

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
CRIMINAL APPEAL No.1299 OF 2016
ALONG WITH REFERRED TRIAL No.1 OF 2016

COMMON JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. R. Mahadevan, learned counsel for appellant Nos.2 and 5 - accused Nos.2 and 5, Mr. Appam Chandra Sekhar, learned counsel for appellant Nos.3 and 4 - accused Nos.3 and 4, Mr. Pathan T.W., learned counsel representing Mr. Mohammed Shujaullah Khan, learned counsel for appellant No.6 - accused No.6 and Mr. P. Vishnuvardhan Reddy, learned Special Public Prosecutor for NIA appearing on behalf of the respondent - State.

2. *Vide* judgment dated 13.12.2016 in Sessions Case No.01 of 2015, learned Special Court for the trial of Scheduled Offences Investigated by National Investigation Agency - cum - V Additional Metropolitan and Sessions Judge, Rangareddy District at L.B. Nagar, Telangana State (hereinafter referred to as 'trial Court'), found accused Nos.2 to 6 herein guilty of the following offenses:

S.N.	Accused	Offences with which the accused were found guilty
01.	Accused No.2	120-B r/w 302, 121, 121-A, 122, 302 r/w 34 (2 counts), 307 r/w 34 (2 counts), 316 r/w 34, 436 r/w 34, 201, 466 r/w 109, 474 r/w 109 of IPC, Sec.3 of Explosive Substances Act (for short ES Act), Sec.5 of ES Act, Sec.3 of ES Act r/w 34 IPC, Sec.14 of Foreigners Act r/w 109, Sec.4 of the Public Property Damages Act (for short 'PPD Act') r/w 34, 16 of the Unlawful Activities (Prevention) Act (for short 'UAA') r/w 34, 17 of UAA, 18 of UAA and 19 of UAA r/w 109.
02.	Accused No.3	120-B r/w 302, 121, 121-A, 122, 302, 302 r/w 34, 307, 307 r/w 34, 316 r/w 34, 436, 201, 466 r/w 109, 474 r/w 109, Sec.3 of ES Act, Sec.5 of ES Act, Sec.3 of ES Act, Sec.14 of Foreigners Act, Sec.4 of PPD Act, 16 of UAA, 17 of UAA, 18 of UAA, 19 of UAA r/w 109.
03.	Accused No.4	120-B r/w 302, 121, 121-A, 122, 302, 302 r/w 34, 307, 307 r/w 34, 316, 436, 201, 466 r/w 109, 474 r/w 109, Sec.3 of ES Act, Sec.5 of ES Act, Sec.3 of ES Act, Sec.14 of Foreigners Act r/w 109, Sec.4 of PPD Act r/w 34, 16 of UAA, 17 of UAA, 18 of UAA, 19 of UAA r/w 109.
04.	Accused No.5	120-B r/w 302, 121, 121-A, 122, 302 r/w 109 (2 counts), 307 r/w 109 (2 counts), 316 r/w 109, 436 r/w 109, 201 r/w 109, 466 r/w 109, 474 r/w 109, Sec.5 of ES Act r/w 109, Sec.3 of ES Act r/w 109, Sec.14 of Foreigners Act r/w 109, Sec.4 of PPD Act r/w 109, 16 of UAA r/w 109, 17 of UAA, 18 of UAA , 19 of UAA, 19 of UAA r/w 109.
05.	Accused No.6	120-B r/w 302, 121, 121-A, 122 r/w 109, 302 r/w 109 (2 counts), 307 r/w 109 (2 counts), 316 r/w 109, 436 r/w 109, 201 r/w 109, 466, 474, Sec.5 of ES Act r/w 109, Sec.3 of ES Act r/w 109, Sec.14 of Foreigners Act r/w 109, Sec.4 of PPD Act r/w 109, 16 of UAA r/w 109, 17 of UAA, 18 of UAA, 19 of UAA r/w 109.

3. Accordingly, accused No.2 to 6 were convicted under section 235 (2) of Cr.P.C. for above said offences.

4. However, accused Nos.2 to 6 were found not guilty for the offences under Sections - 10, 20, 38 (2) and 39 (2) of the UAP Act, and accordingly they were acquitted under Section - 235 (1) of Cr.P.C.

5. Learned trial Court imposed the death penalty, life imprisonment and other punishments for the aforesaid offences, the details of which are as under:

Accused No.	Offences	Punishment
Accused No.2	120B r/w 302 IPC	Death Penalty with a Fine of Rs.10,000/- In Default to undergo Simple Imprisonment (for short 'IDSI) for one month
	121	-do-
	121A	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	122	-do-
	302 r/w 34 (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count.
	307 r/w 34 (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	316 r/w 34	Rigorous Imprisonment (RI) for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
	436 r/w 34	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	201	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	466 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	474 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.3 (b) of ES Act	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.5 of ES Act (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.3 (b) of ES Act r/w 34 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.14 of FA r/w 109 IPC	RI for 2 Years with a Fine of Rs.1,000/-IDSI for one month
	Sec.4 of PPD Act r/w 34 IPC	RI for 2 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.16 of UAA r/w 34 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.17 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one

		month
	Sec.18 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
	Sec.19 of UAA r/w 109 IPC	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
Accused No.3	120B r/w 302 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	121	-do-
	121A	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	122	-do-
	302	Death penalty with a Fine of Rs.10,000/-, IDSI for one month.
	302 r/w 34	Death penalty with a Fine of Rs.10,000/-, IDSI for one month.
	307	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	307 r/w 34	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	316 r/w 34	RI for 10 Years with a Fine of Rs.10,000/-IDSI for one month
	436	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	201	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	466 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	474 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.3 (b) of ES Act (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.5 of ES Act (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.14 of FA	RI for 2 Years with a Fine of Rs.1,000/-IDSI for one month
	Sec.4 of the PPD Act	RI for 2 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.16 of UAA	Death Penalty with Fine of Rs.10,000/-, IDSI for one month
	Sec.17 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
	Sec.18 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
	Sec.19 of UAA r/w 109 IPC	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
Accused No.4	120B r/w 302 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	121	-do-
	121A	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	122	-do-
	302	Death penalty with a Fine of Rs.10,000/-, IDSI for one

		month.
	302 r/w 34	Death penalty with a Fine of Rs.10,000/-, IDSI for one month.
	307	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	307 r/w 34	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	316	RI for 10 Years with a Fine of Rs.10,000/-IDSI for one month
	436	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	201	RI for 7 Years with aFine of Rs.10,000/-IDSI for one month
	466 r/w 109	RI for 7 Years with aFine of Rs.10,000/-IDSI for one month
	474 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.3 (b) of ES Act (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.5 of ES Act (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.14 of FA r/w 109 IPC	RI for 2 Years with aFine of Rs.1,000/-IDSI for one month
	Sec.4 of PPD Act r/w 34 IPC	RI for 2 Years with a Fine of Rs.10,000/-IDSI for one month
	Sec.16 of UAA	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.17 of UAA	RI for 10 Years with aFine of Rs.10,000/-, IDSI for one month
	Sec.18 of UAA	RI for 10 Years with aFine of Rs.10,000/-, IDSI for one month
	Sec.19 of UAA r/w 109 IPC	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
Accused No.5	120B r/w 302 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSIfor one month
	121	-do-
	121A	Life Imprisonment with a Fineof Rs.10,000/-, IDSI for one month
	122	-do-
	302 r/w 109 (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count of Rs.10,000), IDSI for one month for each count.
	307 r/w 109 (for two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count of Rs.10,000/-), IDSI for one month for each count
	316 r/w 109	RI for 10 Years with a Fine of Rs.10,000/-IDSI for one month
	436 r/w 109	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	201 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	466 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one month
	474 r/w 109	RI for 7 Years with a Fine of Rs.10,000/-IDSI for one

		month
	Sec.3 (b) of ES Act r/w 109 IPC (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.5 of ES Act r/w 109 IPC (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.14 of FA r/w 109 IPC	RI for 2 Years with a Fine of Rs.1,000/-IDSI for one month
	Sec.4 of PPD Act r/w 109 IPC	RI for 2 Years with aFine of Rs.10,000/-IDSI for one month
	Sec.16 of UAA r/w 109 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.17 of UAA	RI for 10 Years with aFine of Rs.10,000/-, IDSI for one month
	Sec.18 of UAA	RI for 10 Years with aFine of Rs.10,000/-, IDSI for one month
	Sec.19 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
Accused No.6	120B r/w 302 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSIfor one month
	121	-do-
	121A	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	122 r/w 109	-do-
	302 r/w 109 (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count of Rs.10,000), IDSI for one month for each count.
	307 r/w 109 (for two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count of Rs.10,000/-), IDSI for one month for each count
	316 r/w 109	RI for 10 Years with aFine of Rs.10,000/-IDSI for one month
	436 r/w 109	Life Imprisonment with a Fine of Rs.10,000/-, IDSI for one month
	201 r/w 109	RI for 7 Years with aFine of Rs.10,000/-IDSI for one month
	466	RI for 7 Years with aFine of Rs.10,000/-IDSI for one month
	474	RI for 7 Years with aFine of Rs.10,000/-IDSI for one month
	Sec.3 (b) of ES Act r/w 109 IPC (two counts)	Death penalty with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.5 of ES Act r/w 109 IPC (two counts)	Life Imprisonment with a Fine of Rs.20,000/- (for each count Rs.10,000/-), IDSI for one month for each count
	Sec.14 of FA r/w 109 IPC	RI for 2 Years with aFine of Rs.1,000/-IDSI for one month
	Sec.4 of PPD Act r/w 109 IPC	RI for 2 Years with aFine of Rs.10,000/-IDSI for one month
	Sec.16 of UAA r/w 109 IPC	Death Penalty with a Fine of Rs.10,000/-, IDSI for one month
	Sec.17 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one

		month
	Sec.18 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month
	Sec.19 of UAA	RI for 10 Years with a Fine of Rs.10,000/-, IDSI for one month

However, the learned trial Court felt that no separate sentence is required to be imposed for the conspiracy to commit other offences which are minor in nature as the sentence of death was already awarded to the accused for the offence punishable under Section 120-B read with 302 of IPC.

6. Feeling aggrieved by the aforesaid convictions and sentences imposed by the learned trial Court *vide* impugned judgment dated 13/19.12.2016, accused Nos.2 to 6 preferred the present Criminal Appeal i.e., Crl.A. No.1299 of 2016, while learned trial Court addressed a letter *vide* Dis.No.812 of 2016, dated 19.12.2016 to this Court seeking confirmation of capital punishment of death under Section 366 of the Cr.P.C. Pursuant to the said letter, this Court registered the same as Referred Trial (R.T.) No.1 of 2016.

7. The NIA, Hyderabad, filed two charge sheets against accused Nos.1 to 5 and a supplementary charge sheet against accused No.6. The case of the prosecution, in brief, is as follows:

i) The NIA laid charge sheet No.1 against accused Nos.1 to 5 stating that the Indian Mujahideen (for short 'IM'), an association was declared as an Unlawful Association as per the provisions of the UAP Act which was started as "*Usaba*" in Bhatkal, Karnataka State. The word *Usaba* means "Congregation" and its object is to collect the persons having similar mentality and dedication to do something it also includes waging *Jihad* or holy war against Hindus, other communities, and the Indian State. Usaba meetings were held on regular basis on every Friday in the house of Iqbal Bhatkal in which issues, like weapon training, finance, talent spotting, spiritual discourse, and other matters pertaining to procurement of logistics were discussed.

ii) The role of IM in the commission of terrorist incidents was revealed for the first time through email sent to certain media channels/news networks after bombings in the courts of Varanasi, Faizabad (Ayodhya) and Lucknow, etc., showing the major reasons as Babri Masjid demolition and Gujarat riots.

iii) On 21.02.2013 at 18:58:38 hours and 18:58:44 hours two consecutive bomb blasts took place at Dilsukhnagar, Hyderabad, resulting in the death of eighteen (18) persons including a quickborn

child and injuries to 131 persons. The first bomb blast was at 107 Bus Stop, Dilsukhnagar, and P.S.Malakpet registered Crime No.56 of 2013 in this regard. The second bomb blast was at Al-Mirchi Center, Dilsukhnagar and P.S.Saroornagar registered Crime No.146 of 2013 in this regard. Accordingly, an initial investigation was undertaken by the aforesaid Police Stations. Subsequently, the Government of India entrusted the investigation to NIA as per Orders in MHA F.No.11011/14/2013-IS-IV dated 13.03.2013 and, thereafter, the cases were re-registered as R.C.No.01 & 02/2013/NIA/HYD on 14.03.2013.

iv) On 29.08.2013, the NIA arrested accused Nos.2 and 5 in connection with investigation of R.C.No.06/2012/NIA/DLI and accordingly produced before the Special Court, New Delhi, and the NIA interrogated both the said accused and found their involvement in Hyderabad Twin Bomb Blasts along with accused No.1, Riyaz Bhatkal @ Ismail Shahbandri. Accordingly, after obtaining the necessary permissions, accused No.2 was produced before the Special Court for NIA at Hyderabad on 19.09.2013, and accused No.5 was produced before the Special Court for NIA at Hyderabad on 23.09.2013 and both the accused were granted custody of NIA.

v) Both the said accused stated before the NIA about the conspiracy among accused Nos.1 to 5 for waging war against the Government of India by committing terrorist attacks to kill innocent people, to disrupt the security of India, and to create terror and insecurity feelings in the minds of common people which are prejudicial to the integrity and sovereignty of India, by receiving financial and material assistance from Inter-Services Intelligence (ISI).

vi) As per the directions of accused No.1, accused Nos.2 and 3 had come to India via Nepal in the month of September, 2010 and accused No.4 received them and all three of them reached Samastipur in Bihar and met accused No.5. Subsequently, accused Nos.2 and 3 went to Mangalore and stayed there at Zephyr Heights by entering into lease Agreement in the name of accused No.2 as "Daniyal".

vii) Accused No.2 used to contact accused No.1 through online chatting by using proxy servers. Accused No.1 sent money through *Hawala* & WUMT to accused Nos.2 and 3. Accused Nos.2 and 3 received the same using fake identities at Mangalore in different areas.

viii) During January, 2013, accused No.2 was informed by accused No.1 that in a few days, explosive material would be delivered in Mangalore, and accused No.1 was also instructed to carry out bomb blasts in Hyderabad and accused No.2 received the explosives material from an unknown person at Mangalore.

ix) In the meantime, accused No.4 came to Hyderabad during the last week of January 2013 and searched for shelter near Abdullapurmet, and took a house on rent on 07.02.2013. Accused No.2 booked his bus ticket in the name of Danish and came to Hyderabad from Mangalore. Accused No.4 received accused No.2 at L.B. Nagar and took him to Abdullapurmet.

x) Accused No.2 again left for Mangalore on 12.02.2013 and met accused No.3 at Mangalore both these accused carried the explosive material from Mangalore in VRL Travels and reached Hyderabad on 16.02.2013 and both the accused reached Abdullapurmet and kept the explosives materials at shelter place rented by accused No.4.

xi) As per the instructions of accused No.1 through chatting, accused Nos.2 to 4 conducted reconnaissance in Hyderabad

including Dilsukhnagar and they decided to plant bombs at Dilsukhnagar in the evening hours. Accordingly, all the three accused conducted a test bomb blast at the deserted place at Abdullapurmet successfully.

xii) On 20.02.2013, accused Nos.2 to 4 went to Sri Mahalakshmi Fancy Steel Shop at L.B. Nagar and purchased two 7½ liter capacity pressure cookers for making Improvised Explosive Devices (IED) by filling explosives therein. Accused Nos.2 and 4 purchased an old bicycle from a cycle repairer and parked at the Parking Stand, at Malakpet Railway Station. They also purchased one-meter plastic sheet from a shop near Chadarghat Bridge for packing and filling the explosives inside the pressure cooker.

xiii) On 21.02.2013, accused Nos.2 and 4 went to Thursday Market i.e. *Jummerath Bazaar* and accused No.3 was at Abdullapurmet preparing Improvised Explosive Devices. Accordingly, accused Nos.2 and 4 purchased another bicycle and parked the same at Parking Stand, at Malakpet Railway Station.

xiv) On 21.02.2013 at about 04:00 P.M., accused Nos.2 and 4 were waiting outside the shelter at Abdullapurmet, and accused No.3

prepared the IEDs by setting time for explosion as 07:00 P.M. Accused No.4 informed the house caretaker that he was leaving to Mumbai as his mother was in serious condition and left the place and they reached Malakpet Railway Station Parking area through an auto-rickshaw. Accused No.3 waited outside the parking area with IED and accused Nos.2 and 4 went inside the parking place and returned with both bicycles.

xv) Accused No.2 directed both Accused Nos.3 and 4 to proceed to Dilsukhnagar and accused No.2 waited until both the accused completed their tasks and accused No.3 planted a bomb at 107 bus stop and accused No.4 planted bomb at Al-Mirchi Center. The IED planted by accused Nos.3 and 4 exploded at 18:58:38 hours and 18:58:44 hours creating panic and terror against the public and resulting in death of seventeen (17) persons and one unborn child and injuries to 131 persons. Both the blasted areas i.e., 107 Bus Stop and A1- Mirchi Center, and three motorcycles and one scooter were also completely damaged, apart from the damages caused to the other public and private properties in the surrounding areas.

xvi) Accused Nos.2 and 3 left for Bangalore and from there to Mangalore and as per the instruction of accused No.1, accused No.2 left for Nepal and met accused No.5, who provided shelter.

xvii) Accused No.2 used to chat with accused No.1 and one Mirza Shadab Baig by using Coded Language and different accounts of Yahoo Incorporation and used to discuss various operations, tasks, arrangements of finance for funding their activities. The Code Language of accused No.2 is as: JJ: Yasin Bhatkal (A-5); Cappt: Capital (Kathmandu or Delhi); pandittji: Bal Bahadur Thapa, who was associated at Nepal; jadd: Waqas (A-3); hss or hazil: Hassan @ Monu @ Tehsin (A-4); kalungii: Explosives; nnn: Nitrate (explosive); elaichii: Detonator; pt: Paltalk; n: Nimbuzz chat; waagu : Al-Qaeda in Waziristan; aslm: IM operative Jabrood of Bhatkal; alii: Mohsin Chaudhary of Pune; and bigaduu: IM operative Shahzad.

xviii) Accused No.2 also pointed out the following places at Mangalore: VRL Travels where accused Nos.2 and 3 booked tickets to Bangalore, the shop from where they purchased digital watches for preparation of bombs, the commercial complex where they purchased the mobile phone from a shop, the cyber cafes from where

they used to chat with accused No.1, a shop Supama Forex Pvt. Ltd., from where they received cash, Ding Dong Electronics where they received *Hawala* money from accused No.1, Zephyr Heights, where the accused had shelter.

xix) Accused No.2 also pointed out the following places at Hyderabad: the cycle shop and market from where they purchased bicycles, the pan shop from where accused No.2 called accused No.4 for receiving him, Sri Mahalakshmi Steel Shop from where they purchased two pressure cookers of 7½ liters capacity, the exact blast spots where the IEDs., were planted at Malakpet Railway Station, etc.

xx) On 28.09.2013, accused No.2 led to the hillock where he along with accused Nos.3 and 4 had conducted a test blast. On 04.10.2013 and 08.10.2013, accused Nos.2 and 5 plotted hideouts through Google Maps in Bangladesh, Dubai, Pakistan, Nepal and India.

xxi) The accused had been chatting with each other by keeping their identity secret and they have created *E-mail* IDs, with

Proxy Servers on fake names by using code language and through encrypted files.

xxii) Accused No.5, who was staying in Pokhara, Nepal, and chatted with accused No.1, was fully involved in the conspiracy that led to the blasts at Dilsukhnagar in Hyderabad. During the chat conversation on 28.11.2012 with accused No.5, accused No.1 stated his intention of sending accused No.4 for conducting bomb blasts at Hyderabad. On 16.12.2012, accused No.1 chatted with accused No.4 wherein accused No.4 stated that he was thinking about preparing for blasts in Hyderabad and searching for shelter at Hyderabad. On 20.12.2012, accused No.5 asked accused No.1 about the Hyderabad blasts, to which accused No.1 replied that he was trying to arrange the explosive and that the Police were looking for accused Nos.2 and 3. Accused No.5 advised accused No.1 to do 2-3 blasts at a new place and thereafter shift the location. Accused No.5 also advised accused No.1 to make thin boat-shaped IEDs, for the blast of 1 kg., explosive each, which could be carried easily by tying on the stomach and also advised to use picric acid for making bombs.

xxiii) On 27.12.2012, accused No.5 and accused No.1 chatted about the role of accused Nos.2 to 4 in executing bomb blasts. Accused No.5 advised not to keep the explosive unused for a long time. On 30.12.2012 accused No.5 enquired about the preparation of blasts to be conducted and advised that white gelatin was good for explosion. On 22.01.2013 accused No.5 again enquired about the blasts, for which accused No.1 replied that they had procured the explosives, and there was discussion about the quality of explosives. On 27.01.2013 accused No.1 informed accused No.5 about accused No.4's tour in connection with the blast. On 07.02.2013 accused No.1 informed accused No.5 about the finding of the house by accused No.4 at Hyderabad and accused No.5 also prayed for the success of the blast and accused No.5 also informed about his network in Nepal. On 11.02.2013 accused No.1 told accused No.5 that accused No.2 had gone to accused No.4 and that he was chatting with accused No.3. On 16.02.2013 accused No.1 told accused No.5 that on the previous day accused No.2 and accused No.3 met accused No.4. On 20.02.2013 accused No.1 told accused No.5 that the blast was scheduled for the next day and asked to especially pray for the success of the blasts.

xxiv) On the instructions of accused No.1, after the Hyderabad blasts accused No.2 was shifted to Birgunj, Nepal, and thereafter to Pokhara, Nepal where he met accused No.5 and stayed there.

xxv) On 27.02.2013 through chatting, accused No.1 directed accused No.5 to make arrangements for accused No.2. On 02.03.2013, accused No.1 gave a mobile number of accused No.2 to accused No.5. On 04.03.2013 accused No.5 chatted with accused No.1 and it was indicated that accused No.2 had reached Nepal. On 06.03.2013 accused No.1 again asked accused No.5 to change the room where he had stayed with accused No.4, for which accused No.5 informed him that he was trying for a new room. On 09.03.2013, accused No.1 informed accused No.5 that he had given passports to be made for accused No.4 and accused No.3 for boarding the flight from Nepal. Accused No.1 informed that the passports were being made from Kerala. Accused No.1 also mentioned that accused No.4 and accused No.3 were to be called back to Pakistan and that they would be taken on a flight from Nepal thus from a security point of view he wanted to keep them separate from accused No.2.

xxvi) The sanction for prosecution for prosecuting the accused for the offences under the UAP Act has been accorded by the Ministry of Home Affairs, Government of India *vide* Order No.11011/14/2013-IS.VI (IV) Government of India. Ministry of Home Affairs, Internal Security-I Division, North Block, New Delhi, dated 28.02.2014.

xxvii) The Consents for prosecution of the accused for the offences under the ES Act has been accorded by the District Magistrate of Rangreddy and Hyderabad *vide* proceedings No.C3/306/2014, dated 21.02.2014 in R.C.No.02/2013/NIA/HYD, and *vide* proceedings No. C2/343/2014, dated 09.02.2014 in R.C.No.1/2013/NIA/HYD.

xxviii) The NIA, Hyderabad, laid supplementary (charge sheet No.2) against accused No.1 and accused Nos.3 and 4. The Special Cell, Delhi Police, arrested accused No.3 on 22.03.2014 and accused No.4 on 25.03.2014 and interrogated them. Accused Nos.3 and 4 were taken to the scene of crime and they enacted the movements with the cycles. Accused No.3 used coded language to chat with other accused through different *e-mail* IDs.

xxix) Both accused Nos.3 and 4 had pointed out the following:

- a) Temporary shelter place at Deshmukh Village where accused No.4 stayed for about one week;
- b) The cycle puncture shop from where the accused purchased one old bicycle for Rs.1400/- on 20.02.2013;
- c) The pan shop from where accused No.3 made a phone call to accused No.4 to come and receive him;
- d) Sri Mahalakshmi Steel Shop from where they purchased two pressure cookers of 7 ½ litres capacity each to prepare IEDs.,
- e) The exact blast spots;
- f) The cycle parking stand at Malakpet Railway Station;
- g) *Jummerathbazaar* (Thursday Market) from where they purchased the second old cycle for Rs.1,500/-;
- h) The house at Abdullapurmet;
- i) Test blast site on the hillock;
- j) VRL Travels and Salamat travels from where they had booked their onward and return tickets from Hyderabad to Bangalore; and

k) Nampally Railway Station from where accused No.4 travelled to Ranchi after the bomb blast.

xxx) Accused No.3 had pointed out the following places at Mangalore and Bangalore:

- a) VRL Travels from where accused Nos.2 and 3 have booked tickets for the visit to Bangalore and Hyderabad;
- b) The shop from where they had purchased digital watches for the preparation of bombs;
- c) The computer cyber cafes from where they used to chat with accused No.1;
- d) A shop Supama Forex Pvt. Ltd., from where they received cash;
- e) Ding Dong Electronics where they received *Hawala* money from accused No.1;
- f) Zephyr Heights where the accused had shelter.

xxxi) On 28.05.2014, accused No.3 plotted hideouts through Google maps in Bangladesh, Dubai, Pakistan, Nepal and India. He also plotted down the LeT training camp, where he underwent training, besides plotting down FATA area in North Waziristan, where he underwent Taliban training.

xxxii) The NIA, Hyderabad, laid second supplementary (charge sheet No.3) against accused No.6. On 05.09.2014, the Delhi Police arrested accused No.6 and also seized some articles from his possession in connection with investigation case in FIR No.54 of 2011 of Delhi Special Cell. Accused No.6 is one of the conspirators of terror activities in India. On the instructions of accused No.1, accused No.6 provided fake IDs., *Hawala* Money, SIM Cards, Mobile Phones and also knowingly acted as a carrier of explosives to aid the other members of IM i.e., accused Nos.2 to 5.

xxxiii) On the instructions of accused No.1, during 2010 accused No.6 purchased a DELL Laptop at Mumbai and downloaded/scan voter IDs, driving licenses and other documents from Google and prepared fake documents with the help of photo-shop software installed in his laptop. Accused No.6 also shared encrypted fake documents to accused No.1 whenever he required. Accused No.6 was also involved in several previous bomb blasts in different parts of India.

xxxiv) The fake IDs prepared and supplied by accused No.6 were used by accused Nos.2 to 5 to procure SIM cards, to hide their

identity to evade arrest before the bomb blast and after the bomb blast. Accused No.4 received money through Western Union Money Transfer (for short 'WUMT') sent by accused No.1. On 27.12.2012, accused No.4 withdrew Rs.25,000/- from WUMT, Patna by producing the fake IDs produced by accused No.6 through accused No.1 in the name of Girish Joshi, resident of Dehradun, Uttarakhand, Election ID No.LJS2308815. Accused No.3 also received money through WUMT using IDs in the name of Nabeel Ali Ahmed with his photo for five times.

xxxv) Accused No.6 is an active member of IM and he was initiated into IM by his father-in-law Mohsin Choudhary, who was inspired by Jihadi literature. Accused No.6 had good knowledge of computers which he had acquired in Hyderabad while undergoing five months of hardware, networking and Linux courses from Zoom Technologies, Banjara Hills, Hyderabad. They said Mohsin Choudhary used to chat regularly from Pakistan and used to ask accused No.6 to do blasts in India. Both Mohsin Choudhary and accused No.1 motivated accused No.6 for *Jihad* and inducted him into Indian *Mujahedeen*. Accused No.6 also supplied explosives at

the time of the German Bakery blast, in Pune to accused No.5 during February and April 2010.

xxxvi) On 27.12.2012, accused No.6 received uploaded voter ID card in the name of Girish Chandra Joshi from accused No.1, then accused No.6 changed the photo on the voter ID and replaced the same with the photograph of accused No.4. Accused No.6 also used to send mails to the media houses claiming responsibility of bomb blasts by IM from Mumbai.

xxxvii) After the arrest of accused Nos.2 and 5, accused No.6 left for Nepal via Raxaul on 05.02.2014 and he also stored a number of fake IDs, driving licenses, passports, photos, and other terrorist material in his laptop and pendrives with the help of encryption software.

xxxviii) During the investigation in R.C.No.06/2011/NIA/Delhi, the details emerged from the chat in respect of accused Nos.5 and 6 and specific transactions, accused Nos.2 and 3 at Mangalore VKC and Supama and CS tours and travels, accused No.4 at various places including Patna. On 22.12.2012, accused No.1 gave accused No.6 a link for a passport copy to be downloaded.

xxxix) On 27.12.2012, accused No.4 went to Patna and received money from Apna Tours and Travels, WUMT by producing a fake voter ID in the name of Mr. Girish Chandra Joshi. On 28.12.2012, accused No.6 and accused No.1 chatted about the receiving of money.

xl) Accused No.6 communicated with other IM Members'e-mails in encrypted and coded form so that the content of their communication remains secret. He was in regular contact with accused No.1 and also with accused Nos.2 to 5 and also with Mohsin Chaudhary over Internet chatting for the preparation and supplying of fake IDs and delivery of explosives.

