answered in Hindi and those answers have, thereafter, been recorded in Gujarati. Again, the accused is on the line of denial and claimed ignorance about the circumstances posed against him. However, he has offered explanation, which is general in nature wherein, he has stated that he is wrongly involved in the offence and that he never had an occasion to come to Gujarat. He has no connection with the camp at Vagamon and has never attended the Vagamon camp. A detailed explanation is given by this accused in English as additional submissions in continuation of his statement u/s.313 of Cr.P.C. wherein, he has stated that four months prior to the bomb blast in Gujarat, he was arrested by the Madhya Pradesh Police and the entire story is cooked up by Gujarat Police to frame Muslim youth not connected with the offence and that it is a conspiracy of Gujarat Police to connect the incident with the blasts that have occurred in other parts of the country. He has also mentioned about the adverse effect on his case on account of jail transfer by mentioning that he was convicted and sentenced by the Sessions Court at Indore in February 2017 and therefore, he could not remain present before the Court at

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Ahmedabad and had to remain present through Video Conferencing. He has stated that the prosecuting agency has succeeded in luring co-accused – Aiyaz to become a prosecution witness and that co-accused – Aiyaz is the only witness who has deposed against this accused. He has stated that his identification is questionable and thereby, points to the fabrication of evidence. He had complained about the poor quality of Video Conferencing facility at Bhopal Central Jail, as a result of which, he was prevented from effective participation in the trial. He has also raised grievance against the inhuman and non-cooperative conditions at Bhopal Central Jail, which, according to him, has affected his chance to stand a fair trial. He has stated that over the period, many issues were flagged by him, but none of the Courts were able to answer any of his issues and false case has been foisted upon him, but he has immense faith in his God 'Almighty Allah' and that he will remain a dedicated Muslim, despite his persecution, stereo-typing, Islamophobia and discrimination.

17.22. In the opinion of the Court, the entire explanation offered by the accused has no legal consequence, as it fails to explain the incriminating circumstances against him.

Accused No.12 – Safdar Hussain @ Hussainbhai @ Iqbal S/O Jaharul Hasan Nagori (Exh.134):

17.23. This accused has been posed with 4626 questions, which were largely answered by the accused by way of denial or claiming ignorance. At the relevant time, as the accused was in Bhopal Central Jail, he has specifically answered the question as to whether he is desirous of being examined as a defence witness while being in Bhopal Central Jail. He replied that he is not in a mental condition to decide on the said issue and also answered to the question as to whether he wanted

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to depose on Oath. However, as a general explanation, he has stated that he has been wrongly implicated in the offence and while in custody, he has been subjected to mental and physical torture. He has no connection with any of the allegations relating to either the Surat blast or Ahmedabad blast. At the bottom of the document, the Certificate of trial Court is affixed to the effect that the accused, being a non-Gujarati, has been explained all the questions in Hindi, which he has answered in Hindi and upon translation, they have been recorded in Gujarati.

Accused No.13 – Hafiz Hussain @ Adnan S/O Tajuddin Mulla (Exh.135)

17.24. The further statement of this accused was recorded by Video Conferencing and as the accused was knowing Gujarati language and was knowing Hindi, the procedure for recording the further statement took place in Hindi and the answers were recorded in Gujarati. The Certificate to that effect is annexed when the further statement was recorded on 26-06-2020. Overall, the response given to the questions posed was of complete denial or claiming of ignorance. Lastly, he offered explanation that there is no evidence or witness against him and that he has never entered Gujarat State and was in Indore Jail since March 2008 in connection with some other offence. He has narrated that he has been investigated by various investigating agencies with regard to the bomb blasts that took place in Madhya Pradesh, Bombay, etc. and he was brought to Ahmedabad from Indore on 23-08-2008. He has mentioned about an accident that he had met with and also about his health condition. Over and above, written additional submissions have been forwarded in Hindi where he claims to be a Civil Engineer and belonging to a well to do Muslim family of Bijapur, Karnataka and that he was illegally picked up from his house in Bijapur in March 2008 and was physically and mentally tortured before being handed over to

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Madhya Pradesh Police. He was tortured by the Madhya Pradesh Police and was abused both physically and mentally. He has described the number of cases in which he was involved and has stated omnibus that, in all cases, he has been falsely implicated and physically and mentally abused. He has given one more additional written statement in continuation of his further statement wherein, he has stated that he has never visited the States of Gujarat and Kerala. He does not know Gujarati or Malayalam language. He is totally innocent and has been framed by the Gujarat Police for their vested interests and has placed medical documents regarding his health for consideration.

17.25. The aforesaid does not indicate any specific explanation or version to the incriminating circumstances and the explanation offered is of general nature or claiming innocence.

Accused No.14 – Mohammad Sajid @ Salim @ Sajjad @ Saad S/O Gulam Khwaja Mansuri (Exh.136):

17.26. The stand of this accused is of denial. He has denied to examine himself on Oath and has also denied for being examined as a defence witness. In his explanation, he has stated that he is a resident of Surat and was enjoying a happy social status throughout his life. He has no criminal antecedents and has no connection, either directly or indirectly, with the serial bomb blasts or the conspiracy in this regard. He has not remained absconding during the investigation. He has not attended any camps or meetings and was initially apprehended by the Bharuch Crime Branch and was later on handed over to Baroda Crime Branch. He was interrogated at an isolated place by two IB Officers from Delhi where he was subjected to third degree torture and was threatened that his younger brother and wife would also be falsely involved in the offence. He has stated that he was illegally detained

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between 09-08-2008 to 16-08-2008 and on 16-08-2008, he was shown as arrested and thereafter, during the remand period, he was physically and mentally tortured and was forced to undergo Test Identification Parade, which is illegal and he has suffered socially, financially, physically and emotionally by continuing in jail for 12 years.

17.27. The explanation offered by this accused is also very general in nature, namely, related to allegations against the police during investigation, but he has not offered any valid explanation to the incriminating circumstances except for denial and ignorance.

Accused No.15 – Mufti Abubasar @ Abdul Rashid @ Abdulla S/O Abubakar Shaikh (Exh.137)

17.28. This accused was posed with questions framed under Section 313 of Cr.P.C. and Exh.137 contains the Certificate issued by trial Court regarding the fact that the accused is a non-Gujarati but, the process of recording further statement was conducted in Hindi and the answers were recorded in Gujarati. The entire case of this accused is of claiming innocence. He has stated that he has no connection with either the Ahmedabad serial blast or the Surat bomb plantation cases. He has been apprehended without any warrant, though he belongs to Village: Binwara, District: Azamgarh, Uttar Pradesh and by creating false evidence, he has been implicated in the present offence.

17.29. With regard to other incriminating circumstances, the accused has adopted the line of total denial.

Accused No.16 – Abbas S/O Umar Sameja (Exh.138):

17.30. This accused has also adopted the line of complete denial. He has denied for being examined on oath or for examining any defence witness and has given a specific explanation that he has been falsely implicated by creating wrong witnesses and evidence. On 07-08-2008

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his elder brother – Mohmmed Hussain Umar Sameja was picked up from their shop in Bhuj and was taken to SOG, Bhuj. When he went to SOG, Bhuj for inquiry, he also saw his other relatives at SOG Office, Bhuj. As this accused confronted the police for releasing his brother and other relatives, he was threatened that he too will be implicated in the offence. All three of them were then brought to Ahmedabad with their faces covered, where they were taken to different offices and were assaulted mercilessly and threatened to admit to the serial blasts. While he was in custody, they were not permitted to meet their family members or Advocates. He has referred to the attempts made by his sister-in-law of making applications to various authorities against the illegal detention of himself and his family members and on account of such attempts, the police deliberately implicated the accused in this offence and effected formal arrest on 04-09-2008 and thereafter, he was taken on remand by various police stations in connection with various offences of Ahmedabad and Surat and despite there being no evidence against the accused, the police fabricated the evidence and filed false charge-sheet. The further statement was recorded on 03-07-2020 bearing the signature of accused.

17.31. In the opinion of the Court, the case of this accused is also that of complete denial and he has not offered any valid explanation to the incriminating circumstances against him.

Accused No.18 – Javed Ahmed S/O Sagir Ahmed Shaikh (Exh.140):

17.32. The further Statement under Section 313 of Cr.P.C. was recorded on 07-02-2020 where the case of the accused is that of complete denial. However, specific reply is recorded in the last question, where he has claimed innocence about the serial blasts at Ahmedabad and the bomb plantation in Surat. He has stated that he has no criminal

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antecedents and that on 13-08-2008, without there being any reasons, he was apprehended and was shown arrested on 04-09-2008 on the basis of false evidence. He has stated that he has never interacted with Zakir Kureshi and has never remained present in any of the meetings and therefore, the entire investigation qua him and the charge-sheet so filed is false.

17.33. The statement so recorded is very general in nature and of claiming innocence. However, with regard to the specific circumstances against this accused, no explanation has been offered. Moreover, to a specific question put to him about examining himself on oath or of any other defense witness, he has replied in the negative.

Accused No. 21 – Mehandihasan @ Vikki S/O Abdul Habib Ansari (Exh.143):

17.34. The further statement of this accused under Section 313 of Cr.P.C. was recorded on 12-03-2020 along with the Certificate of trial Court that the statement in Gujarati was translated in Hindi for the benefit of accused and the answers given by him in Hindi have been recorded in Gujarati. With regard to the incriminating circumstances against the accused, he has not given any specific explanation and has only denied or claimed ignorance with regard to such circumstances. He has also denied to examine himself as a witness or to examine any defence witness. However, detail written explanation has been given by him that on 08-10-2008, Ahmedabad Crime Branch had taken his custody on the basis of transfer warrant from Jaipur Central Jail. Thereafter, he was informed that he is being taken by the Ahmedabad Crime Branch by covering his face with veil (‘Burkha’). Upon reaching Ahmedabad, he was taken to very big Haveli type of place. He was surrounded by the Police persons in Civil dress. He was not able to sleep

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because in the same place, he heard screams of someone being beaten up. The accused has thereafter gone on to narrate day to day incident during his remand period, which suggests generally that the Police Officers used to resort to physical and mental torture and doing transfer from one place to another without there being any legal recourse. Perusal of this detail statement is in the form of narration of what he has undergone during his custody with the Police. Perusal of the entire Exh.143 does not indicate that any explanation offered by the accused to incriminating circumstances, which are posed to the accused.

Accused No. 26 – Mohammadali @ Jamal @ Zia @ Yasar @ Abubakr S/O Mohramali Ansari (Exh.148):

17.35. The Court has perused Exh.148, where also, the stand of the accused is that of complete denial. However, a hand-written explanation is given in Hindi, where he has narrated that on 18.09.2008, he was arrested by Bhopal police in a fake case and was apprehended in Train while he was traveling from Narsinhpur and on 20.09.2008, for the first time, he was produced before the Court. While he was in jail custody, he was transferred to Ahmedabad Crime Branch and was arraigned as an accused in the serial blast case. He has stated that he has no connection with the incident. He has never gone to Gujarat or Kerala and has been falsely implicated. He has no connection with any religious or political organization. His real name is Mohammad Ali, Son of Moin Ali Ansari and has no other alias name. He has stated that no Test Identification Panchnama has been conducted against him and that all the panchnamas and witnesses are fabricated and has, thereby, claimed total innocence. The written statement is dated 08-07-2020.

17.36. A perusal of the aforesaid document indicates that the accused has not given any valid explanation to the incriminating

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circumstances posed as questions under Section 313 of Cr.P.C.

Accused No. 27 – Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan S/O Mohammad Isaak Mansuri vide Exh.149:

17.37. The accused has given his explanation in writing where he has narrated about his family members and has stated that by wrong means, he has been implicated in the offence. Through the written explanation, he wanted to bring on record the real facts and the torture meted out to him by the Crime Branch Officers. His family members were also tortured by the Crime Branch Officers. After the death of his first wife, he has remarried. He describes about his visit to religious places like Ajmer, etc. and about his married family life and the life of his sister and other family members. He has stated that on 07-08-2008, when he was at his sister's place at Nagda, his father called him and informed that from their area, the Crime Branch officers are rounding-up many young Muslim persons and that his younger brother Shakil has also been picked up with the information that after two days, he would be released. His father also informed him that when he went to meet Shakil at the Crime Branch, the police informed him to come with his other son and so, his father called him and asked him to come to Ahmedabad so that Shakil could be released. Upon this information, the accused came to Ahmedabad and on 08-08-2008, his father took him to the Crime Branch. Thereafter, his brother Shakil was allowed to go with his father with the information that after two days, Ismail (the accused herein) would be released. Thereafter, many a times, the family members used to come and make inquiry about the accused, but they were always abused. He has alleged that from 08-08-2008 onwards, he was illegally detained and while he was in custody, he came to know that various other young Muslims were also detained. He has narrated

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several names, who are named as accused in this offence as well. He has narrated that the Police used to resort to atrocities and threatened them that their entire life would be in jail unless they admit to the guilt and agree to become witnesses. As the accused did not agree to become a witness, he was, ultimately, made an accused in this offence on 23-10-2008 though the accused had no connection with the offence.

17.38. He has, thereafter, referred to the panchnama, which, according to him, has been falsely created with the help of panch witnesses and the disclosure which was made in panchnama was made by force. He has, thereafter, referred to specific actions of the Crime Branch for making the accused an approver by admitting to the guilt. The police officers summoned him along with Aiyaz and induced them to admit the offence. He also referred to witness – Zakir Kureshi, whom the police had made a witness. The police offered that if they becomes witnesses, then they could settle in New York or Belgium. Initially, Aiyaz and this accused refused to become witnesses and thereafter, through one Head Constable of ATS, other police officers and jail authority, they were pressurized and lured to become witnesses. He has stated that before becoming an approver, Aiyaz met him in jail to discuss the issue regarding admission of guilt. He has referred to the offer made by police if he becomes an approver. He has stated that approver Aiyaz had told him that he was scared and that he will be sentenced for this offence but, as he wanted to escape from the liability, he was ready to go to any extent and to admit the guilt. He has referred to various panchnamas to state that they are falsely created documents.

17.39. However, an overall perusal of the document at Exh.149 reveals that the line adopted by this accused is that of complete denial. Moreover, the incriminating circumstances are not sufficiently explained

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by this accused. On the contrary, in the written explanation given by him, the accused has tried to castigate the evidence of accused No.23-Aiyaz as an approver and that too, without there being any concrete foundation.

Accused No. 28 – Afzal @ Afsar S/O Mutallib Usmani (Exh.150):

17.40. The further statement under Section 313 of Cr.P.C. of this accused was recorded on 28-02-2020 with an endorsement by the trial Court that the questions and answers were undertaken in Hindi, which language was known to the accused and the answers given in Hindi by the accused were recorded in Gujarati. The accused has taken a stand of total denial and claimed ignorance about the evidence / circumstances against him. He has also denied to examine himself as a witness or to examine any defence witness. In the explanation offered by this accused, he has stated that he is innocent and is no way connected with the serial blasts in Ahmedabad or plantation of bombs in Surat. A false case on the basis of false evidence has been foisted against him. On 26-08-2008 he was arrested in a petty offence in Bombay and was kept in Mumbai Crime Branch in connection with which a Report under Section 169 was filed. However, the accused was transferred to the Crime Branch at Surat for some offence of theft, where also he was discharged, still, he was made an accused in the so-called bomb blasts of Ahmedabad. After being arrested, the Crime Branch illegally detained him, against which, his elder brother sent a Fax to the Chief Justice of Bombay High Court. He is attributed with the role of committing theft of a Car in Mumbai and has been illegally arrested in that offence also. He has referred to other FIRs registered at Nerul Police Station and Panvel Police Station, in which, he was arrested, but has been acquitted in both the offences, which establishes his innocence and therefore, the role attributed to him cannot be said to be proved. He has also placed on record the written

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statement under Section 313 to establish his innocence, which he has produced before the Special Court under MCOCA in Maharashtra.

17.41. The Court finds that except for general denial and his version during his custody during the investigation, the accused has not answered the incriminating circumstances or evidence against him.

Accused No.31 – Mohammad Arif @ Arif Badar @ Ladan S/O Badruddin @ Jumman Shaikh (Exh.153):

17.42. The further statement under Section 313 of Cr.P.C. was recorded on 01-03-2020 with an endorsement that the accused is a non-Gujarati and knows Hindi language and therefore, the procedure of recording statement under Section 313 was undertaken in Hindi, which was later on recorded in Gujarati. The case of this accused is that of complete denial. He has denied to get himself examined as a witness or to examine any defence witness. The specific explanation offered is that he is innocent and has been wrongly roped in this offence, though there are no witnesses or evidence. False evidence and witnesses have been created to implicate the accused.

17.43. There is no specific explanation regarding the incriminating circumstances against this accused.

Accused No.32 – Asif @ Hasan S/O Bashiruddin Shaikh (Exh.154):

17.44. The further statement under Section 313 of Cr.P.C. of this accused was recorded on 18-03-2020 with the Certificate of the trial Court that the accused being a non-Gujarati, the procedure of recording statement under Section 313 was undertaken in Hindi and the answers given by the accused in Hindi were, thereafter, recorded in Gujarati. The case of the accused under Section 313 is that of denial and ignorance about the incriminating circumstances or evidence against him. Lastly, he has offered the explanation that he has been falsely roped into the

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offence though he is completely innocent. He has referred to the panchnama under which he has demonstrated the circuit, which he has denied to have made. He has also denied of having rented any premises or of having any connection with Dr. Anvar Bagban. He has declared that false evidence has been created against him on the basis of which he has been charge-sheeted.

17.45. In the opinion of the Court, the accused has not answered any of the incriminating circumstances against him and has offered only general explanation.

Accused No.37 – Kayamuddin @ Rizwan @ Ashfak S/O Sarfuddin Kapadiya (Exh.159):

17.46. The further statement under Section 313 of Cr.P.C. was recorded on 14-07-2020, which is a case of total denial of the circumstances placed before him. He has refused to examine himself as a witness, but has confirmed to examine a defence witness. The accused has given his final explanation that he is innocent and has not played any role in the conspiracy behind the Ahmedabad serial blasts or the Surat bomb plantation. He has stated that on 31-03-2008, the accused and his brother Rafiyuddin were taken to Baroda Crime Branch by the police on the ground that they are being called for some work. Upon reaching, the police snatched away their mobile phones and thereafter, they were informed that from police officers from Madhya Pradesh have come. They were handed over to the police officials of Madhya Pradesh, who took them to a farm-house at some unknown place by covering their faces with a veil where they were questioned. They were wrongly detained by the Madhya Pradesh State IB officers and Madhya Pradesh STF and thereafter, on the basis of false case, they were arrested on 10-11-2008 at Mahakal Police Station in Ujjain; however, in the year 2009,

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they were declared innocent. On 04-12-2008, the police officers from Gujarat came to Ujjain and took their custody. They were brought to Ahmedabad and in a false case, they were implicated. He has stated that all the panchnamas, which are drawn in his name, are fabricated and that he was never taken outside to any place for drawing such panchnamas. With regard to the Test Identification parade, he was shown to the witnesses before the Test Identification parade and therefore, his identity was not established. He has stated that though he is not known by any alias names, the Crime Branch has wrongly attached various alias names against him. In connection with the offence in the State of Kerala, where he was arrested on 30-09-2009, the NIA Court on 14-05-2018 had declared him innocent.

17.47. With regard to the Vagamon camp case, he has stated that no evidence about his involvement in the case has come on record. He has narrated that by luring Aiyaz, he has been converted into an approver. He has, thereafter, referred to atrocities. He has stated that during his custody, he was harassed physically and mentally because of which he was scared and the entire atmosphere, even when his relatives used to come to meet him in jail, was of fear. On account of the continuous tension and fear, for the first time, in the statement under Section 313 of Cr.P.C., he has narrated his real story.

17.48. It is pertinent to observe that the accused has also deposed as defence witness at Exh.159, which the Court has discussed about while considering his case in the Chapter of “Accused-wise discussion of the evidence”.

17.49. The accused has given his version from the beginning and has also narrated about his involvement in other offences. However, he has not offered any explanation to the incriminating circumstances and

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the questions that were put to him under Section 313 of Cr.P.C.