8. The sanction for prosecuting the accused for the offences under the UAP Act has been accorded by the Ministry of Home Affairs, Government of India, *vide* Order No.11011/14/2013-15.VI (IV), Government of India, Ministry of Home Affairs, Internal Security-I Division, North Block, New Delhi, dated 27.05.2015.

9. On 23.12.2014 the case against accused No.1 was split, and on 17.10.2014, the case against accused Nos.2 and 5 is pending in Special Sessions Case No.2 of 2014, while the case against accused

Nos.1, 3, and 4 was ordered to be clubbed with Special Sessions Case No.2 of 2014 for conducting joint trial. On 26.02.2015 as per the Orders of this Court in R.O.C.No.1030/E1/2010, the Special Sessions Case Nos.2 and 3 of 2014 were transferred to the trial Court. On 10.03.2015, the present case was received from learned I Additional Metropolitan Sessions Court, Nampally. Hyderabad, *vide* letter Dis. No.497 of 2015, dated 10.03.2015, and renumbered/registered as Special Sessions Case No.1 of 2015. As per Dis.No.682 of 2015, dated 14.08.2015 and regarding reference No.59/CP-Camp/Cyb/2015,dated 04.08.2015, this Court accorded permission to the trial Court, *vide* R.O.C.No.1037/E1/2010, dated 21.08.2015, to conduct trial of Special Sessions Case No.1 of 2015 in the Central Prison, Cherlapally, Rangareddy District, thrice a week i.e., Monday to Wednesday from 24.08.2015 onwards.

10. After framing the charges against accused Nos.2 to 6 as mentioned in the impugned judgment of trial Court, the trial Court proceeded with trial.

11. During the trial, the prosecution examined PWs.1 to 157 and exhibited Exs.P1 to 507 and also MOs.1 to 201. The accused did not examine any witness on their behalf. However, they got

exhibited Exs.D1 to D40, which are relevant portions in Section - 161 of Cr.P.C. statements, IP addresses, details of mails etc.

12. After hearing both sides, the trial Court convicted accused Nos.2 to 6 and accordingly imposed death sentences and other sentences on them in the manner stated in the impugned judgment. Challenging the same, accused Nos.2 to 6 preferred this appeal. Whereas, the learned trial Court addressed a letter, dated 19.12.2016, to this Court seeking confirmation of capital punishment of death under Section - 366 of the Cr.P.C., which was registered as Referred Trial (R.T.) No.1 of 2016.

13. **COMMON CONTENTIONS OF ACCUSED Nos.2 to 6:**

- i. There was a delay of 1½ hours approximately for registering the crime on the complaints lodged by the de facto complainants and the said delay was not explained properly;
- ii. The timing version of the blast in the complaint and deposition does not match;
- iii. The FIR is not having full details of bomb blast and there is no mention of the names in the complaint;

- iv. The complaint is in English and the complainant is not aware of English language and therefore, it is contended that PW1 is unaware of the contents of the complaint;
- v. In the FIR, the details of witnesses were not mentioned and, therefore, the FIR is not reliable;
- vi. Seizure procedure was not followed;
- vii. Before registration of crime, NIA Officials are there at the scene of offence;
- viii. Dying Declarations were not recorded;
- ix. FSL Experts were not examined;
- x. Prosecution failed to prove the charges leveled against the accused beyond reasonable doubt;
- xi. Identification Parade (IP) was not conducted as per the procedure laid down under the Criminal Rules of Practice;
- xii. Identification parade was conducted on 28.06.2014 after one and half years of the blast/incident;
- xiii. None of the witnesses identified the accused;
- xiv. There is no eye-witness or the direct evidence;
- xv. Entire case rests on circumstantial evidence, which does not form a complete chain;

- xvi. There is break of chain of events;
- xvii. Sanctions were not obtained properly and the same are in violation of the procedure laid down under Section - 196 of Cr.P.C.;
- xviii. Sanctioning Authorities were not examined;
- xix. Sanction proceedings issued *vide* Exs.P393, 394, 395 are not in accordance with the procedure laid down under law;
- xx. No evidence from the scene of offence/spot was collected;
- xxi. Opinions of Experts were not properly obtained;
- xxii. Cognizance was not taken properly. No reasons were assigned in the cognizance orders;
- xxiii. Charge was altered without notice and without following due procedure laid down under law;
- xxiv. Procedure for framing charges was not followed;
- xxv. There is violation of Sections - 211, 212, 215, 216 (2), (3), (4) and (5) and 218 of Cr.P.C.;
- xxvi. The Magistrates, who recorded statements under Section - 164 of Cr.P.C., were not examined;
- xxvii. Notification issued under Section - 6 of NIA Act is not there;

- xxviii. Prosecution failed to establish any clue with regard to Organization of accused Nos.2 and 5;
- xxix. PW.54 is a planted witness;
- xxx. Accused No.4 never stayed in the house at Abdullapurmet as per evidence of Investigating Officer;
- xxxi. It is a Transformer Blast;
- xxxii. PW.59, Merugu Ilaiah is not an eye-witness;
- xxxiii. Reconstruction of the scene is not in accordance with the procedure laid down;
- xxxiv. This Court cannot appoint mitigators to obtain reports with regard to mitigating circumstances of the accused;
- xxxv. Contradictions in the depositions of prosecution witnesses, which are major;
- xxxvi. There is violation of the procedure laid down under Rules - 31 and 32 of the Criminal Rules of Practice;
- xxxvii. Deposition of PW.143 i.e., Mr. T. Nageswar Rao, Reporter of TV9 Telugu News Channel, cannot be believed;
- xxxviii. Certificates under Section - 65B of the Indian Evidence Act, 1872 (for short 'Evidence Act') were not obtained;
- xxxix. *Panch* witnesses were not examined;

- xl. The doctors, who treated the injured persons, were not examined;
- xli. Learned trial Court did not consider the purport of Section - 30 of the Evidence Act;
- xlii. Learned trial Court cannot record conviction twice or more for the very same offences and it amounts to “double jeopardy”;
- xlili. Memos were filed by the accused raising objection not to pronounce judgment in the absence of their counsel. The same were not considered;
- xliv. Thus, learned trial Court convicted the accused without hearing the accused on sentence. Therefore, the same is in violation of Sentencing Policy and law laid down by the Apex Court;
- xlvi. Recoveries were not properly proved;
- xlvi. Prosecution failed to prove the cycle theory; and
- xlvi. Injured witnesses were not examined.
- xlvi. Conspiracy was not proved;
- xlix. There was no claim by Indian Mujahuddin against accused No.6;

1. Prosecution failed to prove allegations against accused No.6 about the preparation of fake ID Cards in respect of accused Nos.2, 3 and 5;
- li. Prosecution failed to prove the allegation that fake ID furnished to accused No.1, who in turn provided the same to accused Nos.2, 3, and 5 by producing cogent evidence;
- lii. NIA has committed irregularities with regard to FIR No.54 of 2011 and RC No.6 of 2011; and
- liii. Without considering the same, the trial Court convicted the accused and imposed the maximum punishment of the death penalty.

14. **SPECIFIC CONTENTIONS OF ACCUSED No.6:**

- i. His name was not there in the FIR, charge sheet, or first supplementary charge sheet. His name was added in the second supplementary charge sheet;
- ii. PW.18 is not an Expert, his testimony is not trustworthy. His evidence has no legal sanctity;

- iii. Placing reliance on Section - 26 of the General Clauses Act, 1897, learned counsel for accused No.6 contended that learned trial Court did not consider the purport of the said provision;
- iv. Learned trial Court convicted accused No.6 for the offences under Sections - 109 and 120B of IPC and Section - 18 of UPA without considering the contentions of accused No.6 that the depositions of prosecution witnesses do not constitute the ingredients of the said offences and that prosecution failed to prove the said offences against accused No.6 by producing cogent evidence beyond all reasonable doubt.

15. Learned counsel for accused Nos.2 and 5 relied upon the following decisions:

- a) **State (Govt. of NCT of Delhi v. Nitin Gunwant Shah**¹
- b) **Mr. S. Arul Raja v. State of Tamil Nadu**²
- c) **Param Hans Yadav v. State of Bihar**³
- d) **Dhan Raj alias Dhan v. State of Haryana**⁴
- e) **Phool Chand v. State of U.P.**⁵
- f) **Shreya Singhal v. Union of India**⁶
- g) **Jagjit Singh v. State of Punjab**⁷

¹. (2016) 1 SCC 472

². (2010) 8 SCC 233

³. AIR 1987 SC 955

⁴. (2014) 6 SCC 745

⁵. 2004 CrL.L.J. 1904

⁶. (2015) 5 SCC 1

h) Adambhai Sulemanbhai Ajmeri v. State of Gujarat⁸

i) Noorahammad v. State of Karnataka⁹.

i) Learned counsel for accused No.6 relied upon the following decisions:

a) Manoj Kumar Soni v. The State of M.P.¹⁰

b) Khet Singh v. Union of India¹¹

c) Ramesh Chandra Agrawal v. Regency Hospital Ltd.¹²

d) The Roman Catholic Mission v. The State of Madras¹³

e) Yogesh v. State of Maharashtra¹⁴

f) Sait Tarajee Khimchand v. Elamarti Satyam¹⁵.

16. SUBMISSIONS OF SPECIAL PUBLIC PROSECUTOR:

- i) NIA Officials were present at the spot along with Army and Law and Order Police, as part of rescue operations;
- ii) SIT was constituted. Thereafter, the investigation was entrusted to NIA; NIA is not a police station;

⁷. (1994) 4 SCC 726

⁸. (2014) 7 SCC 716

⁹. (2016) 3 SCC 325

¹⁰. 2023 INSC 705

¹¹. (2004) 7 SCC 759

¹². AIR 2010 SC 806

¹³. AIR 1966 SC 1457

¹⁴. (2008) 10 SCC 394

¹⁵. AIR 1971 SC 1865

- iii) There is no delay in lodging the complaint and in a case, like this, 1½ hour delay as alleged by the accused is reasonable and is not fatal to the case of prosecution;
- iv) Eye witnesses are there;
- v) As per Section - 3 (2) of the NIA Act, NIA has jurisdiction all over India;
- vi) Accused have used IED Blast - improvised explosive device in the twin blast and accused No.3 has expertise in the said field;
- vii) Prosecution proved the guilt beyond reasonable doubt;
- viii) Identification parade was conducted strictly in accordance with the procedure laid down;
- ix) FSL reports were obtained properly and as per the procedure laid down under law;
- x) Based on the investigation, charge sheet, first supplementary charge sheet and second supplementary charge were filed.
There is no irregularity;
- xi) PW.1 and 2 are eye-witnesses;
- xii) Injured witnesses were also there;
- xiii) CCTV Footages were collected;

- xiv) Scene of offence was reconstructed as per the procedure.
There is no irregularity;
- xv) Seizures were proper;
- xvi) In a matter like this, minor omissions and contradictions can be ignored;
- xvii) It is an organized Crime;
- xviii) Allegations leveled against the accused are very serious and it is an organized crime. There are 18 deaths and injuries to 131 innocent persons; and
- xix) Therefore, on consideration of the same, the trial Court convicted the accused and imposed death penalties. There are no irregularities.

17. Learned Sepcial Public Prosecutor relied upon the following decisions:

- i) **Sundar @ Sundarrajan v. State**¹⁶
- ii) **State of Uttar Pradesh v. Subhash alias Pappu**¹⁷
- iii) **Lallan Rai v. State of Bihar**¹⁸.

¹⁶. 2023 LawSuit (SC) 271

¹⁷. (2022) 6 SCC 508

¹⁸. (2003) 1 SCC 268

18. ANALYSIS AND FINDINGS OF THE COURT:

i) To prove the charges framed against accused Nos.2 to 6, the prosecution has examined PWs.1 to 157 and exhibited Exs.P1 to 507 and also MOs.1 to 201. The accused did not examine any witness on their behalf. However, they got exhibited Exs.D1 to D40, which are relevant portions in Section - 161 of Cr.P.C. statements, IP addresses, details of mails etc.

- a) Presence of NIA Officials at the scene of offence before entrustment of investigation to NIA in terms of NIA Act;
- b) Entrustment of investigation to NIA;
- c) Jurisdiction of Special Court for trial of Scheduled Offences Investigated by National Investigation Agency - cum - V Additional Metropolitan and Sessions Judge, Rangareddy District at L.B. Nagar, Telangana State; and
- d) Delay in lodging the complaint.

ii) Perusal of record would reveal that immediately after the incident, when rescue operations were going on, NIA Officials were present along with Army, Civil Police etc., as spoken by PW.47. Initially, the crime was registered by Mr. A. Anjaneyulu, Sub-Inspector of Police (PW40) on the complaint given by Mr. G. Anand (PW2). On 21.02.2013, as per the instructions of the then Commissioner of Police, Cyberabad, PW47 - Mr. M.

Venkateshwarlu, the then Assistant Commissioner of Police, took up the investigation. He visited Saroornagar Police Station and received C.D. from PW.40 pertaining to bomb blast occurred at A-1 Mirchi Center, Dilsukhnagar, Hyderabad.

iii) PW.47, during chief-examination, deposed as under:

“I am working as ACP, Panjagutta since 25-06-2014. Previously I worked as ACP Crimes, Cyberabad from 14-06-2011 to 21-02-2014. On 21-02-2013 as per the instructions of Commissioner of Police, Cyberabad vide his memo No.36/CP/Camp/Cyberabad dt.21-02-2013 at 09-00 pm., I acknowledged the memo and took up the investigation in Cr.No.146 of 2013 of P.S.Saroornagar pertaining to bomb blast occurred at Dilsukhnagar A1-mirchi Center. Immediately I visited Saroornagar Police Station and received the CD file from SI A.Anjaneyulu. After verification of investigation done by SI I found it on proper lines. Immediately I rushed to the scene of offence situated in front of A1 mirchi center, Rajiv Chouck, Dilsukhnagar, where I observed the scene of offence and it was properly safe-guarded by the barricades, iron stoppers, traffic cones, reflective tapes by the time I visited the scene. The scene of offence was also provided with lights with two generators

provided by the Army Head Quarters at Hyderabad and Cyberabad. The traffic was also diverted towards Malakpet by closing the road leading from Rajiv Chowk towards Konark theatre. When I reached the scene of offence the DCP and ACP LB Nagar, SHO Saroornagar Narasimha Rao, Additional Inspector Saroornagar Srinivas Rao and other three Sub-Inspectors of Police were present. I have examined the SHO Saroornagar Narasimha Rao, Additional Inspector Saroornagar Srinivas Rao, SI Sri.Ch.Sudhakar Rao, S. Ramesh SI and recorded their 161 Cr.P.C. Statements. Prior to my reaching the scene of offence, the above officers who are present at the scene have shifted the huge number of injured persons by calling 108 ambulances, bus, vehicles, autos to various hospitals for treatment. The same officers have also shifted 7 dead bodies found in front of A1-mirchi center after taking photographs and video coverage by PC Samaiah of Saroornagar Police Station. Later I secured the presence of Panchas LW288 M. Mallikarjun, LW289 P. Kiran Kumar at 10-00 pm., and conducted scene of crime observation in their presence. Ex.P27 is the scene of crime, observation-cum-seizure report conducted in the presence of the above said panchas. During the observation there were number of blood pools and severed human flesh

and some human body parts and organs. We also found eatery items, vessels, gas stove, cylinder, showcases, flexes, name boards, banners, damaged cycle parts in pieces, cycle frame of Atlas company and front tyre manufactured by Ganga Toofani Takat etc., as mentioned in Ex P27. While conducting panchanama under Ex P27 the clues team of Hyderabad, CDTS clues team, Counter intelligence clues team, including NIA clues team personnel were present during panchanama proceedings. With the help of above teams i seized the material objects as narrated in page No.4 of Ex.P27 and another serial number 1 to 13 as narrated in the same page. I have also drawn the rough sketch at scene of offence which is Ex.P28. Ex.P27 and P28 are typed on laptop with the assistance of Venkat Reddy HC of Saroornagar Police Station and DTP center system operator Saroornagar. The scene was secured by posting one platoon of APSP and two local police of Saroornagar Police Station for the purpose of further investigation. In pursuance of memo issued by the Commissioner of Police I have taken the assistance of 7 Inspectors and 12 Sub-Inspectors of LB Nagar Zone and Central Crime Station and Finger Print Inspector Thatharao. Accordingly I deputed 7 inspectors/SIs for conducting inquest at Osmania General Hospital mortuary room and other 12

Inspectors/SIs were deputed to other various hospitals for recording the injured persons statements at various hospitals. The deputed officers are PW41, PW42, PW43, PW44, PW45, PW46. On next day i.e., on 22-02-2013 the deputed officers proceeded with the investigation according to the instructions. On 23-02-2013 I have the prepared the letter of advice of seized MOs and sent them to FSL for examination and report. On the same day the Anti-Terrorist Cell of Maharashtra, Bangalore, Gujarat and other Intelligence Bureau officers also inspected the scene of occurrence. I also deputed 10 special teams to near vicinity of the scene of crime to locate the suspects by searching the lodges, and other old bicycle repair shops and mechanics to identify the Atlas cycle which was suspected to have been set-up with explosive substances. On 25-02-2013 I have collected the seven aluminum splinters from Yashoda Hospital which were removed from the person of the injured for the purpose of sending them to FSL to know the kind of splinters which were found in the injured persons. On 26-02-2013 again visited the scene of offence and secured the presence of panchas LW290 J. Satyanarayana Reddy, LW291 K. Venkat Ratnam for the purpose of seizing the remaining material objects at the scene. Ex.P29 is the crime scene seizure panchanama conducted

on 26-02-2013. The material objects from serial No.1 to 18 at page No.2 of Ex.P29 were seized and sent to FSL through Court.

On 27-02-2013 as it was Thursday I deputed two CCS Inspectors along with men to Jumnerat Bazar to cause enquire about the old bicycle sellers to connect the investigation with the bicycle seized at scene. On the same day I received the information about foetus death of mother P.Yashoda from Care Hospital, Banjara Hills. I deputed SI C.Venkateshwarlu to conduct inquest over the foetus and sent to hospital from there foetus sent to Osmania General Hospital for conducting postmortem. On 28-02-2013 received the postmortem examination reports of P1 to P12 from Osmania General Hospital from various doctors and the cause of death mentioned "died due to multiple blast injuries to head, trunk, pelvis, thigh, chest, abdomen and blast injuries associated with burns" and also received 25 medical certificates. Subsequently I received the death intimation of D13 Amrutha Ravi from Yashoda Hospital, Malakpet. I deputed SI C. Venkateshwarlu for conducting inquest at Yashoda Hospital and from there the dead body was shifted to Osmania General Hospital. Later on with the assistance of A.Anjaneyulu deposited the all the MOs which were seized from the scene

of offence in the Hon'ble Court from there the MOs were sent to FSL for examination. Later on I received the instructions from Commissioner of Police, Cyberabad vide memo No.36/CP-Camp-Cyb/2013 dt. 18-03-2013 subsequently I handed over the CD file along with 12 postmortem reports, 103 161 Cr.P.C. statements, 48 wound certificates, 2 albums, 2 CDs and one pen drive to LW439 Sri.K.Sunil Immanuel, CIO, Superintendent of Police, NIA, Hyderabad for the further investigation.

Mo.1 is the damaged scooter

Mo.2 is the damaged Motor cycle No.AP 29 AV 9548

Mo.3 is the damaged Motor cycle No.AP 9 AC 7

Mo.4 is the damaged Motor cycle No. not visible

Mo.5 is the damaged cycle parts of Atlas company which includes material objects from items No.1 to 5 & 11 of page No.4 of Ex.P27.

Ex.P30, P31, P32, P33 are memos issued by me dt.21-02-2013 deputing several officers for the purpose of investigation. Ex. P34 is the handing over letter along with enclosures containing 16 sheets including check list of the details of investigation done. The NIA police and other police agencies have extended their assistance by

guiding me but they did not conduct any investigation nor they interfered in the investigation.”

iv) During cross-examination on behalf of accused No.2, this witness admitted as follows:

“I personally requested LW288 M.Mallikarjun, LW289 Kiran Kumar to act as mediators who were present at scene of offence. Mo.5 do not contain the identification slips attested by panchas. The witness volunteers that the Mo.5 was already sent to FSL. Mo.4 do not contain the identification slip attested by the panchas. Mo.4 even do not contain the registration number plate. The witness volunteers that it was damaged in the blast. I examined the owners of Mos.1 to 3. Before my arrival to the scene of offence the NIA police, other police including bomb squads were present and they shifted injured. It is not true to suggest that by that time reached scene of offence there was electrical power disruption and as such they brought the generators. The witness volunteers that since there was no sufficient light as such the generators were brought. On the next day of the incident I deposited the property before the Court as the incident happened on the previous night. It is not mentioned specifically in Ex.P34 check list that I handed over the two

panchanamas and rough sketch Ex.P27 to P29.

The witness volunteers that I handed over the above said Ex.P27 to P29 which forms the part of CD file. I did not mention specifically in Ex.P27 and Ex. P28 as to the name of the DTP center where I got prepared Ex.P28 rough sketch. It is true that Ex.P27 and P29 do not disclose that I obtained signatures of the witnesses on the slips and affixed the same on the MOs and sealed them. It is not true to suggest that already by the time I reached the scene the NIA police started investigation and the MOs were taken away by them.”

v) The aforesaid cross-examination was adopted by learned counsel for accused Nos.3 to 6.

19. Perusal of record would reveal that as per the instructions of the Commissioner of Police, Hyderabad City, Crime No.56 of 2013 registered for the offences punishable under Sections - 302,307 and 120-B IPC, Sections - 3 and 5 of the ES Act and Sections - 16, 17 and 18 of the UAP Act, of Malakpet Police Station was transferred to SIT, Hyderabad, further investigation vide Ex.P37 - Memo No.30/CP/Camp/2013, dated 23.2.2013 of Commissioner of Police, Hyderabad City and accordingly the said Crime No.56 of

2013 was handed over to SIT ACP, DD, CCS, Hyderabad. PW.53 is the relevant witness to depose with regard to the same.

i) PW.53 - Mr. K. Jaganath Reddy, the then ACP, during chief-examination deposed as follows:

“I am working as Additional SP, ACB, AP-Hyderabad since September, 2014 till date. Previously I worked as ACP, CCS-Hyderabad from November, 2011 to February, 2014. On 25-02-2013 as per the instructions of DCP, DD, CCS-Hyderabad City vide memo No.DCP.DD/Camp/43/2013 dt.23-02-2013 under Ex.P37, I have taken over the charge of investigation in Cr.No.56/2013 registered at Malakpet Police Station in Dilsukhnagar Blast case. On the same day I addressed a letter to the Director, Andhra Pradesh Police Academy for providing services of T.Suresh Kumar (LW402), Faculty member forensic science, AP Police Academy to assist in bomb blast Investigation. On the next day i.e., 26-02-2013 I visited the scene along with the said T. Suresh Kumar, LW403 Prakash Veer Head Constable and incharge of clues team CCS Hyderabad. We reached the scene which was secured and with the help of GHMC officials we have seized

remaining relevant material objects under seizure
panchanama Ex.P38 (2 sheets) dt. 26-02-2013.

Mo.34 is the Pieces of 9V battery collected from
scene of crime (Marked as Q-1)

Mo.35 is the two broken SIM cards, five
damaged 6.3 V batteries and two small metal
pieces collected from scene of crime (marked as
Q-2)

Mo.36 is the silver colour metallic pieces
collected from scene of crime (marked as Q3)

Mo.37 is the pieces of bag and Zip and cloth of
pant collected from scene of crime (marked as
Q4)

Mo.38 is the Green colour coated metallic pieces
collected from scene of crime (marked as Q5)

Mo.39 is the pieces of wires collected from scene
of crime (marked as Q6)

Mo.40 is the iron balls big and small size
collected from scene of crime (marked as Q7)

Mo.41 is the pieces of spokes of bicycle and
other nails collected from scene of crime (marked
as Q8)

Mo.42 is the pieces of metal of bicycle found
collected from scene of crime (marked as Q9)

Mo.43 is the pieces of mudguard attached with tyre of bicycle collected from scene of crime (marked as Q10)

Mo.44 is the cycle tyre & tube pieces and break rubber collected from scene of crime (marked as Q11)\

(Mos.34 to 44 are opened in the Open Court in the presence of both sides from the sealed box sent by FSL) I have examined and recorded statements of LW117 N.V.T.Pandu Ranga Rao. LW118 Ch. Vasantha, LW119 Yadamma, LW120 Vittamma, LW121 Indira, LW124 Padma. I also examined LW402 T.Suresh Kumar, LW403 Prakash Veer Head Constable and incharge of clues team CCS Hyderabad.

I went to JC-Brothers shop situated at Dilsukhnagar along with panchas K. Nanda Kishore LW251, and M.Sai Kumar LW252 for the purpose of seizing CCTV footage at the relevant time of bomb blast.

I have also examined K.Ramulu LW204, LW205 G. Venkateshwarlu RSI who is incharge of guarding the secured scene. Under Ex.P39 seizure panchanama dt.26-02-2013, I have seized Seagate hard disk (1 terra byte) Barracuda No.2057491213---0259701 metal plated hard disk of black colour affixing lable with

descriptive particulars mentioning 'JC Bros' Textile which is fitted secondary to LENOVO CPU (DVR System) of the JC Bros SHOW ROOM, Dilsukhnagar, Hyderabad which is Mo.45. Mo.45 was sealed in the shop premises with the signatures of the panchas and deposited with the Magistrate on 16-03-2013 under Ex.P40. I have also received the statements of the victims who received injuries in the bomb blast recorded by Inspectors U/Sec.161 Cr.P.C on 27-02-2013. On 28-02-2013 I visited the Care Hospitals at Nampally and Banjara Hills and examined victims B.Hathiya Naik, M.Gangullamma, M.Ranga Rao.

On 28-02-2013 I visited Shiva Electronics beside Venkatadri Theater, Dilsukhnagar and seized Mo.46 which is one Seagate Company made "Hard Disk" of 1 TB S/N: 9VPGRL3R, ST 31000524AS, P/N:9YP154-204, Firmware: JC48, Date Code 13135 Site Code: TK: The above mentioned details are printed on a white sheet and affixed to a steel plate and having No.CO93820330A4. Ex.P41 is the seizure report drafted on 28-02-2013 at 1700 hours for the seizure of Mo.46. The said Mo.46 which was sealed and secured at the shop was sent to the Magistrate on 16-03-2013 under Ex.P42.

On 01-03-2013 I have received the iron pieces/splinters which were embedded in the bodies of the injured who received blast injuries and removed by the Doctors during the treatment. Ex.P43 (1 sheet) which is now filed is the letter addressed by the Administrator, Yashoda Hospital sending the splinters removed from the patients and also eye-tissue along with the photographs of the sealed material objects.

Mo.47 is the Nail,

Mo.48 is the two white metals pieces,

Mo.49 is the nail metal pieces,

Mo.50 is the white metal pieces.

Mo.51 five metal piece and eye-tissue.

Mo.47 to 51 are the properties sealed and sent by the hospital authorities as mentioned in Ex. P43. I also received postmortem examination reports and also injury certificates of the victims received injuries.

On 06-03-2013 I forwarded Mos.34 to 44 to the Director, FSL, Red Hills along with letter of advise. Accordingly on 07-03-2013 I also sent Mo.47 to 51 to FSL.

As per the instructions of the Government, the investigation in this case was handed over to NIA on 14-03-2013.”

ii) During cross-examination on behalf of accused Nos.2, 4 and 6 and adopted by accused Nos.3 and 5, this witness answered thus:

“The question posed by the learned counsel for the Accused is that I put it to you that:

Q: Mo.34 to 44 and Mo.47 to 51 are sent to FSL directly?

Ans: It is true I sent Mo.34 to 44 and Mo.47 to 51 directly to the FSL.

It is true that I did not deposit Mo.34 to 44 and Mo.47 to 51 before the concerned Court immediately after seizure. I did not conduct any further investigation after 14-03-2013. The witness volunteers that he assisted NIA. It is true that the date of dispatch as mentioned in Ex.P40, 42 & 43 is 16-03-2013. Another sheet which is pinned to Ex.P42 is identical to Ex.P42. Both the sheets are containing my original signatures, the second sheet is identical to first sheet. It is Ex.D1. Ex.D1 is dt. 28-02-2013 and it contains the initial of VII ACMM before whom the property mentioned therein was deposited on 25-03-2013 vide Pl No.37/13. The witness volunteers that he deposited the property on 16-03-2013. It is true by 14. 03-2013 all the properties were in my custody. It is true the descriptive particulars of

the personnel of our office who carried the property were not mentioned under Ex.P42 and D1. I handed over all the 161 Cr.P.C. statements and panchanamas recorded till 14-03-2013 to the NIA police. It is not true to suggest that I did not seize any material objects on 26-02-2013 or 28-02-2013 and all the material objects 34 to 51 are falsely planted in this case to fill up the lacuna in the investigation done earlier. It is not true to suggest that Ex.P38 to P43 are fabricated documents which were created by me to fill up the lacunas of the investigation. It is not true to suggest that the panchas covered by Ex.P38 to 42 are all stock witnesses and their signatures were taken in our SIT office.”

20. In the present case, on 21.02.2013 at 18:58:38 hrs and 18:58:44 hrs two consecutive bomb blasts took place at Dilsukhnagar, Hyderabad, resulting in the death of 18 persons and injuries to 131 persons. The first blast took place at 18:58:38 hrs near 107 Bus Stop, Dilsukhnagar in the limits of Malakpet Police Station, Hyderabad City. In that regard, a case in Crime No.56 of 2013 was registered for the offences punishable under Sections - 302, 307 and 120B of IPC and Sections - 3 and 5 of the ES Act.

i) The second bomb blast took place at 18:58:44 hrs near A-1 Mirchi Centre, Dilsukhnagar in the limits of Saroornagar Police Station, Cyberabad City. Accordingly, Saroornagar Police Station, Cyberabad, registered a case in Crime No.146 of 2013 for the offences punishable under Sections - 324, 326, 307, 302, 124A, 153A and 201 read with 120B of IPC, Sections - 3 & 5 of the ES Act and Sections - 16, 17 & 18 of the UAP Act. However, after adding Sections - 16, 17 and 18 of the UAP Act in Crime No.56 of 2013, the investigation was taken over by PW.53 on 25.02.2013, while PW.47 investigated Crime No.146 of 2013 of Saroornagar Police Station. Having regard to the gravity of the cases, the Government of India decided the cases to be investigated by the NIA. Accordingly, vide MHA F.No. 11011/14/2013-IS-IV dated 13.03.2013, the Government of India directed the NIA to investigate the above cases. NIA had re-registered the cases as RC No.01/2013/NIA/HYD & RC No. 02/2013/NIA/HYD on 14.03.2013 and the NIA Office, Hyderabad, had investigated the cases. The said aspects were spoken to by PWs.47 and 53 in their depositions as extracted above.

ii) Even learned trial Court discussed the issue of jurisdiction of NIA and its power to add Sections under UAP Act, 1967 in Paragraph Nos.601 to 603 of impugned judgment elaborately.

iii) With regard to the jurisdiction of NIA, learned counsel for the accused contended that trial Court has no Jurisdiction as the NIA Office is situated within the Jurisdiction of Criminal Courts, Nampally. They have also filed Writ Petition No.27445 of 2016 before this Court on the said ground and the same was dismissed on 29.08.2016. As against the same, he preferred SLP and according to him he also preferred review before the Apex Court. As stated above, in the present case, one crime falls within the jurisdiction of Malakpet Police Station, Hyderabad, and another crime falls within the jurisdiction of Saroornagar Police Station, Rangareddy District and, therefore, learned trial Court got jurisdiction. Moreover, this Court designated learned trial Court. Further, it is clear that NIA is not a police station and it has jurisdiction all over India in terms of Section - 3 (2) of the NIA Act. There is no delay in lodging the complaint as alleged by the accused.

iv) Thus, NIA Officials were present at the scene of offence along with Army Officails, Law and Order Police etc., as part of Rescue Operation. There is no error in it. Accused cannot take advantage of it.

v) As discussed above, considering the gravity of the offence and the manner in which it was committed etc., the investigation was entrusted t NIA in terms of NIA Act. There is no error in it. Moreover, having failed in writ petition, SLP, review petitions, accused cannot contend that the trial Court has no jurisdiction.

21. **SCENE OF OCCURRENCE/BOMB BLASTS:**

i) With regard to the first bomb blast, as stated above, it had occurred on 21.02.2013 at 18:58:38 near 107 Bus Stop, Dilsukhnagar. On receipt of Ex.P1 - complaint from PW.1 - Shaik Jani Pasha, PW.38, the then Additional Inspector of Police, Malakpet Police Station, registered the aforesaid Crime No.56 of 2013. In this context, evidence of PW.1 and PW.38 is relevant.

ii) PW.1, during his chief-examination, deposed as under:

“I am working as RTC Driver at Dilsukhnagar
Bus Stand since 2002. On 21-02-2013 at 06-30

pm., I along with my friends came to the tea point situated near Bus Stop situated opposite to our Bus stand as usually. At around 06:50 pm., I was hearing the evening prayers from the nearby Mosque. Meanwhile I heard a blasting sound then I thought that the sound was of burst of bus tyre or transformer and meanwhile I heard another sound while I was rushing towards 107/V bus stop. Where some buses including 107 Bus stop. Then we found there were two bomb blasts were at A1-Mirchi point and at 107 bus stop. There I noticed the scattered dead bodies and the people are running helter-skelter. Meanwhile there were ambulances and we shifted the deceased and injured through RTC buses to various hospitals including Yashoda, Omni, Kamala hospitals. At 08-10 I went to Police Station, Malakpet and at 08-30 pm., I lodged the complaint it is Ex.P1. Ex.P1 complaint was scribed by constable at my dictation and after contents read over and explained to me in Telugu I signed. From there I rushed to the Osmania General Hospital where inquest was held over the dead body of an unknown male Muslim person. Ex.P2 is the inquest dt. 22-02-2013 at 0340 hours marked subjected to objection as it does not contain the signature of the witness. The said inquest was conducted by SI Satyanarayana. I was also present at the time of inquest held over

the unknown dead body of a Muslim persons held by S.I Murthy on 22-02-2013 at 0300 hours. Ex.P3 is the said inquest marked subjected to objection as it does not contain the signature of the witness. The above said two persons died due to bomb blasts. I was examined by Police.”

iii) During cross-examination by accused No.2, this witness admitted as follows:

“...It is true immediately after the incident the passerby and all the people ran away. Nearly 25-30 mins. took for the arrival of the Police....”

“...After the law and order police arrived to the scene of offence, the NIA Police also came. The Police wearing Orange Colour NIA jackets collected all the remnants at the scene of offence. The witness again says that after returning from Police Station the NIA Police came. From 08-10 onwards I was there in Police Station for 40 mins till 08-40 pm. I was examined by the Police at the Malakpet Police Station which was recorded under Ex.P1. After recording Ex.P1 I rushed to Osmania General Hospital, three months thereafter I was examined by local police of Malakpet Police. On the same day the Inspector of Malakpet PS was there till mid night at the scene of offence. The entire area i.e., both the scene of offences was cordoned and nobody was

allowed at the scenes of offences. The whole night the NIA Police and local police collected remnants at the scene of offences. While I was on the other side of the road having tea I heard the above said sounds. At that time due to the impact of the blasts and smoke there was darkness. It is not true to suggest that without knowing the contents I signed in Ex.P1.”

iv) During cross-examination by accused No.3, this witness answered thus:

“At the scene of offence at around 05-45 the prayers are going on. I was having tea nearby Renuka Yellamma Temple....”

v) PW.38 - the then Additional Inspector of Police, Malakpet Police Station, during his chief-examination, deposed as under:

“I am presently working as Inspector of Police, CID, Telangana, Hyderabad. Earlier I worked as Additional-Inspector of Police, P.S. Malakpet. On 21-02-2013 while I was discharging my duties in the Malakpet P.S., at 07-00 to 07-10 pm., I heard a huge sound and immediately I heard another huge sound and I came to know through the Public that there was bomb blast and there was lot of commotion at that time I also heard the same through the scrolling in TV that

several persons died and several persons were injured and shifted to various hospitals. Then immediately our Inspector Satyanarayana LW411 rushed to Dilsukhnagar bus stop 72 near Venkatadri theater. At that time I was attending duties at my station. Then our inspector Satyanarayana sent statement of PW1 (Shaikjani Pasha) through our constable Amjad Khan Basing on the above said Ex.P1 statement and instructions of our inspector Satyanarayana I registered the same in Cr.No.56 of 2013 U/Sec. 302, 307 120-B IPC and Sections 3 and 5 of Explosives Substances Act. 1908. Then submitted the original FIR to the Court and copies to the concerned officers. The FIR is Ex. P23. Then I submitted the CD file to the Inspector Satyanarayana who was camped at near 72 bus stop Dilsukhnagar opposite Venkatadri Theater.”

vi) During cross-examination on behalf of accused No.2, this witness answered thus:

“At the time of the blast I was in the Police Station and I heard the sounds. Between 07-00 to 11-00 pm., I was in Police Station on that day. It is true the complainant PW1 did not come to Police Station personally and 09-30 pm., through one PC No.4209. After 11-00 pm., I visited the

scene of offence, I was at the scene of offence for a period 2 hours, thereafter I used to go to Police Station and come back. It is true our police and bomb squads and other higher officials visited the scene of offence and the police were collecting the remnants.....

“... It is true as seen from the photograph shown by the defence counsel from the file of this case, it shows some persons wearing NIA jackets at the scene of offence. Now the photograph is marked as Ex.P24. I did not examine the constable who brought Ex.P1 complaint to me and the constable through whom I dispatched the FIR to the Court.”

vii) With regard to second bomb blast, as stated above, it had occurred at 18:58:44 hours at A-1 Mirchi Center, Dilsukhnagar. On receipt of Ex.P4 - complaint from PW.2, Crime No.146 of 2013 was registered by PW.40, the Sub-Inspector of Police, Saroornagar Police Station. In this regard, evidence of PWs.2 and 40 are relevant.

viii) PW.2, in his chief-examination deposed as under:

“I own a shop at Dilsukhnagar in the name and style of Anand Music Centre and Mobile Shop. On 21-02-2013 at around 07-00 pm., myself and my friends are having tea at other side of the road

opposite to 107 bus stop at around 100 mts. Then suddenly I heard a big and within seconds I heard another big sound. Then the People are running in panic. Then I rushed to the A1-Mirchi center and we shifted the deceased and injured in ambulances and buses and also autos to various hospital including Omini and Kamala Hospitals and the above said sounds emanated out of bomb blasts. Then I lodged a complaint with the Saroornagar Police. Since my hands were dirty due to helping the injured in shifting to the hospitals, I dictated to the constable of Saroornagar P.S. to draft the complaint. It is Ex.P4. I gone through the contents of the complaint which were written to my narration and signed.”

ix) During cross-examination, he answered thus:

“..... I remained at the spot from 0700 pm., to 0800 pm., on that day. Within 10 mins the local police reached the scenes of offence. Ten mins thereafter bomb squad reached the scenes of offence. Ex.P4 was drafted at the police station of Saroornagar at my dictation. It is not true to suggest that that only at the influence of the police I signed in Ex.P4....”

x) PW.40, the then Sub-Inspector of Police, Saroornagar

Police Station, in his chief-examination, deposed as under:

“I am working as Inspector of Police, Secunderabad Railway Police Station. Previously I worked as Sub-Inspector of Police, Saroornagar Police Station from October, 2009 to October, 2013. While I was on duty on 21-02-2013 at 07-00 pm., to 07-10 pm., I heard two sounds one after the another like bomb blast. Immediately our Inspector Narasimha Rao and all our police personnel present in the police station rushed to the scene of offence. Then myself and other police personnel were present at the scene of offence. At around 08-00 pm., PW2 (G.Anand) and LW14 (A.Srikrishna) came to the police station and PW2 narrated the incident to our constable and the said constable drafted the complaint which is Ex.P4 and he presented the said complaint to me. Basing on the said complaint registered FIR U/Sec 324, 326, 302, 124-A, 153-A, 201 r/w.120-B IPC Section 3 and 5 of Explosive Substances Act, 1908, Section 16, 17, 18 of Unlawful Activities Prevention Act, 1967. The FIR is Ex.P26. Then submitted the original FIR through PC NO.2120 then I examined PW2 and LW14 and recorded their 161 Cr.P.C. statements then I handed over the CD file to ACP Venkateshwar Rao. On 26-02-2013 I recorded the 161 Cr.P.C statements of Smt. Maddi Pentamma (LW122), LW123 (D.Lakshmi). On 15-03-2013 I recorded the 161

Cr.P.C. statement of Maniteja Chowdary
(LW165).”

xi) During cross-examination, this witness answered thus:

“I dispatched the FIR within two hours after registration. It is true that in FIR Ex.P26 the column No.3 (c) is empty with regard to General dairy information. The witness volunteers that the GD entry was made but not mentioned in Ex.P26 FIR.”

**22. CONSPIRACY, INVOLVEMENT, PARTICIPATION
AND EXECUTION:**

i) As discussed above, the first charge sheet was filed against accused Nos.2 and A5 on 14.03.2014. Thereafter, first supplementary charge was filed against accused Nos.1, 3 and 4 on 15.09.2014 and second supplementary charge sheet was filed against accused No.6 on 06.06.2015. Investigation discloses that IM operatives, accused Nos.1 to 5 have entered into a criminal conspiracy for waging war against the Government of India. As part of the same, they have decided to commit terrorist attacks to kill innocent people, to disrupt the security of India and to create terror and insecurity feelings in the minds of the common people, which are acts prejudicial to the integrity and sovereignty of India. With a

view to accomplish their intention, they had decided to conduct bomb explosions in India. The IM is receiving financial and material assistance from the Inter Services Intelligence (ISI), backed by the Government of Pakistan, which is providing shelter to several absconding senior operatives of the IM in Karachi and in other places in Pakistan. The role of several operatives of the IM in planning and commission of many terrorist incidents in different parts of India also has been revealed. In pursuance to the conspiracy, as per the direction and motivation of accused No.1, accused Nos.2 and 3 came to India *via* Nepal in the month of September 2010 after receiving **Terror Training in Pakistan**. In Nepal, accused No.4 received both of them. Thereafter, accused Nos.2 to 4 reached Samastipur in Bihar, where accused No.5 was residing in his hideout. Subsequently, they had committed different terrorist attacks in Delhi, Varanasi, Bombay and Pune. Thereafter all of them were residing in India and Nepal by taking hideouts at different places.

ii) In the month of September 2012, as per the directions of accused No.1, accused Nos.2 and 3 moved from Belgaum to Mangalore. In Mangalore, accused No.2 searched for a rented house in the outskirts of Mangalore by staying in different lodges. He found

a suitable flat in an apartment building near Hampankatta by name "Zephyr heights" at Attavar Road, Mangalore. Accused No.2 joined in the Flat in November, 2012 along with accused No.3. During their stay there, both accused Nos.2 and 3 used to contact accused No.1 through online chatting from the internet centres namely Falnir Cyber point, Angel Cyber Gallery and Cyber Fast situated at Mangalore. Accused No.2 always used proxy servers for chatting by using required software or by manual setting. The software used are 'Freemate', 'Security kiss (paid proxy server) and 'ultra surf. Accused Nos.2 and 3 were staying in Mangalore, accused No.1 had sent Rs. 1,00,000/- (Rupees One Lakh Only) through a hawala dealer and the same was delivered by LW-222 to accused No.2. During investigation it was revealed that accused No.2 is the person who received the cash. The money sent by accused No.1 through WUMT was received by accused No.3 using fake identity from Supama Forex Pvt. Ltd., a WUMT Outlet, situated at Hampankatta Circle. In the same manner, accused No.3 had received money through VKC Credit and Forex Services Ltd, Ganesh Mahal Complex, first floor, K.S. Rao Road, Hampankatta, Mangalore and from CS Tours and Travels. While receiving the amount from Supama Forex Pvt. Ltd,

accused No.2 was also present along with accused No.3. On 3.11.2012, accused No.2 along with accused No.3 visited M/s. Supama Forex Ltd and received an amount of Rs.25,006.68ps. Accused No.3 received Rs.25,000/- each from VKC Forex Ltd, on 26.2.2013, on 20.03.2013 and on 12.04.2013 respectively. Accused No.3 received Rs. 25,000/- each from CS Tours and Travels on 13.07.2013 and on 29.08.2013 and also received Rs.16,364/- from CS Tours and Travels on 08.08.2013.

iii) During the month of January, 2013, accused No.1 instructed accused No.2 to purchase a new mobile phone to contact the person who delivers the explosives and the explosives would be delivered in Mangalore and accused No.2 was directed to carry out blasts in Hyderabad along with accused Nos.3 and 4. Accordingly, accused No.3 purchased a mobile phone and SIM by using fake identity proof and photo. Accused No.1 instructed A-2 to switch on that mobile on a particular day to receive information about the delivery of the explosive from that unknown person, who delivers the explosives. Accused No.2 received explosive material from an unknown person in a golden colour trolley bag. The material was delivered near Unity Health Centre, Mangalore. After receiving pro-

explosives, accused No.2 took the explosive material to their rented flat in Zephyr Heights Apartments. They checked the trolley bag and found to be containing 300 tubes of semi-solid pinkish coloured ANFO of 100 grams each, and 50 numbers of detonators. As per the direction of accused No.1, accused No.4 came to Hyderabad in the last week of January 2013 and searched for the shelter place near Abdullapurmet. On 6.2.2013, he met PW.54 and took the house on rent. On 07.02.2013, he had occupied the house. It is reflected in the chat communication between accused Nos.1 and 5.

iv) In this regard, the evidence of PW.54 is relevant and the same is as under:

“I am a Homeo Physician by profession. I am residing at Abdullapurmet for the past 20 years. Our relative one Brahmaiah constructed a house in Abdullapurmet Village. After construction of the said house the said Brahmaiah did not occupy the said house as the daughter of the said Brahmaiah was about to deliver. So the said Brahmaiah asked me to show the said house to the prospective tenants and handed over the keys of the house to me. On one day in the first week of February, 2013 one student asked me to show the said house for tenancy and also informed me

that he contacted the owner. Then I handed over the keys to the said person. The said student told me that the said Brahmaiah would come and talk to him on the next day. The said student is identified by the witness as the Accused No.4 Mohd. Taseen Akhtar @ Hassan @ Monu (The accused stood/sat in their own sequence). On the day of bomb blast in the evening I came to know that the A4 handed over the keys to P. Venkateshwarlu (my husband). / was examined by Police and I also gave my statement before concerned Magistrate and I also participated in TI proceedings. I also identified the accused in the jail. Ex. P44 is the signature of the witness (at page No.3) during TIP proceedings conducted on 28-06-2014 at Central Prison, Cherlapally.”

v) PW.55 is the husband of PW.54. He identified accused No.2 during TIP and deposed with regard to the statement recorded under Section - 164 of Cr.P.C. PW.60, neighbor to the house of PW.54 and 55 deposed with regard to identifying accused No.2 during TIP. PW.62, neighbour and resides in adjoining the aforesaid house of PWs.54 and 55, deposed with regard to his interaction with accused No.2 and identifying him during TIP.

vi) On the instructions of accused No.1, accused No.2 had booked his ticket in the name of one 'Danish' through VRL travel agency, Mangalore and left for Hyderabad on 09.02.2013 at about 2 P.M. and reached Hyderabad on next day around 8 AM. Accused No.4 had taken accused No.2 to the shelter place situated at Abdullapurmet near Ramoji Film City. The fact of contacting accused No.4 by accused No.2 has been reflected in the CDRs of the phones available at the PCOs and the mobile phone used by accused No.4. Thereafter, accused No.2 returned to Mangalore. After staying in Hyderabad for three (3) days, accused No.2 left for Mangalore by VRL travels on 12th February by purchasing the ticket in the name of 'Danish'. He reached Mangalore on 13th morning. On 15.02.2013, he and accused No.3 carried the explosive material from Mangalore in VRL travels and reached Hyderabad on 16th February. Two tickets were booked in the name of 'ANI' for this travel.

vii) PW.113, Manager of VRL Travels, deposed with regard to handing over the travel details of the buses ply from Hyderabad to Bangalore and vice versa. From there, both the accused boarded a City bus, reached Abdullapurmet, and kept the explosive materials at the shelter place rented by accused No.4 As per the instruction given

by accused No.1 through chat, accused Nos.2 to 4 had conducted reconnaissance in the areas of Malakpet, Abids, Koti, Begum Bazar and Dilsukhnagar. The fact of reconnaissance by accused Nos.2 to 4 in the above areas have been revealed through the tower location of mobile phone bearing No.9911772066 used by accused No.4 chatting with accused No.1. Within two days of their recce, they decided to plant the bombs in Dilsukhnagar in the evening around 7.00 P.M. This place and time were selected as the Hindu Population in that area is more and large numbers of students used to gather there at that time.