Accused No.38 – Mohammad Saif @ Rahul Sabad Ahmed @ Mr. Sheikh vide Exh.160

17.50. The further statement of this accused under Section 313 of Cr.P.C. was recorded on 04-03-2020 with an endorsement that the accused being a non-Gujarati and was knowing Hindi language, therefore, the process of recording further statement was undertaken in Hindi and the answers given by the accused in Hindi were recorded in Gujarati. It is a case of denial by the accused. He has also denied to examine himself as a witness or to examine any defence witness. In his final explanation, he has stated that he is completely innocent and that on the basis of wrong evidence, he has been implicated in this offence despite there being no documentary or oral evidence. He was arrested in this offence by way of transfer warrant though he had no occasion to visit Gujarat. He has stated that he does not know to read and write Gujarati and therefore, the evidence against him in Gujarati is false evidence.

17.51. The accused has not given any explanation to the incriminating circumstances, except for bare denial and explanation, which are very general in nature.

Accused No.45 – Fazle Rehmaan @ Rafik @ Salauddin S/O Musaddik Durrani (Exh.167):

17.52. The further statement of this accused under Section 313 of Cr.P.C. was recorded on 05-03-2020 with an endorsement by the trial Court that the procedure of further statement under Section 313, though was in Gujarati, was explained to him in Hindi since he knew Hindi and his answers in Hindi were recorded in Gujarati. The case of the accused is that of total denial and ignorance of the incriminating circumstances

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placed before him. He has also denied to examine himself as a witness or to examine any defence witnesses. In the final explanation, he has stated that he is innocent and is, in no way, connected with the Ahmedabad serial blasts or Surat Bomb plantation cases and though there is no evidence, oral or documentary, false case has been foisted upon him. He is not part of any organization nor is involved in any conspiracy or any anti-national activities. He was not taken anywhere outside. He has also not shown or pointed out any location to the police. He was not taken by the police to Surat, Ahmedabad, Bharuch, Pune or Mumbai. He has not stayed in any Hotel with any of the co-accused. On a wrong premise, he has been apprehended and put-up in lock-up in illegal detention and has been implicated in the offence by creating false evidence.

17.53. In the opinion of the Court, the accused has not offered any valid explanation to the incriminating circumstances put forth to him under Section 313 and has offered only general explanation.

Accused No.46 – Mohammad Naushad @ Mohammad Irshad Saiyed (Exh.168):

17.54. The further statement of this accused under Section 313 of Cr.P.C. has been recorded, wherein the case of the accused is that of total denial. However, as a final explanation, he has given written statement under Section 313 in English, wherein he has narrated that he is in prison since 11 years. He is from Mangaluru, Karnataka and does not understand Gujarati language. Though he is innocent, he has been wrongly roped into the offence and has always followed and obeyed Indian Law and Constitution. He has stated that previously, i.e. on 02-10-2008, he was called for local inquiry by the Bengaluru police and after three months i.e. on 05-01-2009, he was transferred to Gujarat

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police and was kept at the Police Station for two months without any inquiry and was informed that after completing necessary works, they would make arrangement for his early release. He has stated that he is not involved in any offence but, has been falsely implicated with the ill-intention to drag him in the offence with the purpose of achieving illegal gratification. He has denied any incriminating articles or paper evidence that have been attributed to him stating that they are false, fabricated, concocted and baseless. The statement has been submitted under the signature of accused and Jailor of Central Prison, Bengaluru.

17.55. The accused has not offered any valid explanation to the incriminating circumstances, but has given general explanation about his innocence and false involvement.

Accused No.47 - Ahmed Bava @ Abu S/O Abubakr Barelvi (Exh.169):

17.56. The further statement under Section 313 of Cr.P.C. was recorded. The case of the accused is that of total denial and along with this, written explanation under Section 313 is given, which is in English, wherein he has stated that he had left his job in UAE due to illness of his wife and came back to India and started working at Mangalore**.** On the day of Eid, the Mangalore police came to his home but, as he was not at home, the police left a message asking him to visit the Police Station for the purpose of Passport and Visa for some inquiry. When he went to the Police Station, he was kept under lock-up. While he was in lock-up, he was asked as to whether he knew others, who were also there in the lock-up, to which he answered that he had no knowledge of other persons in the lock-up. He was allowed to go at night and was again called next day. On that day, he was shown arrested and was tortured and forced to sign on blank papers. He was produced before the Court at Mangalore. While he was in judicial custody under the orders of the

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Court at Mangalore, the Gujarat Police came to Central Prison, Mangalore for making inquiry about the Gujarat blast case and on inquiry, the accused replied that he had never seen or been to Gujarat. However, he was threatened that Gujarat Police would take his custody and ultimately, the Gujarat police took his custody and falsely implicated him in the offence, without there being any evidence against him. Therefore, in the charge-sheet, the allegations made are baseless and without any evidence. He has therefore, prayed to be discharged.

17.57. In the opinion of the Court, there is no valid explanation by the accused to the incriminating circumstances cited against him.

Accused No.49 – Sarfuddin @ Sarfu S/O It Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim (Exh.171):

17.58. The further statement under Section 313 of Cr.P.C. was recorded on 17-03-2020 and in addition, he has given written submissions. He has dictated his statement under Section 313 in Malayalam, which was translated by an inmate in English and after reading and understanding the contents, the accused has put his signature under the further explanation given in writing. In the written explanation, he has stated about his family and medical ailment of his father and when he went to meet his father, who was detained by Bengaluru police, this accused was also detained. After being in Bengaluru prison, all of a sudden, he was transferred to Gujarat Police and for about two months, he was kept at different places in Gujarat and lastly, was sent to Ahmedabad Central Prison. According to him, he had never travelled outside Kerala and had never visited Gujarat. He is totally ignorant of electronic gadgets and therefore, the allegation regarding use of electronics by the accused is false and fabricated. He has reiterated that he is not involved in this offence and has been falsely

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implicated.

17.59. The explanation offered by this accused is very general in nature and there is no valid explanation to the incriminating circumstances cited against the accused.

Accused No.59 – Mohammad Ansar @ Siddik @ Nadvi S/O Abdul Razak Muslim (Exh.181):

17.60. The further statement under Section 313 of Cr.P.C. has been recorded with an endorsement by the trial Court that the procedure under Section 313 was explained in the language known to the accused and after his reply, the same was translated in Gujarati and recorded as such. It is a case of complete denial by the accused and the final explanation was submitted in writing vide statement dated 03.07.2020.

17.61. In this further statement in writing, he has denied about his involvement in the serial bomb blasts, which occurred in Ahmedabad and the bombs that were recovered from Surat. He has stated that he has been deprived of fair trial on account of his transfer from Ahmedabad Central Jail to Indore Central Jail and thereafter, to Bhopal Central Prison. He has stated that his transfer to Indore and then to Bhopal is on account of his conviction by the Court at Indore in February 2017, and therefore, while his trial in the Court at Indore was in progress, he was at Ahmedabad, as a result of which, he did not get a fair trial. He has stated that he was not given proper legal assistance to oppose his transfer from one jail to another.

17.62. He has stated that the prosecution had succeeded to lure co-accused Aiyaz Razakmiyan, accused No.23, as the case of the prosecution was crumbling due to lack of evidence. Thereafter, he has narrated several issues, which he faced as an under-trial and thereby, his trial was not fair. He was denied several documents. He faced language

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barrier and could not have meaningful and confidential interaction with the Advocates, etc. He has stated that he does not have any alias name/s and by alias name, he has been wrongly arraigned as an accused by concocting false evidence. He has lastly stated that since he was booked in other cases under the UAPA in the States of Kerala, Karnataka and Madhya Pradesh, it was easy for Gujarat Police to arraign him as an accused in this case.

17.63. With regard to confessional statement under Section 164 by accused No.35-Rafiyuddin S/O Sarfuddin Kapadiya, accused No.24-Umar @ Ashok Kalabhai Kabira, accused No.2-Imran S/O Ibrahim Shaikh and accused No.21-Mehandihasan @ Vikki S/O Abdul Habib Ansari, according to him, these statements are false and were given under heavy pressure by the Gujarat Police. None of the witnesses have attributed any role to this accused, still he has been arraigned as an accused.

17.64. The Court has perused the statement under Section 313 of Cr.P.C. of this accused. He has taken up a case of complete denial and has offered explanation as above; however, he has not specifically answered to all the incriminating circumstances which were posed to him.

<u>Accused No.60 – Saduli @ Hariz S/O Abdul Karim Muslim (Exh.182):</u>

17.65. The further statement under Section 313 of Cr.P.C. of this accused was recorded while he was lodged in Bhopal Central Prison in Madhya Pradesh and as he was a non-Gujarati, the procedure of further statement under Section 313 of Cr.P.C. was undertaken by translating him the contents of the questions and his answers were, thereafter, translated in Gujarati and recorded. The Certificate to that effect is also annexed by the trial Court. The accused has taken up the case of

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complete denial and towards his final explanation, he has given written statement under Section 313 of Cr.P.C.. He has stated that he is not involved in the present offence and is falsely implicated by the Gujarat police and the Gujarat Government due to vested interests. He has raised grievance that on account of his jail transfers from the jails of Ahmedabad, Indore and Bhopal, his chance of fair trial has been adversely affected. He has objected to such transfers as he was not able to put up his defence and could not interact with his Advocates. He has also raised grievance with regard to non-participation in the trial on account of poor video quality from Bhopal Central Prison. He has, thereafter, gone on to list certain circumstances, which, according to him, has resulted in lack of fair trial, viz. he was not able to contact Senior Advocates and the only communication that was allowed, was through Video conferencing, which too, was of poor quality. He was not permitted to give written instructions to his Advocates directly but, had to route it through the jail authorities. He was also denied pen and paper in the jail by the jail administration in Madhya Pradesh. Accordingly, he has narrated that he was not satisfied with the manner in which he could represent his case in the trial. He has referred to Exh.9021 document, on which the prosecution relies upon for this accused. According to him, this document does not contribute any evidence against this accused and the statement made by accused No.76-Manjarimam was not at all voluntary and therefore, it cannot be used as evidence against him. Moreover, according to him, there is no evidence to corroborate what accused No.76-Manjarimam has stated against him.

17.66. He has also objected to the version of PW No.1141-Aiyaz by stating that the witness has not given deposition by his own knowledge but, was simply singing the tunes of the Crime Branch. The witness has

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falsely identified him in place of his brother – Sibli, through Video Conferencing though they both do not look similar. Therefore, the evidence of PW No.1141-Aiyaz is required to be treated as false evidence. According to the accused, he is totally innocent and without any fault on his part, he has languished in jail for more than 12 years.

17.67. The Court finds that there is no specific answer to the incriminating circumstances posed against the accused and his statement that the confessional statements of co-accused - Manjarimam and Aiyaz should not be believed on the ground that they were given under pressure, the Court finds no evidence in support of such statement. On the contrary, the Court has perused in detail the manner in which the confessional statements have been recorded by the Magistrate after complying with necessary procedure.

17.68. In the opinion of the Court, mere identification of the brother of this accused by PW No.1141-Aiyaz would not render the entire evidence of this witness doubtful, as the evidence of PW No.1141 has been discussed in great detail, including the answers given by him during the course of cross-examination.

Accused No.69 – Amin @ Raja S/O Ayub Nazir Shaikh (Exh.957):

17.69. The further statement under Section 313 of Cr.P.C. of this accused was recorded on 07-03-2020. The accused, being a non-Gujarati, had knowledge of Hindi and therefore, the procedure of recording further statement was undertaken in Hindi and the answers given by him were recorded in Gujarati. The Certificate in this regard is given by the trial Court. The accused has taken up defence of total denial. He has denied for getting himself examined as a witness or to examine any defence witness. In his final explanation, he has stated that he is completely innocent and has been falsely roped into the offence of

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conspiracy and anti-national activities and has no connection with any anti-national organization.

17.70. According to him, the police has not undertaken the procedure of drawing panchnama, as he was never called before the panch witness. He was never taken to places like Surat, Ahmedabad or Mumbai. He has stated that he has never absconded in the offence and has never stayed in any Hotel. He was brought to Mumbai Crime Branch from his home-town Indore and was falsely involved in the offence of Car theft. However, he has already been acquitted for the offence of Car theft registered in Mumbai and therefore, his role cannot be connected with the Car.

17.71. The accused has given explanation only to one circumstance, i.e. regarding the Car theft, on the basis of acquittal by the trial Court at Mumbai. However, with regard to other set of evidence, which are incriminating circumstances against the accused, he has not offered any valid explanation.

Accused No.70 – Mohammad Mobin @ Mubin @ Irfan S/O Abdul Sakurkhan (Exh.958):

17.72. The further statement of this accused under Section 313 of Cr.P.C. was recorded on 09-03-2020 with the Certificate that the procedure for further statement under Section 313 was recorded in Hindi as the accused was a non-Gujarati and the answers given by the accused to the questions posed, were recorded in Gujarati. The accused has taken up the defence of total denial and has claimed ignorance to each of the circumstances posed to him under Section 313. He has also denied to examine himself as a witness or to examine any defence witness. The witness, in his final explanation, has stated that he is innocent and is not involved in the offence of serial blasts at Ahmedabad or the plantation of

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bombs in Surat. He has stated that he was not absconding at any time, but has been falsely roped in this offence, without there being any valid evidence. He has never visited Ahmedabad or Surat and was picked up from his residence in Indore in Madhya Pradesh and was brought to Crime Branch at Mumbai and false case relating to Car theft has been foisted upon him, which, ultimately, has resulted in his acquittal. Therefore, according to him, there is no connect of the accused with the Car.

17.73. However, the accused has not specifically given answers to the incriminating circumstances, except for the circumstance of Car connected to the offence and he has not given any explanation to the evidence in this connection.

Accused No.75 – Mohammad Rafiq @ Javed @ Alam Jeb Afridi S/O Maskur Ahmed (Exh.6945):

17.74. The further statement under Section 313 of Cr.P.C. was recorded while the accused was in Central Prison, Bengaluru. An endorsement is made by the trial Court that the procedure under Section 313 was undertaken in Hindi language, which was understood by the accused and his answers have been thereafter recorded in Gujarati. The stand of the accused is that of complete denial and of claiming innocence for all the circumstances and evidence against him. As a part of final explanation, he has given his further statement under Section 313 in writing stating that he was professionally employed since 2005. He is innocent and is in no way connected with any of the co-accused and has been falsely implicated. He is not connected with any criminal conspiracy or any organization. He is not a member of any banned organization. He has stated that he had not purchased any cycle from any shop nor did he hide the cycle for any criminal act and that the

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panchnamas are fabricated. He has stated that he has not purchased or accompanied anyone to purchase gas cylinders from any market and therefore, the panchnama is fabricated. He has stated that while in custody, he has been forced to put his signature on various documents, which are, thereafter, treated as evidence.

17.75. In this case, the accused has only claimed ignorance to all the evidences, which were placed before him in the form of questions-answers and has only referred to the documents of panchnama as being fabricated, without there being any other evidence which would lead the Court to believe that the documents were fabricated.

Accused No.78 – Tausifkhan @ Atiq S/O Sagir Ahmedkhan Pathan (Exh.7248):

17.76. The further statement of this accused under Section 313 of Cr.P.C. was recorded on 26-02-2020, wherein the stand of the accused is that of complete denial. He has also denied to examine himself as a witness or to examine any defence witness. In the final explanation, he has stated that he is innocent and is not connected with the serial blast at Ahmedabad or with the bomb plantation in Surat. He is a resident of Amalner in Maharashtra and on the basis of wrong evidence, he has been implicated in this offence. By profession, he is an Engineer and was serving as a Technical Support Associate in Wipro Company at Mumbai. Thereafter, he was working in Ahmedabad as a Lecturer and despite there being no evidence, in the year 2017, he was arrested. He has stated that he has never gone to Halol or Pavagadh and there is no evidence against him but, still he has been wrongly charge-sheeted.

17.77. The Court finds that the accused has not answered to the specific circumstances, which are incriminating against him and has only given general explanation of denial.

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Accused No.6 – Mohammad Aarif S/o Mohammad Iqbal Kagzi (Exh.128):

17.78. This accused has offered an explanation in general by narrating that after the serial bomb blasts in Ahmedabad he was repeatedly summoned by Investigating Agencies for inquiry and that on 06.08.2008 he was illegally detained by the Crime Branch and was subjected to serial custodial torture and was kept in illegal confinement for about 10 days before being formally arrested. According to him, he had complained about such illegal confinement and torture before the Metropolitan Magistrate upon his first production i.e. on 21.11.2008. He has further narrated that he is innocent, has no connection with either SIMI or IM and that he has been falsely implicated in the present case. He has also relied upon his acquittal in the Vagamon training camp case by the Special Court at Ernakulam to contend that he had neither attended the said training camp nor had any involvement in any terrorist activity. He has further narrated that the approver, Aiyaz Razakmiya Saiyed has deposed falsely against him on account of personal grudge enmity which arose out of the incidents when they were together in imprisonment and that the prosecution has examined him as an approver only because it had otherwise failed to establish the charges against the accused. The accused has lastly narrated about the hardship suffered by his family and the collapse of his readymade garment business during his prolonged detention and that he is innocent and deserves to be acquitted.

17.79. In the opinion of the Court, the explanation offered by the accused in general in nature and in absence of specific answer to the incriminating circumstances against the accused, the general explanation is of no consequence.

17.80. At the stage of concluding of our hearing, our attention was

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drawn to an order dated 27.04.2026 in Criminal Appeal (Diary) No.24574 of 2026 in case of Aman Singh and Another v/s. State of Bihar. The case appears to be still pending and is to be listed again before the Apex Court. The directions are given in para-13 where the object is very categorically mentioned which is to ensure meaningful legal representation in cases involving a potential death sentence and for that purpose, the directions have been issued. As discussed elsewhere, exercise appears to have been conducted by the Special Court and accused wise discussion is also evident from the judgment. In para-13B, the direction is to the effect that in the event of such report has not been called for or placed on record before the trial Court, then it is mandatory to call for the same at the stage of admission of death reference.

17.81. From the record of this case, the final verdict by the Special Court was pronounced on 18.02.2022. The Sessions Court forwarded the case for confirmation by communication dated 02/03.03.2022 and this Court had ordered admission of the matter vide order dated 28.07.2022.

17.82. Considering the exercise undertaken and the crime being an act of terrorism which by itself is an aggravating circumstance and the nature of mitigating circumstances considered by the Special Court and also pleaded before us, the requirement of such an exercise is met with.

17.83. Before proceeding with the sentencing, the court would put a word of appreciation for Learned Senior Advocates Mr. S. Nagamuthu, Mr. Thipsay, Ms. Nitya Ramakrishnan, Mr. Yug Chaudhary, Mr. Asim Pandya, Mr. Tejas Barot, Mr. Hriday Buch, Mr. Somnath Vats, Mr. K.G. Shaikh, Mr. Arjun Joshi, Defence Counsels and Shri Mitesh Amin and Mr. Amit Patel for the State, who have painstakingly taken this Court through the voluminous record. We also appreciate the efforts put by the Court Master, the Secretaries and the Registry, C.O. Mr. Pranav Joshi in

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digitising and formatting the R. & P. as per our requirement. A word of appreciation for the able assistance of our Legal Assistant Ms. Neha Devadasan.

18. Terrorism and Sentencing

18.1. The prosecution examined 1163 witnesses and defence also examined 8 witnesses. Though all efforts were made to complete the trial as early as possible, it took 10 long years to finish the trial, wherein one of the contributing factors was Covid period. However, during that period, trial Judge and all parties concerned cooperated in proceeding with the trial through virtual mode.

18.2. Though trial came to be proceeded against 78 accused, large number of accused persons were still found absconding and therefore, stage of investigation continued.

18.3. Even after delivering judgment in the present case on 18.02.2022, some of the absconding accused, four in number, came to be arrested at very later stage and were charge sheeted. Trial qua them is in progress now.

18.4. Even during the course of trial, as accused persons were facing prosecution arising against them from different States, when the dates of two different proceedings got coincided on one particular day, the Court was requested adjourn the present proceedings and accommodate certain accused for attending them other proceedings. This also clearly establishes that accused persons are mindful and vigilant for their rights of attending different proceedings in person.