viii) Perusal of record would reveal that 2 to 3 days before the blast, accused Nos.2 to 4 had conducted a test blast at a deserted place on a hill, around 5 to 6 kms. away from Abdullapurmet. Based on accused No.2 on 28.09.2013, remnants of the detonators were seized from the test blast site. On 20.2.2013 evening, accused Nos.2 to 4 together went to Sri Mahalakshmi Fancy Steel Shop, L.B. Nagar and purchased two 7 ½ litre capacity pressure cookers for making IED by filling the explosives therein. In this regard, the prosecution examined the owner of the said shop as PW.58 and he deposed with regard to purchase of the said items. In order to plant the bomb,

accused Nos.2 and 4 had purchased an old bicycle for Rs.1,400/- from one cycle repairer, PW.57, found on the walk way near a mazaar, situated in between Yasoda Hospital and TV Tower in Hyderabad, on 20.02.2013 at about 2.00 P.M. They had taken the cycle to Malakpet Railway Station parking stand and parked there. PW.66, who runs parking lot maintenance for the last 20 years at various Railway stations, Parks and Bus Stations, deposed about maintenance of Parking Lot at Malakpet Railway Station.

ix) Then they went to Lakadi-ka-pul at about 4.00 P.M. in an auto-rickshaw and booked return tickets for accused Nos.3 and 2 in the name of 'Nabeel', through PW.89, to go to Bangalore on 21.02.2013 in SL travels. PW.89 is the booking clerk in the said SL Travels, Lakdikapul deposed the same.

x) Thereafter, they have purchased one-meter plastic sheet from a shop near the Chadarghat Bridge for the purpose of packing and filling the explosives inside the pressure cooker. On the next day i.e., on 21.02.2013 morning, accused No.2 and Tahseen prepared cooker carrying damas 17.15 estab vacat caret was accused No.4 left for purchasing another cycle from Thursday market of the leaving

accused No.3 at the shelter place to complete the preparation of IEDs. From there, accused Nos.2 and 4 went to Malakpet railway station cycle stand on the same cycle and parked it in the same cycle stand, where they parked the first cycle on the previous day. PW.67 deposed about the same. PW.61, Hamali, deposed about selling of his old bicycle to one Mr. Ismail, who is running a small puncture shop situated near Darga on the footpath of Malakpet Main Road near Yashoda Hospital.

xi) Perusal of record would reveal that on 21.02.2013 at about 4 P.M, while accused Nos.2 and 4 were waiting outside the shelter place in Abdullapurmet, accused No.3 prepared IED by setting the time for explosion as 7.00 P.M. After completing the preparation of IEDs, the remaining items i.e., two digital watches, cooker handles and whistles of cooker and trolley bag used for carrying explosives were thrown in two different nearby places after damaging them. On 21.02.2013 at about 5.00 P.M., accused No.4 vacated the house. They reached L.B. Nagar Cross Road in an auto- rickshaw carrying the IEDs. From there, they engaged an auto-rickshaw and went to the cycle parking stand situated at Malakpet Railway Station. While accused No.3 was waiting on the road with the IEDs and their

baggage, accused Nos.2 and 4 went inside the parking place and returned with the bicycles. Accused No.2 directed both accused Nos.3 and 4 to proceed to the blast spots. Accused No.2 waited near the place of occurrence until both the other accused complete their tasks. Thereafter, accused No.3 met accused No. 2 after placing the bicycle at 107 Bus Stop, Dilsukhnagar, and accused No.4 left the place directly after placing the bicycle mounted with the bomb at A1-Mirchi Centre. The CCTV Footages available at J.C. Brothers Cloth Shop and Siva Electronics situated near 107-Bus Stop show that one person drawing a bicycle with a white box carriage and another person riding another bicycle with another white box carriage. The IEDs so planted by accused Nos.2 to 4 exploded at 18:58:38 hrs and 18:58:44 hrs on 21.02.2013. This incident created panic and terror amongst the public. The Incidents resulted in the death of 18 persons including unborn child in the womb of its mother, while 131 people were sustained both grievous and minor injuries. The injured as well as the deceased were immediately taken to different hospitals in Hyderabad. 107-Bus Stop and A-1 Mirchi Centre were severely damaged apart from the damages caused to the other public and private properties in the surrounding area.

xii) As discussed above, accused No.6 also in active e connivance with the other accused committed the aforesaid offences. In fact, he has purchased DELL laptop on the instructions of accused No.1 in the year 2010 itself at Mumbai.

xiii) During Chat of accused No.5 with accused No.1 on 20.12.2012, accused No.5 asked accused No.1 about the status of the job i.e., Hyderabad Blasts, for which he replied that the explosive had yet not been arranged and he was trying for its arrangement. He informed that the police were badly looking for accused Nos.2 and 3. Since accused No.5 was not there with them, they had to tread very cautiously. Accused No.5 then advised accused No.1 to do 2-3 blasts at a new place and that thereafter they should leave the location and go far away. Accused No.1 informed accused No.5 that they were at a new place and if everything went on well then they could stay at that location for a long time. Suggesting about the design of the IEDs to be used, accused No.5 advised him to make thin boat shaped IEDs for the blast of 1 kg. explosive each which could be carried easily even by tying on the stomach. But, accused No.1 told that they were planning for big IEDs. Accused No.5 told him that such small IEDs will have more impact. Then, accused No.5 asked accused No. to try

Picric Acid for making bombs. But, accused No.1 said that he was trying for the basic explosive generally used since it was effective. Accused No.5 told them to go for Picric acid, if the gelatin was not obtained since gelatin was difficult to procure and also got spoilt with time.

xiv) In view of the above and the evidence of the aforesaid witnesses would clearly establish that accused committed the aforesaid offences. As stated above, PW.1 and PW.2 are the complainants, while PWs.3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 33, 34 and 39 are not only eye-witnesses to the incidents, but also they sustained injuries in the said incidents. They have categorically deposed with regard to the incident occurred. The accused did not elicit anything contra from them. PW.7 deposed with regard to receipt of injuries to his left thigh. Evidence of eye-witness stands on a higher footing and there is no reason for them to depose falsely. PW.21 deposed with regard to the injuries received by his daughter and taking treatment in Yashoda Hospital and also deposed with regard to death of his grandson (foetus). During cross-examination, nothing contra was elicited by learned counsel for accused.

23. INQUESTS:

i) PW.22 is the elder brother of Asghar Ali, paternal uncle of deceased No.2, deposed about inquest conducted on 22.02.2013. PW.23 is the brother-in-law of deceased No.3 deposed about inquest conducted on 22.02.2013; PW.24, son of deceased No.6 deposed regarding inquest on 22.02.2013; PW.25, brother of deceased No.8, deposed regarding inquest conducted on 22.02.2013; PW.26 is the father of deceased No.9 deposed regarding inquest conducted on 22.02.2013; PW.27, brother of deceased No.10 deposed about inquest conducted on 22.02.2013; PW.28 is the father of deceased No.11 deposed regarding inquest held on 22.02.2013; PW.29, father of deceased No.14 deposed with regard to inquest conducted on 22.02.2013; PW.30, father of deceased No.16 deposed witnessing inquest held on 22.02.2013; PW.31 is the son-in-law of deceased No.4 deposed about his presence while conducting inquest on D-4. PW.32 deposed with regard to loss of his younger brother. PW.34 deposed with regard to the injuries sustained by his friend, Mr. S. Anand Kumar in the bomb blast and thereafter his death occurred. PW.35 deposed with regard to death of his cousin, Mr. B. Lakshmi Srinivas Reddy in the said bomb blasts and identifying the dead

body. PW.36 deposed with regard to death of Chogaram in the bomb blast near A1-Mirchi Centre and identifying the dead body at Osmania General Hospital. PW.39 deposed with regard to receipt of information about death of his cousin, Vadda Vijay Kumar and his identifying the dead body in Osmania General Hospital. Accused declined to cross-examine these witnesses. This itself provide the bomb blast as well as injuries/deaths occurred in it.

ii) Thus, the evidence of PWs.1, 22 to 30, 32 to 37, 39, 41 to 46, 48 and 50 to 52 would prove the inquest reports of the deceased persons who succumbed to the injuries caused on account of twin explosions at Dilsukhnagar on 21.02.2013. The said inquest reports of 18 deceased persons including an unborn child were marked as Exs.P2, 3, 5, 7 to 10, 12 to 22 and 25. Therefore, by virtue of examination of the aforesaid witnesses who identified the deceased and the cause of deaths proved the incident of bomb blasts.

24. As stated above, PWs.56 and 57 deposed with regard to sale of old bicycle at Jumerath Bazar to accused Nos.2 and 3 on 21.02.2013 for Rs.1500/- and identifying them during TIP. PW.64 deposed about the stay of accused Nos.2 and 3 in his house on rent at

Mangalore and seizure of Rs.50,000/- and identification of accused No.4. PW.65 deposed with regard to identification of accused Nos.2 and 3 and their visiting for food to New Jain's Restaurant. PW.69 deposed with regard to their visit to Falnir Cyber Café for chatting and seizure of six (06) hard disks and identification of accused No.2 in TIP. PW.71 was examined with regard to accused Nos.2 and 3 visiting Angel Cyber Gallery for chatting and seizure of seven (07) hard disks and also identification of accused No.2 during TIP. During cross-examination of these witnesses, nothing contra was elicited by learned counsel for accused.

25. As stated above, PW.143, TV9 Senior Reporter, deposed with regard to his interviewing PW.59 at the scene of crime immediately after the offence and giving video clippings of the broadcast video and issuing Certificate under Section - 65B of the Evidence Act. Nothing contra was elicited by learned counsel for accused.

26. **MEDICAL REPORTS:**

i) With regard to medical reports, PWs.95, 96, 100, 103 to 107, 144 to 146 and 150 to 153 are the Resident Medical Officers in

different hospitals and they deposed with regard to the injuries sustained by the aforesaid injured persons in the aforesaid bomb blasts and bringing them to their respective hospitals. They further deposed with regard to the treatment given to them for the injuries suffered by the aforesaid injured persons and issuance of Medical Certificates. Nothing contra was elicited in their cross-examination by learned counsel for accused. Thus, their evidence also proves the impact of bomb blasts, immediate deaths and the injuries and also involvement of IED bomb blasts.

ii) Whereas, PWs.85 to 87 and others are the Assistant Professors in Osmania Government Medical College deposed with regard to conducting postmortems on some of the deceased persons vide Exs.P122 to 139. During cross-examination of these witnesses, nothing contra was elicited by learned counsel for the accused. The medical reports including Exs.P108 to 139 proves the prosecution's case. The postmortem reports of the deceased individuals, such as Exs.P122 to 135 would reveal that the cause of death was multiple blast injuries. Further, the MLC records of the injured individuals, Exs.P108 to 121 confirm blast injuries sustained by them. The absence of specific mentions of brownish, yellowish, or whitish

substances in the reports does not diminish the significance of the injuries caused by the blasts. Thus, the medical evidence consistently proves the injuries sustained by the aforesaid persons in the bomb blasts.

iii) In the legal proceedings with regard to Dilsukhnagar bomb blasts on 21.02.2013, a comprehensive examination of medical professionals' testimonies would support the case of prosecution that the injuries and deaths were a consequence of an Improvised Explosive Device (IED) bomb blast. As stated above, the statements from various Resident Medical Officers and Specialists highlight the severity and nature of injuries sustained by the victims.

iv) PW84 - Dr. K. Satyanarayana Reddy and PW.88 - G. Raghavendra, both Resident Medical Officers at Prominent Hospitals, underscored the grave injuries, including blast injuries, penetrating wounds, fractures, and amputations. The same was corroborated with the evidence of Dr. Md. Rafi, Dr. D. Ajay, PW100 - Dr. P. Murali Manohar and PW101 - Dr. N. Yadagiri. Their evidence consistently proves the injuries caused in a bomb blast, with a focus on blast injuries, lacerations, and the removal of foreign

bodies through surgery. The cross- examination would reveal the administrative roles, but not disputed the connection between injuries and a bomb blast.

v) Furthermore, PWs.103 to PW145 also deposed with regard to treating physicians from various hospitals, such as Sapthagiri Hospitals, Nikhil Hospital, Owaisi Hospital, and others, consistently testified to blast injuries in patients. Thus, the entire testimony of Medical Officers establishes that the injuries and deaths caused in the Dilsukhnagar bomb blasts were a direct result of an IED bomb blast. Therefore, the medical evidence available on record supports the case of prosecution that the injuries sustained by the patients were caused by IED bomb blast.

vi) It is relevant to note that learned counsel appearing for the accused did not dispute the incidents, injuries deaths etc. Therefore, their contention that accused are not responsible for the same, and accused never committed any offence and prosecution failed to prove role played by the accused in commission of the offence by producing cogent evidence beyond reasonable doubt cannot be accepted.

27. SCENE OF OFFENCE AND OBSERVATION:

i) With regard to scene of crime and observation, perusal of record would reveal that Ex.P28 is the scene of crime, observation-cum-seizure report dated 21.02.2013. PW.76 deposed that on 21.02.2013, while he was present at the Dilsukhnagar in the evening hours after the bomb blasts and noticed the dead bodies and also injured persons. Nearly 20-30 persons shifted the injured to the hospital including himself. Then, the police cordoned the scene of offence and did not allow the outsiders to the scene of offence. He noticed a burnt cycle and scooter and some two wheelers at the scene of offence. The police seized MOs.1 to 5 and other material objects at the scene. He acted as panchayatdar for the scene of crime observation-cum-seizure report vide Ex.P27. MO.53 is the damaged piece of cycle tube and tyre. MO.54 is the damaged cycle stand. MO.55 is the damaged cycle fork and spring. MO.56 is the damaged cycle rim and rear wheel chain, MO.57 is the rear cycle mudguard, MO.58 is the damaged piece of cycle seat and seat cover, MO.59 damaged cycle stand locking part, MO.60 damaged cycle chain, MO.61 cycle spare parts, MO.62 cycle spring and spring base, MO.63 is the detonator wires, MO.64 is the brown colour shirt

piece, MO.65 is the damaged steel glass, MO.66 is the blood stained earth 1st blood pool, MO.67 is the blood stained earth from 2nd blood pool, MO.68 is the controlled earth related to Sl.No.15, MO.69 is the controlled earth related to Sl.No.16, MO.70 is the swabs collected from the explosion spot (scene of offence), MO.71 is the aluminium splinters collected from the scene, MO.72 is the damaged cycle spare parts, MO.73 is the pieces of cloth, MO.74 is the metallic pieces, MO.75 is the blood stained earth from 3rd blood pool, MO.76 is the blood stained earth from 4th blood pool, MO.77 is the controlled earth related to Sl.No.4, MO.78 is the controlled earth related to Sl.No.5, MO.79 is the swabs collected from scene, MO.80 is the swabs collected from the scooty, MO.81 is the flexi pieces, MO.82 is the damaged bicycle handle grip, MO.83 is the swabs and material objects collected from the carter, MO.84 is the damaged scooter doom (scooter side cover). He signed on all the slips affixed to MOs.53 to 84. The seizures were conducted in his presence and also in the presence of other panchayathdars. The panchanama was prepared at DTP centre at Dilsukhnagar. He also signed on Ex. P28 sketch. Ex.P28 is the rough-sketch prepared by the Investigating Officer in the presence of two panchas.

28. SEIZURE PANCHANAMAS:

i) With regard to seizure panchanama dated 26.02.2013, Ex.P29 is another scene of offence panchanama drafted on 26.02.2013 in the presence of both panchas, who are VROs of Jalpally Village and Mamidipally Village nearby the scene of offence, which reads as the Police officer with the assistance of the Clues team has earmarked objects and seized the following items from the scene of offence as material evidence, relating to the explosion. 01. One burnt and damaged motor cycle visible as registered No.AP 29 AV 9548, one burnt and damaged motor cycle visible as registered No.AP 9 AC 7----, having engine number 99F10E19917, one burnt and damaged motor cycle number not visible and having chassis number DUFBLF29443 and engine number DUMBLF00853, one partly damaged scooter visible registration number as AP 11 L 856, MO.85 is the burnt pieces of pedal of cycle, MO.86 is the pieces of electronics, MO.87 is the cycle parts, MO.88 is the pieces cycle tyres and tubes, MO.89 is the pieces of cell phone and mother board, MO.90 is the pieces of 9V battery, MO.91 is the pieces of white metal, MO.92 is the bag with number, MO.93 is the break rubber of cycle, MO.94 is the pieces of

cycle spokes and springs, MO.95 is the pieces of cycle seat, MO.96 is the pieces of metals found in scene of offence, MO.97 is the pieces of molten metallic parts and MO.98 is the pieces of cloths.

ii) With regard to Ex. P35 - scene of offence observation-cum-seizure panchanama, dated 21.02.2013 at backside of 72 Bus Stop, perusal of record would reveal that Ex. P35 is the said scene of offence observation-cum-seizure panchanama conducted by PW.49 at 2045 hours on 21.02.2013 at backside of 72 bus stop where bomb exploded on a bicycle. MO.6 is the damaged bicycle found remained with front wheel, handle engraved as K.W., middle portion of frame engraved as ZNO6913. MO.7 is the 5 (Five) pieces of cloth, having blue, Green, Black, and white stripes, collected from scene of offence. MO.8 is the seven iron Nails collected from the scene of offence. MO.9 is the 41 (Forty-one) Twisted Metal pieces, collected from scene of offence, MO.10 is the 1 (one) 9 volts Battery recovered from top of the bus shed, make Hi-watt, MO.11 is the 1 (one) 9 volts battery recovered from the scene of offence, make Thought, MO.12 is the swabs collected on the cycle frame at the scene of offence. MO.13 is the semi burned ploythene sheet, collected from the crater. MO.14 is the nuts fitted with bolts bind

with copper wire are collected near the stairs of complex exactly back side blasted bus stop. MO.29 is the control swab, Mo.30 is the control earth collected from the scene of offence, Mo.31 is the blood-stained earth collected from the scene of offence, MO.32 is the sharp needle like objects collected from crater, MO.33 is the swabs collected from roof of bus shelter, MOs.7 to 34 were produced in a sealed suitcase sent by the FSL. MO.6 also contains the slips put up by the FSL and the investigation authorities. With regard to Ex. P36 rough sketch of scene of offence was also drawn at the scene in the presence of panchas.

iii) Thus, the prosecution has proved the said seizure panchanams beyond reasonable doubt and accused did not elicit from the aforesaid witnesses during cross-examination to disbelieve the same. As discussed above, in a matter like this, minor contradictions and omissions can be ignored. Accused cannot take advantage of the same.

29. **OFFICIALS OF REVENUE DEPARTMENT AS PANCHAS:**

i) Learned counsel for the appellants contended that the Investigating Officers called the Officials of the Revenue

Department from different places/distant places to act as *panchas* which is in violation of the procedure laid down under Cr.P.C.

ii) In the light of the above, it is relevant to note that Section - 100 of Cr.P.C., deals with 'persons in charge of closed place to allow search' and the same is extracted as under:

“100. Persons in charge of closed place to allow search.

- (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- (2) If ingress into such place cannot be so obtained, the officer or other persons executing the warrant may proceed in the manner provided by sub-section (2) of section 47.
- (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- (4) Before making a search under this Chapter, the officer or other person about to make it shall call

upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

- (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.
- (6) The occupant of the place searched, or some person in his behalf, shall, in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- (7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- (8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under

this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).”

iii) In **Rajesh v. The State of Madhya Pradesh**¹⁹, the Apex Court held as under:

“It was pointed out that a panchnama can be used as corroborative evidence in the Court when (2013) 13 SCC 1 the respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act. This Court noted that Section 100 (4) to Section 100 (8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama:

(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

¹⁹. (2023) 15 SCC 521

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places.

If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

(h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued. It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court

concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.”

iv) In **Yakub Abdul Razak Memon v. State of Maharashtra through CBI, Bombay**²⁰, the Apex Court held as under:

“This Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when the respectable person who is a witness thereto gives evidence in

²⁰. (2013) 13 SCC 1

the Court of law Under Section 157 of the Evidence Act. This Court noted that Section 100(4) to Section 100(8) Code of Criminal Procedure stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public.”

v) In the light of the aforesaid principles, there is no irregularity in requesting the Revenue Officials as *panchas*. Thus, the aforesaid contention of learned counsel for the appellants is untenable.

30. INQUEST PANCHAS:

i) In this case, inquest *panchas* are also crucial witnesses to prove the guilt of the accused. The inquest reports, viz., Exs.P2, P3, P5, P7, P8, P9, P10, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22 and P25 along with Exs.P108 to 139 play a crucial role in establishing the nature of blasts. In the said reports, it was opined that the deceased individuals died due to the explosion of high explosive bombs. In view of the aforesaid evidence, the contention of learned counsel for accused Nos.2 to 5, Mr. R. Mahadevan, that the

twin blasts that occurred in Dilsukhnagar are not bomb blasts and only due to a transformer and a cylinder blast which resulted in deaths of 18 individuals including a newborn and 131 others serious injured is unsustainable.

31. The learned trial Court in the impugned judgment, considered the nature of blasts in paragraph Nos.76 to 80; evidence of complainants and injured in paragraph Nos.81 to 109, evidence of Medical Officers in paragraph Nos.110 to 151, inquest *panchas* in paragraph Nos.152 to 168, evidence of Investigating Officers in paragraph Nos.169 to 183, 190 and 201, evidence of *panchas* for scene of offence in paragraph Nso.184 to 189, evidence of FSL Experts with regard to scene of offence in paragraph Nos.202 to 204 and for video footage in paragraph Nos.207 to 211, evidence of Photographer in paragraph Nos.205 and 206, evidence of owners of Video recorded Cameras in paragraph Nos.212 and 213 and the evidence of Photographer with regard to scene of offence in paragraph Nos.214 and 215 and having discussed elaborately in paragraph No.220, gave reasons that Ex.P28 - rough sketch, Ex.P29 - another scene of *panchanama*, MOs.85 to 98 and also Ex.P35 - seizure *panchanama* dated 25.02.2013, Ex.P36 - rough sketch of

scene of Offence in Cr.No.56 of 2013 of P.S. Malakpet, Ex.P38 - seizure *Panchanama*, Inquest *Panchanamas*, MLC Certificate, Exs.P108 to 121 disclose that injured sustained blast injuries and post-mortem certificates, Ex. P122 to 139 discloses the deceased died due to multiple blast injures, Ex. P141 to 160 discloses that injured sustained the injures due to bomb blast, MLC Certificates Exs.P221 to 251, Exs.P276 to 279, Exs.P282 to 293 it is mentioned that injured sustained injuries due to Bomb blast.

32. The learned trial Court in the impugned judgment at paragraph Nos.234 to 235 discussed about Ex.P89 - FSL Report and observed thus:

“Ammonium Nitrite a chemical substance one of the ingredients of high explosives is found in the items 1, 3, 6, 7, 8, 9, 10, 13 & 14 and 17 to 19 (MO.6, 8, 11 to 29 & MO.31 to 33). Traces of Ammonium Nitrite also found in items 2, 4, 5, 11 & 12. He opined that items 1 to 19 are analysed as per the methods and ammonium nitrate, a chemical substance one of the ingredients of High Explosives is found in items 1, 3, 6, 7, 8, 9, 10, 13 & 14 and 17 to 19 (Mo.6, 8, 11 to 29 & Mo.31 to 33)”

33. The learned trial Court further discussed that that Ex. P88 - FSL Report given by PW.78 - Technical Officer in DMRL and his opinion in paragraph No.235 as under:

“He opined that the black deposit on both the samples contain magnesium on the surface in varying compositions and this could be due to residue of the explosives used.”

34. The learned trial Court also observed in paragraph No.237 observed thus:

“In this matter no material was placed by the defence counsel to support his contention or at least to create a doubt that it was a cylinder blast or a transformer blast or due to short circuit and he did not examine any witnesses from either of the Departments i.e., Electricity Department or Gas Agency. Even otherwise there is no suggestion to the Medical Officers who conducted the autopsy over the dead bodies of the deceased and examined the injured that those injuries are possible by cylinder blast or transformer blast.”

Thus, the learned trial Court considered the evidence, came to a conclusion in paragraph Nos.224 to 245 of the impugned judgment that the nature of the blast is due to IED Explosion.

35. CIRCUMSTANTIAL EVIDENCE:

i) With regard to circumstantial evidence, the depositions of PWs.54 to 58, 60 to 73, 102, 113, 116, 123, 124 and 127 to 129 are relevant. As already stated above, PW.54, relative of one Mr. Brahmaiah Chary, house owner of Abdullapurmet Village deposed that her house is also situated in the same locality. Accused No.4 under the guise of a student occupied the house of Mr. Brahmaiah Chary. Therefore, she identified him as accused No.4 during TIP conducted at Central Prison, Cherlapally. She was examined by the police and her statement was also recorded under Section - 164 of Cr.P.C. PW.55 was also examined. He is the husband of PW.54. Mr. Brahmaiah Chary, his relative, handed over the house keys to show the same to the persons who wanted the house on rent. His wife handed over the keys of the said house on rent to the person in the first week of February, 2013. On the date of bomb blast at around 3 to 4 p.m., accused No.4 handed over the keys of the said house to him stating that his mother was not feeling well and he was going to Mumbai. PW.55 identified that person as accused No.4. Accused Nos.2 and 3 were staying along with accused No.4 in the said house. From the date of bomb blast, accused Nos.2 to 4 were

not found in that house. He was also examined by the police as well as the Magistrate. He also participated in TIP conducted on 28.06.2014 at Central Prison, Cherlapally. Thus, there is no doubt with regard to identification of accused Nos.2 to 4.

ii) PW.58, shop owner of M/s. Mahalakshmi Agencies, deposed about three persons coming to his shop and purchasing of two big size cookers one day prior to the bomb blast. One person (accused No.2) came and asked him to sell two cookers, while two others (accused Nos.3 and 4) were standing outside the shop at a distance of 6 feet from him. He was also examined by the police as well as the Magistrate. He participated in TIP proceedings at Central Prison, Cherlapally, wherein he also identified accused Nos.2 to 4 during TIP conducted on 19.10.2013 and 28.06.2014. Ex.P51 is his signature on TIP proceedings dated 28.06.2014. Despite cross-examining this witness at length, nothing contra was elicited from him. By the evidence of this witness also, accused Nos.2 to 4 were identified as per the persons and the persons who are responsible for bomb blasts. In view of the same, it is clear that accused No.2 along with accused Nos.3 and 4 went to the aforesaid shop and purchased the aforesaid cookers. The same were used for filling the explosives

in making IED Bomb Blast. PW.47, the Investigating Officer in respect of Crime No.146 of 2013 of Saroornagar Police Station, conducted the seizure *panchanama* at 10.00 P.M. and seized the important material objects *vide* Ex.P27. In the said seizures, parts of the cooker were also there.

36. DISCLOSURES & CONFESSIONS OF ACCUSED:

i) Ex.P192 is the disclosure statement of accused No.2 given in connection with R.C. No.1& 2/2013/NIA/HYD before PW.138 on 02.09.2013 at Group Centre, Shamirpet, Hyderabad, in the presence of PWs.92 and LW.307, independent witnesses, which led to discovery of evidence under Section - 27 of the Evidence Act, and the same is as under:

“On the instructions of Riyaz Bhatkal, I booked my ticket revealing my identity as Danish through VRL travel agency in Mangalore and left for Hyderabad on 9th February 2013 at about 2 P.M. and reached in Hyderabad on next day i.e., 10-2-2013 around 8 AM. I got down from the Bus in Kukatpalli area and contacted Hassan from a nearby PCO and informed him that I have reached Hyderabad. He told me to come to LB Nagar. I proceeded to LB Nagar in an Auto and after reaching LB Nagar, again I contacted Hassan @ Tahseen @ Monu from a PCO situated near LB Nagar X roads at broad land hotel.

After receiving the call, Hassan @ Tahseen @ Monu who was already waiting at LB nagar X roads came and took me to the shelter place situated at Abdullapurmet near Ramoji Film City.

I found the shelter place to be suitable as the place is far off from the city, quite isolated, near to highway with transport convenience, no presence of owner and also there were many colleges nearby. After staying in Hyderabad for 3 days, I left for Mangalore by VRL travels on 12th February in the name of 'Danish I reached Mangalore on 13th morning. On 15th February 2013, I along with Waqas and the explosive material started from Mangalore by VRL travels and reached Hyderabad on 16th February. Two tickets were booked in the name of ANI' for this the We got down from the bus at Lakadi-kapul and reached LB Nagar by auto. Frontere we boarded a city bus and reached Abdullapurmet and the explosive material was kept in the shelter place, rented by Hassan @ Tahseen @ Monu

As per the instructions of Riyaz Bhatkal through chat, we conducted reccee in the areas of Malakpet, Abids, Koti, Begum Bazar and Dilsukhnagar. Within two days of our reccee, we decided to plant the bombs in Dilsukhnagar in the evening around 7 PM This place and time was selected, as there is huge Hindu population in the area and also large number of students gather in this area around that time

We purchased a plastic sheet of 1 meter from a shop after crossing the Chadarghat bridge on the main road of Putlibowli for the purpose of packing and filling the explosives inside the cooker and not to contaminate the explosive with cooker material.

Two to three days before the blast, we also conducted a test blast to check the explosive at a far off deserted place on a hill, which is about 5 to 6 kms after crossing Abdullahpurmet. Myself, Waqas and Hassan went in an auto and got down from the auto on the main road and walked inside for about 20 minutes, searching for a suitable place to conduct the test blast. We found a hillock on the right side near which another road was leading towards left. We went on to the hillock on the right side and found a suitable place on the top of the hillock to conduct the test blast. For the test blast, we made all preparations at our shelter place. We took along with us one separate detonator and one half of the ANFO tube with detonator fixed into it and a 9 volt battery. On the top of the hillock, we dug a small pit with a knife and first exploded the detonator with a 9 volts battery from a distance to check the sound that it would create. Later in the same pit, the explosive along with the detonator was kept and exploded from a distance using the 9 volts battery and it was conducted successfully. Later the remnants of the test blast were cleaned.

On 20-02-2013 afternoon at about 2 P.M. myself and Hassan @Tahseen@ Monu, purchased an old cycle

froth one cycle repairer shop situated on the way way near a mazaar leading from Yashoda Hospital, Malakpet towards TV tower for Rs 1400/-. The same was taken to Malakpet railway station parking stand and parked the cycle. A receipt was taken from the counter. We tried for another old cycle but we could not get it. While trying for another cycle in the market, somebody told that on every Thursday, there will be a market, where second hand articles, including cycles are sold. We decided to buy another cycle on next day from that market. Then we went to Lakdikapul at about 4 P.M. in an auto and booked return tickets for Waqas and myself in the name of Nabeel, to go to Bangalore on 21-02-2013 in SL travels.

At about 09.00 PM, Waqas and myself went to one Sri Mahalakshmi steel shop, Waqas and myself stayed at entrance of the shop. Monu went inside the shop and purchased two 7½ litres capacity pressure cookers of Ganga make for Rs 1250/- each for preparing the IED. We returned to Abdullahpurmet house and engaged in preparation of IEDs. We kept the Plastic sheet inside the cooker and filled with Explosive material.

On the next day i.e, on 21-2-2013 morning, I along with Hassan @ Tahseen left for purchasing another cycle from Thursday market leaving Waqas at the shelter place to complete the preparation of IEDs. At about 11.15 hrs Hassan @ Monu and myself reached the Thursday market and came to know from auto driver that it is called as 'jummerath bazaar. We purchased another old cycle from

one cycle seller for Rs. 1500/- from a place near the Masjid, where there were other cycle sellers also selling old cycles. The cycle seller from whom we purchased the cycle is of about 5'7" height, black complexion, brown colour hair, white beard and moustache, wearing glasses, normal built and wears Shirt& pant. While purchasing the cycle, I heard somebody from behind calling this cycle seller by name as Pasha.

From there we went to Malakpet railway station cycle stand on the same cycle and parked it in the same cycle stand, where we parked the first cycle on the previous day and took the receipt. The same person who was present on the previous day while parking the cycle was also present at that time. He identified me and Hassan and asked us, "kal bhi ek cycle aap ne rakhi thi, woh cycle bhi yahi pe hai na" (you have parked one cycle yesterday and it there we went to Abdullahpurmet house by an auto is still parked here). From there we went to Abdullahpurmet house by an auto.

At about 4 P.M. while we were waiting outside, Waqas prepared the IED by fixing the time for explosion at 7 P.M. After completing our preparation of IEDs etc.. the remaining items viz, two digital watches, handles and whistles of cooker and trolley bag used for carrying explosives were thrown in two different places after damaging them. At about 5 PM, we vacated the house and Hassan informed the house care taker that his mother is serious and he is leaving to Mumbai and handed over the

keys of the shelter place to him and reached LB Nagar X road in an auto along with IEDs. From there we engaged an auto and went to the cycle stand situated at Malakpet Railway Station. While Waqas was waiting on the road along with IEDs and our baggage, myself and Hassan @ Tahseen @ Monu went inside the parking place and returned receipts at the counter and paid the amount and collected the cycles.

After collecting the cycles, the IEDs, which were assembled in two pressure cookers and kept in white color fruit cartons purchased from fruit vendors, were kept on two cycles, duly checking the mechanism. The job of planting / parking the cycles carrying IEDs on its carrier to the blast spot, that is at (1) Dilsukhnagar Bus Stop was performed by Waqas and (2) A1 Mirchi Centre was performed by Hassan Tahseen @ Monu. I followed them upto the places of planting of IEDs mounted cycles by observing and guiding them.

After planting the IEDs, Waqas and myself left to Malakpet by foot and from Malakpet we went to Lakadi-ka-pool by auto and Monu alone left to an unknown place. We learnt that two IEDs were successfully exploded and many were injured and some people succumbed to their injuries. We felt happy on hearing the news of explosion. Waqas and myself returned to Bangalore on the earlier booked tickets. From Bangalore to Mangalore we travelled by Karnataka state Road Transport Bus. As per the instructions of Riyaz Bhaktal through chat I left

Mangalore for Bangalore to proceed to Nepal, while Waqas stayed back in the same flat. After reaching Nepal Md. Ahmed Sidibapa @ Yasin Bhatkal provided shelter to me on the instructions of Riyaz Bhatkal. During my interaction with Yasin Bhatkal I came to know that he had the knowledge of Hyderabad twin blasts. He was also closely monitoring our activities along with Riyaz Bhatkal. Yasin also helped Riyaz Bhatkal in procuring the explosives for Dilsukhnagar, twin blasts.”

ii) The above said disclosure statement would clearly show as to how the accused committed the offences in respect of twin blasts and the said statement corroborates with prosecution witnesses about involvement of accused Nos.1, 3 and 4.

iii) Further, PW.58 deposed that accused No.2 came inside the shop, whereas the disclosure statement of accused No.2 refers that accused No.4 went inside the shop and purchased the cooker. Though there is a contradiction on the said aspect between the evidence of PW.58 and the disclosure statement of accused No.2, the same is insignificant and would not tilt the case of prosecution. His disclosure statement would also reveal with regard to test blast near Ramoji Film City. Thus, pursuant to the disclosure statement of accused No.2, the Investigating Officer examined PW.58 and also

collected tax invoice produced by PW.58 in the presence of witnesses *vide* seizure memo, dated 28.09.2013. In view of the evidence of PW.58 and the disclosure statement of accused No.2, it is clear that the accused used the aforesaid cookers in commission of offences and there is no contra evidence to disprove the case of the prosecution. Thus, the prosecution is successful in proving its case on the aspect of accused purchasing the cooker and utilized the same for keeping explosives in it.

iv) PW.138 arrested accused No.2 and produced before the Special NIA Court at New Delhi. A transit Warrant was granted and he was produced before the learned trial Court, Hyderabad. Police custody was also granted from 20.09.2013 to 08.10.2013.

v) With regard to Ex.P331-the disclosures-cum-IED demonstration made by accused No.3 in connection with RC No.1 & 2/13/NIA/HYD is also relevant to discuss herein. At the time of commission of offence, he was aged 24 years. He hails from Mustafabad, Punjab, Pakistan. He disclosed about the bombs which exploded at Dilsukhnagar, Hyderabad, were made and planted by him along with accused Nos.2 and 4. He learnt the art of making bombs

at Dilsukhnagar, Hyderabad; at North Waziristan, FATA Area. He underwent Taliban training in the said area for 25 days. The trainer's name was Nasar Bhai @ Nasarulla. He completed the training of about 25 days and 12 days of mixture of explosives training. He learnt three types of explosives mixture. He had mastered the art of making bombs, had practiced and successfully tested those bombs by exploding them at isolated locations near Deshmukh Village of Hyderabad along with accused Nos.2 and 4. If he is provided with different components of IEDs (Bombs), such as 1) Soldering Iron 25watts, 2) Soldering lead, 3) Vero mother board, 4) 9 volt battery, 5) 9 volt battery clip, 6) Multi-meter, 7) Precision screw driver set, 8) Single strand wire-1mtr, 9) 1mt normal plastic electrical wire, 10) Jumper wire, 11) 1 kilo ohm resistor, 12) 1.5 LED one piece, 13) 10 kilo ohm resistor, 14) IN4148 diode, 15) MCR 100.6 SCR, 16) Relay 5-6 volt, 17) Digital watch 1 piece, 18) Wire cutter, 19) Red cellophane tape, 20) Paper cutter 21) Detonators, 22) Cooker, 23) Explosives etc., he can demonstrate how he made the bombs, which were blasted by him and other associates, accused No.4 planted at A1-Mirchi Centre and 107 Bus Stop at Dilsukhnagar, Hyderabad, on 21.02.2013.

vi) His disclosure statement further reveals that in the presence of the above mentioned witnesses and NIA Officers on 08.06.2014, he also learnt the art of making bombs (which were planted at Dilsukhnagar, Hyderabad on 21.02.2013) and successfully tested those bombs by exploding them and if he is provided with the different components of IEDs, he can demonstrate the complete procedure of making such IEDs. Accordingly, he was provided with limited sample components for the purpose of demonstration of bomb making in the presence of the above mentioned witnesses viz.

- 1) Soldering Iron, 2) Soldering lead, 3) Vero mother board, 4) 9 volt battery, HW company, 5) 9 volt battery clip, 6) Multimeter, 7) Precision screw driver set, 8) Single strand wire-very thin, 9) 1mt normal plastic electrical wire, 10) Jumper wire (assorted), 11) 1 kilo ohm resistor, 12) 1.5 LED one piece, 13) 10 kilo ohm resistor, 14) IN4148 diode, 15) MCR 100.6 transistor, 16) Relay 5-6 volt, 17) Taixun Digital watch, 18) Wire cutter, 19) Red cellophane tape, 20) Paper cutter, 21) Dummy Detonators, 22) Cooker -5 ltrs, 23) Dummy explosives (Mud) etc.

A new video SD Card BI1309422908G of 8GB capacity for recording the video provided to the NIA videographer Raju for recording the entire process of IED making

demonstration given by accused No.3. He was then asked to demonstrate the procedure of bomb making step by step along with his own commentary on each step. During preparation, he asked to provide Internet to verify the pin configuration of the SCR 106. He gave the access in his personnel laptop provided with internet connectivity. He googled and typed SCR 106 leg, and verified the pin configuration K (Cathode), A (Anode), G (Gate).

vii) Accordingly, accused No.3 soldered the above component on the mother board for completion of the timer circuitry. The video SD Card No B11309422908G containing the recording of the process recorded by NIA Photographer GS Raju, was duly packed and sealed in Paper cover and thereafter handed over to PW.157, the Chief Investigating Officer, NIA, Hyderabad for further investigation. Thereafter, accused No.3 demonstrated the process of IED making with the help of electronic components provided which was duly video graphed and the circuit was perfectly working on bench test, the sample dummy IED made by him and the remnants/used articles left over were duly packed, sealed in a cover and taken into police custody. On completion of recording of the above process, the entire proceedings were drawn up and read over to

accused No.3 in the language he understood, Hindi/English and the witnesses present. All concerned accepted the same as correctly recorded and put their signatures on the memorandum as a token of its correctness. The specimen of the seal used during the proceeding, is embossed hereunder. The proceedings were concluded at 1745 Hrs. Recording of Disclosure and demonstration of IED is commenced from 1500 Hrs to 1745 Hrs. Accused No.3 was arrested on 23.05.2014 by PW.157 and brought before the Special NIA Court at New Delhi. A Transit remand was granted on 23.05.2014 and he was produced before the learned trial Court, wherein accused No.3 was granted police custody from 25.05.2014 to 09.06.2014.

viii) At the same time, Ex.P388 - disclosure *panchanama* by accused No.3 is also important. Ex.P388 would reveal that as per directions of accused No.1, he and accused No.3 moved from Belgaum to Mangalore in the month of September 2012. In Mangalore they rented a flat in an Apartment building near Hampankatta. During their stay at Mangalore, he used to communicate with accused No.1 with online chatting from the Internet cafes namely 1) Falnir- Cyber point 2) Angel Cyber Gallery 3) Cyber Fast. In the first week of February, 2013, accused No.1

informed him over chat that in a few days explosive material would be delivered to him in Mangalore and he has to carry out blasts in Hyderabad along with accused Nos.3 and 4. As a part of preparation, accused No.1 sent money through WUMT and also through *hawala*. The money sent by WUMT was received from Supama Forex Pvt. Ltd./WUMT outlet situated at Hammpankatta circle and *hawala* money was received from Ding Dong Shop owner, Market Road, Mangalore. After receiving the money, he and accused No.3 purchased digital watches from City Centre mall, Hampankatta and one mobile set and SIMS from Cell U com, near Hampankatta and another SIM card from Bandar road, Mangalore.

Ex.P388 further discloses that in the first week of February 2013, he received the explosive material from an unknown person in a golden colour trolley bag sent by accused No.1. The material was delivered near Unity Health Centre, Mangalore. (At the time of delivery one watchman suspected him and the person who delivered the explosive and questioned their identity and the contents in the trolley, but they managed to escape). After receiving the explosives, he kept the said material in their flat. Subsequently, he booked his ticket through travel agency situated in Mangalore and he came to Hyderabad and

contacted accused No.4 from a PCO situated near L.B. Nagar X roads at Broad Land Hotel. After receiving the call, accused No.4, who was already waiting at L.B. Nagar X roads, came and took him to the shelter place situated at Abdullapurmet, near Ramoji Film City. He found the shelter place suitable and left for Mangalore. Later the explosive material was taken to Hyderabad by him and accused No.3. At Hyderabad, the explosive material was kept in the shelter place, rented by accused No.4 at the outskirts. As per the instructions of accused No.1, they conducted recce in the areas of Malakpet, Abids and Dilsukhnagar and decided to plant bombs at Dilsukhnagar. Two to three days before the blast day, they also conducted a test blast to check the explosive at a far off deserted place from Abdullapurmet.

a) Ex.P388 further discloses that he, Waqas and accused No.4 purchased one old cycle from one cycle repairer shop situated on the walk way near a mazaar leading from Yashoda Hospital, Malakpet towards TV tower on 20.2.2013 around 2.00 P.M., and parked the cycle at the cycle stand situated at Malakpet Railway Station and went to Lakdi-ka-pul, in an auto-rickshaw and booked return tickets in his name and in the name of Waqas. Subsequently, on the same

day, he and accused No.4 purchased two pressure cookers having capacity of 7 ½ litres each from one Sree Maha Laxmi Steel Palace situated near to the LB Nagar X roads to place the IEDs in them to Increase the pressure. On the next day i.e., on 21.02.2013 morning, he along with accused No.4 left for purchasing another cycle from Thursday market leaving Waqas at the shelter place to prepare the IEDs. At about 11.00 hrs., himself and accused No.4 reached Thursday market and purchased another old cycle from one person and went to Malakpet railway station cycle stand on the same cycle and parked it at the cycle stand, where we parked the first cycle. In the evening after completing their preparation of IEDs etc., the remaining items viz., two digital watches, handles and whistles of cooker and trolley bag used for carrying, explosives were thrown in two different places after damaging them. At about 5.00 P.M., they vacated the house and accused No.4 informed the house care taker that his mother is serious and he is leaving to Mumbal and handed over the keys of the shelter place to him and reached L.B. Nagar X road in auto along with IEDs and their temporary baggage and went to the cycle stand situated at Malakpet Railway Station in another auto-rickshaw, where he and accused No.4 went and collected

cycles, while Waqas was waiting with on the road along with IEDs and our baggage. After collecting the cycles, the bombs, which were assembled in two pressure cookers which were kept in white colour fruit cartons purchased from fruit vendors, were kept on two cycles, duly checking the mechanism. The job of planting/parking the cycles carrying IEDs on its carrier to the blast spot, i.e., (1) Dilsukhnagar Bus Stop was performed by Waqas and at (2) A-1 Mirchi Centre was performed by accused No.4. After the explosion, he and Waqas returned to Mangalore. The next day, he left Mangalore for Bangalore to proceed to Nepal, while Waqas stayed back in the same flat. The relevant portion of the disclosure is reproduced hereunder:

“If, I am taken to Mangalore and Hyderabad, I will identify and point out all the places of transactions which occurred in conducting the twin blasts at Dilsukhnagar, Hyderabad along with other places of receiving explosive used in Mumbai, Pune and places of our visit to have food etc.”

b) The above disclosure was read over and explained to the accused Asadullah Akhtar @ Haddi by Sri. K. Sunil Emmanuel, IPS Superintendent of Police, NIA, Hyderabad in Hindi and Urdu and the accused admitted to be true and signed.

ix) Ex.P493 - disclosure statement-cum-plotting memo, dated 29.05.2014 by accused No.3 would reveal that he is a resident of Pakistan and underwent Jihadi Training in Explosives i.e., preparation of IEDs, use of Hand Grenades, training in Weapons including small arms, like Pistol and other weapons, such as AK-47, Light Machine Gun, Rocket Launchers. As per the instructions of accused No.1, he came to India and joined the other accused, conspired with them and participated in several bomb blasts across the Country including Dilsukhnagar Twin Bomb Blast case. He voluntarily stated that if he is provided a computer system with internet facility, he will plot the locations of his house, and the places where he underwent Jihadi Training with Terrorist outfits in Pakistan, and place where Asadullah Akhtar had received phone call from explosives supplier at Mangalore on Google earth maps.

x) Ex.P389A & B are the disclosure *panchanama*, dated 26.05.2014 of accused No.4 and the same would reveal that on 24.05.2014, learned trial Court gave police custody of accused No.4 for a period from 24.05.2014 to 02.06.2014. Accordingly, he was interviewed and questioned about his role in the subject bomb blasts. His disclosure statement is as under:

“In the third week of January 2013, Riyaz asked me to go to Hyderabad. I told Asif that I was going to Hyderabad for taking admission in M.B.A. course. I told him that my name in Hyderabad would be Sameer. I asked Asif to suggest or provide any accommodation at Hyderabad for 3-4 days till the arrangement of another accommodation is made. Asif arranged for an accommodation at his cousin Zeeshan's room situated near St. Mary College, Deshmukhi village. Zeeshan was pursuing Diploma course from this college. It was in a village and the room had a landmark i.e. Mobile Tower and behind the room was a stone cutting shop. I reached Hyderabad via train in the last week of January 2013 and stayed at Zeeshan's room for 3-4 days.

During my stay with Zeeshan, I tried to get rented house in and around Deshmukhi village. I moved and enquired about the available rented houses and I called some agents in that area. Finally, I found a to-let board in Abdullapurmet area with mobile number. I have contacted over that number for lending the "house on rent, upon which he directed me to meet one Dr. Sudha Madhuri, who is his relative and reside in the same locality nearby. I have visited the Medical Shop and met Dr. Sudha Madhuri, introduced myself as student. After verifying the room and locality, I found it suitable for occupation. The rent was decided to 1500/- per month. I have informed the same to Riyaz Bhatkal over chatting.

Riyaz told me that Daniyal will visit Hyderabad to check whether this accommodation was suitable for their purpose. I was carrying the Idea SIM purchased from Ghaziabad with me in Hyderabad. This number was passed on to Daniyal by Riyaz on 10-2-2013, Daniyal came to Hyderabad and called me through PCO Kukatpalli. I instructed him to hire an auto and come down to LB Nagar X roads. After his reaching, again he called on my phone through PCO and I received him at L.B. Nagar, Hyderabad and took him to the hideout. "Daniyal carefully inspected the surrounding areas and informed Riyaz that the hideout was safe. Then it was decided that Waqas would join them.

Daniyal left Hyderabad for Mangalore. Again after 4/5 days after his leaving, Daniyal came to Hyderabad along with Waqas and explosives. This time, they were carrying a bag and had also brought a laptop with them. Riyaz had provided them with a list of probable places for reccee. Waqas had already prepared 4-5 circuits. As per the instructions of Riyaz Bhatkal through chat, we conducted reccee in the areas of Malakpet, Abids, Koti, Begum Bazar and Dilsukhnagar. Within two days of our reccee, we decided to plant the bombs in Dilsukhnagar in the evening around 7 PM. This place and time were selected, as there is huge Hindu population in the area and also large number of students gather in this area around that time.

We purchased a plastic sheet of 1 meter from a shop after crossing the Chadarghat bridge on the main road of Putlibowli for the purpose of packing and filling the explosives inside the cooker and not to contaminate the explosive with cooker material. Two to three days before the blast, we also conducted a test blast to check the explosive at a far-off deserted place on a hill, which is about 5 to 6 kms after crossing Abdullahpurmet. Myself, Waqas and Haddi went in an auto and got down on the main road and walked inside for about 20 minutes, searching for a suitable place to conduct the test blast. We found a hillock on the right side near which another road was leading towards left. We went on to the hillock on the right side and found a suitable place on the top of the hillock to conduct the test blast. For the test blast, we made all preparations at our shelter place. We took along with us one separate detonator and one half of the ANFO tube with detonator fixed into it and a 9 volt battery. On the top of the hillock, we dug a small pit with a knife and first exploded the detonator with in the 9v battery from a distance to check the sound that it would create. Later in the same pit, the explosive along with the detonator was kept and exploded from a distance using the 9 V battery and it was conducted successfully. Later the remnants of the test blast were cleaned.

On 20-02-2013 afternoon at about 2.P.M. myself and Haddi purchased an old cycle from one cycle repairer shop situated on the walk way near a mazaar leading from

Yashoda Hospital, Malakpet on the tower for Rs. 1400/-, whereas Waqas stood at a farer distance. The cycle was taken to Malakpet railway station parking stand and parked. A receipt was taken from the counter. We tried for another old cycle but we could not get it. While trying for another cycle in the market, somebody told that on every Thursday there will be a market, where second hand articles, including cycles are sold. We decided to buy another cycle on next day from that market.

At about 09.00 PM, Waqas and Haddi went to one Sri Mahalakshmi steel shop, Waqas and Haddi stayed at entrance of the shop. I went inside the shop and purchased two 7 ½ litres capacity pressure cookers of Ganga make for Rs. 1250/- each for preparing the IED. We returned to Abdullahpurmet house and engaged in preparation of IEDs. We kept the Plastic sheet inside the cooker and filled with Explosive material.

On the next day i.e, on 21-2-2013 morning, I along with Haddi left for purchasing another cycle from Thursday market leaving Waqas at the shelter place to complete the preparation of IEDs. At about 11.15 hrs myself and Haddi reached the Thursday market and came to know from auto driver that it is called as 'jummerath bazaar. We purchased another old cycle from one cycle seller for Rs. 1500/- from a place near the Masjid, where there were other cycle sellers also selling old cycles. The cycle seller from whom we purchased the cycle is of about 5'7" height, black complexion, brown colour hair,

white beard and moustache, wearing glasses, normal built and wears Shirt& pant. While purchasing the cycle, we heard somebody from behind calling this cycle seller by name as Pasha.

From there we went to Malakpet railway station cycle stand on the same cycle and parked it in the same cycle stand, where we parked the first cycle on the previous day and took the receipt. The same person who was present on the previous day while parking the cycle was also present at that time. He identified me and Haddi and asked us, "kal bhi ek cycle aap ne rakhi thi, woh cycle bhi yahi pe hai na". (you have parked one cycle yesterday and it is still parked here). From there we went to Abdullahpurmet house by an auto.

At about 4 P.M. while we were waiting outside, Waqas prepared the IED by fixing the time for explosion at 7 P.M. After completing our preparation of IEDs etc., the remaining items viz., two digital watches, handles and whistles of cooker and trolley bag used for carrying explosives were thrown in two different places after damaging them. At about 5 PM, we vacated the house and I informed the house care taker that my mother is serious and I have to leave Mumbai and handed over the keys of the shelter place to him and reached LB Nagar X road in an auto along with IEDs. From there we engaged an auto and went to the cycle stand situated at Malakpet Railway Station. While Waqas was waiting on the road along with IEDs and our baggage, myself and Haddi went

inside the parking place and returned receipts at the counter and paid the amount and collected the cycles.