18.5. During the course of proceedings before the trial Court, many applications were given by accused persons agitating about their rights of receiving food like eggs for the purpose of having protean

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included food like milk, etc. There are also many applications filed for providing them books, newspapers, etc. Many accused persons have also agitated about their rights of receiving comfort and convenience inside jail.

18.6. There are also applications in the nature of providing them papers of investigation in the language known to them as they agitated about they being not knowing Gujarati. As a matter of fact, during the course of trial, it was revealed that what was submitted about not knowing Gujarati was not a correct statement. Apart from that, application of accused about providing them material of investigation in the language known to them was adjudicated and decided.

18.7. It was has also revealed during the course of trial that many accused have exercised some rights which as per their prayer lead to giving of copies of certain documents, etc. as they are entitled to get them under the Right to Information Act and the same was also complied and were placed before this Court for perusal. To show that the accused persons are headstrong, the trial Court has also taken note of the fact that accused persons would enter into conflict with the treating doctors as also would threaten them, if concerned doctor does not prescribe tonic and juice as suggested by accused persons, even there are instances that accused themselves would prescribe their requirement and would collect the same from Jail Medical Store. Though it was made known to these set of accused including convicted accused that whenever Ld. Judge comes on Dias as a mark of respect everyone has to stand up and only after Ld. Judge sits on his chair, all concerned were required to sit, not only they refused to do that but ridiculed and, thereafter, Ld. Judge to save herself from such humiliation was forced to apply curtain so that whenever Ld. Judge comes on Dias. The concerned

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Trial Court was therefore forced to make a remark in the Rojkam referring to this conduct. The Court has perused such remarks vide Entry on Page No.429 of the Rojkam dated 30.06.2012. This shows the extent of headstrongness of accused persons, which also is recorded by the trial Court. The Court may refer to Exh.711 which is the grievance raised by the team of medical officers attending these set of accused, as an undertrial. This application was addressed to the trial Court and is part of the record. Along with this Exhibit, there is also communication dated 25.12.2012 addressed to the jail authorities where the high handedness of these accused is highlighted. The grievance is of the nature that the Medical Officers had to give in to their illegal demands and had faced threat to their person even while discharging their duty in the premises of the Central Jail. This particular conduct has also been noted in the Rojkam vide Entry dated 17.01.2013 at Page No.615.

18.8. It is also a matter of record that even police persons discharging their duty in jail were frequently threatened by this set of accused and police were also abused by them.

18.9. The trial Court has also taken note about frequent correspondence received by him from Bhopal Central Jail about repeated misbehaviour done by set of accused lodged at Bhopal Jail and also committing frequent violation of Jail Manual. It has also come on record that one such accused at Bhopal Jail in an attempt to escape from jail, took life of one jail official.

18.10. It is also a matter of record that papers in the form of charge-sheet provided to the accused persons were used for preparing instrument of weight lifting like dumbbells weighing 5 kg. while in judicial custody and also seized by Jail Superintendent.

18.11. It is also a matter of record that when A-10 was asked as to

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what he would like to say on sentence, his reply was that Allah's law will apply to earth, Allah's law will give justice and Government of India and law of India will not give justice, there is no prison in India that will keep us forever in jail, give whatever punishment you want, etc. This shows headstrong mind of accused, and many accused as like A-10 has expressed their headstrong mind while showing disregard for rule of law in India. This also would apply to A-15 and A-44, who are also death convicts. A-16 and A-78, who are also death convicts, stated that Advocate Khalidbhai had cheated him. A-44 has also threatened Public Prosecutor.

18.12. Even during the course of hearing of different proceedings before this Court, different applications were given for giving personal hearing to the convicted accused and have also prayed for extending link to participate in virtual hearing for the purpose of their appearance through VC, which ultimately came to be decided by Hon'ble Supreme Court and pursuant to the order passed by Hon'ble Supreme Court, Video Conferencing link for participating hearing of Court Proceedings was given to each and all accused across different Central Jails of different States. Considering it, even during proceedings before this Court, it is found that convicted accused are fully conscious, vigilant about their rights and remedies, which they can avail.

18.13. On the ground of gravity of offence for considering enormity of crime, element of vengeance, heinousness, deaths and injuries to absolutely innocent persons and nature of execution of crime, the prosecution for the purpose of considering doctrine of rarest of rare case, has submitted that conspiracy is always hatched in dark, probably conspiracy of this case is not only hatched in darkest hour, but, it is so hatched that some set of accused-conspirator would certainly not be

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knowing, which are the other set of conspirators and acts done by some set of conspirators would also be unknown to other set of conspirators. It is also a matter of record that principal perpetrators have taken sufficient care so that identity of all the conspirators would not be known to each and all or to each and other. There are different sequels to the entire conspiracy. The foundational conspiracy was laid at the Vagamon camp, Kerala, which was participated by several persons from across different States and thereafter, camp was held at Pavagadh, Halol, Gujarat. In all the meetings, the perpetrators of the crime instigated participants by giving 'jehadi' speeches with the object of executing mass killings of innocent civilians in retaliation of the 2002 Gujarat riots. During the course of different meetings, training was imparted for the preparation of bombs, videos on 'jehad' were shown, etc. For the purpose of preparing bombs, accused persons got on rent two different houses at Surat and Ahmedabad so that their nefarious activities are achieved.

18.14. It is submitted that the accused are head-strong persons is also known from the fact that the accused, who have been given set-off, along with other convicted accused who have been awarded death penalty, used the articles / items provided to them by the jail authority in pursuance of the orders of the Court for digging tunnel inside Sabarmati Central Jail, Ahmedabad in order to escape prison. If the act of digging of tunnel had not come to the notice of the jail authority in time, then the accused would have escaped from jail.

18.15. In view of above, commission of striking terror is extremely cruel and gravest cases of extreme culpability and the character of perpetrator of crime is wicked and corrupt. In view of that, the prosecution has submitted that life imprisonment would be altogether an

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inadequate punishment having regard to the relevant circumstances of the crime and this is not a case where life imprisonment can be awarded conscientiously. The Court is also of the opinion that the crime committed by convicts is uncommon, society's abhorrence, extreme indignation, continuing threat to society. Therefore, ther is justification for prosecution to submit that doctrine of rarest to rare case is fully satisfied and option of life imprisonment is the only option.

18.16. The trial Court while awarding death sentence has also considered this aspect of doctrine of rarest of rare case in page 6927 to 6947 and has also considered ***Bachan Singh v/s. State of Punjab reported in AIR 1980 SC 898*** and ***Mukesh and Anr. v/s. State (NCT of Delhi)*** reported in ***2017 (6) SCC 1***. The prosecution has also submitted that the exercise of getting reports of mitigating circumstance for convicted accused persons is already undertaken by the trial Court, which is also demonstrable from the judgment from page 6758 to 6927.

18.17. As said the exercise is undertaken by the trial Court and that there is no longer period of hiatus between the exercise undertaken by the trial Court and present day, hence, prosecution would submit that this Court is not required to undertake the same exercise again. Defence also, while placing reliance on the judgment reported in 2023 2 (SCC) 353 of Manoj and Others, also not submitted anything with regard to mitigating circumstances for any of the death sentence accused persons.

18.18. In all, 38 accused persons are awarded death sentence for offence punishable under Section 302 of IPC and are also awarded death sentence for committing terrorist act punishable under Section 16(1)(a) of UAPA and are also awarded death sentence for offence punishable under Section 10 of UAPA as these accused were found to be members of unlawful association.

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18.19. Considering the settled legal position enunciated in the cases of ***Bachan Singh Vs. State of Punjab (supra)*** and ***Machhi Singh v/s. State of Punjab reported in AIR 1983 SC 957*** and also considering provisions of Section 235(2) as well as Section 354(3) of Cr.P.C., the trial Court has afforded sufficient opportunity to all convicted accused to placed their reasons and grounds for the purpose of sentencing them.

18.20. In an effort and endeavour to give sufficient opportunity to convicted accused persons, all the applications and all and any supporting documents given by them or their Ld. Advocates were taken on record and based on such application and supporting material, submissions for the purpose of sentencing them were heard along with representatives of State. All convicted accused were represented by Ld. Advocates of their choice not only during the course of trial, but, even from the stage of their production before the Court for the purpose of remand, etc. If at all, any accused was found un-represented, such un-represented accused was also provided legal aid.

18.21. Considering the representation made by Ld. Advocates who represented their respective clients-accused persons, detailed cross-examination is also made, which also appears from the record of the case. It is also a matter of record that lawyers from outside the State of Gujarat also appeared during the course of trial to represent some of the accused.

18.22. It also appears from the record that all possible challenge available under the scheme of the Code is made and is also duly adjudicated on behalf of accused persons. In view of above, all the accused persons were ably defended by their respective Ld. Advocates.

18.23. It is also a matter of record that death sentence was awarded to 38 persons and Confirmation Case No. 2 of 2022 was filed and

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effective hearing of this Confirmation Case along with the allied appeal matters started almost from 04.03.2025 and ended on 08.05.2026. Even during hearing of this different matters, different convict accused were represented by large number of Senior Advocates from different States namely from State of Maharashtra, Delhi, Ahmedabad. In view of that, all the convicted accused were ably represented by their respective Ld. Advocates of their choice.

18.24. At the initial stage, some of the convicted accused were found un-represented and they were given sufficient opportunity to engage their Ld. Advocates and ultimately, they engaged Ld. Advocates of their choice except one i.e. A-28 to whom from the list of Advocates, services of one Ld. Advocate was ordered to be given, but ultimately, his matter was argued by one of the Ld. Advocates who also argued for other accused. Hence, even in the course of proceedings before this Court, all the convicted accused were sufficiently heard through Ld. Advocates of their choice.

18.25. There are different threads to conspiracy and the foundational head of conspiracy is arrangement of Kerala Camp, participated by lot many persons from across different States, though the case of prosecution is conspiracy started much prior to this foundational head. Other foundational head, which happened subsequent to it, is Halol Camp, again attended by some common participants and also some new participants conspirators and, thereafter, in Month of March, 2008 at the house of relative of one of the accused, another crucial conference took place. The case of prosecution is that all the sequels to the conspiracy was only to achieve its ultimate object and that was only and only to take revenge of 2002 riots in which lot many Muslims lost their lives and humongous loss to the properties of Muslims and for that,

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to execute mass killings. In all the meetings which took place and which continued even up to day of occurrence i.e. 26.07.2008, different perpetrators of crime had instigated participants by giving Jehadi Speech and the purpose, as submitted earlier, was to execute mass killing. Even during the course of different meetings, training was imparted for preparation of bombs and video films on Jihad were seen. Ultimately, all throughout starting from December, 2007, object of conspiracy got achieved by accused persons, who are found guilty as by their acts, efforts instructions, etc. Different parts of Ahmedabad, which would include Trauma Centre of Civil Hospital, L. G. Hospital, Public Transport Bus and crowded places where bombs were planted by accused persons exploded and which took lives of 56 innocent persons. These 56 innocent persons are of different age, some are of 10 years, youthful persons are in the range of around 25 years and some even elders. It is pertinent to state that out of 56 deaths as a result of bomb explosion, age group would be between 5 years, being the youngest victim to 70 years.

18.26. So far as casualty which happened at Trauma Centre of Civil Hospital is concerned, the timing of the blasts was so planned that when the injured persons of surrounding places with their near and dear ones would rush to Civil Hospital for necessary medical treatment and the first place, which they would cross when they reach Civil Hospital would be Trauma Centre and to see that maximum casualty happens, accused persons have planted bomb near Trauma Centre where the toll of death is 37 persons, which would include even persons, who would be qualified doctors, pregnant women and few others. Even persons working in Trauma Centre to provide services to injured persons suffered serious injuries and some even lost their lives. At this place i.e.

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Trauma Centre to see that intensity of explosion remains maximum possible, explosion was magnified with the aid of gas cylinder. Even this particular blast made to suffer 84 persons receiving serious to very serious in the nature of grievous hurt injuries on different parts of their body.

18.27. It is the audacity of the accused persons to intimate that they have prepared themselves for committing bomb blast under the name of Indian Mujahideen through Email which was sent to India TV Office.

18.28. Apart from Trauma Centre, Civil Hospital, Ahmedabad, other locations were chosen by accused persons after doing sufficient surveillances-recce of different areas, etc. which included places that were crowded like Vegetable markets, Tea Stall, Pan Galla, Medical Shop, etc.

18.29. For the purpose of planting bombs, different Cars were stolen and after they being stolen from State of Maharashtra were brought in State of Gujarat either by tampering their number-plates (registered number) or by changing number-plates. The bombs were tied or loaded alongwith cycles and those cycles were just planted at crowded places so that it would not draw attention or raise doubt about such cycles, and also placing bombs in public transport bus.

18.30. So far as Surat cases are concerned, intention of accused persons is to cause heavy destruction and devastation as bombs were planted on 23 public places at a place where bombs would be tied on the tree, bridge and in a motorcar stationed at a crowded place (a place which was near doctor house). So far as these bombs are concerned i.e. bombs planted at Surat, it did not explode. But, 29 bombs were planted, which would clearly establish intentions of accused persons to cause heavy devastation and destruction of human lives and property. The

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consorted attack as a result of conspiracy is evident from the nature of incidents itself. As mentioned earlier, the explosion of bombs took place at various crowded places within the City of Ahmedabad leading to deaths and injuries, where as a necessary consequence, the effort of the establishment would be to transfer the injured to the nearest Government or Private Hospitals and when this effort was underway, a planned explosion at the door step of Trauma Centre took place at the very moment when the affected / injured persons of the blasts that took place elsewhere in the City were being transferred, thereby leading to major damage to the Hospital itself leading to deaths of Doctors in service and damage to the treatment facility thereby depriving those injured and luckily survived even the facility of basic treatment.

18.31. All the circumstances herein show that it is not a case of causing murder simpliciter but, it is an act of striking terror and, therefore, this act of accused persons is not an ordinary act of committing murder, but is an act of striking terror which had led to loss of lives of 56 innocent persons and 256 persons who received different injuries, which can be termed as hurt to grievous hurt, which would also include causing of disability as well. The conduct of these accused demonstrates their headstrongness. By using books and other articles which they asked from the trial Court alongwith few other objects which were available to them, they dug a tunnel measuring approximately 213 feet while they were in judicial custody at Sabarmati Central Jail. Had this act of digging tunnel not been unearthed in time, it would have resulted in the escape of a large number of under-trial accused from Sabarmati Central Jail. This act was done by different accused, including accused persons who were awarded death sentence.

18.32. At this stage, the Court may refer to only two incidents

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which would emphasise the seriousness of the consequences suffered as an aftermath of this crime. With respect to the first incident, the Court may refer to the evidence of the complainant/victim himself (PW No.2/Exh.486) wherein on 26.07.2008 at around 6:30 p.m. when he was on his way back home after picking up his son, aged 11 years, when he heard a loud explosion near a medical shop named M. Narayandas which was next to a roadside cart, upon which he felt that a gas cylinder had burst. However, upon seeing an old man lying nearby, he realized that a bomb blast had occurred. Upon hearing the people shouting that a bomb blast had occurred, he ran to the opposite side of the road wherein another explosion occurred at Gokhale Paan House due to which, this witness and his son sustained injuries. This witness sustained injuries on his right thigh and left knee whereas his son sustained injuries on his lower abdomen, private parts and on his thigh due to the shrapnel from the blast and both, the witness and his son were bleeding as a result of the injury.

18.33. With respect to the incident that had occurred at Civil Hospital which also resulted in the death of two doctors who were on duty, amongst others, the Court may refer to the evidence of P.W. No.1006-Dr. Tejas Hathila at Exh.6984 who was on duty in treating the victims of bomb blasts elsewhere and being brought to the Trauma Centre of the Civil Hospital alongwith him, a doctor couple namely; Prerak Shah and his wife Kinjal Shah, were also on duty in attending and bringing the victims brought by ambulance to the Trauma Centre and taking them for treatment inside the Hospital when the bomb exploded, which resulted in instant death of the doctor couple. Nothing more can be more shocking than this incident, and the accused cannot escape by maintaining that they were not aware or planned for such

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catastrophic effect which would warrant nothing less than a capital punishment.

18.34. The sentencing is also legislative intent which has its own efficacy. When a sentence is provided in statute book then it is very much the will of the Legislature representing the will of the people that such sentence must exist to stand as a protection to civilized society and not remain dormant in the statute book and thereafter, the Court shunning from awarding appropriate sentence or looking for a small excuse to avoid sentencing is in fact, a miscarriage of justice.

18.35. Terrorism is not an abstract concept but has attained such a proportion nationally and globally that no State can now disregard its existence or compare it with other offences in the statute book. The Second Administrative Reforms Commission, in its Eighth Report titled "Combatting Terrorism: Protecting by Righteousness", where under the heading of "Terrorism in India", the Commission's report while mentioning about the strategy to counter terrorism, has observed and emphasized as under:

> *"3.7.4 The Commission would like to reiterate that any form of extremism with faith in a dogma ending in violence has the potential of escalating from hate campaign, violent hooliganism and murders of perceived enemies to terrorist activities affecting national security and citizens at large. While the Commission in this Report has dealt with some forms of extremism which have degenerated into terrorism, it needs to be highlighted that it is necessary to deal with all forms of extremism in their early stages through measures of conflict resolution accompanied by firm action against hate campaigns and local violence in order to prevent their escalation."*

18.36. Taking cognizance of and addressing this issue of terrorism, the Indian Parliament enacted BNS, 2023 defining the "terrorist act" under Section 113 of BNS.

18.37. The form of terrorism has also undergone a change in the

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method of striking terror with the state machinery and the law firming up to the challenges of terrorist activities which predominantly was armed attacks like use of sophisticated arms, and ammunitions freely provided from across border but with the tightening of the State's grip over such supply chain, the method to strike terror underwent a change and common household articles were converted into lethal weapons with the combination of commonly available, though regulated, chemicals and petroleum. The world has seen that even a motor truck has been converted into a lethal weapon where as an act of terror, a terrorist would just barge into, in full speed in a crowded area with a clear intention to cause deaths of as many as innocent citizens to strike terror in the hearts of common man.

18.38. The Supreme Court had an occasion to closely examine terrorism when the Court was dealing with a batch of petitions and criminal appeals challenging the wearies of TADA Act in case of ***Kartar Singh Vs. State of Punjab***, reported in **(1994) 3 SCC, 569** and in Para 20, 21, 22, the Court had referred to the situation prevailing then and in context thereto was examining the challenge. In para 24 to 28, the Apex Court has referred to various statements made in the Parliament by the members of Parliament, in this connection. The Court may reproduce Paras 20,21, 22 as under:

> ***"****20. Before we make an in-depth examination of the challenges canvassed which are manifestly and pristinely legal, with regard to the impugned Acts and some of their provisions with a comprehensive and exclusive survey, it has become inevitable for us to give a brief sketch of the historical background and the circumstances which forced the legislature to enact these laws, as gathered from the parliamentary debates, Statement of Objects and Reasons and prefatory notes of the impugned Acts, etc., etc.*
>
> *21. From the recent past, in many parts of the world,*

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terrorism and disruption are spearheading for one reason or another and resultantly great leaders have been assassinated by suicide bombers and many dastardly murders have been committed. Deplorably, determined youths lured by hardcore criminals and underground extremists and attracted by the ideology of terrorism are indulging in committing serious crimes against the humanity. In spite of the drastic actions taken and intense vigilance activated, the terrorists and militants do not desist from triggering lawlessness if it suits their purpose. In short, they are waging a domestic war against the sovereignty of their respective nations or against a race or community in order to create an embryonic imbalance and nervous disorder in the society either on being stimulated or instigated by the national, transnational or international hard-core criminals or secessionists etc. Resultantly, the security and integrity of the countries concerned are at peril and the law and order in many countries is disrupted. To say differently, the logic of the cult of the bullet is hovering the globe completely robbing off the reasons and rhymes. Therefore, every country has now felt the need to strengthen vigilance against the spurt in the illegal and criminal activities of the militants and terrorists so that the danger to its sovereignty is averted and the community is protected.