After collecting the cycles, the IEDs, which were assembled in two pressure cookers and kept in white colour fruit cartons purchased from fruit vendors, were kept on two cycles, duly checking the mechanism. The job of planting/parking the cycles carrying IEDs on its carrier to the blast spot, that is at (1) Dilsukhnagar Bus Stop was performed by Waqas and (2) A1 Mirchi Centre was performed by me. I followed them up to the places of planting of IEDS mounted cycles by observing and guiding them.

After planting the IED at A1 Mirchi Centre, I took an auto and reached Nampalli, Railway Station and boarded a train for Ranchi at about 8.30 PM in general bogie, as decided earlier.”

xi) Ex.P494 - disclosure-cum-Plotting memo of accused No.4, dated 29.05.20214 would reveal that he along with accused No.5 and others had participated and conspired to carry out several bomb blasts across India. He voluntarily stated that if he is provided a computer system with internet facility, he would plot the locations of his hideouts in INDIA, on Google earth maps. The computer system from the office was identified to conduct the proceedings for recording the proceedings of Disclosure-cum-Plotting Memo.

xii) Ex.P419 - disclosures of accused No.5 is as under:

“Mohammed Ahmed Siddibapa @ Yasin Bhatkal @ Sharukh has disclosed about chats made between him and another person namely Riyaz Bhatkal during the police custody at Delhi on 11.09.2013. The IO has also showed us the copy of disclosure memo made on the disclosure of Mohammed Ahmed Sidibapa @Yasin Bhatkal) on 11.09.2013 at New Delhi in connection with the Disukhnagar Twin Blasts at Hyderabad. Once again, the IO has given the copy of the disclosure memo to Mohammed Ahmed Sidibapa @Yasin Bhatkal and Yasin Bhatkal disclosed the following:

After my arrest and when I was in custody of NIA at New Delhi, on 11-9-2013, I have disclosed that "I had chat discussion with Riyaz Bhatkal on mail id patara_singh@yahoo.com. used by Riyaz Bhatkal through my mail id hbhaddur@yahoo.com, used by me and I can download all these chat discussion if I am provided a computer with internet facility" and " thereafter based on that those e- mail chat discussion was downloaded and print outs were taken, which were signed by me and witnesses I further say that in that chat discussion, we had discussion with regard to Hyderabad blast before and after its execution. We use to chat in coded language using abbreviations, which we both could understand easily.

➤ **02/12/12 08:38:23 hrs** - In this chat, Ahmed asks Riyaz

about the preparations and progress done to carry out blast at Hyderabad to which Riyaz replies that there is difficulty in procuring cvv (explosive) as the person who has to supply the explosive is hesitating to which Ahmed replies that the explosives could be old. Riyaz then tells Ahmed that the person supplying explosives also has new (fresh) explosives and also that the person supplying explosive is a middle man.

- **30/12/12 09:19:15 hrs-** In this chat, accused Ahmed asks Riyaz about the preparations and progress about carrying out blast at Hyderabad to which Riyaz replies that have you checked out the place. Whether blast can be carried out there. Riyaz also says that cheeje (explosives) will be available within a week. Ahmed tells Riyaz that very effective bomb blast is to be done. (mast sa job chahiye). Riyaz tells Ahmed that Asadullah Akhtar @Daniyal was asking whether Ahmed is coming (aanewale kya) to participate in the blast. Riyaz tells Ahmed that he is trying to procure explosives from the person who had supplied explosive for city (Mumbai blast). Accused Ahmed advices Riyaz that we should try and get white colour gelatin sticks as it is more effective and reliable when compared to pink color gelatin sticks.
- **27/01/13 09:39:00hrs -** In this chat, Riyaz informs Ahmed that Hazi(Monu @Tehseen Akhtar)is leaving for Safar par nikhlega aaj. (Journey to Hyderabad) for carrying out bomb blast, finally he was requested by Riyaz to pray for success of the task by Monu.

- **07/02/13 09:04:47hrs**-In this chat, Riyaz discusses with Ahmed that Monu @ Tehseen was searching for a rented house at Hyderabad for last one week. Today, Monu has been successful and getting it. Riyaz further tells Ahmed that Monu@Tehseen is at Hyderabad where bomb blast will be done.
- **11/02/13 09:21:34 hrs**- In this chat, Riyaz tells accused Ahmed Sidibapa that Daniyal @ Asadullah Akhtar has reached Hyderabad and he is with Monu@Tehseen Akhtar Waqas has not gone there as he was busy with some other job i.e. receiving explosives from supplier.
- **11/02/13 09:25:52 hrs** - In this chat, Riyaz requests accused Ahmed to pray for success carrying out bomb blast in Hyderabad, Riyaz then asks accused Ahmed whether any explosives is available at Nepal.
- **11/02/13 09:27:04 hrs**- In this chat, Riyaz tells accused Ahmed that explosives are not available. Riyaz asks Ahmed whether ammonium nitrate is available. To which accused Ahmed replies that ammonium nitrate is not available but has brought some hydrogen peroxide.
- **16/02/13 09:37:10 hrs**- In this chat, Riyaz informs accused Ahmed that Daniyal @Asadullah Akhtar and Waqas have left for Hyderabad to meet Monu@Tehseen Akhtar but Monu @ Tehseen has gone missing (Monu ka koi msg nahi) and tells Ahmed not to stay at any place in Nepal which is known to Monu@Tehseen as there are possibilities that he could have been caught by the police(agencies).

- **17/02/13 08:58:59 hrs.** In this chat, Riyaz asks accused Ahmed to take some rental accommodation in Nepal as it may be risky till the return of Monu @Tehseen to his safe house for which Ahmed replies that he has arranged more than one rental accommodation in Nepal. Riyaz further asks Ahmed that he wants to call Daniyal @Asadullah to Pakistan via Nepal after Hyderabad blast and requests Ahmed to arrange for accommodation in Nepal.

xiii) Exs.P260 and 260A - disclosure statement of accused No.5 was taken in RC No.6/2012/DEL, dated 02.09.2013, which led to discovery of e-mails accounts used by him and accused No.1 for communication and he also disclosed some Code words which they used for communication in the above manner.

xiv) Ex.P326 - disclosure statement of accused No.6 in connection with RC No.1 & 2/2013/HYD, dated 14.04.2015 is as under:

“Ajaz Shaikh @ Samar Armaan Tunde @ Sagar @ Aizaz Saeed Shaikh has disclosed in his disclosure statement that, “On the direction of Mohsin Chaudhary and Riyaz Bhatkal, I had provided fake Ids, Hawala money, SIM cards, mobile phones to the members of Indian Mujahedeen namely Yasin Bhatkal, Asadullah Akhtar @ Haddi and Tehsin Akhtar @ Monu at different occasions

and different places. In 2010 I had purchased Dell Lap-Top from Mumbai. I used to scan voter IDs, D/L and other documents from Google with the help of Photoshop software installed in my Lap-Top., I was preparing fake documents to be supplied to terrorist of Indian Mujahedeen on the direction of Riyaz Bhatkal and my Jeeja Mohsin Chaudhary. I also used to mail fake documents to Riyaz Bhatkal whenever he asked me to do so.

I have stored a number of fake elections Ids, D/L, Passports, Photos and other Jihadee material in my Lap-Top and Pen drives which I can get recovered, I was using "true crypt" and "Axcrypt" encryption software's/Keys to encrypt the files wherein fake documents were prepared by me. All these fake documents stored in my Lap-Top and Pen drives have been kept in a "true crypt". Encrypt drive. First files were encrypted using "Axcrypt" and then drive was encrypted using "True crypt. The codes were "81458145" for "Axcrypt" and "forgivemeyarehman001" for true crypt.

A-6 explained that this encrypted file uploaded by him to Mohsin Chowdhury through wikisend. The file contains the following data naam:vikas yadav; address:chas bokaro Jharkhand", A-6 explained that he created another fake ID with this address and uploaded to Mohsin Chowdhury through wikisend. In "aaz file contains Voter Identity Card of one Girish Chand Joshi S/O Jeevanand Joshi, H.No. 497B. Street/Mohalla:

Shimla Rooda, Chandrabani, Vil/Town: Vasant Vihar, Dist.: Dehradun, Pin: 248007, Identity Card No.1.152308815, Placa Dehradun, Date: 02-01-2007 bearing photograph of Tehsin Akhtar @ Monu (A-4) Then the same fake ID printed through printer in the presence of the above witnesses and A-6. He also shown some other files containing fake IDs created with A-2 photos by him. (1) Lokesh Kumar S/O Ravi Sinha, Bailey Road, patna, bihar (Path: EVIDENCE-Dream- TC-root-pass-New folder(2)-new folder(2)-final. This file contains file downloads of passport containing photo of A-2 Asadullah Akhtar Haddi. Fake passport for A-2 in the name of Ravi Sinha, S/O Laxmi Sinha, Name of spouse- Jaya Sinha, Address: Bailey Road, Patna-800015 Bihar with fake passport no. G98961166 and another fake passport with same address and fake passport number: G9116196. Another fake passport with photograph of A-2 Asadullah Akhtar @Haddi with name of P. Kumar Lokesh, Male, D.O.B-08/19/1982, Place of Birth Patna with fake passport No.G9896116. Then the same fake ID printed through printer in the presence of the above witnesses and A-6. This "final" file are in BMP file, JPG file format and contains downloads of fake IDs. Another file shown by As contains fake ID with photograph of A-4 in the name of Armaan, S/O Aman So address: 40/C, Gauri Shankar Nagar, PO-Doranda-20, Distt-Ranchi, PIN-834002 with ID No. WOE3292182. Then the same fake ID printed through printer in the presence of the above witnesses and A-6. Another file shown by A-6

contains 10 ID No. PSK0163822 issued by Election Commission of India in the name of Narendra Kumar S/O Prakash Kumar and ID No. RRS0135747 in the name of Pravin Kartal, S/o Ajay Kartal and informed that same were forwarded to Mohsin Chowdhury.”

xv) Disclosure statement of accused No.6 was taken by PW.157 in RC No.1 & 2/2013/HYD, dated 16.04.2015, which is Ex.P451, whereas, disclosure statement of accused No.6, dated 06.09.2014 in RC No.6/2012/DEL is Ex.P441, which is as under:

“Ajaz Shaikh @ Samar Armaan Tunde @ Sagar @ Aizaz Saeed Shaikh has disclosed in his disclosure statement that, “on the direction of Mohsin Chaudhary and Riyaz Bhatkal I had provided fake Ids, Hawala Money, SIM cards, Mobile phones to the members of Indian Mujahedeen namely Yasin Bhatkal, Asadullah Akhtar Haddi and Tehsin Akhtar @ Monu at different occasions and different places. in 2010 I had purchased Dell Laptop from Mumbai. I used to scan voter Ids. D/L and other documents from Google with the help of Photoshop software installed in any laptop. I was preparing fake documents to be supplied to terrorist of Indian Mujahedeen on the direction of Riyaz Bhatkal and my Jeeja Mohsin Chaudhary I also used to mail fake documents to Riyaz Bhatkal whenever he asked me to do.

I had stored a number of fake election Ids, D/L. passports, photos and other Jihadi material in my laptop and pen drives, which I can get recovered. I was using 'truecrypt and "Axcrypt" encryption software sikeys to encrypt the files wherem fake documents were prepared by me. All these fase documents stored in my Laptop and pen drives have been kept in a "truecrypt" encrypted drive. First files were encrypted using "Axcrypt" and then drive was encrypted using "Truecrypt". The codes were "81458145" for "Axcrypt" and "Forgivmoyarehman001 for truecrypt

I can help in arresting other members of Indian Mujahedeen I have been supplying fake Id Hawale money and other fake documents to the members of Indian Mujahedeen since 2010, on the direction of Riyaz Bhatkal and Mohsin Chaudhary. I nave also received 75000 Nepali currency during my stay to Nepal I can identify the shops from where I had purchased laptop, mobiles and SIM cards on fake Ids.”

xvi) Exs.P442 and 451 with regard to disclosure statement of accused No.6 taken in RC No.6/2012/DEL, dated 06.09.2014 would disclose as under:

“Ajaz Shaikh @ Samar Armaan Tunde @ Sagar @ Aizaz Saeed Shaikh has disclosed in his disclosure statement that, “I was using following Email/Chat Ids to communicate, Mohsin Chaudhary and Riyaz Bhatkal. commanders of Indian

Mujahedeen based in Pakistan. Some other E-mails were created by for getting access to proxy websites. Hacking website and web-uploading websites.”

S.No	Chat IDs/E-Mail IDs of Ajaz Shaikh	Corresponding ID& name of person
	NIMBUZZ	
1.	Passe542	Jojo21221 & losticon (Mohsin Chaudhary)
2.	Goforitgo	Gobabygo4u (Mohsin Chaudhary)
3.	Goexploring	Gobabygo4u (Mohsin Chaudhary)
4.	Butterjamtone	Nirmacutel (Mohsin Chaudhary)
	Mail IDs/Yahoo.Com	
1.	pickuthere@yahoo.com	soft.bull@yahoo.com(Riyaz Bhatkal)
2.	roganrosh@yahoo.com	soft.bull@yahoo.com(Riyaz Bhatkal)
3.	fellow5912@yahoo.com	Created for Riyaz Bhatkal
4.	Max_1102199@yahoo.com	Personal use
5.	jokonarmi@yahoo.com	ID created for getting access hacking/proxy IP sites
6.	Rohan.singh11166@yahoo.com	ID created for getting access hacking/proxy IP sites
7.	jakonova@yahoo.com	ID created for getting access hacking/proxy IP sites
8.	Pinky.sharma1989@yahoo.com	ID created for getting access hacking/proxy IP sites
9.	Pathway0011@yahoo.com	ID created for getting access hacking/proxy IP sites
10	Maryfrancis333@yahoo.com	ID created for getting access hacking/proxy IP sites
11	Kenshow66@yahoo.com	ID created for getting access hacking/proxy IP sites
12	Love.isin@yahoo.com	ID created for getting access hacking/proxy IP sites
13	jazshaik@gmail.com	Personal use
14	Mn57 nm@gmail.com	Used for accessing play store in Android mobile
15	Rosemartin995@gmail.com.	ID created for getting access to hacking proxy IP site
16	ajazshk@gmail.com	ID created for personal use
17	raymondpark@gmail.com	ID created for personal use
18	Adam.joseph123456789@outlook.com	ID created in Nepal for uploading my personal data in ONEDRIVE backup

19	Mukesh bhais@outlook.com	ID created in Nepal for uploading my personal data in ONEDRIVE backup
20	kentwogosh@outlook.com	ID created for getting access to hacking/proxy IP sites
21	Commonmoon@mailinator.com	This is a fake mail for providing alternate mail IDs in Gmail/yahoo
22	sureshoople@mailmator.com	This is a fake mail for providing alternate mail IDs in Gmail/Yahoo

The Email Ids of Yahoo" roganrosh" and "pickuthere were used to chat with Riy Bhatkal and to send fake documents to Riyaz Bhatkal. I can open all my ID given access to a computer having internet connection. I can get retrieved all chat and fake Ids sent by me to Riyaz Bhatkal. I was using coded language while chatting with Riyaz Bhatkal and Mohsin Chaudhary. I was using "Nimbuzz" cha messenger on my mobiles recovered from me."

xvii) The contention of learned counsel for the accused that the disclosure statements, Exs.P192 and 261 recorded by the Investigating Officer are not admissible in evidence.The disclosure statement of accused No.2 was marked as Ex. P192 and Ex. P261 recorded by PW138 in connection with RC No.1/2013/NIA/HYD in the judicial custody, which has led to discovery of fact under Section - 27 of the Evidence Act is admissible in evidence as the same has fully corroborated in discovery of fact, places and relevant facts relating to the blast occurred at Dilsukhnagar. Further the disclosure of accused No.2 has led to various places i.e., Abdullapurmet (rental

house) in which accused Nos.2 to 4 resided and the same was identified by PW54 - Sudha Madhuri (relative of the landlord), PW55 - P. Venkateswarlu (husband of PW54), who identified them in the Court. Even his disclosure statement-cum-point out memo has led the police team to the house at Abdullapurmet and search and seizure was conducted *vide* Exs.P190 is regarding search and seizure memo of house in Abdullapurmet, Hyderabad. Further, accused No.2 has led the police team and the independent *panch* witness to the hillock remote place, wherein the test blast was conducted by the accused on 20.03.2013. Ex. P261 is the disclosure statement of accused No.5 made on 05.09.2013. PW.138, the Investigating Officer deposed with regard to the same. Even the disclosure statements of accused Nos.2 to 4 has also led to discovery of various places i.e., test blast place at hillock place near Ramoji Film City and discovered the seizures *vide* Ex.P193 pointing out and Seizure memo of Hillock place; Ex.P197 pointing out and Seizure memo of Maha Lakshmi Steel Shop, where accused purchased two 7.5 liters Pressure Cookers; Ex.P200 pointing out and Seizure memo of Siddharath Brothers, where accused purchased a Plastic Sheet & travel after blast from Hyderabad to Mangalore in Salamat travels.

Even accused No.2 has also voluntarily made Ex.P25 - confession statement under Section - 164 of Cr.P.C. which was corroborated with the contents of disclosure statement of accused No.2 *vide* Exs.P192 and 261. Thus, the said disclosure statements are admissible in evidence with regard to role of accused in involvement of commission of the aforesaid offences.

xviii) It is apt to note that any confession leading discovery of fact is admissible in terms of Section - 27 of the Evidence Act as held by this Court in **Macharla Ramesh v. The State of Telangana**²¹.

37. **ONLINE CHATTING:**

i) As per the evidence, both oral and documentary available on record, it has to be seen whether the prosecution established that there was online chatting between accused No.1 and accused Nos.2 to A5 conspiring to cause twin bomb blasts. On this aspect, the owners of the Cyber Cafes i.e., PWs.69 to 71 stated that accused Nos.2 to 4 visited their Café Centres for browsing. Exs.P64 to 68 are the registers maintained in the shop during the months of June, July, August and September also corroborate the evidence of PWs.69 to

²¹. Crl.R.C. No.268 of 2022, decided on 18.04.2022

71. Though accused Nos.2 to 4 attended the aforesaid Cyber Cafes by using fake ID Cards they were identified by PWs.69 to 71.

ii) The crucial witness is PW.81, who retrieved the online chatting in the presence of PW.99 and another *panch* witness. The sum and substance of online chatting is that on 27.12.2012 accused No.5 and accused No.1 chatted about the role of accused Nos.2 to 4 to be played in executing bomb blasts. Accused No.5 advised for not keeping the explosive unused for long time. On 30.12.2012, accused No.5 enquired about the preparation of blasts to be conducted and advised that white gelatin was good for explosion. On 22.01.2013, accused No.5 again enquired about the blasts, for which accused No.1 replied that they have procured the explosives and there was discussion about the quality of explosives. On 27.01.2013 accused No.1 informed accused No.5 about accused No.4's tour in connection with the blast. On 07.02.2013 accused No.1 informed accused No.5 about searching of a house by accused No.4 at Hyderabad and accused No.5 also prayed for success of the blast and accused No.5 also informed about his network at Nepal. On 11.02.2013 accused No.1 told accused No.5 that accused No.2 had gone to accused No.4 and that he was chatting with accused No.3. On 16.02.2013, accused

No.1 told accused No.5 that on the previous day accused No.2 and accused No.3 met accused No.4. On 20.02.2013 accused No.1 told accused No.5 that the blast was scheduled for the next day and asked to specially pray for the success of the blasts.

iii) As per the evidence of PW138, it was revealed that on 28.11.2012, accused No.5 explained that in 'H' which means "Hyderabad" lot of anti- Muslim activities are going on and they discussed that this place has to be targeted for which accused No.4 was given the task to carry out these activities. On 02.12.2012, accused No.5 asked accused No.1 about the preparations and progress done to carry out the blasts in Hyderabad and also the progress in procuring the explosives. On 16.12.2012 accused No.1 told accused No.5 that accused No.4 is trying to recruit new boys into the Organization IM and accused No.4 is also trying to get a house on rent in Hyderabad and once he gets the house on rent bomb blasts will be carried out in Hyderabad. On 30.12.2012 accused No.5 asked accused No.1 about the progress of carrying out blast in Hyderabad to which accused No.1 replied that whether the place was finalized to carry out the blast. Accused No.1 also told that explosives would be available within one week. Accused No.1 also

told accused No.5 that accused No.2 was asking about the participation of accused No.5 in carrying out the blast. On 27.01.2013 accused No.1 informed accused No.5 that accused No.4 is leaving for Hyderabad to carry out the bomb blast for which accused No.4 has requested accused No.5 to pray for the success of the bomb blast in Hyderabad. On 07.02.2013 accused No.1 told accused No.5 that accused No.4 had been searching for a rented house and on the said date he has been successful in getting a rented accommodation at Abdullapurmet near Ramoji Film City, Hyderabad. On 11.02.2013 accused No.1 told accused No.5 that accused No.2 has also reached Hyderabad and he is along with accused No.4 and the accused No.3 is busy preparing in the explosives. On 16.02.2013 accused No.1 informed accused No.5 that accused Nos.2 and 3 had left for Hyderabad to meet accused No.4. On 17.02.2013 accused No.2 informed accused No.5 that all necessary arrangement to carry out the blasts in Dilsukhnagar is complete and only blessings of Allah is necessary for carrying out the blasts successfully and requested accused No.5 to pray for the success of the blast. Accused No.1 told accused No.5 that he has instructed accused Nos.2, 3 and 4 to add 50 more detonators in the

IEDs. This would help in proper explosion of IEDs. On 17.02.2013, accused No.1 informed accused No.5 that some rental accommodation may be taken in Nepal as it may be risky till return of accused No.4 to the safe house for which accused No.5 replied that he has arranged more than one rental accommodation in Nepal. Accused No.1 further told accused No.5 that he would call accused No.2 to Pakistan *via* Nepal after execution of blasts and till such time accused No.2 should be arranged accommodation in Nepal. On 20.02.2013 accused No.1 told accused No.5 that blasts would be conducted tomorrow i.e., 21.02.2013 and the explosive material was also tested by conducting a test blast.

iv) As stated above, with regard to confession leading to recovery through online chatting under Section - 27 of the Evidence Act, both the *panchas* i.e., PWs.99 and 131 supported the version of PW.81 coupled with Exs. P98, 99 and 101. Ex.P259 is the disclosure statement of accused No.2 in which he stated that *"I can show the said chat discussion as mentioned above, if I am provided with a computer with internet facility in the presence of witnesses and the said chat discussion can downloaded from my email/chat IDs if a printer is attached with the said computer as well"*. Ex. P.260 is the

disclosure statement of accused No.5, wherein he stated that *“I can show the said chat discussion as mentioned above, if I am provided with a computer with internet facility in the presence of witnesses and the said chat discussion can downloaded from my email/chat IDs if a printer is attached with the said computer as well”*. Ex.P261 is the disclosure statement of accused No.5 made on 05.09.2013 wherein he stated that *“If I am taken to Mangalore and Hyderabad, I will identify and point out all the places of transactions which occurred in conducting the twin blasts at Dilsukhnagar, Hyderabad along with other places of receiving explosive used in Mumbai, Pune and places of our visit to have food etc.”*. Exs. P417 to P419 disclose that accused No.5 was staying at Nepal and accused No.2 also stayed with him. The above chat details under Exs.D9 to D13 also disclose that certain chatting was made from Nepal.

v) Exs.D9 to D13 are the e-mails dated 01.09.2013 addressed to NIA, SP Anup Kuruvilla John by the Yahoo Incorporation, USA, Ex.D14 is the details of Yahoo mail i.e., hbhaddur@yahoo.com, Ex.D15 is the relevant details of the I.P. addresses and time pertaining to mail ID hbhaddur@yahoo.com sent by Yahoo Incorporation, Ex.D16 is the details of Yahoo Mail i.e.,

mail77@yahoo.com, Ex.D17 is the details of Yahoo Mail i.e., kul.chitra@yahoo.com, Ex.D18 is the relevant details of the IP addresses and time pertaining to mail ID kul.chitra@yahoo.com sent by Yahoo Incorporation, Ex.D19 is the details of Yahoo Mail i.e., muthumamu80@yahoo.com, Ex.D20 is the relevant details of the IP addresses and time pertaining to mail ID muthumamu80@yahoo.com sent by Yahoo Incorporation, Ex.D21 is the details of Yahoo Mail i.e., spent_those11@yahoo.com, Ex.D22 is the relevant details of the IP addresses and time pertaining to mail ID spent_those11@yahoo.com sent by Yahoo Incorporation, Ex.D23 is the details of Yahoo Mail i.e., patara_singh@yahoo.com, Ex.D24 is the relevant details of the IP addresses and time pertaining to mail ID patara_singh@yahoo.com sent by Yahoo Incorporation, Ex.D25 is the details of Yahoo Mail i.e., coolallz@yahoo.com, Ex.D26 is the relevant details of the IP addresses and time pertaining to mail ID coolallz@yahoo.com sent by Yahoo Incorporation, Ex.D27 is the details of Yahoo Mail i.e., laho0@yahoo.com, Ex.D28 is the relevant details of the IP addresses and time pertaining to mail ID laho0@yahoo.com sent by Yahoo Incorporation, Ex.D29 is the details of Yahoo Mail i.e., halwa.wala@yahoo.com, Ex.D30 is the

relevant details of the IP addresses and time pertaining to mail ID halwa.wala @yahoo.com sent by Yahoo Incorporation, Ex.D31 is the details of Yahoo Mail i.e., jankarko@yahoo.com, Ex.D32 is the relevant details of the IP addresses and time pertaining to mail ID jankarko@yahoo.com sent by Yahoo Incorporation, Ex.D33 is the details of Yahoo Mail i.e., a.haddad29@yahoo.com and it reveals the login name as “a.haddad29” with registration IP address 110.44.120.39, Ex.D34 is the relevant details of IP addresses and time pertaining to mail ID a.haddad29@yahoo.com sent by Yahoo Incorporation, Exs.D35 to D38 are the mails dated 09.04.2013 sent by Yahoo Incorporation to Anup Kuruvilla John, Ex.D39 is the mail sent by Anup Kuruvilla John to Yahoo Incorporation.

vi) Perusal of Exs.D9 to D39 clearly reveal that accused Nos.1 to 5 were using Email chatting and to that extent there is no dispute since the accused are admitting by marking Exs.D9 to D39. The contention of learned counsel for the accused that the evidence of pre-offence and post offence cannot be considered is unsustainable for the reason that the charge framed for conspiracy commencing from 2010 and continued till 2013 February and even

otherwise there is no bar for taking any evidence available prior to the offence and subsequent to the offence in conspiracy cases.

vii) In **Sajidbeg Asifbeg Mirza v. State of Gujarat**²², the Apex Court held that the relevance and admissibility of the statement, if any, given by the accused before the media persons shall be considered at the appropriate stage in the trial. In the present case, evidence of PWs.81, 99 and 138 coupled with Exs.P98 to 107 and 259 to 261 clinchingly established the fact that recovery of e-mail chatting beyond reasonable doubt at the instance of accused Nos.2, 3 and 5 and further established that accused No.1 to accused No.5 conspired by chatting to cause twin bomb blasts at Dilsukhnagar. Therefore, it can be held that the prosecution established its case beyond reasonable doubt that there was chatting between accused Nos.1 to 5 to cause bomb blasts in Hyderabad prior to twin bomb blasts.