22. Thus, terrorism and disruptive activities are a worldwide phenomenon and India is not an exception. Unfortunately in the recent past this country has fallen in the firm grip of spiraling terrorists' violence and is caught between the deadly pangs of disruptive activities. As seen from the Objects and Reasons of the Act 31 of 1985, "Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh" and then slowly they expanded their activities to other parts of the country i.e. Delhi, Haryana, U.P. and Rajasthan. At present they have outstretched their activities by spreading their wings far and wide almost bringing the major part of the country under the extreme violence and terrorism by letting loose unprecedented and unprovoked repression and disruption unmindful of the security of the nation, personal liberty and right, inclusive of the right to live with human dignity of the innocent citizens of this country and destroying the image of many glitzy cities like

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Chandigarh, Srinagar, Delhi and Bombay by strangulating the normal life of the citizens. Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children and reducing those areas into a graveyard, which brutal atrocities have rocked and shocked the whole nation."

18.39. In case of ***Rabindra Kumar Pal alias Dara Singh Vs. Republic of India***, reported in **2011 (2) SCC 490,** the Supreme Court in para-96 has observed as under:-

"96. In a country like ours where discrimination on the ground of caste or religion is a taboo, taking lives of persons belonging to another caste or religion is bound to have a dangerous and reactive effect on the society at large. It strikes at the very root of the orderly society which the founding fathers of our Constitution dreamt of. Our concept of secularism is that the State will have no religion. The State shall treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual right of religion, faith and worship."

18.40. In the facts of our case also, the target group has been Hindu community, as on the basis of evidences of eye witnesses as well as the witnesses to the conspiracy, prosecution has established that the target for this terror act is focused on the locality, predominantly Hindu/non-Muslims and therefore, this act is also striking to the root of an orderly society envisioned under our Constitution. This also, is an act of terrorism.

18.41. In case of ***Yakub Abdul Razak Menon Vs. State of Maharashtra***, reported in **(2013) 13 SCC, 1** also, the Supreme Court has referred to several pronouncements defining terrorism and thereafter in Para 829 has found terrorism to be a serious threat even to the very basic structure to our Constitution and has therefore held as under:

"829. Terrorism is a major problem that is reoccurring over the globe in many different forms. In short, terrorism is a plague

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for a nation or society that should be eradicated. There is a dire need to best deal with it and to make sure to take preventive actions so that other groups and people are not motivated to make themselves heard through various acts of terrorism. In our considered view, the following procedures/rules must have to be adopted while dealing with it:-

i) Better governance and law enforcement is the real need of the hour.

ii) We must formulate long term as well as short term strategies to combat terrorism.

iii) More advanced technologies must be used for communication among law enforcement agencies.

iv) Fighting terrorism would require a long term planning and sustained multi-dimensional action.

v) There should be proper coordination between all the agencies with high level of motivation and a quick response system must be established to tackle the menace immediately.

vi) Rule of Law must always be upheld and it is the duty of the constitutional authority to defend the life and limb of its subjects.

830. India being a secular State, such religious fanaticism which resulted in such terrorist acts should not be allowed to destroy the very basic structure of our Constitution. Unless every one of us put our sincere efforts to fight terrorism, we will not be able to curb this menace."

18.42. The Court has considered the judgment of the Apex Court in the case of ***Devender Pal Singh v/s. State of NCT of Delhi*** *reported in* ***2002 (5) SCC 234*** wherein the issue as to whether the case was within the "rarest of rare" category was considered. The said case pertained to awarding the sentence of death penalty to the appellant-Devender Pal Singh who was convicted for offences punishable under Sections 302, 307, 326, 120-A, 120-B and other provisions of the Indian Penal Code as well as under Sections 3 (2) (i) and Sections 4 and 5 of the TADA Act.

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18.43. The Trial Court had awarded death sentence to the accused Devender Pal Singh, and considering the provisions of the TADA Act, the Death Reference (Criminal) was registered directly before the Hon'ble Supreme Court. The Court had awarded the death sentence only on the basis of the confessional statement which was recorded by the DCP under Section 15 of the TADA Act. So far as the facts of the case are concerned, it relates to the explosion of bomb in a car parked near the place from where the then President of the Indian Youth Congress was passing. Nine persons had died, several persons including the said Youth Congress President sustained injuries and several vehicles were damaged. The case of the prosecution was that all the accused persons, including Devender Pal Singh, were members of a terrorist organization (KLF) and were behind the blast, and that their object was to assassinate the said Youth Congress President. The Hon'ble Supreme Court came to the conclusion that the acts of the accused persons, including Devender Pal Singh, were dastardly acts, diabolical in conception and cruel in execution. The Court has also observed that terrorists are sometimes described as death merchants, they have no respect for human life and innocent persons lose their lives because of their mindless killing and that any compassion shown for such persons would frustrate the purpose of enactment of TADA Act and would amount to misplaced and unwarranted sympathy.

18.44. In the facts of the present case, 56 innocent persons have lost their lives, more than 250 persons have sustained injuries and loss of property; both public and private ran into crores of rupees. Even considering the ultimate object in both the cases and upon comparison it appears that in the case of ***Devender Pal (supra)***, it was for the assassination of one person, i.e., the Youth Leader of the Congress and

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in the present case, the object was to take revenge by causing mass killing. Further, in the case of ***Devender Pal (supra)***, it caused the death of nine persons whereas in the present case, it caused the death of 56 persons in order to seek vengeance.

18.45. The said judgment in ***Devender Pal (supra)***, was considered as a landmark judgment and was upheld even in the case of ***Bachan Singh v/s. State of Punjab (supra)*** and ***Machhi Singh v/s. State of Punjab (supra),*** which holds the field. Insofar as the case of ***Devender Pal (supra)*** is concerned, the conviction was under Section 3 (2) (i) of TADA which deals with punishment for "terrorist act". After TADA was repealed, UAPA was enacted, which came to be amended in 2013, and Section 15 of the said Act deals with the definition of Terrorist Act. Considering the same gravity of term "terrorist act" which is applied in ***Devender Pal (supra)***, it would be made applicable with added force in the present case as casualty in terms of human lives is six times more in the present case alongwith injuries to 240 persons and damage to the properties. Para-59 in ***Devender Pal (supra)*** reads as under:

> *"59. As the factual scenario of the present case shows at least nine persons died, several persons were injured, a number of vehicles caught fire and were destroyed on account of the perpetrated acts. The dastardly acts were diabolic in conception and cruel in execution. "Terrorist" who are some times described as "death merchants" have no respect for human life. Innocent persons lose their lives because of mindless killing by them. Any compassion for such persons would frustrate the purpose of enactment of TADA, and would amount to misplaced and unwarranted sympathy. Death sentence is the most appropriate sentence in the case at hand, and learned trial Judge has rightly awarded it".*

18.46. The above referred case of ***Devender Pal (supra)*** was also considered by Hon'ble Supreme Court in case of ***Mukesh and Anr. v/s. State (NCT of Delhi) (supra)***; which is also infamously known as the

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case. In the said case, the Apex Court has dealt in great detail with respect to the aggravating and mitigating circumstances and while dealing with mitigating circumstances, the Apex Court has dealt with circumstances like young age of victims, dependents and ailing parents, post crime remorse, good behaviour in jail, absence of criminal antecedents and scope of reform were outweighed against the aggravating circumstances. Considering this aspect which has been critically considered by the Apex Court and upon comparison with the facts of the present case, as stated earlier, almost all accused persons either convicted for death penalty or for life imprisonment have serious criminal antecedents whereby they are found involved in cases of bomb blasts which had happened elsewhere across India and even while in judicial custody most of the convicted accused have involved themselves in the act of digging tunnel inside Sabarmati Central Jail, Ahmedabad for the purpose of escaping from judicial custody and most importantly above everything act of causing humiliation to the Ld. Trial Judge by not only disrespecting the dignity of Hon'ble Court but ridiculing the majesty of Hon'ble Court by blatantly refusing to respect the Ld. Judge so much so that the Ld. Judge was forced to apply curtain at the time of arriving to the Hon'ble Court and also at the time of retiring from the Hon'ble Court. Apart from this, the conducted of the accused even apart from this, which has been narrated earlier, needs to be considered in the context of the judgment of the Apex Court in the case of ***Mukesh & Anr (supra)*** and in view of the ratio of the said judgment, there is no necessity to strike balance between aggravating circumstances and mitigating circumstances. If the aggravating circumstances are found extremely serious, then it would outweigh all or

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any mitigating circumstances, though in the present case there are no mitigating circumstances, much less genuine mitigating circumstances which have been placed before us.

18.47. Insofar as the case of ***Mukesh (supra)*** is concerned, facts relate to committing gang rape in moving bus and assault over prosecutrix with iron rods, etc. and also forcing prosecutrix for oral sex. The prosecutrix suffered various injuries in different parts of her body and this act of the accused was termed as brutal, barbaric and diabolic by the Apex Court. Considering the aggravated crime committed in the case of ***Mukesh (supra)*** and comparing the same with the facts of the present case, the accused persons/conspirators have committed an outrageously wicked offence. Another aspect which has been dealt with by the Apex Court in case of ***Mukesh (supra)*** is about society's cry for justice against crime and even in the present case, that feature of determining rarest of rare case would apply with added force.

18.48. In view of above, when these two judgments namely ***Devender Pal (supra)*** and ***Mukesh (supra)*** both have relied upon celebrated case of ***Bachan Singh v/s. State of Punjab (supra)*** and ***Machhi Singh (supra)***, being an act of terror, the judgment of Hon'ble Supreme Court in ***Devender Pal (supra)*** would be squarely applicable in the facts and circumstances of the present case.

18.49. At this stage, the Court may take note of the order in the case of ***S.G.Vombatkere v/s. Union of India***, reported in ***(2022) 7 SCC 433***, wherein petitions were filed challenging the constitutionality of Section 124-A of Indian Penal Code. The Court may reproduce Paras-1 and 2, which are as under:

"1. These petitions are filed challenging the Constitutionality of Section 124 A of the Indian Penal Code 1860 (hereinafter IPC) relating to the offence of Sedition.

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2. Having heard learned Senior counsel appearing for the parties and perusing the documents available on record, we may observe that this matter was listed for the first time on 15.07.2021. Thereinafter, this Court, after hearing the parties, issued notice on 27.04.2022. When this matter was next taken up, learned Solicitor General of India prayed for additional time of 2 to 3 days for filing of counter-affidavit. Accordingly, time was granted till the end of the week for filing counter-affidavit. Again, the matter was listed on 05.05.2022, wherein the Solicitor General again sought additional time to file a counter affidavit. On that date, this Court while granting the Solicitor General time to file counter affidavit, directed the parties to file their written submissions on the preliminary issue of the necessity of reference to a larger bench prior to the next date of hearing."

18.50. In view of the aforesaid categoric direction of the Apex Court which reads as under, the conviction under Section 124 (A) of I.P.C. is kept in abeyance.

"8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Crl.)No.217/2021 along with W.P.(Crl.)No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in

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abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed."

18.51. However, in the facts of the present case, there is no impediment in proceeding with the recording of conviction and sentencing of the accused for the other offences charged except for Section 124A of I.P.C.

18.52. The Apex Court in case of ***Vasanta Sampat Dupare v/s. State of Maharashtra reported in 2017 (6) SCC 631***, had referred to various judgments to streamline aggravating circumstances and mitigating factors and led down the principles when it comes to death penalty, and after laying down the principles, has succinctly observed with regard to its application, and in Para-20, the Court has held as under:

"20. It is thus well settled, "the Court would consider the cumulative effect of both the aspects (namely aggravating factors as well as mitigating circumstances) and it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes completely ignoring other classes under other heads and it is the primary duty of the Court to balance the two." Further, "it is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts." With these principles in mind we now consider the present review petition."

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18.53. The Apex Court in case of ***C.Muniappan & Ors. Vs. State of Tamil Nadu***, reported in **(2010) 9 SCC, 567** was considering an offence where the accused were involved in two incidents, the first of which being, burning and damaging several buses and the second incident being, burning down a bus carrying college girls which resulted into death of 20 girls and injuries to several. The Court in Para-86 onwards had considered all the leading judgments on death sentence and ultimately, in Para 91 held as under:

> ***"91.*** *Thus, it is evident that Criminal Law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. The "Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co- existence of the society. Where an accused does not act on any spur-of-the-moment provocation and he indulged himself in a deliberately planned crime and meticulously executed it, the death sentence may be the most appropriate punishment for such a ghastly crime."*

18.54. As the present case, undoubtedly is about a Terrorist Act and therefore, the Court may refer to the decision of the Apex Court in case of ***Mohd. Arif alias Ashfaq v/s. State (NCT of Delhi) reported in 2011 (13) SCC 621***, wherein at the stage of considering sentencing has held in Para-221 as under:

> *"221. However, we must point out that in Machhi Singh V/s. State of Punjab, a principle was culled out that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, same can be awarded. The fourth test includes the crime of enormous proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality are committed. Applying both the tests here we feel that this is a*

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> *case where the conscience of the community would get shocked and it would definitely expect the death penalty for the appellant. Three persons who had nothing to do with the conspirators were killed in this case. Therefore, even Machhi Singh's case would aptly apply."*

18.55. According to the Court, the Apex Court had led an emphasis on the fourth test. The Court may take into consideration enormous proportion of the crime like multiple murders of all members of family or large number of persons of particular caste, community or locality, which also is a relevant factor in considering of aggravating circumstances. This very judgment was under review before the Apex Court, of course on technical issue with regard to electronic evidence. Nonetheless, the Court finds it helpful to reproduce relevant para of the judgment in case of ***Mohd. Arif alias Ashfaq (supra),*** which reviewed the principal judgment and is now reported in ***2023 (3) SCC 654***, where the Apex Court has gone to the extent of holding that any challenge to the unity, integrity and sovereignty of India by an act of Terrorism, is the most aggravating circumstance vis-à-vis inflicting of death penalty.

18.56. In the present case also, as the facts having been recorded where the coordinated attack in the two major Cities of Gujarat and in coordinated succession, Serial Blasts to which this Court has also drawn reference to similar modus adopted all across India. There is no doubt in the mind of the Court that such consorted attack is an attack on the sovereignty of India with ultimate objective as is even reflected from evidence of witnesses, to topple democratically elected Government, which has ultimately resulted in death of 56 persons indiscriminately and injuries to 240 persons without their fault, will take this case in the category of "rarest of the rare".

18.57. The Court may refer to yet another decision of Apex Court, which is for the purpose of sentencing for Terror Attack. In case of ***State***

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Of Nct Of Delhi Versus Navjot Sandhu @ Afsan Guru reported in 2005 (11) SCC 600 and in Para-252 and 253, the Court has observed as under:

> *"252. In the instant case, there can be no doubt that the most appropriate punishment is death sentence. That is what has been awarded by the trial court and the High Court. The present case, which has no parallel in the history of Indian Republic, presents us in crystal clear terms, a spectacle of rarest of rare cases. The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperiling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity. It is a classic example of rarest of rare cases.*
> *253. The gravity of the crime conceived by the conspirators with the potential of causing enormous casualties and dislocating the functioning of the Government as well as disrupting normal life of the people of India is some thing which cannot be described in words. The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender. The challenge to the unity, integrity and sovereignty of India by these acts of terrorists and conspirators, can only be compensated by giving the maximum punishment to the person who is proved to be the conspirator in this treacherous act. The appellant, who is a surrendered militant and who was bent upon repeating the acts of treason against the nation, is a menace to the society and his life should become extinct. Accordingly, we uphold the death sentence."*

18.58. The Apex Court having treated an act of terrorism resulting into deaths of citizens to be a "rarest of the rare" case, identical to the facts of this case where innocent citizens including, the serving doctors of the Government Hospital have died as a result of this terror attack, thereby taking this case in the category of "rarest of the rare".

18.59. An effort was made by the Apex Court while confirming the

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death sentence, to deal with the subject of Terrorism in the case of ***Yakub Abdul Razak Memon v. State of Maharashtra reported in (2013) 13 SCC 1***, particularly in Paras-809, 810, 883.4, which have been reproduced hereinunder:

> *"809. The term 'terrorism' is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word 'terror' which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Black's Law Dictionary defines terrorism as:*
>
> *'Terrorism.- The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct." (8th Edn., p. 1512.)*
>
> *810. Terrorism is a global phenomenon in today's world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings bomb scares, car bombs, building explosions mailing of dangerous materials, computer based attacks and the use of chemical, biological, and nuclear weapons- weapons of mass destruction (WMD).*
>
> *xxxxxx*
>
> *883.4. Crime of terrorism is in itself an aggravating circumstance as it carries a "special stigmatisation due to the deliberate form of inhuman treatment it represents and the severity of the pain and suffering inflicted" (emphasis supplied)."*

18.60. The Court may also refer to the judgment of the Apex Court in the case of ***Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1***, wherein the Court while convicting the appellant in the

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case of Terrorist Attack of 26/11 in Mumbai, had held that there would be certain cases wherein imposition of death penalty would be justified and in this regard, the Court may reproduce Paras-573 and 577, which are as under:

> *"573. In short, this is a case of terrorist attack from across the border. It has a magnitude of unprecedented enormity on all scales. The conspiracy behind the attack was as deep and large as it was vicious. The preparation and training for the execution was as thorough as the execution was ruthless. In terms of loss of life and property, and more importantly in its traumatising effect, this case stands alone, or it is at least the very rarest of rare cases to come before this Court since the birth of the Republic. Therefore, it should also attract the rarest of rare punishment.*
>
> *xxxxxxx*
>
> *577. Putting the matter once again quite simply, in this country death as a penalty has been held to be constitutionally valid, though it is indeed to be awarded in the "rarest of rare cases when the alternative option (of life sentence) is unquestionably foreclosed". Now, as long as the death penalty remains on the statute book as punishment for certain offences, including "waging war" and murder, it logically follows that there must be some cases, howsoever rare or one in a million, that would call for inflicting that penalty. That being the position we fail to see what case would attract the death penalty, if not the case of the appellant. To hold back the death penalty in this case would amount to obdurately declaring that this Court rejects death as lawful penalty even though it is on the statute book and held valid by the Constitutional Benches of this Court."*

18.61. The aftermath of the present terror attack has left behind the very same situation which has been described by the Apex Court in the afore quoted paras of ***Mohd. Ajmal Amir Kasab (supra),*** therefore also in the opinion of the Court, the present case will fall in the bracket of "rarest of the rare".

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18.62. The Court may take into consideration the decision of the Apex Court in case of ***Deepak Rai v/s. State of Bihar reported in 2013 (10) SCC 421***, wherein the Apex Court has confirmed the death sentence and has held in para-42 and 43 as under:

> *"42.The aforesaid would reflect that under this provision the legislature casts a statutory duty on the Court to state reasons for choice of the sterner sentence to be awarded in exceptional cases as against the rule of life imprisonment and by necessary implication, a legal obligation to explain them as distinguished from the expression "reasons" follows. The legislative mandate of assigning "special reasons" assures that the imposition of the capital punishment is well considered by the Court and that only upon categorization of the case as "rarest of rare", thus leaving no room for imposition of a less harsh sentence, should the Court sentence the accused person to death.*
>
> *43. Incontrovertibly, the judicial approach towards sentencing has to be cautious, circumspect and careful. The Courts at all stages- trial and appellate must therefore peruse and analyze the facts of the case in hand and reach an independent conclusion which must be appropriately and cogently justified in the "reasons" or "special reasons" recorded by them for imposition of life imprisonment or death penalty. The length of the discussion would not be a touchstone for determining correctness of a decision. The test would be that reasons must be lucid and satisfy the appellate Court that the Court below has considered the case in toto and thereafter, upon balancing all the mitigating and aggravating factors, recorded the sentence.*"

18.63. The Court has examined the judgment of Special Court, wherein the exercise of aggravating circumstances as well as assigning of special reasons to treat this case as rarest of rare case and while doing so, the Court has given in detailed its reasonings under the following heads, which deal with the aggravating and mitigating circumstances,

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which are considered and special reasons are assigned from page Nos.6833 to 6849 (Paper Book Page Nos.718933 to 718969), which are as under:

1. The gravity and nature of the offence.

2. The severity of the offence.

3. The impact of the offence on society.

4. The status and condition of the victim.

5. The personality and social standing of the victim.

6. The motive of the accused in committing the offence.

7. The age and character of the accused.

8. The possibility of reformation and rehabilitation of the accused.

9. Whether the offence was committed in a momentary fit of passion or under sudden provocation.

10. The degree of planning and premeditation involved in the commission of the offence.

11. The criminal antecedents of the accused.

18.64. In the opinion of the Court, the aforesaid reasons mentioned in detail in the judgment satisfy this Court about the exercise undertaken by the trial Court in assigning the special reasons for treating this case as rarest of rare case. Amongst the parameters as mentioned hereinabove, the trial Court has also taken into consideration the scope of reformation amongst the accused persons and has assigned sufficient reasons and after its own observation and record of the Court, has concluded that there is no scope of any reformation. Nothing contrary to such finding given by the trial Court has been controverted, either by any evidence on record or even by pleadings.

18.65. The Court may also draw support from the decision of the Apex Court in case of ***Ajitsingh Harnamsingh Gujral Versus State Of***

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Maharashtra reported in 2011 (14) SCC 401, where also the Apex Court had confirmed the death sentence while differentiating between ordinary murders and murders which are gruesome, ghastly or horrendous. It concluded that while sentence should be given in the case of ordinary murders, but the murders which fall in the category of gruesome, ghastly or horrendous would belong to the category of rarest of rare case, justifying awarding of the death sentence. (See paras-91 to 94)

18.66. The Court may refer to decision of the Apex Court in the case of ***Javed Ahmed Abdulhamid Pawala v/s. State of Maharashtra*** reported in ***1983 (3) SCC 39***, wherein the Apex Court confirmed the death sentence where the murders were perpetrated in a cruel, callous and fiendish fashion with the motive of gain therefore, Supreme Court held that no mercy is to be shown despite the argument of the counsel for the appellant to show leniency because of the younger age of the accused and because the case rests upon circumstantial evidence.

18.67. Lastly, the Court may refer to the decision of the Apex Court in the case of ***Munawar Harun Shah v/s. State of Maharashtra*** reported in ***1983 (3) SCC 354*** wherein the Apex Court in a short order, makes a strong statement on the issue of sentencing. The Court may reproduce Paras-2,3 and 4, which reads as under:

> *"2. It is pointed out that the concerned offences were committed between January 1976 and March 1977, that each one of them was sentenced to death by the trial Court on 28.09.1978; that their sentences were confirmed by the Bombay High Court on 6.04.1979 and that their Special Leave Petitions against their convictions and sentences were dismissed by this Court on 17.11.1980. In other words, the death penalty has been brooding over each one's head for an excruciatingly long period of about five years. So far as Munawar Harun Shah is*

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concerned, it is urged that he was so to say a junior member of the gang of the killers and perhaps did not take part in the actual killing and it is pointed out that since his conviction he is writing Koran in Marathi and is also learning Arabic language and Homoeopathy. So far as Shantaram Jagtap is concerned, it is pointed out that he has written one book bearing title "Kalyan-Marg" in Marathi and has also translated into Marathi an English Book titled "Yogic Sukshama Vyayam" authored by Mr. Dhirendra Bhramchari and that he is at present studying Budhism and translating "Dhamma Pada" in Marathi. On the basis of these facts a strong plea has been made to us that their death sentences should be commuted to life imprisonment, particularly in view of the pronouncement made by the Constitution Bench of this Court that death penalty should be inflicted in the rarest of rare cases.

3. Having given our anxious consideration to the plea so put forward we regret we are unable to accept the same. It is true that a period of 5 years has elapsed since the imposition of death penalty on them but as has been pointed out by this Court in Sher Singh's case, (AIR 1983 SC 465) such lapse of time is not decisive of the matter but would be a factor to be borne in mind. In this case the normal judicial process itself came to an end only on 17.11.1980 when this Court finally dismissed the Special Leave Petitions of the petitioners against their convictions and sentences. But for the subsequent lapse of time the petitioners or at least some of them are responsible. Each one of them preferred a review petition against the dismissal of the special leave petition and those review petitions came to be dismissed on 11.02.1981. Even thereafter fresh writ petitions were filed by Shantaram Jagtap and Munwar Shah for a consideration of their sentences which were dismissed, on 5.02.1982. Against such dismissal of his said writ petition Shantaram Jagtap filed a review petition which was dismissed on 1.4.1982. Even thereafter the present writ petitions have been filed by Munawar Shah on 3.12.1982 by Shantaram Kanhoji Jagtap on 17.1.1983 and by Dilip Dhyanoba Sutar on

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12.4.1983 which are being disposed of by the present order. In other words, for part of the time gap that has occurred the petitioners, who have indulged in successive petitions, are responsible. True, two of them namely Munawar Shah and Shantaram Jagtap, on their statements have done translation work and written books but that requires a composed mind and concentrated attention. If anything this belies that any spectre of death penalty was hovering over their minds during the period they have been in jail.

4. The Sessions trial at Poona, which came to be popularly known as "Joshi Abhyankar Massacre Case" death with a sprawling criminal conspiracy in furtherance of which the petitioners and their co-conspirators got involved in six incidents during the course of which 10 murders and acts of robbery and dacoity were committed and from the record, it is clear that each one of the petitioners before us was involved in at least 7 murders out of the 10. Having regard to the magnitude, the gruesome nature of the offences and the manner of perpetrating them this case in all the facts and circumstances must be regarded as falling within the rare of the rarest category and the extreme penalty of death is clearly called for. Any leniency shown in the matter of sentence would not only be misplaced but will certainly give rise to and foster a feeling of private revenge among the people leading to destabilisation of the society. In the circumstances, we do not think that any leniency is called for in the case. The writ petitions are dismissed. The death sentence awarded to the petitioners should be carried out without any further loss of time in accordance with law, now that their mercy petitions have, according to the statement of Counsel for the Respondent, been dismissed."

18.68. A trend is in vogue to be susceptible to clever defence arguments and misplace sympathies that the Court may be driven to think only about the accused who is before the Court, day in and day out. However, the victim is often hidden and most of the time covered under

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the prosecution is never visible. Here also, no appeals against the acquittals and absolutely no representation of the large number of victims and no effort by the State to ask them whether they want to be represented by legal aid whereas, a tall order is made out, whether the accused is given or offered legal aid at the cost of the tax payer's money certainly cannot be treated as an aspiration of a civilized society wedded to the rule of law and fair criminal justice system. Therefore, the Court is inclined to direct the State to pay compensation to the victims of this Terror Attack. The Court therefore directs the State Government to pay the compensation as under:

i) Rs.10 lakhs for the family members of each deceased,

ii) Rs.5 lakhs for grievous hurt or permanent deformity /disability,

iii) Rs.1 lakh for simple injury.

The compensation to be paid upon due verification.

18.69. The special Court has discussed the aspect of sentence from Page No.6754 onwards of the impugned judgment and has discussed the issue accused-wise from Page No.6761 onwards. For the sake of convenience, the Court shall discuss the issue of sentence of each of the accused individually. In all, 38 accused have been imposed the punishment of death sentence.

(1) **Accused No.1 – Jahid Kutubuddin Shaikh**:

18.70. This Court has taken into consideration the exercise undertaken by the Special Court on the mitigating and aggravating circumstances as well as on the hearing on sentence. The accused No.1 had filed written submissions with the FS U/s.313 vide Exh.9533 before the special Court wherein, it was mainly stated that on account of the long duration of trial, he and his family members have suffered mental,

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physical, social and financial difficulties. He is suffering from Hypertension and Asthma and also from Arthritis for the last about five years. He is the sole bread-winner of his family and is in jail since July 2008 and therefore, his family, consisting of his wife and children and aged mother, do not have any source of income for their sustenance.

18.71. The Court finds that the special Court has considered the written submissions filed by the accused (Exh.9533) pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At pages-6761 & 6762 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that while the accused was in judicial custody, he was involved in the offence of digging of tunnel inside Sabarmati Central Jail, Ahmedabad along with co-accused in order to escape from prison. One other offence was also registered against him while he was in judicial custody. The jail authority has taken six punitive measures (disciplinary action) against the accused, which shows that the conduct of the accused inside the jail is not proper. After analysing all the facts, this Court is satisfied that the aggravating circumstances far out-weighs the mitigating circumstances. This Court finds that the special Court has concluded the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record in a just and proper manner and has, thereafter, inflicted the sentence.

18.72. From the record, it appears that during the judicial custody, this accused was involved in digging tunnel in Sabarmati Central Jail while in judicial custody for the bomb blast case and offences under Section 120B, 224, 130 of IPC was registered vide I-C.R.No.24 of 2013 of Ranip Police Station and trial of said case is going on. The trial is at

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the stage of evidence of prosecution and witnesses were examined by the prosecution. During pendency of trial before Sessions Court in Sessions Case No. 389 of 2013, accused gave application for discharge and Sessions Court has discharged the accused from charges leveled against them under Section 130. Thereafter, State has preferred Special Criminal Application No.3191 of 2016 before High Court of Gujarat and challenged the said order of discharge. This application was allowed by the High Court of Gujarat. Thereafter, some of the accused have challenged the order of High Court of Gujarat before Hon'ble Supreme Court by SLP (Cri.) No.4085 of 2023 and SLP (Cri.) No. 4035 of 2023 which were dismissed.

18.73. The other offences which have been registered against this accused and others, as appearing from the record is at Sabarmati Police Station vide I-C.R.No. 118/2009 under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act. This accused has been tried for the offences under Sections 143 and 147 of IPC (Criminal Case No.497 of 2004) and also, an offence has been registered in Gayakwad Haveli Police Station vide C.R.No.3346/2000 under Sections 188 of IPC and Sections 135(1), 33(1) and 33(5) of BP Act.

18.74. This Court has analysed the evidence while recording conviction in Chapter-16.1 as well as the mitigating and aggravating circumstances and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.6 & 17.7. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by

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the special Court while imposing sentence on the accused. Considering the facts and circumstances of the case, the total number of human casualties, the humongous nature of conspiracy and the intention of the accused to create an atmosphere of wide-spread terror in the society, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused No.1 and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.1 - Jahid Kutubuddin Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(2) **Accused No.2 – Imran Ibrahim Shaikh**:

18.75. The accused No.2 had not filed any written submissions on the aspect of sentence before the special Court and the said aspect has been recorded by the trial Court at Page-6762 of the impugned judgment.

18.76. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that three other offences have been registered against the accused and that while the accused was in judicial custody in connection with the bomb blast case, he was involved in the offence of digging of tunnel inside Sabarmati Central Jail along with co-accused in order to escape from prison. The jail authority has taken two punitive measures against the accused in connection with his conduct inside the jail and thus, the behaviour of the accused inside the jail is not good. After analysing all the facts, this Court is satisfied that the aggravating circumstances far out-weighs the mitigating circumstances. This Court finds that the special Court has concluded the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record in a just and proper manner and has,

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thereafter, inflicted the sentence.

18.77. From the record, it appears that during judicial custody, this accused was involved in digging Tunnel in Sabarmati Central Jail while in judicial custody for the Bomb Blast Case and offence under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 of Ranip Police Station and trial of said case is going on. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.78. The Court has analysed the evidence while recording conviction in Chapter-16.2 along with his further statement under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.8 & 17.9. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the gravity of offence, the intention of the accused behind the act and the humongous nature of the conspiracy, this Court is of the opinion that sentence of death penalty deserves to be imposed upon the accused and accordingly, we confirm the sentence of death penalty awarded to accused No.2 - Imran Ibrahim Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(3) **Accused No.3 – Iqbal Kasam Shaikh**:

18.79. The accused No.3 had not filed any written submissions on the issue of sentence before the special Court and the said aspect has

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been recorded by the special Court at Page-6762 of the impugned judgment.

18.80. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that one other offence was also registered against the accused while he was in judicial custody in connection with the bomb blast case. He was involved in the offence of digging of tunnel inside Sabarmati Central Jail along with co-accused in an attempt to escape from jail. The accused had forced the Doctor on Duty inside the jail to prescribe unnecessary medicines and diets and had also threatened and abused the Doctor, for which, the jail authority has taken one punitive measure against him. Thus, the conduct of the accused inside jail is not proper. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.81. From the record, it appears that during judicial custody, this accused was involved in digging Tunnel in Sabarmati Central Jail while in judicial custody for the Bomb Blast Case and offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on. The trial is at the stage of evidence of prosecution. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.82. The Court has analysed the evidence while recording conviction in Chapter-16.5 along with his further statement under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.10 & 17.11. Having perused the record, the Court is satisfied that all necessary

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steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing the sentence on the accused. In fact, during the course of trial, the special Court noticed that the accused did not express any remorse for the dastardly act. Thus, considering the facts and circumstances of the case, the conduct of the accused during trial, the large-scale conspiracy and the intention of the accused of spreading wide-spread terror, the Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.3 - Iqbal Kasam Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(4) **Accused No.4 – Shamsuddin, S/o. Shahbuddin Shaikh**:

18.83. The accused No.4 had filed written submissions on the issue of sentence vide Exh.9534 wherein, it was stated that he has the liability to sustain his family consisting of his wife, four children, mother and in-laws and his children are studying. His family is staying in a rented house and are facing severe financial difficulties. Along with the written submissions filed by the accused before the special Court (Exh.9534), the accused had produced medical certificates of his mother, wife and mother-in-law to show that they are suffering from different ailments. He also produced mark-sheets of his children to show that two of his children have cleared entrance examinations for Post-graduate courses while two other children are undergoing school education. He stated that earlier he was serving as a Teacher and has received several awards in academics.

18.84. The Court finds that the special Court has considered the

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written submissions (Exh.9534) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page No.6763 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that one other offence was also registered against the accused while he was in judicial custody in connection with the bomb blast case. During judicial custody, the jail authority had taken one punitive measure against him. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances, as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.85. From the record it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.86. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.4 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.12 & 17.13. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the facts and circumstances of the case, the humongous

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nature of the conspiracy, the role played by the accused and the intention of the accused to cause human casualties on a large scale as also damage to public property, this Court deems it appropriate to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.4 - Shamsuddin, S/o. Shahbuddin Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(5) **Accused No.5 – Gyasuddin Abdul Salim Ansari**:

18.87. The accused No.5 had filed written submissions on the aspect of sentence before the special Court vide Exh.9535 wherein, it was stated that he and his family members have suffered severe mental, physical, social and financial hardships on account of the long period of incarceration. At the time of his arrest in connection with the bomb blast case, his wife was pregnant. She delivered a child prematurely in the eighth month of pregnancy but, the child passed away within a week and thereafter, as the trial prolonged, his wife took divorce from him and hence, his family life has ruined. His aged father is working as a labourer in a power-loom factory and there is no other source of income.

18.88. The Court finds that the special Court has considered the written submissions (Exh.9535) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6764 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that one other case was registered against the accused while he was in judicial custody in connection with the bomb blast case. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating

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circumstances. This Court finds that the special Court has concluded the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record in a just and proper manner and has, thereafter, inflicted the sentence.

18.89. From the record it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act

18.90. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.45 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.14 & 17.15. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing sentence on the accused. Considering the facts and circumstances of the case, the deep-rooted conspiracy, the intention of the accused behind the inhuman and dastardly act and the number of innocent lives lost and injuries sustained on account of the bomb blasts, amounting to act of terror, this Court is of the opinion that the accused deserves to be imposed with the sentence of death penalty and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.5 - Gyasuddin Abdul Salim Ansari. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(6) **Accused No.6 – Mohammad Arif Kagzi**:

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18.91. The accused No.6 had filed written submissions on the aspect of sentence before the special Court vide Exh.9536 wherein, it was mainly stated that he is the sole bread-winner of his family and that the condition of his family was very poor from the beginning. His parents are more than 70 years of age and are suffering from different ailments. His wife is also suffering from several ailments. He has three children, who are dependent on him and the situation at his home is not good. It was stated that on two to three occasions he was released on parole leave and on every such occasion, he had surrendered on time and his conduct had remained good.

18.92. The Court finds that the special Court has considered the written submissions (Exh.9536) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6765 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody, the jail authority had taken three punitive measures against him. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances. This Court finds that the special Court has concluded the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record in a just and proper manner and has, thereafter, inflicted the sentence.

18.93. From the record, it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act

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18.94. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.6 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.78 & 17.79, as also the jail proceedings initiated against the accused. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. The Court finds that the accused has played a major role behind the entire conspiracy inasmuch as he had given inciting speeches in the camps with the intention to create an atmosphere of fear and hatred in the society. The role played by the accused, the wide-spread conspiracy and the manner in which the bomb blasts were executed, speaks volumes about the mind-set and the remorseless act of taking away the lives of innocent people and hence, this Court is of the opinion that it would be just and appropriate to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.6 - Mohammad Arif Kagzi. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(7) **Accused No.7 – Mohammad Usman, S/o. Mohd. Anees Agarbattiwala**:

18.95. The accused No.7 had not filed any written submissions on the aspect of sentence before the special Court and the said aspect has been recorded by the special Court at Page-6766 of the impugned judgment.

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18.96. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody, the accused was involved in the offence of digging a tunnel inside Sabarmati Central Jail along with co-accused in order to escape from the jail. One other offence was also registered against the accused while he was in judicial custody and insofar as jail proceedings are concerned, the jail authority has taken three punitive measures against him. Thus, the conduct of the accused inside jail is also not good. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.97. From the record it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act. It also appears that during the judicial custody, this accused was involved in digging Tunnel in Sabarmati Central Jail while in judicial custody for the Bomb Blast Case, for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on. The trial is at the stage of evidence of prosecution. Another offence was registered against this accused at Vadi Police Station vide I-C.R. No.68/2007 under Sections 143, 147, 149, 337, 186, 332, 353, 153(c) of IPC and Sections 3 and 7 of Prevention of Damage of Public Properties Act.

18.98. The Court has analysed the evidence while recording conviction in Chapter-16.22 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly, in Paras-17.16 to 17.18. Having perused the record, the Court is satisfied that all necessary

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steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing the sentence on the accused. In fact, during the course of trial, the special Court noticed that the accused did not express any remorse for the dastardly act as he was also involved in the attempt to escape from the prison by digging a tunnel. Considering the facts and circumstances of the case, the conduct of the accused during the trial, the large-scale conspiracy and the intention of the accused to spread wide-spread terror, the Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.7 - Mohammad Usman, S/o. Mohd. Anees Agarbattiwala. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(8) **Accused No.8 – Yunus, S/o. Mohammad Mansuri**:

18.99. The accused No.8 had filed written submissions on sentence before the special Court vide Exh.9537 wherein, it was mainly stated that he is the sole bread-winner of his family and that his family is facing severe hardships in his absence. He has the responsibility to look after his wife and three children. He is suffering from Piles, High B.P. and Kidney stones.

18.100. The Court finds that the special Court has considered the written submissions (Exh.9537) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6766 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that one other offence was registered against the accused while he was in

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judicial custody in connection with the bomb blast case. Moreover, the jail authority has taken two punitive measures against the accused and thus, the behaviour of the accused inside the jail is also not good. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances. This Court finds that the special Court has concluded the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record in a just and proper manner and has, thereafter, inflicted the sentence.

18.101. From the record, it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act

18.102. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.23 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.19 & 17.20. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the facts and circumstances of the case, the role played by the accused in the conspiracy, the gravity of offence and the wide-spread terror caused on account of the act of bomb blasts, this Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.8 – Yunus, S/o. Mohammad Mansuri.

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The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(9) **Accused No.9 – Kamruddin, S/o. Chand Mohd. Nagori**:

18.103. The accused No.9 had not filed any written submissions on the issue of sentence before the special Court. The said aspect has been recorded by the special Court at Page-6767 of the impugned judgment. In the presence of learned advocates on both the sides, the accused orally stated that at the time when the alleged offence was committed, he was in jail and thus, he has been falsely implicated in the offence. He does not know as to how the case has proceeded and that the entire evidence is false. He stated that his life has been destroyed by keeping him in jail and except the above, he does not have anything else to state.