38. The contention of the prosecution is that accused No.4 came to Hyderabad from Ranchi in pursuance of conspiracy and on the directions of accused No.1. To prove the same, prosecution examined PWs.54, 60, 82, 83 and 113.

²². (2007) 1 GLH 400 (India)

i) PW.82 is the resident of Ranchi. He deposed that he was studying DME at Chennai. He met one Sameer when he was in Ranchi. He was staying in the adjacent room in chotu lodge where he was staying. They were conversing regularly and he informed that he wanted to do MBA. He tried to get him admission in Chennai but failed. He expressed that he wanted to study MBA in Hyderabad. One of his cousin brothers Sharique Iqbal (LW448) was studying Diploma in Hyderabad. Then he gave address and phone number of his cousin to Sameer. Then Sameer went to Hyderabad and met his cousin. His cousin brother informed that his friend Sameer had met him in Hyderabad and was staying in his room. The witness identified the said Sameer as accused No.4.

ii) PW83 deposed that during the year 2012 he was studying in St. Mary College, Deshmuki Village, Batasingaram. He was residing in a room along with his friend in Deshmuki Village. PW82 is his cousin brother, who was in Ranchi at the relevant time. In the last week of January, 2013, PW82 called him and informed that his friend by name Sameer was interested in studying MBA and he would come to his place. PW82 asked him to show the College. The said Sameer came to him two days after his cousin PW82 called him.

After Sameer came, he stayed with them for 3 to 4 days. After four days, he left to Ranchi. From there, he called his roommate who informed that the said Sameer stayed for one day and left. This witness identified the said Sameer as accused No.4.

iii) PW113, who is working with VRL Travels since 14 years, deposed that he gave details of passengers who travelled between Mumbai, Bangalore, Mangalore, Hyderabad, during February, 2013 under Ex.P202, which includes the details of passengers and also buses during 01.02.2013 to 28.02.2013.

iv) PW.54, whose evidence is already extracted above, deposed that one Brahmaiah constructed a house in Abdullapurmet Village and entrusted the same to her and her husband (PW. 55) to lease out the same and they let out the same to accused No.4. Her husband has also deposed in the same lines as that of PW.54 corroborating the evidence of PW54.

v) PW60, an auto-rickshaw driver, deposed that he is residing at Abdullapurmet in Plot No.99 and his neighbor Brahmaiah constructed a house in Plot No.100 and that two or three persons came on rent in the said house of Brahmaiah in the first week of

February, 2013 including accused No.2 and he did not see accused No.2 from the next day of bomb blasts.

vi) Perusal of the evidence of the aforesaid witnesses would disclose that accused No.4 came from Ranchi, took house at Abdullapurmet on rent in the first week of February.

vii) Whereas, it is contended by learned counsel for the accused that it was referred as tin sheeted shed in 164 Cr.P.C by PW.55. Therefore, there is a contradiction in the evidence of PW.54 and PW.55. There is no dispute that PW.55 referred to the said house as tin sheeted shed, but tin sheeted sheds also useful for stay as if houses or rooms. Therefore, this admission cannot be taken as advantage by the accused as PW.55, 56 and 54 categorically stated the presence of accused Nos.2 to 4 at the above said rented house. Thus, the prosecution proved beyond all reasonable doubt with regard to the aspect of accused No.4 coming from Ranchi to Hyderabad and taken the house on rent at Abdullapurmet.

39. It is the contention of prosecution that accused Nos.2 and 3 came to Hyderabad from Mangalore and joined accused No.4 at a rented house at Abdullapurmet and stayed there till the date of bomb

blasts. It relied upon the evidence of PW.127 - Booking Clerk in VRL Travels at Mangalore. He deposed that accused Nos.2 and 3 travelled on 09.02.2013 to Hyderabad. He identified accused Nos.2 and 3 stating that he travelled in VRL travels bus. Ex.P201 discloses that accused No.2 pointed out the travels through which he travelled from Mangalore to Hyderabad.

i) PW.60, an auto-driver, stated that he is residing at Abdullapurmet in Plot No.99 and his neighbor Brahmaiah constructed a house in Plot No.100. Two or three persons came on rent in the said house of Brahmaiah in the first week of February, 2013 including accused No.2 and he did not see accused No.2 from the next day of bomb blasts.

ii) PW80, who is the Technical Examiner of CDFD, deposed that basing on the DNA fingerprints available on the articles (which were seized from Mangalore Zephyr Heights) are matched with DNA fingerprints of the articles of accused Nos.2 to 4 at Abdullapurmet. Therefore, the evidence of PW.127, 54, 55, 60 and 80 coupled with Ex. P315 pointing out memo and Ex. P297 dairy containing the handwriting of accused Nos.2 to 4 which were compared by PW.80 clinchingly established the circumstances that

accused Nos.2 and 3 came from Mangalore and joined accused No.4 at rented house at Abdullapurmet and stayed there till the date of blasts. Therefore, it can safely be held that the prosecution proved beyond all reasonable doubt that accused Nos.2 and 3 came to Hyderabad from Mangalore and joined accused No.4 at rented house at Abdullapurmet and stayed there till the date of bomb blasts.

40. PURCHASE OF PRESSURE COOKERS:

i) It is also the case of the prosecution that accused Nos.2 to 4 purchased big size pressure cookers from PW.58 one day prior to the twin blasts. With regard to the same, evidence of PW.58 would be discussed later while dealing with the role of accused No.6. However, evidence of PW.78, Technical Officer 'B' DMRL, is relevant. He deposed that the aluminium vessels available in the shop of PW.58 and the metal pieces seized from the scenes of offence are matched under Ex.P88. With regard to recovery of pressure cooker handles and whistles in the house at Abdullahpurmet, where accused Nos.2, 3 and 4 stayed, PW.91, who is working as Senior Tax Assistant, Office of Commissioner of Income Tax - I, deposed that accused No.2 led PWs.91 and 138 to Abdullahpurmet, where MO.161 (handles of two cookers) and

MO.162 (two whistles of cookers) were seized in their presence *vide* Exs.P189 to 191 proceedings. The evidence of PW78 coupled with Ex. P198 invoice shows that the owner of the shop purchased the Ganga Cookers from Ganga Company and sold the same to the accused and the accused failed to give any explanation with regard to the possession of MO.161 (handles of two cookers) and MO.162 (two whistles of cookers).

ii) In view of the above evidence, an inference can be drawn that they belong to the said pressure cookers which were removed before using the same for the twin bomb blasts. Further, by virtue of the aforesaid evidence, an inference can also be drawn that the said pressure cookers were purchased not for domestic purpose and that the same were used in the twin blasts because the accused did not give any explanation in their examination under Section - 313 of Cr.P.C. as to why they purchased two big size pressure cookers. Usually, for domestic purpose of three persons, one liter cooker is enough but not big size cookers but they did not give any explanation on the said aspect and the only inference that could be drawn that only to use the same in the twin blasts, they purchased those two big cookers. Moreover, Ex.P190 discloses that these items i.e., damaged

trolley bag with some pieces of clothes on it in the garbage and four long handles and two short handles of pressure cookers and two whistles, which draws the inference that they are not purchased for cooking purpose and the handles, whistles were removed and they are purchased for the preparation of bombs. Having considered the above evidence, it can safely be concluded that accused Nos.2 to 4 purchased the aforesaid cookers of big size with a view to use them in the twin blasts.

41. **CONDUCTING TEST BLAST:**

i) It is the specific case of the prosecution that one day prior to the incident, accused Nos.2 to 4 conducted test blast near Abdullapurmet. To prove the same, it had relied upon the evidence of PW92, Senior Assistant in MDO Office, Saroornagar. According to him, accused No.2 informed that he would show them the places where they carried out the test blast and other places. They proceeded to Abdullapurmet and went towards Deshmukh Village and prior to reaching the village there was a hillock to the right. Accused No.2 asked them to follow him, he went up to the hill and showed the place where a test blast was conducted *vide* Ex.P193 proceedings. Exs. P194 to 196 are the said three sketches. MO.163,

which is aluminum piece of detonator shell, was seized. MO.164, which is part of detonator with two white colour insulated wires, were seized. MO.165 is the control soil sample. MO.166 is another suspected soil sample seized at the hillock site. MO.167 is the part of detonator with two white colour insulated wires. The admissible portion in Ex.P192-A discloses as *“If I am taken to places, 1) test blast place / spot about 5 to 6 kms away from Abdullapurmet. 2) Place of shop where we purchased plastic sheet at Putli Bowli 3) Ticket booking places at Lakdi- ka-pool, I can identify and point out the remaining places of transactions which occurred in conducting the twin blasts at Dilsukhnagar, Hyderabad”*.

ii) Thus, the evidence of PW.92 is also corroborated with the evidence of PW.138 - Investigating Officer, who deposed that accused No.2 disclosed in the confession statement that they conducted test blast at Abdullapurmet and that accused No.2 led PWs.92 and 138 to the spot of test blast. Accordingly, a *panchanama* was conducted under Ex.192-A and MO.163, which is aluminum piece of detonator shell, was seized. MO.164, which is part of detonator with two white colour insulated wires were seized, MO.165 is the control soil sample, Mo.166 is another suspected soil

sample seized at the hillock site, MO.167 is the part of detonator with two white colour insulated wires were seized at the instance of accused No.2. Therefore, when the test blast is proved under Section - 27 of the Evidence Act, burden is on accused No.2 since he got knowledge about the test blast so he has to account for the test blast as to who conducted the test blast, but he did not give any explanation. As such, an inference can be drawn that it is the accused No.2 and other accused, who conducted the test blast at Abdullapurmet. Therefore, it can be held that accused Nos.2 to 4 conducted test blast at Abdullapurmet.

42. **PURCHASE OF CYCLES:**

i) It is the specific case of prosecution that accused Nos.2 to 4 had purchased MO.5 & 6, Cycles, which were used in twin bomb blasts. To prove the same, it relied upon the evidence of PWs.56 and 57 and the same would be discussed later while dealing with the role of accused No.6. However, the evidence of PW.57, who is running a puncture shop at Malakpet Gunj, is also relevant. He deposed that two days prior to the bomb blasts, he purchased an old cycle from PW.61 - Mallaiah, who is hamali in Malakpet Gunj. The said cycle was repaired by replacing with a big handle and Ganga tyre.

Accused Nos.2 and 4 came to him to purchase the said cycle (MO.5) two days prior to the bomb blasts for Rs.1,400/- and they gave 500/- rupees as advance and on the next day they paid Rs.900/-.

ii) PW61, a *Hamali* at Malakpet Gunj, deposed that he owned a cycle which he had sold to PW.57, 15-20 days prior to Dilsukhnagar Bomb blast for Rs.300/-. PW56, who is running Auto-ricksha, deposed that previously he used to do business by assembling cycles by buying parts of the cycle from Lohe-ki-mandi. On Thursday i.e., 21.02.2013, accused Nos.2 and 3 came to him and asked for purchasing a cycle (MO.6) for Rs.1,500/- and purchased the same.

iii) PW114, learned III Metropolitan Magistrate at Hyderabad, deposed that PWs.56 and 57 identified MOs.5 and 6 under property test identification proceedings held *vide* Ex. P46. Ex.P35 is the seizure *panchanama* for seizure of damaged cycle MO.6, MO.18 damaged half cycle tyre, MO.19 damaged rare rim, MO.20 damaged rare mudguard, MO.21 damaged fork, MO.22 is one rear part of frame, MO.23 is cycle stand and its broken pieces with its spring, MO.24 is two rear carriage supporting rods and pieces of carrier, MO.25 is cycle spokes, MO.26 is the piece of cycle chain, MO.27 is

the cycle seat springs and supporting rod. Ex.P38 is seizure *panchanama* for seizure of MO.41 is the pieces of spokes of bicycle and other nails collected from scene of crime (marked as Q8), MO.42 is the pieces of metal of bicycle found collected from scene of crime (marked as Q9), MO.43 is the pieces of mudguard attached with tyre of bicycle collected from scene of crime (marked as Q10), MO.44 is the cycle tyre & tube pieces and break rubber collected from scene of crime (marked as Q11), Ex.P27 is the seizure *panchanama* for seizure of the damaged cycle MO.5. Ex. P338 shows the cycle part, Ex.P353 shows another cycle part with handle, Ex. P354 also shows cycle part with handle, Ex. P169 shows cycle part, Ex.P163 also shows cycle part.

iv) Thus, the aforesaid three *panchanamas* and photographs were proved through the *panch* witnesses, photographer and the Investigating Officer and thereby it can safely be inferred that accused Nos.2 and 4 purchased MO.5 from PW.57 and accused Nos.2 and 3 purchased MO.6 from PW56. In view of the same, the prosecution proved its case that accused Nos.2 and 4 purchased MO.5 from PW.57 and accused Nos.2 and 3 purchased MO.6 from PW.56 prior to the bomb blasts and the same was used in the twin

blasts beyond reasonable doubt. Even during examination of accused under Section - 313 of Cr.P.C, accused did not give any explanation as to why they purchased the second hand cycles.

43. It is also the case of prosecution that MOs.5 and 6 Cycles were parked at Malakpet Station by accused Nos.2 to 4. To prove the same, the prosecution relied upon the evidence of PW.67 - employee of PW.66 - parking contractor. His evidence is also discussed above elaborately.

i) However, at the cost of repetition, his evidence is discussed herein. He deposed that on 20th February about three years ago at about 12-00 noon three persons came to the parking with a cycle and parked the said cycle in the parking area. All the three persons appeared to be stylish wearing Jean pants and T-shirts. One person was six feet height and two persons are in medium height of 5.5. After parking the said cycle all the three persons left by an auto. On 21st February at about 01-00 pm., two persons out of above said three persons again came to his scooter parking with another cycle and parked the second cycle in their parking stand. PW66 (parking contractor for Railways) stated that he had taken the parking contract of Malakpet Railway Station and he had given the said contract for

management to PW.67 on a monthly target basis. During January and February, 2013, the said Venkatesh was taking care of the parking contract in Malakpet Railway Station and thereafter he left. Thus, it can be held that the prosecution established the fact that accused Nos.2 to 4 parked MOs.5 and 6 at Malakpet Railway Station.

44. It is also the contention of prosecution that accused Nos.2 to 4 left the house at Abdullapurmet on the day of blast by handing over keys to PW.54 saying that they were leaving to Mumbai. To prove the same, the prosecution relied upon the evidence of PW.55. He deposed that on the date of bomb blasts at around 3 to 4 p.m., accused No.4 handed over the keys of the said house to him stating that his mother was not feeling well and he was going to Mumbai. The said evidence was corroborated with the evidence of PW54. On the date of blasts, accused left the house at Abdullapurmet stating that they are leaving for Mumbai and handed over the keys. Thus, the evidence of PWs.54 and 55 clinchingly established the fact that accused Nos.2 to 4 left the rented house at Abdullapurmet on the day of twin bomb blasts. In view of the same, it can also be held that the prosecution established its case that on the date of blasts, accused Nos.2 to 4 left the rented house at Abdullapurmet.

45. RECOVERY OF EXPLOSIVES AT MANGALORE:

i) It is the contention of prosecution that explosive material recovered from the rented house at Zephyr Heights, Mangalore, where accused Nos.2 and 3 stayed, was tallied with the explosives used in the twin blasts. The prosecution relied upon the evidence of PW141 - B.C.Ravinder, FSL, Madiwale. He deposed that he compared the items collected the following items at Zephyr Heights. MO.174 is one paper packet containing Ammonium Nitrate Fuel Oil cover (ANFO, ~ 250-300 GM), one paper packet containing IDEAL powder 90 gel explosive was sent to FSL, one polythene cover containing three electrical detonators which were diffused; MO.175 is the remnants of the diffused detonators; MO.176 is one paper packet containing white polythene cover use to wrap the ANFO Bottle; MO.177 is one polythene cover containing one Red Polythene cover use to wrap the ANFO Bottle; MO.178 is one polythene cover containing one paper used to wrap the IDEAL 90 gel explosive; MO.179 is one polythene cover containing 1 ½ "gum tape; MO.180 is one polythene cover containing GL-one brown gum tape; MO.181 is one polythene cover containing hammer and saw blade, one polythene cover containing one digital multimeter -CE-

Master, one polythene cover containing timer devises with connected wires, circuits with battery connections (Electrical Detonators), one polythene cover containing soldering (yellow wire with black, red and white color), one polythene cover containing 10 batteries of 09 volts, one polythene cover containing three packets of wires (yellow, orange, green and blue in colour), one paper packet containing CK electronic circuits-project board, one polythene cover containing Diodes and one brown circuits, one polythene cover containing timer (writ watch)-45 pieces, one polythene cover containing one pack of batteries and connectors, one paper packet containing hairs collected from the Maroon colour blanket lying on the floor of bedroom No.1, one polythene cover containing one set of needle file set kit-06 needle (one is cut), one polythene cover containing small circuit board (07) Pin (05) cutters (03) Hitech electrical solution (01) battery connectors (03) saw blade (01), one polythene cover containing small tool kit box, one polythene cover containing diodes, connected wires etc with batteries, one paper packet containing one red comb with black hairs collected from bedroom No.2, one paper packet containing hairs collected from floor, one polythene cover containing one multi-meter (mastech), one polythene cover containing Mobile

parts and wires (Three circuits, two mobile handsets) and the remnants at the scenes of offence of twin bomb blasts and came to conclusion that both are one and the same and this aspect is also supported by the presumption under Section - 43E of UAP Act.

ii) PW126 - Nithyanada Das, Revenue Inspector, Mulki, deposed that accused No.2 voluntarily took them to Flat in an apartment where he stayed earlier. The accused had taken them to Zephyr Heights where Ex.P55 was drafted and all the articles mentioned in Ex.P55 were seized in his presence. He also witnessed production-cum-seizure memo under Ex.P56, wherein Ex. P57 lease deed was seized. Thus, the prosecution established that the recovery of these items was also proved by PW.126, *panch* witness and PW.157 - Investigating Officer. Thus, the prosecution proved the aforesaid contention.

46. RECEIPT OF HAWALA MONEY:

i) It is the further contention of prosecution that accused Nos.2 to 4 received *hawala* money from WUMT. It relied upon the evidence of PW.68 - Dilip Kumar, a Senior Sales Executive in Centrum Direct Limited. He deposed that during the year 2012-2013 he worked in M/s.VKC Credit and Forex Private Limited as a Senior

Sales Executive. The firm was dealing with receiving and sending money to foreign countries. If money sent from foreign country a MTCN (Money Control Transfer Number) is generated and the same is given to the person receiving the money. Basing on MTCN number the said person can withdraw the money from any of the authorized money exchange centers by providing sufficient identity proof and the document containing MTCN number. When a receiver comes to them he has to fill in a TRM form giving particulars of senders name, receivers name, amount and present address and mobile number of the receiver. After providing the said details they match the said details in their system and after being convinced about the identity and other details, the receiver is given the money. For money below 50,000/- the same is given in Cash and above 50,000/- it is given by way of cheque. On 20.09.2013 some NIA officials from Hyderabad came to their office at Mangalore and enquired about certain transactions of receiving money by some persons and shown photographs. He identified one of the photographs to be that of the person who had received money by filling up the requisite forms and also ID proof was provided. The said person had come to their out-let and transacted business of

receiving money on three occasions and on all the three occasions forms were filled up for withdrawing the money. After checking out their record they learnt that the above said person transacted three times, one is on 26.02.2013 and 20.03.2013 and lastly on 12.04.2013. On two transactions dated 12.04.2013 and 20-03-2013 he was personally present during transactions. But one Mr. Nitin Kumar Shetty (LW234) and Chitrakshi Shetty were present for all the transactions. On 20.09.2013 two taluk people (panchayathdars for seizure) along with NIA police came and seized the documents and prepared a statement. Ex.P59 is the seizure memo dated 20.09.2013. He also attested on Ex.P59 containing four sheets. Ex. P60 TRM form containing three sheets of the transaction done on 26.02.2013 along with system generated receipt and copy of ID provided by the receiver. Ex. P61 TRM form containing three sheets of the transaction done on 20.03.2013 along with system generated receipt and copy of ID provided by the receiver. Ex.P62 TRM form containing three sheets of the transaction done on 12.04.2013 along with system generated receipt and copy of ID provided by the receiver. The three transactions were done at their out-let by Nabeel Ahmed who had provided his identity proof and signed on the

documents. The witness identified the said Nabeel Ahmed as accused No.3 - Zia-ur-Rahman @ Waqas @ Javed @ Ahmed @ Nabeel Ahmed.

ii) Insofar as receipt of *hawala* money from WUMT is concerned, PW.124 - Branch Head of Supama Forex Pvt. Ltd., Mangalore, who transfers money in association with WUMT Agency, deposed that accused No.3 filled in the said form with a secret code and also provided his ID proof. The Money transfer form is Ex.P402 filled up by the said accused No.3 and signed by him. Ex. P403 is the photocopy of ID Proof. Ex. P404 is the receipt issued by them. Ex. P405 is the seizure memo under which Exs.P402 to 404 were seized by the National Investigation Agency. After verifying the details he had handed over the money to the said persons.

a) PW.73 - Manager in WUMT deposed about the money transactions done by accused No.3 thrice i.e., Rs.25,000/- on 16.07.2013, Rs.16,364/- on 08.08.2013 and Rs.25,000/- on 29.08.2013. On all the said transactions, he gave voter ID card with his photograph. Ex. P76 is MTC form with photocopy of ID dated

16.07.2013. Ex.P77 is MTC form with photocopy of ID dated 08.08.2013. Ex. P78 is MTC form with photocopy of ID dated 29.08.2013. The said person had taken the amount of Rs.25,000/- on 10.06.2012 in the name of Suleiman Sood. Ex.P79 is the computer printout of MTC form scanned copy along with election ID card of the receiver who received money under Exs.P76 to 78. Ex.P80 is the register maintained by them in their outlet showing the details of payments made to different individuals who received money for the period from 16.09.2010 to 30.05.2014.

iii) Learned counsel for the accused contended that the receipt of the aforesaid amounts refers to post-offence. But, there is no bar to take the aforesaid evidence whether it is post-offence or pre-offence in cases of conspiracy. Therefore, the evidence of the aforesaid witnesses is admissible. Sometimes accused may receive money after commission of offence. There is no explanation from accused No.3 with regard to receipt of money. The evidence of PW.73 is corroborated with the evidence of PW.142 - Investigating Officer.

iv) Learned counsel for the accused also contended that doing *hawala* business is illegal even according to PW.72. Therefore,

Section - 319 of Cr.P.C has to be invoked and PW.72 arraigned as an accused and be tried with accused Nos.2 to 6. Perusal of evidence of PW.72 would reveal that he came to know that *hawala* business is an illegal business and after knowing the same, he stopped it.

v) In **Lokram v. Nehal Singh**²³, the Apex court held that power of Court under Section - 319 of Cr.P.C is to be exercised sparingly and for compelling reason to add a new person as an accused. In the present case, there are no compelling reasons are appearing, moreover PW.72 stated that he stopped *hawala* business. Thus, it can be held that Section - 319 of Cr.P.C. need not be invoked, whereas, learned Special Public Prosecutor contended that Section - 319 of Cr.P.C can be invoked only in a case where there is a *prima facie* material against the third party in connection with the main offence.

vi) Therefore, the above evidence clinchingly establishes the fact that accused Nos.2 to 4 received money through illegal transactions by using fake IDs and also accused No.4 received money from WUMT by using fake ID and nowhere they explained as to why they used fake IDs.

²³. AIR 2006 SC 1892

47. **ACCUSED No.3's EXPERTISE IN PREPARING
AND BLASTING OF IED:**

It is the specific case of the prosecution that accused No.3 had knowledge in assembling IED. To prove the same, it relied upon the evidence of PW.112 - Assistant Director, Explosives at Central Forensic Science Laboratory, Ramanthapur, Hyderabad, is relevant. He deposed that he witnessed the disclosure and IED demonstration of accused No.3 at CRPF Camp at Hakimpet. Accused No.3 volunteered and stated that if he was provided with different components of Improvised Explosive Device (IED), he would demonstrate as to how the bomb would be made and accordingly different components required for assembling an IED were provided to the said accused and accused No.3 demonstrated the preparation of IED bomb. After completing the process of assembling a bomb, the accused placed a bulb in place of explosive substance. The bulb glowed which indicated that circuit required for a bomb to explode has been completed under disclosure and IED demonstration memo is Ex. P331 containing three sheets on which he had signed. MO.172 is the assembled IED by accused No.3 during the demonstration process on 08.06.2014. MO.173 is the sealed cover containing the

video SD card (memory card). The MO.173 memory card is identified by the number BI1309422908G embossed on it (made in China). Therefore, keeping in view the evidence of PW.112 coupled with MOs.172 and 173, it can be held that accused No.3 has got knowledge in preparing IED.