18.104. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that the accused was convicted in two different cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC and under the UAPA as also the Arms Act; and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. While in judicial custody in connection with the bomb blast case, the jail authority had taken three punitive measures against the accused, which shows that the behaviour of the accused inside the jail is not proper. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.105. From the record, it appears that this accused was convicted in Sessions Case No. 132 of 2010 under Sections 122, 124(A), 153(A) of IPC and under UAPA Act as well as under Arms Act. This accused was

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convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. This accused was convicted in RT No.14638 of 2009 under Section 419 of IPC and UAPA Act and was also convicted in RT No.1222 of 2010 under Section 149 of IPC by CJM, Bhopal. Also, Sessions Case No.49 of 2011 with Sessions Case No.119 of 2014 under Sections 120B, 121, 121A, 122, 124, 153, 465, 467 and 471 of IPC was registered at Hubli, Karnataka. Further, Sessions Case No.699 of 2009 under Sections 3, 10 and 13 of UAPA and Sessions Case No.159/2008 under Sections 153 of IPC and 3, 10, 13 of UAPA were registered at Ujjain Court. Lastly, Sessions Case No.139 of 2016 under Sections 130, 224, 120B of IPC and Sections 42, 45 of UAPA was registered at Majgaon.

18.106. The Court has analysed the evidence while recording conviction in Chapter-16.28 and the jail proceedings initiated against the accused as also his criminal antecedents. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. In fact, during the course of trial, the special Court noticed that the accused did not express any remorse for his act and did not offer any explanation in his further statement under section 313 of Cr.P.C. Considering the facts and circumstances of the case, the conduct of the accused during the trial, the criminal antecedents and the intention of the accused to spread wide-spread terror, the Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.9 - Kamruddin, S/o. Chand Mohd. Nagori. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

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(10) **Accused No.10 – Aamil Parvaz, S/o. Kazi Saifuddin Shaikh**:

18.107. The accused No.10 had not filed any written submissions on the aspect of sentence before the special Court. The said aspect has been recorded by the special Court at Page-6768 of the impugned judgment. In presence of learned advocates on both the sides, the accused orally stated that he does not know anything about the case. He does not know as to in connection with which case prosecution has been initiated against him and in which case he has been convicted. He stated that he has not committed any offence and has expressed dissatisfaction about the manner in which the law was enforced. He stated that neither the Government of India nor the law formulated by the Government of India would provide him with justice.

18.108. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that the accused was convicted in two different cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC as also under the UAPA and the Arms Act and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. Further, while in judicial custody in connection with the bomb blast case, the jail authority has taken one punitive measure against the accused. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.109. From the record, it appears that accused was convicted in Sessions Case No. 132 of 2010 under Sections 122, 124(A), 153(A) of IPC, UAPA Act and Arms Act. This accused was also convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. It also appears that two other cases have been

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registered against this accused namely, (1) Criminal Case No.31 of 2002 at West Bengal and (2) Criminal Case No.159 of 2008 at Indore.

18.110. The Court has analysed the evidence while recording conviction in Chapter-16.13. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. In fact, during the course of trial, the special Court noticed that the accused did not express any remorse for his act. In fact, it appears that this accused has shown utter disregard for Indian laws. Considering the facts and circumstances of the case, the role of the accused in the large-scale conspiracy, the conduct of the accused during trial, his criminal antecedents and the intention to cause wide-spread terror and human deaths, the Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.10 – Aamil Parvaz, S/o. Kazi Saifuddin Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(11) **Accused No.11 – Sibli @ Sabit, S/o. Abdulkarim Muslim**:

18.111. The accused No.11 had not filed any written submissions on sentence before the special Court and the said aspect has been recorded by the special Court at Page-6769 of the impugned judgment. Before the special Court, it was orally stated by the accused that what all has happened, has happened as per the wish of God and that what all will happen, will happen as per the wish of God.

18.112. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings

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initiated against him. The record shows that the accused was convicted in two different cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC as also under the UAPA and the Arms Act and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. While in judicial custody in connection with the bomb blast case, the jail authority had taken four punitive measures against the accused, which shows that the behaviour of the accused is not good and remorseless inside the jail. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.113. From the record, it appears that while in judicial custody for the Bomb Blast Case, this accused was involved in digging Tunnel in Sabarmati Central Jail for which offence under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and the trial of the said case is going on. This accused was convicted in Sessions Case No. 132 of 2010 under Section 122, 124(A), 153(A) of IPC, UAPA Act and under Arms Act. This accused was also convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. Lastly, Sessions Case No.49 of 2011 with Sessions Case No.119 of 2014 was registered at Hubli, Karnataka under Sections 120B, 121, 121A, 122, 124, 153, 465, 467 and 471 of IPC.

18.114. The Court has analysed the evidence while recording conviction in Chapter-16.14 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.21 & 17.22. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. In fact, during the course of trial, the special Court noticed

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that the accused did not express any remorse for his act. Considering the facts and circumstances of the case, the criminal antecedents of the accused, the specific role played by the accused in the large-scale conspiracy and the intention to cause wide-spread terror and loss of human lives, the Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.11 – Sibli @ Sabit, S/o. Abdulkarim Muslim. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(12) **Accused No.12 – Safdarhussain @ Hussainbhai @ Iqbal, S/o. Jaharul Hasan Nagori**:

18.115. Before the special Court, the accused No.12 had filed written submissions on the aspect of sentence vide Exh.9529 wherein, it was stated that he is a qualified Mechanical Engineer, a Journalist and a Lecturer. He is suffering from high B.P. and anxiety and has also suffered two mild heart-attacks. He has neurological complications and chronic Rhinitis. He stated that he has been acquitted by the competent Court in five other cases. He was never involved in any act of bomb blast nor in any conspiracy of committing any such act and though at the time when the incident in question took place, he was in jail in connection with some other case, he has been implicated in this case in a wrongful manner.

18.116. The Court finds that the special Court has considered the written submissions (Exh.9529) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6769 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the

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accused and the jail proceedings initiated against him. The record shows that the accused was convicted in two other cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC as also under the UAPA and the Arms Act and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. He was convicted in one other case under the UAPA and IPC and also in two other cases under the IPC. 08 (eight) other cases are also pending against the accused. While in judicial custody in connection with the bomb blast case, the jail authority has taken nine punitive measures against the accused, which shows that the conduct of the accused has not shown any remorse while in jail. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.117. From the record, it appears that this accused was convicted in Sessions Case No. 132 of 2010 under Sections 122, 124(A), 153(A) of IPC, under UAPA Act as well as Arms Act. This accused was also convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. This accused was convicted in RT No.14638/2009 under Section 419 of IPC and UAPA Act and in RT No.1222/2010 under Section 149 of IPC by CJM, Bhopal. This accused was convicted in Criminal Case No.462 of 1998 under Section 153A of IPC at Ujjain and is also undergoing trial at Madhya Pradesh for offence under Section 153A of IPC (RT No.12594/2008) and for offences under Sections 153A, 188 of IPC (RT No.12951/2008). Further, while in judicial custody for the Bomb Blast Case, this accused was involved in

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digging Tunnel in Sabarmati Central Jail for which offence under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution.

18.118. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.18 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Para-17.23. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the large-scale conspiracy amounting to terrorist activity, and the criminal antecedents of the accused and the jail proceedings initiated against the accused, this Court deems it appropriate to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.12 - Safdarhussain @ Hussainbhai @ Iqbal, S/o. Jaharul Hasan Nagori. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(13) **Accused No.13 – Hafizhussain Tajuddin Mulla**:

18.119. Before the special Court, the accused No.13 had filed written submissions on the issue of sentence vide Exh.9529 wherein, it was mainly stated that he is a Civil Engineer and comes from an educated and respected Muslim family. He stated that he is not involved with the serial bomb blasts case in any manner and has been falsely implicated in

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the case on the basis of false evidence and documents. He has been arraigned in the case since he was booked by the police of the States of Madhya Pradesh, Karnataka and Maharashtra in cases under the UAPA. In two out of the four cases, he has been acquitted by the competent Court. He is suffering from diabetes, heart disease and urinary problem, in proof whereof, he had produced the medical certificates.

18.120. The Court finds that the special Court has considered the written submissions (Exh.9529) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6770 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that the accused was convicted in two other cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC as also under the UAPA and the Arms Act and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. He was also convicted in one other case under the UAPA and IPC. Insofar as jail proceedings are concerned, the jail authority has taken one punitive measure against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.121. From the record, it appears that this accused was convicted in Sessions Case No. 132 of 2010 under Sections 122, 124(A), 153(A) of IPC, under UAPA Act as well as under Arms Act. This accused was also convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala

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under UAPA Act, IPC and Arms Act. Also, while in judicial custody for the Bomb Blast Case, this accused was involved in digging Tunnel in Sabarmati Central Jail for which offence under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. It also appears that Sessions Case No.49 of 2011 with Sessions Case No.119 of 2014 under Sections 120B, 121, 121A, 122, 124, 153, 465, 467 and 471 of IPC was registered at Hubli, Karnataka and Sessions Case No.88 of 2008 under Sections 120B, 123, 124A, 143, 149, 511, 153AB of IPC was registered at Velgaon.

18.122. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.19 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.24 & 17.25. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the conspiracy as also the fact that the accused has been convicted in two other cases. The accused has therefore definitely involved in terrorist activity hence, this Court deems it appropriate to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.13 - Hafizhussain Tajuddin Mulla. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

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(14) **Accused No.14 – Mohammad Sajid, S/o. Gulam Khwaja Mansuri**:

18.123. Before the special Court, the accused No.14 had filed written submissions on the aspect of sentence vide Exh.9538 wherein, it was stated that on account of the prolonged trial, he and his family members have suffered severe financial, social, mental and physical hardships. He is suffering from hyper-tension, migraine and mental issues. His father has died and his mother is aged about 70 years. While in judicial custody, he has achieved academic degrees in different courses.

18.124. The Court finds that the special Court has considered the written submissions (Exh.9538) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6772 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. One other offence was also registered against him while in judicial custody in connection with this case. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.125. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections

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120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Also, it appears that one offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.126. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.24 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.26 & 17.27. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the facts and circumstances of the case, the role played by the accused in the conspiracy, the wide-spread terror caused on account of the act of bomb blasts as also the jail conduct of the accused inasmuch as he was involved in the attempt to escape from prison, this Court deems it appropriate to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.14 - Mohammad Sajid, S/o. Gulam Khwaja Mansuri. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(15) **Accused No.15 – Mufti Abubasar @ Abdul Rashid @ Abdullah, S/o. Abubakar Shaikh**:

18.127. Before the special Court, the accused No.15 had not filed any

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written submissions on the aspect of sentence and the said aspect has been recorded at Page-6773 of the impugned judgment. In presence of learned advocates on both the sides, it was orally stated by the accused that he has faith in Allah but does not have faith on the law of the country as well as on the Courts of the country and on the Government of India.

18.128. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused in order to escape from prison. One other offence was also registered against him while in judicial custody in connection with this case. The accused was convicted in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala for offences under the UAPA Act, IPC and Arms Act. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.129. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage

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of Public Properties Act and under Prison Act. This accused was convicted in Sessions Case No. 2 of 2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act and was tried in Sessions Case No.427 of 2012 under Sections 153A, 153B, 123, 120B, 124A, 143, 149, 511 of IPC and Sections 13, 15 and 18 of UAPA and Sections 4 and 5 of Explosives Substances Act at Karnataka.

18.130. The Court has analysed the evidence while recording conviction in Chapter-16.25 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.28 & 17.29. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the conspiracy, the criminal antecedents of the accused and the factum of his conviction in another case of similar nature, the accused being remorseless, the Court deems it just and appropriate to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.15 – Mufti Abubasar @ Abdul Rashid @ Abdullah, S/o. Abubakar Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(16) **Accused No.16 – Abbas Umar Sameja**:

18.131. Before the special Court, the accused No.16 had filed written submissions on the issue of sentence vide Exh.9539 wherein, it was stated that the financial condition of his family is very weak as they do not have any source of income. His father and brother have passed away and there is no one else to look after his family consisting of his wife,

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three children and mother aged 80 years. His wife is suffering from Thyroid and Migraine. He stated that while in judicial custody, he achieved Degrees in different courses. In 2015 and 2018, he had suffered heart-attacks.

18.132. The Court finds that the special Court has considered the written submissions (Exh.9539) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6773 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody in connection with this case, the accused was involved in the offence of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. One other offence was also registered against him while in judicial custody in connection with this case. Insofar as jail punishment is concerned, six punitive measures have been taken against the accused by the jail authority, which shows that the behaviour of the accused inside the jail is not good. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.133. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Another offence was registered against this

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accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.134. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.20 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.30 & 17.31. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the facts and circumstances of the case, the role played by the accused in the large-scale conspiracy of carrying out terror attacks, the jail proceedings initiated against him as also his involvement in the act of attempt to escape from the prison during trial, this Court deems it proper to impose the sentence of death penalty upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.16 - Abbas Umar Sameja. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(17) **Accused No.18 – Javed Ahmed, S/o. Sagir Ahmed Shaikh**:

18.135. The accused No.18 had filed written submissions on the issue of sentence before the trial Court vide Exh.9540 wherein, it was stated that he is the sole bread-winner of his family and in his absence, his family is facing severe financial hardships. His father is suffering from Cancer. He has achieved several degrees while studying from the jail.

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18.136. The Court finds that the special Court has considered the written submissions (Exh.9540) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6775 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that one other offence has been registered against the accused while in judicial custody in connection with the bomb blast case. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.137. From the record, it appears that an offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.138. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.7 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.32 & 17.33. Having perused the aforesaid record, this accused has played a role in conspiracy to carry out terror attacks, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly

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considered by the special Court while imposing the sentence on the accused. Thus, the Court hereby confirms the sentence of death penalty awarded to accused No.18 - Javed Ahmed, S/o. Sagir Ahmed Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(18) **Accused No.27 – Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan, S/o. Mohammad Isaak Mansuri**:

18.139. Before the special Court, the accused No.27 had filed written submissions on the issue of sentence vide Exh.9545 wherein, it was mainly stated that the accused had undergone dental treatment and was operated upon for some cyst. He is also suffering from blood pressure. He belongs to the poor strata of society and in his absence, his family is facing severe financial hardships. In the past, he was released on parole leave for attending marriage ceremony of his daughter and during such time, his conduct was good. He was permitted to take treatment from a private hospital outside jail and during such time also, his conduct was good. While in judicial custody, he has secured degree in some course.

18.140. The Court finds that the special Court has considered the written submissions (Exh.9545) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6781 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. One other offence was also registered against him while in judicial custody in connection with this

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case. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.141. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.142. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.10 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.37 to 17.39. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused and the fact that he had no remorse for his act as he was involved in the attempt to escape from prison during the trial,

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this accused has been in the conspiracy from the beginning resulting in a terrorist act which resulted in loss of lives and grievous injuries to innocent victims and damage to public and private properties, this Court deems it just and appropriate to impose the sentence of death penalt y upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.27 - Mohammad Ismail @ Abdul Rajik @ Musaf @ Furkan, S/o. Mohammad Isaak Mansuri. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(19) **Accused No.28 – Afzal @ Afsar, S/o. Muttalib Usmani**:

18.143. The accused No.28 had not filed any written submissions on sentence before the special Court and the said aspect has been recorded by the special Court at Page-6783 of the impugned judgment. In the presence of learned advocates for both the sides, it was orally stated by the accused that he has three children and he is suffering from high blood pressure.

18.144. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that the jail conduct of the accused is not good as three punitive measures have been taken against him by the jail authority. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.145. The Court has analysed the evidence while recording conviction in Chapter-16.12 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.40 & 17.41. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and

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all circumstances have been duly considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the conspiracy by transporting vehicles to places where the bombs ultimately detonated being part of the conspiracy to conduct a terror attack , as also the jail proceedings initiated against him, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.28 – Afzal @ Afsar, S/o. Muttalib Usmani. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(20) **Accused No.31 – Mohd. Arif @ Arif Badar @ Ladan, S/o. Badaruddin @ Jumman Shaikh**:

18.146. Before the special Court, the accused No.31 had filed written submissions on the issue of sentence vide Exh.9546 wherein, it was mainly stated that he is suffering from Diabetes, Asthma, High Blood Pressure, Arthritis and Back-pain. The financial condition of his family consisting of his wife, two sons and a daughter is very poor and they survive on the basis of free food-grains provided by the Government. While in judicial custody, he had completed his studies. He is not aware about the case against him as also about the allegations levelled against him.

18.147. The Court finds that the special Court has considered the written submissions (Exh.9546) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6784 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the

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accused and the jail proceedings initiated against him. The record shows that in the year 2008, an offence under the Explosive Substances Act and the UAPA was registered against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.148. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra.

18.149. This Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.27 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.42 & 17.43. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Looking to the gravity of offence, the large-scale conspiracy and the specific role played by the accused of procuring timers that were used in the bombs which ultimately detonated. This role being a part of Conspiracy to carry out the terror attack this Court is of the opinion that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we confirm the sentence of death penalty awarded to accused No.31 - Mohd. Arif @ Arif Badar @ Ladan, S/o. Badaruddin @

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Jumman Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(21) **Accused No.32 – Asif @ Hasan, S/o. Bashiruddin Shaikh**:

18.150. The accused No.32 had not filed any written submissions on the issue of sentence before the special Court. The said aspect has been recorded by the special Court at Page-6785 of the impugned judgment. In the presence of learned advocates on both the sides, the accused orally stated that he has been falsely implicated in this case and while in judicial custody, he has continued with his studies.

18.151. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that cases under the Explosive Substances Act, the UAPA and the IT Act were registered against the accused at Mumbai and Delhi. Despite the aforesaid his continuing role emerging in the present offence shows that the accused is remorseless. Six cases were pending against the accused at the relevant time. Insofar as jail proceedings are concerned, the jail authority has taken three punitive measures against the accused, which shows that his jail conduct inside the jail is not good. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.152. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra. It also appears that an offence was registered at Karoli Bag, New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123,

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302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act.

18.153. The Court has analysed the evidence while recording conviction in Chapter-16.34 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.44 & 17.45. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the conspiracy and the criminal antecedents of the accused, as he appears to be habitual in involving in this type of terror attacks, the Court deems it just and appropriate to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.32 – Asif @ Hasan, S/o. Bashiruddin Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(22) **Accused No.36 – Mohammad Arif Nasim Ahmed Mirza**:

18.154. Before the special Court, the accused No.36 had filed written submissions on the aspect of sentence vide Exh.9531 wherein, it was

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stated that the financial condition of his family is very poor. His parents are aged and are suffering from different diseases. The financial condition of his house is very weak. He is suffering from migraine. While in judicial custody, he has achieved PG degrees from two different Universities. His paternal Uncle is serving as a Professor in Sibli National College, U.P. whereas, his paternal Aunt is discharging duties as a Doctor in Government Hospital, Azamgarh, U.P..

18.155. The Court finds that the special Court has considered the written submissions (Exh.9531) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6787 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that one other offence was registered against the accused while he was in judicial custody in connection with the bomb blast case and that one other case under section 307 of IPC is pending against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.156. From the record, it appears that an offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act. Also, an offence was registered at Vazirganj Police Station, Lucknow, UP vide C.R.No.547/2009 under Sections 307 and 120B of IPC, which

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is pending.

18.157. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.35. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused, the gravity of offence coupled with the total number of human casualties and the humongous nature of conspiracy in this act of terrorism, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused No.36 and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.36 - Mohammad Arif Nasim Ahmed Mirza. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(23) **Accused No.37 – Kayamuddin @ Rizwan @ Ashfaq, S/o. Sarfuddin Kapadiya**:

18.158. Before the special Court, the accused No.37 had filed written submissions on the issue of sentence vide Exh.9548 wherein, it was mainly stated that he has the responsibility of looking after his wife and one daughter. His mother has undergone surgery for the treatment of Cancer and presently also, she remains ill. The accused has a brother and both are in jail since last about 13 years.

18.159. The Court finds that the special Court has considered the written submissions (Exh.9548) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6789 of the impugned judgment, the special Court has

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taken into consideration such submissions as well as the case against the accused and the jail proceedings initiated against him. The record shows that the accused was involved in the offence of digging a tunnel inside Sabarmati Central Jail along with co-accused in order to escape from prison. One other offence was registered against the accused while in judicial custody in connection with this case. Five cases, viz. (i) for offences under sections 302, 307 and other sections of IPC; (ii) for offences under the UAPA and Explosive Substances Act in Delhi; (iii) for offences under the UAPA, Explosive Substances Act, Arms Act and IPC at Mangalore; and (iv) one case at Vadi, Vadodara; are pending against him. While in judicial custody in connection with the bomb blast case, the jail authority has taken one punitive measure against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.160. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.161. It also appears that an offence was registered at Karoli Bag,

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New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act. Also, an offence was registered at Ullal Police Station, Karnataka vide I-C.R.No.242/2008 for the offences under Sections 120B, 121A, 122, 123, 153A, 217, 420, 468, 471 of IPC and Section 3 of Explosive Substances Act and Sections 10, 11, 13, 16, 18, 19, 20 and 21 of UAPA and Section 25(2) of Arms Act. Lastly, it appears that an offence was registered at Vadi Police Station vide I-C.R. No.68/2007 under Sections 143, 147, 149, 337, 186, 332, 353, 153(c) of IPC and Sections 3 and 7 of Prevention of Damage of Public Properties Act.

18.162. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.47 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.46 to 17.49. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused as one of the main conspirators of the conspiracy

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which was with an object to cause mass killings and thereby, resulting in irreparable loss of lives, grievous injuries to innocent persons and even damage to public and private properties, and also considering the criminal antecedents of the accused and the gravity of offence which shook the public confidence and spread terror far beyond the victims impacted by it, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.37 - Kayamuddin @ Rizwan @ Ashfaq, S/o. Sarfuddin Kapadiya. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(24) **Accused No.38 – Mohammad Saif @ Rahul Sabad Ahmed @ Mister Shaikh**:

18.163. Before the special Court, the accused No.38 had filed written submissions on the issue of sentence vide Exh.9562. On behalf of the accused, it was stated that the accused has a degree in B.A. and was selected at the District Level in Cricket. His father had worked as the General Secretary of a political party in the State of U.P. and is a social worker. He has three brothers, viz. one is a practising advocate in Azamgarh, U.P. and the other two brothers are doing business of building materials.

18.164. The Court finds that the special Court has considered the written submissions (Exh.9562) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6790 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. After analysing all the facts, the special Court was satisfied that

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the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.165. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.36 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.50 & 17.51. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused, the humongous nature of conspiracy and the gravity of offence, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.38 - Mohammad Saif @ Rahul Sabad Ahmed @ Mister Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(25) **Accused No.39 – Zishan Ahmed @ Zishan Isan Ahmed Shaikh**:

18.166. Before the special Court, the accused No.39 had filed written submissions on the issue of sentence vide Exhs.9563 and 9531 wherein, it was stated that his father is serving as Teacher of commerce subject in a Government School and also gives free coaching to students. The accused has done P.G. course from a private University and has produced certificates regarding his educational qualifications. His

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brother is suffering from Neuropsychiatric problem.

18.167. The Court finds that the special Court has considered the written submissions (Exhs.9563 & 9531) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6791 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. Five cases for offences under sections 302, 307 and other offences and offences under the UAPA as also under the Explosive Substances Act are pending against him in Delhi. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.168. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution.

18.169. It also appears that an offence was registered at Karoli Bag, New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and

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Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act.

18.170. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.37. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case which was a coordinated terror attack intending to spread terror by causing mass killings and to instill fear in the minds of the people, the role played by the accused, the criminal antecedents of the accused and the jail proceedings initiated against him, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.39 - Zishan Ahmed @ Zishan Isan Ahmed Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(26) **Accused No.40 – Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli**:

18.171. The accused No.40 had filed written submissions on the

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aspect of sentence before the special Court vide Exh.9564 wherein, it was stated that the accused has a degree in B.A. He has completed courses in different Programming Languages. He has problems of migraine, headache and toothache. His father was serving as a Stenographer in the PWD division of Uttar Pradesh Government and retired in the year 2010. His parents are aged.

18.172. The Court finds that the special Court has considered the written submissions (Exh.9564) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6793 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. Five cases, viz. for offences under sections 302, 307 and other offences and offence under the UAPA as also under the Explosive Substances Act are pending against him in Delhi. Insofar as jail punishment is concerned, one punitive measure has been taken against the accused by the jail authority. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.173. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip

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Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. Another offence was registered against this accused and other accused vide I-C.R.No. 118/2009 in Sabarmati Police Station under Sections 143, 147, 148, 149, 332, 353, 294(B), 336, 337, 427, 186 and 188 of IPC and Sections 3(1), 7 of Prevention of Damage of Public Properties Act and under Prison Act.

18.174. It also appears that an offence was registered at Karoli Bag, New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act.

18.175. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.38. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused, the criminal antecedents of the accused, the jail proceedings initiated against him, absence of remorse on the part of the accused and even considering his subsequent conduct to escape from the jail by digging a tunnel, the

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Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.40 - Ziyaur Rehmaan @ Montu @ Ziya Abdul Rehmaan Teli. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(27) **Accused No.42 – Mohammad Shakil Yaminkhan Luhar**:

18.176. Before the special Court, the accused No.42 had filed written submissions on the aspect of sentence vide Exh.9565 wherein, it was stated that he is suffering from Raynaud's syndrome – a disease that results in reduced flow of blood to the hands causing pain and tingling sensation in the hands. He is also suffering from headaches and blood pressure. He has achieved degrees in academics while in judicial custody. His elder brother has done M.B.A. and is doing business with his father whereas, his younger brother works in the private sector. His mother remains ill on regular basis and has undergone Open Heart surgery twice.

18.177. The Court finds that the special Court has considered the written submissions (Exh.9565) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6794 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that while in judicial custody in connection with this case, the accused was involved in the act of digging a tunnel inside Sabarmati Central Jail along with co-accused to escape from prison. Five cases, viz. for offences under sections 302, 307 and other offences and offences under the UAPA as also under the Explosive Substances Act are pending against him in Delhi. After analysing all the

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facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.178. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. It also appears that an offence was registered at Karoli Bag, New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act.

18.179. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.39. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and

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circumstances of the case, including the enormity of the terror attack and its impact on the society, the role played by the accused, the criminal antecedents of the accused being involved in similar anti national activity shows remorseless conduct of the accused, the jail proceedings initiated against him, the subsequent conduct of the accused including the attempt to escape by digging a tunnel, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused and thus, the Court hereby confirms the sentence of death penalty awarded to accused No.42 - Mohammad Shakil Yaminkhan Luhar. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(28) **Accused No.44 – Mohd. Akbar @ Said @ Yakub @ Vinod, S/o. Ismail Chaudhari**:

18.180. Before the special Court, the accused No.44 had not filed any written submissions on the aspect of sentence. The said fact has been recorded by the special Court at Page-6795 of the impugned judgment. In the presence of learned advocates on both the sides, the accused orally stated that he believes in God and has been falsely implicated in this offence. He stated that he does not have faith in the justice system of the country and that atrocities are committed on the minority community.

18.181. The Court finds that the special Court has taken into consideration the case against the accused. The record shows that the accused was convicted for offences under the UAPA and IPC as also for other offences. One case under the MCOCA is pending against him in Mumbai. Five cases under sections 302, 307 and other offences and offences under the UAPA as also under the Explosive Substances Act

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are pending against him in Delhi. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.182. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra. It also appears that an offence was registered at Karoli Bag, New Delhi Police Station vide I-C.R.No.166/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA. Also, three other offences were registered at Tilaknagar, New Delhi Police Station vide I-C.R.No.293/2008, at Connaught Palace, New Delhi Police Station vide I-C.R.No.418/2008 and at Greater Kailas, New Delhi Police Station vide I-C.R.No.130/2008 for the offences under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 2, 3, 4, 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of 1.T. Act.

18.183. Upon perusing the record, it appears that this accused was convicted in Criminal Case No.1 of 2011 for the offence under Sections 121A, 120B of IPC and Sections 16 and 18 of UAPA. This accused was also convicted in Criminal Case No.2 of 2011 and in Criminal Case No.3 of 2011 for offences under Sections 302, 120B, 34 of IPC and Section 16 of UAPA and Section 3B of Explosive Substances Act.

18.184. The Court has analysed the evidence while recording conviction in Chapter-16.40. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly

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considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the criminal antecedents of the accused as cases are pending against him in different States, the role played by the accused, the total number of human casualties and injuries sustained by innocent persons as a result of the terrorist act coupled with the psychological impact upon the society at large, the Court deems it just and appropriate to impose the sentence of death penalty upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.44 – Mohd. Akbar @ Said @ Yakub @ Vinod, S/o. Ismail Chaudhari. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(29) **Accused No.45 – Fazle Rehmaan @ Rafik @ Salauddin, S/o. Mussadik Durrani**:

18.185. Before the special Court, the accused No.45 had filed written submission on the issue of sentence vide Exh.9549 wherein, it was stated that he belongs to a poor family and comes from a village background. He produced medical case-papers regarding the treatment undertaken by him during the period 2018-2019.

18.186. The Court finds that the special Court has considered the written submissions (Exh.9549) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6794 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that one case under the MCOCA is pending against the accused in Mumbai. While in judicial custody, the jail authority has taken three punitive measures against the accused, which shows that the conduct of the accused inside the jail is not good. After

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analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.187. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra.

18.188. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.44 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.52 & 17.53. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused which demonstrates his conscious participation in achieving the object of the conspiracy which was to cause mass killings coupled with the devastating consequence of the terror attack which caused irreparable loss, the criminal antecedents of the accused and the jail proceedings initiated against him, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused and thus, the Court hereby confirms the sentence of death penalty awarded to accused No.45 - Fazle Rehmaan @ Rafik @

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Salauddin, S/o. Mussadik Durrani. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(30) **Accused No.47 – Ahmed Bava @ Abu, S/o. Abubakr Barelvi**:

18.189. Before the special Court, the accused No.47 had filed written submissions on the aspect of sentence vide Exh.9530 wherein, it was mainly stated that the allegations levelled against him are baseless and he is a law-abiding citizen.

18.190. The Court finds that the special Court has considered the written submissions (Exh.9530) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6797 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that one case under the MCOCA is pending against the accused in Mumbai. While in judicial custody, the jail authority has taken three punitive measures against the accused, which shows that his conduct inside the jail is not good. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.191. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra.

18.192. The Court has analysed the mitigating and aggravating

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circumstances as well as the evidence while recording conviction in Chapter-16.30 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.56 & 17.57. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in facilitating the terror attack which caused consequences that have continued long after the explosions occurred and created a scar in the minds of the families of the deceased, the victims and the society at large, and also considering the criminal antecedents of the accused and the jail proceedings initiated against him including his consistent participation in anti-national activity shows scant regards for the rule of law as well as no remorse therefore , the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused and thus, the Court hereby confirms the sentence of death penalty awarded to accused No.47 – Ahmed Bava @ Abu, S/o. Abubakr Barelvi. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(31) **Accused No.49 – Sarfuddin @ Sarfu, S/o. E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim**:

18.193. Before the special Court, the accused No.49 had not filed any written submissions on the aspect of sentence. It was orally stated on behalf of the accused that he has the responsibility to look after his wife, children and aged parents and that his family is facing financial

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difficulties in his absence.

18.194. The Court finds that the special Court has taken into consideration the case against the accused. The record shows that nine session cases are pending against the accused before the Court at Bengaluru and one sessions case is pending before another Court in Karnataka. While in judicial custody, the jail authority has taken one punitive measure against the accused. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.195. From the record, it appears that Sessions Case No.1478/2010 to Sessions Case No. 1486/2010 are pending against this accused in the Court at Bangalore. Also, Sessions Case No.61/2013 for the offences under Sections 120B, 121A of IPC and Sections 3, 4 and 5 of Explosive Substances Act is pending in Karnataka.

18.196. The Court has analysed the evidence while recording conviction in Chapter-16.31 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.58 & 17.59. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the criminal antecedents of the accused as several cases are pending against him in different States as also the role played by him in preparing the timers used in bombs that got detonated coupled with the total number of human casualties, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.49 – Sarfuddin @ Sarfu, S/o. E.T. Sainuddin @ Abdul Sattar @ Abdul Salam @ Salim. The Court also hereby confirms the fine imposed

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by the learned special Court, as prescribed in Chapter-7.

(32) **Accused No.50 – Saifur Rehmaan @ Saifu @ Saif Abdul Rehman**:

18.197. Before the special Court, the accused No.50 had filed written submissions on the aspect of sentence vide Exh.9566 wherein, it was stated that his father was serving as Assistant Professor in Sibli National College, Azamgarh, U.P. and retired in the year 1998. He has three brothers, viz. one brother has a Ph.D degree and is serving as a Research Scientist in a Pharmaceutical Company, another has done M.Sc. in Bio-technology as Ph.D from JNU and serving in a reputed Hospital in Saudi Arabia and the third brother runs a business of fire-extinguishers. The accused has four sisters and all are Graduates and are married. His mother has been diagnosed with Parkinson's disease.

18.198. The Court finds that the special Court has considered the written submissions (Exh.9566) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6799 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that while in judicial custody, the jail authority has taken one punitive measure against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.199. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.32. Having perused the aforesaid record, the Court is

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satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused in the conspiracy by planting the bomb laden cycles at crowded places fully aware that the explosions would result in irreparable loss of innocent lives and cause damage to public and private properties and thereby, committed an act of terror and therefore, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No.50 – Saifur Rehmaan @ Saifu @ Saif Abdul Rehman. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(33) **Accused No.60 – Saduli @ Hariz, S/o. Abdul Karim Muslim**:

18.200. Before the special Court, the accused No.60 had not filed any written submissions on the aspect of sentence and the said aspect has been recorded by the special Court at Page-6800 of the impugned judgment. In the presence of learned advocates on both sides, it was orally stated by the accused that he does not have any faith in Court and that if it's an offence to kill people by way of bomb blasts, then it's also an offence to kill any person by hanging.

18.201. The Court finds that the special Court has taken into consideration the case against the accused and the jail proceedings initiated against him. The record shows that the accused was convicted in two other cases being (i) in Sessions Case No.132/2010 under sections 122, 124(A) and 153(A) of IPC as also under the UAPA and the

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Arms Act and (ii) in Sessions Case No.2/2011 by the competent Court in Ernakulam, Kerala under the UAPA Act, IPC and Arms Act. One case in Hubli, Karnataka and one before the Metropolitan Court at Ahmedabad are pending against the accused. While in judicial custody in connection with the bomb blast case, the jail authority has taken three punitive measures against the accused, which shows remorseless behaviour of the accused inside the jail. After analysing all the facts, the special Court has proceeded to inflict the sentence.

18.202. From the record, it appears that while this accused was in judicial custody for the Bomb Blast Case, he was involved in digging Tunnel in Sabarmati Central Jail for which offences under Sections 120B, 224, 130 of IPC was registered vide I-C.R.No.24/2013 in Ranip Police Station and trial of said case is going on, which is at the stage of evidence of prosecution. This accused was convicted in Sessions Case No. 132 of 2010 under Sections 122, 124(A), 153(A) of IPC, under UAPA Act as well as Arms Act. Also, this accused was convicted in Sessions Case No. 2 of 2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. This accused was tried in Sessions Case No.49 of 2011 with Sessions Case No.119 of 2014 under Sections 120B, 121, 121A, 122, 124, 153, 465, 467, 471 of IPC was registered at Hubli, Karnataka.

18.203. The Court has analysed the evidence while recording conviction in Chapter-16.21 and the further statement of accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.65 to 17.68. Having perused the record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all circumstances have been duly considered while imposing sentence on the accused. Considering the facts and circumstances of the case, the

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criminal antecedents of the accused as several cases are pending against him in different States and the jail proceedings initiated against him, the Court is satisfied about his role in this terrorist activity hence, the sentence of death penalty deserves to be imposed upon the accused and accordingly, the Court hereby confirms the sentence of death penalty awarded to accused No.60 – Saduli @ Hariz, S/o. Abdul Karim Muslim. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(34) **Accused No.63 – Mohammad Tanvir @ Talha, S/o. Mohammad Akhtar Pathan**:

18.204. Before the special Court, the accused No.63 had filed written submissions on the aspect of sentence vide Exh.9550 wherein, it was stated that while being in judicial custody, his mother had passed away. His father is aged and is a heart-patient. The daughter of the accused is in a distressed condition after his conviction. The accused has spent his time in judicial custody for studies and has produced certificate of the course done from an Open University.

18.205. The Court finds that the special Court has considered the written submissions (Exh.9550) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6801 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. While in judicial custody, the jail authority has taken three punitive measures against the accused, which shows that the behaviour of the accused inside the jail is not proper. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the

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exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.206. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.3. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused, particularly in the preparation of bombs and the jail proceedings initiated against him, the accused has played a role in terror act, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No. 63 – Mohammad Tanvir @ Talha, S/o. Mohammad Akhtar Pathan. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(35) **Accused No.69 – Amin @ Raja, S/o. Ayub Nazir Shaikh**:

18.207. Before the special Court, the accused No.69 had filed written submissions on the aspect of sentence vide Exh.9552 wherein, it was mainly stated that he has been falsely implicated in the offence. His mother is aged about 70 years and is suffering from multiple ailments. He has the responsibility to look after his wife and two children. By doing stitching work, his wife is earning livelihood for herself and family and the financial condition of his family is very weak.

18.208. The Court finds that the special Court has considered the

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written submissions (Exh.9552) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6801 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that one case under the MCOCA is pending against the accused in Mumbai. Four cases are pending against the accused in different Courts in Madhya Pradesh and one case is pending before another Court in Mumbai. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.209. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra. Also, offences have been registered against this accused at Bhavakuva, Indore, M.P. Police Station vide C.R.No.13/2010 for the offence u/s. 395, 397, 506 and 75 of IPC, at Palasiya, Indore, M.P. Police Station vide C.R.No.144/2005 for the offence u/s. 379 of IPC and at DCB Police Station, Mumbai vide C.R.No.32/2010 for the offence u/s. 379 and 34 of IPC.

18.210. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.16 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.69 to 17.71. Having perused the aforesaid record, the Court is satisfied that all

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necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the criminal antecedents of the accused as cases are pending against him in different States and the role played by the accused, particularly in the procurement of vehicles used in the bomb bombs thereby facilitating in achieving the ultimate object of the conspiracy to cause mass killings by terror attack, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No. 69 – Amin @ Raja, S/o. Ayub Nazir Shaikh. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(36) **Accused No.70 – Mohammad Mobin @ Mubin @ Irfan, S/o. Abdul Sakurkhan**:

18.211. Before the special Court, the accused had filed written submissions on the aspect of sentence wherein, it was mainly stated that he has been acquitted in the case pertaining to car theft.

18.212. The Court finds that the special Court has considered the written submissions filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6803 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that the accused was convicted in an offence registered at Khajrana, Indore, Madhya Pradesh. One case under the MCOCA is pending against the accused in Mumbai. Four cases are pending against the accused in different Courts in Madhya Pradesh.

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While in judicial custody, the jail authority has taken three punitive measures against the accused, which shows that the behaviour of the accused inside the jail is not proper. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.213. From the record, it appears that MCOCA (Special) Case No.04/2009 under Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of IPC and Sections 3, 4 and 5 of Explosive Substances Act and Sections 16, 18, 20 and 23 of UAPA and Section 66 of I.T. Act was registered at Mumbai, Maharashtra. Also, offences have been registered against this accused at Bhavakuva, Indore, M.P. Police Station vide C.R.No.13/2010 for the offence u/s. 395, 397, 506 and 75 of IPC, at Palasiya, Indore, M.P. Police Station vide C.R.No.144/2005 for the offence under Section 379 of IPC, at Palasiya, Indore, M.P. Police Station vide C.R.No.710/2010, at Khajrana, Indore, M.P. Police Station vide C.R.No.1516/2013 which is pending and also at Ulhat Police Station C.R.No.242/2008 pending against accused. This accused was convicted in connection with offence registered in Khajarana, Indore, MP Police Station vide C.R.No.802/2008.

18.214. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.16 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.72 & 17.73. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special

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Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the criminal antecedents of the accused as cases are pending against him in different States and the role played by the accused, particularly in the procurement of vehicles used in the bomb blasts, thereby participating in the conspiracy, which was with an object to cause mass killings and the remorseless jail conduct, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No. 70 – Mohammad Mobin @ Mubin @ Irfan, S/o. Abdul Sakurkhan. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(37) **Accused No.75 – Mohammad Rafik @ Javed @ Alam Jeb Afridi, S/o. Maskur Ahmed**:

18.215. Before the special Court, the accused No.75 had filed written submissions on the aspect of sentence vide Exh.9530 wherein, it was stated that he has been falsely implicated in the offence. He is very poor and his parents are suffering from mental issues. His brother is having medical issues in one of his eyes and is, therefore, unable to do any kind of work. His father-in-law has passed away. There is nobody to look after his wife and she is staying in a rented house. The financial condition of his family is very weak. The accused is a heart patient for the last about 25 years and is having mental issues.

18.216. The Court finds that the special Court has considered the written submissions (Exh.9530) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on

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sentence. At Page-6805 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. The record shows that the accused was convicted in Sessions Case No.2/2011 by the Court at Ernakulam, Kerala for offences under the UAPA, IPC and the Arms Act and one case is pending in the Court at Bengaluru, Karnataka. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.217. From the record, it appears that this accused was convicted in Sessions Case No. 2/2011 by Ernakulam Court, Kerala under UAPA Act, IPC and Arms Act. This accused was tried in Sessions Case No.761/2016 for the offence under Sections 307 read with Section 34 of IPC, which is pending at Bangalore Court.

18.218. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.42 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.74 & 17.75. Having perused the aforesaid record, the Court is satisfied that all necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the criminal antecedents of the accused as cases are pending against him in different States as also the role played by the accused in the purchase of gas-cylinders and planting of bombs, the Court is satisfied about his role

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in carrying out terrorist act and that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No. 75 – Mohammad Rafik @ Javed @ Alam Jeb Afridi, S/o. Maskur Ahmed. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

(38) **Accused No.78 – Tausifkhan @ Atiq, S/o. Sagir Ahmedkhan Pathan**:

18.219. Before the special Court, the accused No.78 had filed written submissions on the aspect of sentence vide Exh.9568 wherein, it was stated that he has a degree in B.E. He has helped fellow-prisoners inside the jail and that the financial condition of his family is very weak.

18.220. The Court finds that the special Court has considered the written submissions (Exh.9568) filed by the accused pointing out the mitigating and aggravating circumstances for the purpose of hearing on sentence. At Page-6806 of the impugned judgment, the special Court has taken into consideration such submissions as well as the case against the accused. After analysing all the facts, the special Court was satisfied that the aggravating circumstances far out-weighs the mitigating circumstances and after concluding the exercise of considering the mitigating and aggravating circumstances as also the facts as appearing on record, the special Court proceeded to inflict the sentence.

18.221. The Court has analysed the mitigating and aggravating circumstances as well as the evidence while recording conviction in Chapter-16.43 and the further statement of the accused under section 313 of Cr.P.C. in Chapter 17, particularly in Paras-17.76 & 17.77. Having perused the aforesaid record, the Court is satisfied that all

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necessary steps for hearing on sentence has been followed by the special Court and all mitigating and aggravating circumstances have been duly considered by the special Court while imposing the sentence on the accused. Considering the facts and circumstances of the case, the role played by the accused and the nature of conspiracy of carrying out terror attack, in which the accused was involved, the Court is satisfied that the sentence of death penalty deserves to be imposed upon the accused and accordingly, we hereby confirm the sentence of death penalty awarded to accused No. 78 – Tausifkhan @ Atiq, S/o. Sagir Ahmedkhan Pathan. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

Imprisonment for life:

18.222. Insofar as the sentence of imprisonment for life imposed upon original accused Nos.20, 21, 22, 26, 30, 35, 43, 46, 59, 66 and 74 is concerned, the said accused have preferred appeals against their conviction. The Court has already discussed in detail the evidence qua this set of accused and it is established that the said accused had participated in the terror training camps held at Halol, Gujarat and Vagamon, Kerala. As regards the individual roles of convicted accused, accused No.43 is found to be present / stayed at Sherpura House, had purchased the Kinetic scooter and had pointed out the places from where plastic containers were purchased; accused No.26 is involved in making arrangements for sheltering certain accused apart from being a participant of Halol and Vagamon camps; accused No.30 is involved in pointing out a place from where he had made the call; accused No.63 is found to be involved in the purchase of clock as he was found to be standing outside when the co-accused had gone inside the shop; accused

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No.35 is involved by his own confessional statement as also by the confessional statement of accused No.2 and also pointed out the place in Halol and was found in contact with his brother (accused No.37) during the period of conspiracy; accused No.46 has pointed out House No.D-34, River view Society and had stayed at Abhilasha Tourist Home, Kerala in a fake name and the period of stay is proximate to the date of bomb blast, i.e. 26.07.2008 as also having pointed out the business place of Satnaam Travels from where travel ticket was purchased for the purpose of travelling to Surat; accused No.66 is found to be present in Halol camp and also pointed out Halol camp place and accused No.74 is involved by Halol witnesses and also identified during the Test Identification parade and had pointed out the Halol camp place coupled with his involvement in the confessional statement of accused No.35. Considering the oral as well as documentary evidence on record against this set of convicted accused, the special Court came to the conclusion that this set of accused had played a major part in the entire conspiracy. Having perused the entire evidence on record, the Court is of the view that the reasonings given by and the findings arrived at by the special Court while sentencing this set of accused to life imprisonment is just and appropriate. Hence, while dismissing their respective appeal we confirm the sentence of life imprisonment imposed by the special Court upon accused Nos. 20, 21, 22, 26, 30, 35, 43, 46, 59, 66 and 74. The Court also hereby confirms the fine imposed by the learned special Court, as prescribed in Chapter-7.

18.223. While considering the aspect of sentencing, upon perusing the record, this Court takes note of the fact that the accused persons have been involved in offences of similar nature and that even while in judicial custody, the conduct of the accused persons have been such, that

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disciplinary actions have been taken against them. Moreover, throughout the course of trial and even during the hearing of the present appeals before this Court, the accused persons have not exhibited any remorse. Therefore, upon considering their overall conduct as a whole, nothing appears on record so as to persuade this Court to take a lenient view while sentencing the accused persons.

Fine:

18.224. Chapter 7 reflects that the Special Court has determined the fine as mentioned against the respective accused persons. There is no hard and fast rule for imposing the fine but is a matter of discretion which is guided by several parameters. One of the relevant parameters is always the magnitude of the offence. The Court has perused the evidence of the witnesses in Chapter-10, where the witnesses have deposed to the damages suffered by the public property as well as damage to private property. Therefore, over and above the loss of life and injuries to the victims as described in preceding paras, the damage suffered to the public property especially, the property like, a Civil Hospital has to be treated as a circumstance of larger magnitude. The Court is therefore convinced that the fine imposed on each of the accused whose collective role has knowingly led to the damage of this magnitude is justified. Moreover, in absence of any submissions in this regard offered by the defence, this Court is not inclined to interfere with the discretion of the Special Court.

18.225. In view of the aforesaid discussion, the Court confirms the judgment and order of the Special Court in Sessions Case No.38 of 2009 and allied matters, both, in terms of the conviction and in terms of sentences and fine awarded to each of the respondents/appellants.

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18.226. The Criminal Appeals namely, Cr.A.1710 of 2022, Cr.A.2106 of 2023, Cr.A.727 of 2024, Cr.A.1710 of 2023 and Cr.A.1917 of 2022 are hereby dismissed.

18.227. The State is ordered to pay compensation to the family of deceased and injured victims to the tune of Rs.10 lakhs for each deceased, Rs.5 lakhs for grievous hurt or permanent deformity/disability, Rs.1 lakh for simple injury.

18.228. The State is directed to conclude the process of compensation on or before 31.03.2027.

18.229. Registry is directed to forward one copy of this judgment to each jail authorities where appellants are lodged.

18.230. Records and Proceedings be returned back to the concerned Special Court.

18.231. Upon pronouncement, learned Senior Advocate Mr. Tejas M. Barot has made request on behalf of all convicts who have been awarded death sentences to postpone the order of execution of sentences as the convicts are inclined to prefer a petition to the Supreme Court for grant of Special Leave to Appeal.

18.232. Considering the provisions contained under Section 415 of the Criminal Procedure Code, execution of the sentences is postponed for a period of three (3) months from today.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

SHITOLE/SOMPURA/DAVE

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List of cases cited

Sr.	Year	Name of Parties	Citation
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2	1925	Emperor v/s. Panchkari Dutt and others	AIR 1925 CAL 587
3	1936	Nazir Ahmed v/s. King Emperor	AIR 1936 PC 253(2)
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5	1949	Bhuboni Sahu v/s. King	1949 SCC Online PC 12
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7	1952	Kashmira Singh vs. State of Madhya Pradesh	1952 (1) SCC 275
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10	1954	Rao Shiv Bahadur Singh v/s. State of Vindhya Pradesh	AIR 1954 SC 322
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13	1956	Nathu v/s. the State of Uttar Pradesh	AIR 1956 SC 56
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15	1957	Sarwan Singh v/s. State of Punjab	1957 SCC OnLine SC 1
16	1958	State of Madras v/s. A.Vaidyanatha Iyer	AIR 1958 SC 61
17	1958	Subramania Goundan v/s. State Of Madras	1958 AIR(SC) 66
18	1959	Tahsildar Singh v/s. State of Uttar Pradesh	AIR 1959 SC 1012
19	1962	K. Chinnaswamy Reddy v/s. State of Andhra Pradesh	1962 SCC OnLine SC 32
20	1963	Pyare Lal Bhargava v/s. State of Rajasthan	AIR 1963 SC 1094

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22	1966	Aghnoo Nagesia v/s. State of Bihar	AIR 1966 SC 119
23	1968	Laxmipat Choraria v/s. State of Maharashtra	AIR 1968 SC 938
24	1968	Lt. Commander Pascal Fernandes vs/. State of Maharashtra	AIR 1968 SC 594
25	1970	Jadunath Singh v/s. State of Uttar Pradesh	1970 (3) SCC 518
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27	1972	Sheikh Hasib @ Tabarak v/s. State of Bihar	(1972) 4 SCC 773
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29	1975	Harbhajan Singh v/s. The State of J&K	AIR 1975 SC 1814
30	1976	Mohmed Inayatullah v/s. the State of Maharashtra	1976 (1) SCC 828
31	1977	Dagdu and others v/s. State of Maharashtra	1977 (3) SCC 68
32	1977	Harshadsingh V/s. State of Gujarat	AIR 1977 SC 710
33	1977	Yash Pal Mittal v/s. State of Punjab	1977 (4) SCC 540
34	1978	Modan Singh v/s. State of Rajasthan	(1978) 4 SCC 435
35	1978	Nandini Satpathy v/s. P. L. Dani	AIR 1978 SC 1025
36	1978	Shankaria v/s. State of Rajasthan	1978 (3) SCC 435
37	1979	Bahadul Alias Ghanshyam Padhan v/s. State of Orissa	(1979) 4 SCC 346
38	1979	Prakash Chand v/s. State (Delhi Administration)	(1979) 3 SCC 90
39	1980	Bachan Singh v. State of Punjab	AIR 1980 SC 898
40	1980	Hazari Lal v/s. State (Delhi Administration)	(1980) 2 SCC 390
41	1981	Madi Ganga v/s. State of Orissa	AIR 1981 SC 1165
42	1981	Wakil Singh and others v/s. State of	1981 (Supplementary)

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43	1982	Manzoor v/s. State of Uttar Pradesh	(1982) 2 SCC 72
44	1983	Javed Ahmed Abdulhamid Pawala v. State of Maharashtra	1983 (3) SCC 39
45	1983	Machhi Singh v. State of Punjab	AIR 1983 SC 957
46	1983	Mohd. Abdul Hafeez v/s. State of U.P.	(1983) 1 SCC143
47	1983	Munawar Harun Shah v. State of Maharashtra	1983 (3) SCC 354
48	1984	Sharad Birdichand Sharda v/s State of Maharashtra	1984 (4) SCC 116
49	1985	Henry Westmuller Roberts v/s. State of Assam	AIR 1985 (SC) 823
50	1985	Narayan Singh and others v/s. State of M.P.	AIR 1985 (SC) 1678
51	1985	Subhas Bhattacharyya and others v/s. State	1985 (0) Cr.LJ 1807
52	1987	Subash and Shiv Shankar v/s. State of U.P.	(1987) 3 SCC 331
53	1988	Balvant Kaur v/s. Union Territory of Chandigarh	(1988) 1 SCC 1
54	1988	Kehar Singh and others v/s. State (Delhi Administration)	1988 (3) SCC 609
55	1991	Brathi Alias Sukhdev Singh Versus State Of Punjab	(1991) 1 SCC 519
56	1992	Chandrakant Chimanlal Desai v/s. State of Gujarat	(1992) 1 SCC 473
57	1992	Union of India v/s Zora Singh	1992 (1) SCC 673
58	1994	Bheru Singh S/o Kalyan Singh v/s. State of Rajasthan	1994 (2) SCC 467
59	1994	Hitendra Vishnu Thakur and others v/s. State of Maharashtra	(1994) 4 SCC 602
60	1994	K.S.Paripoornan v/s. State of Kerala	1994 (5) SCC 593
61	1994	Kartar Singh v. State of Punjab	(1994) 3 SCC 569
62	1995	Shivappa v/s. State of Karnataka	1995 (2) SCC 76

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64	1996	Preetam v/s. State of M.P.	1996 (10) SCC 432
65	1997	A. Devendran v/s. State of T.N	(1997) 11 SCC 720
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68	1998	Kalpanth Rai v/s. State	AIR 1998 SC 201
69	1998	Mohd. Iqbal M. Shaikh and others v/s. State of Maharashtra	1998 (4) SCC 494
70	1999	Gian Singh v/. State of Punjab	AIR 1999 SC 3450
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72	1999	State of Himachal Pradesh v. Jeet Singh	(1999) 4 SCC 370
73	1999	State Through Superintendent of Police, CBI/SIT v/s. Nalini and others	(1999) 5 SCC 253
74	1999	Vijayan v/s. State of Kerala	(1999) 3 SCC 54
75	2000	Basavaraj R. Patil v/s. State of Karnataka	AIR 2000 SC 3214
76	2000	Narayan Chetanram Chaudhry and another v/s. State of Maharashtra	AIR 2000 SC 335
77	2000	State Of Maharashtra V/s. Damu S/o Gopinath Shinde	(2000) 6 SCC 269
78	2000	State of Mahrashtra vs. Suresh Thomas	2000 (1) SCC 471
79	2001	State of Tamil Nadu v/s. Kutty @ Lakshmi Narasimhan	2001 (6) SCC 550
80	2002	Devender Pal Singh v. State of NCT of Delhi	2002 (5) SCC 234
81	2002	Krishna Mochi v/s. State of Bihar	AIR 2002 SC 1965
82	2002	Lakhwinder Singh and others v/s. State of Punjab	(2002) 10 SCC 295
83	2002	Mohd. Khalid v. State of West Bengal	(2002) 7 SCC 334
84	2002	Prakash Dhawal Khairnar (Patil) v/s. State of Maharashtra	(2002) 2 SCC 35
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87	2004	Parmananda Pegu v/s. State of Assam	2004 (7) SCC 779
88	2005	K.R. Purushothaman v/s. State of Kerala	2005 (12) SCC 631
89	2005	State of NCT of Delhi v. Navjot Sandhu @ Afsan Guru	2005 (11) SCC 600
90	2005	Umesh Kamat v/s. State of Bihar	(2005) 9 SCC 200
91	2006	Babubhai Udesinh Parmar v/s. State of Gujarat	2006 (12) SCC 268
92	2007	Aloke Nath Dutta and others v/s. State of West Bengal	2007 (12) SCC 230
93	2009	Mohd. Rahis Khan v/s. State	2009 SCC OnLine Del 2901
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97	2011	Ajitsingh Harnamsingh Gujral v. State of Maharashtra	2011 (14) SCC 401
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99	2011	Jahid Shaikh & Ors. v/s. State of Gujarat & Anr.	2011 (7) SCC 762
100	2011	Mohd. Arif alias Ashfaq v. State (NCT of Delhi)	2011 (13) SCC 621
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103	2012	Ashrafkhan v/s. State of Gujarat	(2012) 11 SCC 606
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105	2012	Madhu v/s. State of Kerala	2012 (2) SCC 399
106	2012	Mohd. Ajmal Amir Kasab v. State of Maharashtra	(2012) 9 SCC 1

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108	2012	Sahadevan v/s. State of Tamilnadu	(2012) 6 SCC 403
109	2012	Sangeetaben Mahendrabhai Patel v/s. State of Gujarat	(2012) 7 SCC 621
110	2013	Central Bureau of Investigation v/s. Ashok Kumar Aggarwal	(2013) 15 SCC 222
111	2013	Deepak Rai v. State of Bihar	2013 (10) SCC 421
112	2013	Ramesh Kumar Soni v/s. State of Madhya Pradesh	2013 (14) SCC 696
113	2013	Yakub Abdul Razak Memon v. State of Maharashtra	(2013) 13 SCC 1
114	2014	Adambhai Sulemanbhai Ajmeri and others v/s. State Of Gujarat	2014 (7) SCC 716
115	2015	Ashwini Kumar Alias Ashu and another v/s. State of Punjab	(2015) 6 SCC 308
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117	2015	Tomaso Bruno and Anr. v/s State of Uttar Pradesh	2015 (7) SCC 178
118	2016	Sheikh Sintha Madhar Alias Jaffer Alias Sintha v/s. State	(2016) 11 SCC 265
119	2016	State (Government of NCT of Delhi) v/s. Nitin Gunwant Shah	(2016) 1 SCC 472
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122	2017	Lt. Col. Prasad Shrikant Purohit v/s. State of Maharashtra	2017-BHC-AS:12222
123	2017	Md. Sajjad alias Raju alias Salim v/s. State of West Bengal	(2017) 11 SCC 150
124	2017	Mukesh and Anr. v. State (NCT of Delhi)	2017 (6) SCC 1
125	2017	Seeni Nainar Mohammed v/s. State Rep. by DSP	(2017) 13 SCC 685
126	2017	Vasanta Sampat Dupare v. State of	2017 (6) SCC 631

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128	2018	Vaiko v/s. The State of Tamilnadu	Cr.O.P.No.20417 of 2018
129	2019	Reena Hazarika v/s. State of Assam	(2019) 13 SCC 289
130	2021	Pradeep S. Wodeyar v/s. State of Karnataka	(2021) 19 SCC 62
131	2021	Rajesh Alias Sarkari and Another v/s. State of Haryana	(2021) 1 SCC 118
132	2022	S.G. Vombatkere v. Union of India	(2022) 7 SCC 433
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137	2023	Prakash Nishad @ Kewat Zinak Nishad v/s. State of Maharashtra	2023 (16) SCC
138	2023	Subramanya v/s. State of Karnataka	(2023) 11 SCC 255
139	2023	Yedala Subba Rao v/s. Union of India	2023 (6) SCC 65
140	2024	Allarakha Habib Memon and others v/s. State of Gujarat	(2024) 9 SCC 546
141	2024	Fuleshwar Gope v/s Union of India	2024 (0) AIR (SC) 4684
142	2024	Mohd. Naushad	(2024) 12 SCC 494
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144	2024	Perumal Raja v/s. State Rep. By the Inspector of Police	2024 SCC Online SC 12
145	2025	Narayan Yadav v/s. State of Chhattisgarh	2025 SCC Online SC 1603
146	2025	Renuka Prasad v/s. State	2025 SCC Online SC 1074
147	2025	Sambubhai Rasangbhai Padhiyar v/s.	2025 (2) SCC 399

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149	2025	Tukesh Singh and others v/s. State of Chhattisgarh	2025 SCC OnLine SC 1110
150	2026	Anand Jakkappa Pujari @ Gaddadar v/s State of Karnataka	2026 (0) INSC 417
151	2026	Gopi Chand @ Pappu v/s. State (NCT of Delhi)	2026 INSC 598

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