48. **RETRIEVAL OF JIHADI MATERIAL ETC.:**

i) It is also the contention of learned Special Public Prosecutor that during investigation, the Investigating Officer retrieved Jihadi material, draft e-mails on the letter head of IM and also fake IDs used by accused Nos.2 to 4 from the Laptop of accused No.6 at his instance and the same would prove the commission of aforesaid offences by the accused. To prove the same, prosecution relied upon the evidence of PW.111 - Senior Assistant, Office of the Collector, Hyderabad District. He deposed that on their questioning, accused No.6 had shown the information stored in the computer and he opened certain documents by using passwords under Ex. P326 (8 sheets) which is the disclosure of accused No.6. In view of the same, an inference can be drawn that the prosecution proved the case even by collection of material i.e., retrieval of Jihadi material, draft e-mails

on the letter head of IM and fake IDs used by respondent Nos.2 to 4 from the laptop of accused No.6.

49. **ROLE OF ACCUSED No.6 IN COMMISSION OF OFFENCES:**

- i) Learned counsel for accused No.6 contended as under:
 - (a) The name of accused No.6 was not there in the FIR, charge sheet and first supplementary charge sheet.
 - (b) His name was added in the second supplementary charge sheet.
 - (c) Testimony of PW.81 - expert is not trustworthy. His evidence has no legal sanctity.
 - (d) Sanction proceedings issued *vide* Exs.P393, 394 and 395 are not in accordance with the procedure laid down under law.
 - (e) Criminal Conspiracy was not proved.
 - (f) IM did not make any claim against accused No.6.
 - (g) Prosecution failed to prove the allegations against accused No.6 with regard to preparation of fake I.D. Cards in respect of accused Nos.2, 3 and 5.
 - (h) Fake I.D. furnished to accused No.1, who in turn provided the same to accused Nos.2, 3 and 5.

- (i) NIA committed irregularities with regard to FIR No.54 of 2011 and RC No.6 of 2011.
- (j) Recovery and discoveries were not proved.
- (k) There is no meeting of minds to convict accused No.6 under Section - 120B of IPC.
- (l) Prosecution failed to prove the connections to accused No.6 and other accused.
- (m) There are serious contradictions in the version of prosecution case.
- (n) Arrest of accused No.6 is not proved in Crime No.54 of 2011 registered by the Delhi Special Police. In the said crime, there is an allegation against him with regard to larger conspiracy. In the present case also, the prosecution alleged criminal conspiracy against accused No.6. Therefore, registration of second FIR with regard to same offence against accused No.6 is impermissible.
- (o) There is violation of procedure laid down under Section - 43B of UAP Act

- (p) Prosecution failed to examine any independent witness including *panch* witnesses.
- (q) Photocopy is not admissible and mere marking of an exhibit does not dispense with its proof.
- (r) Without considering the contentions of accused No.6, learned trial Court did not decide the said aspect.
- (s) Learned trial Court erred in considering and appreciating it as admissible in evidence, although photocopies neither primary nor secondary evidence.
- (t) Prosecution did not supply clone copy of electronic evidence and, therefore, there is violation of Section - 207 of Cr.P.C. in respect of Exs.106, 106A and P107.
- (u) Prosecution failed to comply with Section - 65B of the Evidence Act insofar as Exs.P106A, 107 and 491.
- (v) There is violation of Section - 293 (4) of Cr.P.C.
- (w) Learned trial Court failed to consider the admissions made by PW.140, Chief Investigating Officer in Crime No.54 of 2011 of Delhi Special Cell. Without considering the same, learned trial Court convicted accused No.6 and imposed capital punishment of death penalty. In fact, his arrest was not proved.

- (x) Prosecution failed to obtain sanction in respect of accused No.6 for the offences under Sections - 3 and 4 of the ES Act. The findings of the learned trial Court are perverse and not based on the actual evidence including admissions of prosecution witnesses. The learned trial Court having acquitted accused No.6 for the offences under Sections - 10, 20, 38 (2) and 39 (2) of UAP Act, convicted him for the offences under Sections - 120-B r/w 302, 121, 121-A, 122 r/w 109, 302 r/w 109 (2 counts), 307 r/w 109 (2 counts), 316 r/w 109, 436 r/w 109, 201 r/w 109, 466, 474, Sec.5 of ES Act r/w 109, Sec.3 of ES Act r/w 109, Sec.14 of Foreigners Act r/w 109, Sec.4 of PPD Act r/w 109, 16 of UAA r/w 109, 17 of UAA, 18 of UAA, 19 of UAA r/w 109 of IPC. Therefore, prosecution failed to discharge its initial burden that accused No.6 is a Member of banned Organization.
- (y) Benefit of doubt shall be given to accused No.6. There is no direct evidence against accused No.6. Prosecution failed to prove guilty of accused No.6 by way of circumstantial evidence. Circumstances relied upon by the prosecution is not forming complete chain and there is break of links.

(z) Without considering the said aspects, learned trial Court convicted accused No.6 and imposed capital punishment of death penalty.

ii) Whereas, learned Special Public Prosecutor for NIA contended as follows:

- a) Prosecution can conduct further investigation and file report against any accused. Accordingly, on conducting further investigation and on coming to a conclusion that accused No.6 is also part of criminal conspiracy, it has filed second supplementary charge sheet against accused No.6.
- b) The role played by accused No.6 is specifically mentioned in the second supplementary charge sheet.
- c) Prosecution examined PWs.111, 139, 140 and 147 to prove guilt of accused No.6 and the role played by him in commission of offences including criminal conspiracy.
- d) On consideration of the said aspects, learned trial Court convicted accused No.6 and imposed capital punishment of death penalty.

- e) The role played by accused No.6 is specifically mentioned by all the prosecution witnesses and the allegations levelled against him are very serious in nature.
- f) It is an organized crime.
- g) There are 18 deaths and 131 injured.
- h) Therefore, on consideration of the said aspects, learned trial Court came to a conclusion that this is a rarest of rare case and, therefore, imposed capital punishment. There is no error in it.

50. In the light of the aforesaid rival submissions, it is relevant to note that Section - 173 of Cr.P.C. deals with 'report of police officer on completion of investigation'. Sub-Section - (8) of Section 173 of Cr.P.C. says nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of Sub-Sections (2) to (6) shall, as far as may be, apply in relation to such report or

reports as they apply in relation to a report forwarded under Sub-Section (2).

i) Thus, the Investigating Officer has power to file a report under Section - 173 (8) of Cr.P.C. on conducting further investigation. If during the course of investigation, Investigating Officer comes to a conclusion that a person has committed an offence, and on consideration of the statements of witnesses and documents, he has power to file report in terms of Section - 173 (8) of Cr.P.C. There is no irregularity in it.

ii) In the present case, the charge is filed against accused Nos.2 and 5 on 14.03.2014 and first supplementary charge sheet was filed against accused Nos.1, 3 and 4 on 15.09.2014. Thereafter, on completion of further investigation, and on coming to a conclusion with regard to the role played by accused No.6 in commission of offences, the Investigating Officer laid second supplementary charge sheet on 06.06.2015 against accused No.6. There is no irregularity.

iii) In **Pooja Pal v. Union of India**²⁴, the Apex Court held that an adverse deduction *vis-à-vis* the quality of investigation and/a

²⁴. AIR 2016 SC 1345

trial trivializing the cause of justice, is however the essential pre-requisite, for such remedial intervention by way of further investigation, reinvestigation, additional evidence, retrial etc. to be made objectively but assuredly for the furtherance of the salutary objectives of the justice dispensing system as contemplated in law, it being of paramount pre-eminence.

iv) In **Dharam Pal v. State of Haryana**²⁵, the Apex Court held that Section - 173 (8) of Cr.P.C. empowers the office-in-charge to conduct further investigation even after filing of a report under Section - 173 (2) of Cr.P.C. if he obtains further evidence, oral or documentary. Thus, the power of the Police Officer under Section - 173 (3) of Cr.P.C., is unrestricted. The Magistrate has no power to interfere but it would be appropriate on the part of investigating officer to inform the Court.

v) In the light of the aforesaid principle laid down by the Apex Court, the contention of learned counsel for accused No.6 that the name of accused No.6 is not there in the charge sheet and first supplementary charge sheet, and there is no evidence against accused

²⁵. AIR 2016 SC 618

No.6, even then, the Investigating Officer laid the second supplementary charge sheet against him is unsustainable.

vi) As discussed above, at the cost of repetition, on completion of further investigation and on coming to a conclusion about the role played by accused No.6, the Investigating Officer has filed the second supplementary charge sheet against accused No.6.

51. It is relevant to note that in the second supplementary charge sheet, the Investigating Officer has specifically stated the role played by accused N.6 in commission of offences.

52. The specific allegations levelled against accused No.6 are as under:

i) He being a member of the proscribed terrorist organization, IM, he had entered into a criminal conspiracy along with other accused to wage war against India, they had decided to commit terrorist attacks to kill innocent people, to disrupt the security of India and to create terror and insecurity feelings in the minds of common people, which are acts prejudicial to the integrity and sovereignty of India. With a view to accomplish their intention, they had decided to conduct bomb explosions in India.

ii) Accordingly, accused No.6 used to download/scan voter IDs, driving licenses and other documents from Google and prepared fake documents with the help of Photoshop Software installed in his Lap Top, to be supplied to terrorist of IM on the direction of Riyaz Bhatkal and hisJeeja, Mohsin Chaudhary.

iii) Accused No.6 also used to mail and share through wiki send, encrypted fake documents to Riyaz Bhatkal whenever he asked him to do so. Accused No.6 delivered explosives for German Bakery blast and Chinnaswamy Stadium, Bangalore blast at Pune to Md. Ahmed Sidibapa @ Yasin Bhatka, accused No.5. Accused No.6 also arranged accommodation and mobile and SIM on fake IDs to accused Nos.2, 3, 4 and 5. The same fake IDs were used by them to procure SIM Cards, to hide their identity to evade the arrest, before after the bomb blasts. Accused No.4 received money through WUMT outlet on 27.12.2012 and three more occasions accused No.4 withdrawn Rs.25,000/- from WUMT outlet, Patna by producing the fake ID supplied by accused No.6 in the name of Girish Joshi, resident of Dehradun, Uttarakhand Election ID Card No.LJS - 2308815.

iv) On the direction of Riyaz Bhatkal and Mohsin Chaudhary in September, 2010, accused No.6 sent an *e-mail* to different media houses in India at the time of Jama Masjid attack in Delhi and Sheetla Ghat, Varanasi blast claiming the responsibility that attacks was executed by IM. The draft PDF mail was sent by Riyaz Bhatkal and Mohsin to accused No.6. Both times, *e-mail* were sent from Mumbai.

v) Accused No.3 received money from WUMT Outlet, Mangalore by producing fake IDs in the name of Nabeel Ali Ahmed with his own photo five times before and after the bomb blast, which was prepared by accused No.6 and sent through wikisend to accused No.1, Riyaz Bhatkal sent the same to accused No.3, who requested accused No.1 to prepare in the name of Nabeel Ali Ahmed, childhood friend of accused No.3 at Pakistan.

vi) Accused No.6 communicated with other IM Members through *e-mails* in encrypted and coded form so that the content of their communication remains secret. He was in regular contact with all accused, A1 and Mohsin Chaudhar over Internet chatting with regard to preparation and supplying of the fake IDs and delivery of explosives. Accused No.6 had provided fake IDs through 'AxCrypt'

messages. He involved in the conspiracy of twin bomb blasts in Hyderabad providing fake IDs to several operatives of the IM. The bomb explosions in which resulted in the death of 17 innocent persons and death of unborn child in the womb of Y. Yasodha and causing injuries to 126 persons and causing damages to several vehicles and buildings.

53. To prove the aforesaid allegations against accused No.6, the prosecution examined PWs.81, 111, 140 and 147.

54. **EXPERT'S EVIDENCE:**

i) PW.81, Scientist-C in Indian Computer Emergency Response Team (ICERT), which is a Government Institution comes under Ministry of Communication and IT, Government of India and is a Nodal Agency for Government to address Cyber Security Incidents in India and assisting in investigation of Digital Gadgets pertaining to Cyber Crime Cases reported by Law Enforcement Agencies, such as NIA, CBI, Delhi Police etc.

a) He further deposed that on 02.09.2013, 2 Officers from NIA came to ICERT to assist for extraction of e-mail and web-chat messages from IDs: jankarko@yahoo.com, hbahaddur29@yahoo.com, ahaddad29@yahoo.com and halwawala@yahoo.com. The said

e-mail IDs/web-chat ID have been regularly accessing from Nepal. After arresting accused person, Md. Ahmed Siddibaba @ Yasin Bhatkal, NIA was trying to access aforesaid *e-mail* IDs/web-chat IDs from India. Yahoo mail server identifies the system is having IP address which belongs to India, therefore, Yahoo mail server assuming that a hacker is trying to access these accounts, as such, Yahoo server automatically asks security questions as a second level authentication which is mandatory according to security policy of Yahoo. The NIA officials informed him that the aforesaid accused forgot his security questions which were posed by Yahoo server, as such the *e-mails* pertaining to the aforesaid IDs of accused could not be accessed.

b) He further deposed that they installed 'Team viewer' and as per procedure it was launched from the local system and entered system ID and password of Remote Computer Terminal. The session has been successfully established between the two computers. Thereafter, he asked the accused person to enter his credentials to mail ID jankarko@yahoo.com and they have successfully logged into accused *e-mail* ID.

c) During cross-examination, he has admitted that there were no mail communications noticed in the Inbox folder, draft folder but there was one mail from 'lovesam361' was noticed in the sent items folder which contains one encrypted attachment file called 'diy.zip' and this would open using the password '59455945'. During his presence, Investigating Officer asked the accused about the sender 'lovesam361' and accordingly accused replied that the said mail belongs to Riyaz Bhatkal. All the messages and chat details and attachments pertaining to the aforementioned four e-mails are within the exclusive knowledge of accused person. Ex.P98 is the *panchanama* drafted during the extraction process. NIA police requested to carry out forensic analysis of the digital evidences were seized from accused No.5. In the last week of March, 2014, the ACP, Delhi Police Special Cell, New Delhi requested Director General, ICERT for extraction of content of e-mail communication and chat messages of the mail ID pertaining to Mr. Md. Tahsin Aktar @ Monu. Accordingly, DG, ICERT authorized him to assist the said Police.

ii) PW.111, an independent witness, deposed regarding disclosure of accused No.6 and retrieving the fake IDs in the name of

Mr. Girish Chandhra Josh and others from the hard disk at CRPF Centre on 14.04.2015. Ex.P326 containing 8 sheets is disclosure of accused No.6 and Ex.P327 containing 17 sheets is printouts of scanned copies. Nothing contra was elicited during cross-examination.

iii) PW.140, the Chief Investigating Officer in Crime No.54 of 2011 deposed about collection of chat details of accused Nos.1 and 4. He further deposed that on 06.01.2013, there were specific chat between accused No.4 and accused No.1 regarding arranging explosives. With regard to chat on 10.01.2013, accused No.1 informed accused No.4 that Daniyal (accused No.2) and accused No.3 were about to receive explosives and accused No.4 will have to leave for a new place soon.

a) He further deposed on 06.09.2014, he arrested accused No.6 from Saharanpur, Uttar Pradesh. At the time of his arrest, a total 19 electronic devices were recovered from his possession including a DELL Laptop, mobile phones, USB-stick, Micro SD Card etc. During his interrogation, accused No.6 revealed that his responsibility as a member of IM was for preparing forged identities, receiving and delivering Hawala Money, explosives and composing

e-mails whereby his organization used to take claim for various terrorists strikes in the Country. Accused No.6 revealed that he had sent threatening e-mail in 2008 after the Varanasi Blasts which were investigated by Uttar Pradesh Police and in 2010 after Jama Masjid Blast of Delhi which have been investigated by him.

b) He further deposed that accused No.6 disclosed several e-mail and chat IDs over which he was in communication with accused No.1 and others. As per the analysis of laptop recovered from accused N.6, the voters ID in the name of Girish Joshi was used by accused No.4 for many financial transactions and the same was prepared by him. From the same laptop, many other forged voter IDs bearing photographs of accused Nos.2 and 3 and the same were also prepared by him. Ex.P439 is the seizure memo at the instance of accused No.6.

c) During cross-examination, he has admitted that he did not give any certificate under Section 65-B of the Evidence Act in FIR No.66 of 2010 of Jama Maszid Police Station.

iv) PW.147, an independent witness, deposed regarding disclosure statement of accused No.6.

v) Apart from the aforesaid evidence the prosecution has also filed Ex.P326 - disclosure statement of accused No.6 marked through PW.111, Ex.P451 - disclosure statement of accused No.6 marked through PW.147. Prosecution also filed Ex.P439 - seizure memo for recovery under Section - 100 of Cr.P.C. in Crime No.54 of 2011. Ex.P106 is the digital forensic analysis report and Ex.P106A is original report to Ex.P106 received from ICERT along with covering letter in respect of 19 electronic devises seized at the best of accused No.6 in Crime No.54 of 2011. The prosecution has also placed reliance on Ex.P316 - disclosure *panchanama* dated 14.04.2015, Ex.P541 - supplementary disclosure *panchanama* dated 16.04.2015 and Ex.P395 - sanction under Section 45 of UAP Act.

vi) According to learned counsel for accused No.6, prosecution failed to prove criminal conspiracy against accused No.6 and that prosecution failed to prove connection of accused No.6 with other accused. There were no meetings of mind. He relied upon the decision in **Yogesh**¹⁴.

vii) In the light of the aforesaid submissions, it is relevant to note that Section 120-A of IPC deals with 'criminal conspiracy', and it says that when two or more persons agree to do, or cause to be

done: (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

viii) Section - 120-B of IPC deals with ‘punishment for criminal conspiracy’. To bring home the charge of ‘criminal conspiracy’ within the ambit of Section - 120-B of IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is no doubt true that, it is difficult to establish ‘criminal conspiracy’ by direct evidence. Therefore, from established facts, an inference could be drawn but there must be some material from which it would be reasonable to establish a connection between the alleged conspiracy and the act done pursuant to the said conspiracy. The said principle was also laid down by the Apex Court in **Vijayan v. State of Kerala**²⁶.

²⁶. (1999) 3 SCC 54

ix) In **Hardeo Singh v. State of Bihar**²⁷, the Apex Court held that in the absence of any reasonable evidence that at least two brains had consulted the offence, a charge of conspiracy cannot be sustained. There is no doubt that merely on the basis of suspicion of informant about conspiracy of accused to commit alleged crime, accused cannot be convicted for the offence under Section - 120B of IPC as held by the Apex Court in **Abdul Sattar v. State of U.P.**²⁸.

x) In the light of the aforesaid principle laid down by the Apex Court, as discussed above, on conducting further investigation and on coming to a conclusion with regard to the role played by accused No.6, the Investigating Officer has filed second supplementary charge sheet against accused No.6. The allegations mentioned therein are specifically mentioned in the second supplementary charge sheet. To prove the same, prosecution examined PWs.81, 111, 140 and 147 and the aforesaid documents. Prosecution also placed reliance on the recoveries and discoveries as stated above. On consideration of the said aspects only, learned trial Court recorded conviction against accused No.6.

²⁷. (2000) 5 SCC 623

²⁸. 2001 CrL.L.J. 676 (All.)

55. With regard to the contentions of learned counsel for accused No.6 that accused No.6 name is not there in FIR, charge sheet and first supplementary charge sheet and that in confession statement of accused Nos.2 and 5 (Exs.P252 and P254); there is no utterance of name of accused No.6; merely accused No.6 was arraigned as an accused on the basis of alleged recovery at the best of accused No.6 after his arrest in Crime No.54 of 2011 on 06.09.2014; that prosecution failed to prove the role played by accused No.6 with regard to criminal conspiracy and that connection between accused No.6 and other accused are baseless and unsustainable. As discussed above, in the second supplementary charge sheet, there is specific reference with regard to the role played by accused No.6. PW.140 specifically deposed about the role played by accused No.6 in commission of offence.

56. It is relevant to note that accused No.6 failed to elicit anything contra from the aforesaid witnesses. Thus, accused No.6 cannot contend that the prosecution failed to prove criminal conspiracy against him beyond reasonable doubt.

57. As discussed above, there are specific allegations/overt acts against accused No.6 that he has provided fake IDs to accused Nos.2 to 5. The same are based on recovery of fake IDS from the DELL laptop of accused No.6 in Crime No.54 of 2011 as mentioned in Ex.P439 - seizure memo. There is specific allegation against accused No.6 that accused Nos.2 and 3 used the said fake IDs for receiving Hawala money from the WUMT outlet. There is also specific allegation against him that on the instructions of accused No.1, he has purchased the said DELL laptop in the year 2010 itself in Mumbai. Therefore, accused No.6 cannot contend that he is innocent and he was implicated in the present case falsely.

58. Learned counsel for accused No.6 further contended that contents of second supplementary charge sheet and depositions of PWs.81, 111, 140 and 147 and the documents relied upon by the prosecution lack the ingredients of 'criminal conspiracy'. He would further contend that prior knowledge of criminal conspiracy is an important ingredient of Section - 120-B of IPC and the same is lacking in the present case. To prove knowledge, the prosecution has to produce sure and safe evidence. In the present case, the prosecution failed to produce the same.

59. In the light of the aforesaid submissions, it is relevant to note that to prove the said knowledge and that accused No.6 prepared fake IDs, provided the same to accused Nos.2 to 5 and basing on the said fake IDs, they received hawala money from WUMT outlets, Exs.P105 is the chart transcriptions extracted under Ex.P104 by the prosecution. It contained conversation among accused Nos.1 to 5 in respect of preparation, commission, planning and execution of offence.

60. Perusal of Ex.P105 - chart transcriptions would reveal that it contains chart communication in respect of criminal conspiracy of both pre and post bomb blasts among accused Nos.1 to 5. Therefore, the contention of accused No.6 that Ex.P105 is silent with regard to role of accused No.6 cannot be accepted. Therefore, the decisions relied upon by learned counsel for accused No.6 in **State of Maharashtra v. Somnath Thapa**²⁹ and **Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh v. CBI through its Director**³⁰ are of no use.

²⁹. AIR 1996 SC 1744

³⁰. Crl.A. No.473 of 2007 (SC), decided 18.11.2008

61. With regard to other contention of learned counsel for accused No.6 that whether Court can hold a person guilty for criminal conspiracy on the allegation of providing fake IDs to other accused, as discussed above, in the present case, it is the specific case of the prosecution that the accused conspired together, hatched a plan together and blasted bombs at A1-Mirchi Center and 107 Bus-stop, wherein 18 deaths occurred and 131 people were injured. It is an organized crime. Accused No.6 prepared fake IDs, basing on which accused Nos.2 to 5 used the same and received *Hawala* money from WUMT outlet. Therefore, accused No.6 cannot contend that he has no knowledge that accused Nos.2 to 5 will use the said fake IDs as part of criminal conspiracy. He cannot contend that he is not the Member of the said criminal conspiracy and he is not a party to the crime to do or cause to illegal act of bomb blasts.

62. It is relevant to note that in explanation to Section - 120-A of IPC, it is mentioned that it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. In the light of the said explanation, accused No.6 cannot contend that he is not a Member of the said criminal conspiracy and not party to the said agreement. At the cost of repetition, there is

specific allegations/overt acts against accused No.6 that he has prepared fake IDs, supplied to accused Nos.2 to 5, to avail *hawala* money from WUMT Outlet.

63. On consideration of the said evidence, learned trial Court gave a specific finding that accused No.6 criminally conspired with other accused, prepared fake IDs, supplied to them as part of criminal conspiracy to receive money from *hawala*. The said money was used in execution of said criminal conspiracy. Learned trial Court also considered that in a matter like this, there would not be any direct evidence and accused will execute such criminal conspiracy secretly. Therefore, relying on the circumstantial evidence, learned trial Court recorded conviction against accused No.6. There is no error in it. In the light of the said discussion, the decisions relied upon by learned counsel for accused No.6 in **State (Government of NCT of Delhi) v. Nitin Shah**³¹, **Subramaniam Swamy v. A. Raja**³², **Praveen alias Sonu v. State of Haryana**³³, **Yogesh**¹⁴ and **State (NCT of Delhi v. Navjot Sandhu)**³⁴ are of no use. In the said cases, there are vague and bald statements against

³¹. AIR SCW 5347

³². (2012) 9 SCC 257

³³. AIR 2022 SC (Cri.) 280

³⁴. AIR 2005 SC 3820

accused therein and that there are few bits here and there. But, in the present case, the prosecution established the role played by accused No.6 in preparation of fake IDs and supplying the same to other accused for the purpose of availing money through *hawala* to execute criminal conspiracy. Therefore, accused No.6 cannot place reliance on the aforesaid decisions. The facts of the said cases are different to the facts of the present case. In the present case, there is allegation of conspiracy and it is an organized crime.

64. In the present case, accused Nos.2 and 5 were arrested in RC.No.6/2012/NIA-DELHI, whereas accused Nos.3 and 4 were arrested in Crime No.54 of 2011 by Special Cell of Delhi Police. Accused No.6 was also arrested in Crime No.54 of 2011 by the Special Cell of Delhi Police.

i) It is relevant to note that RC.No.6/2012/NIA-DELHI was registered on 10.09.2012 at NIA Police Station, New Delhi, and in the said case also, there is allegation of criminal conspiracy hatched by IM. In the present case, the allegation against accused No.6 is with regard to criminal conspiracy and bomb blasts. Therefore, accused No.6 cannot contend that with regard to larger conspiracy

and registration of second FIR is impermissible. The allegations in the aforesaid crime are different to the allegations made in the present crime. In the present case, there is specific allegation against accused No.6 that he has prepared fake IDs, and supplied the same to other accused to enable them to receive money in execution of criminal conspiracy of bomb blasts.

65. With regard to the contention of learned counsel for accused No.6 that Exs.P440 and 441, which are explanation of accused No.6 regarding articles seized under Ex.P439 and disclosure statement made on 06.09.2014 in Crime No.54 of 2011 have no evidentiary value of recovery and discoveries to prove criminal conspiracy against accused No.6 in the present case. Ex.P438-A is the data retrieved from the chat IDs and e-mail IDs disclosed by accused No.6 and the same was transferred to a sterile DVD and handed over along with certificate. The same was seized through seizure memo containing thirteen (13) sheets. Ex.P106-A is the original report to Ex.P106 received from ICERT (22 sheets) along with covering letter. Ex.P439 is the seizure memo at the instance of accused No.6, details of articles mentioned in Ex.P439 were recovered on 06.09.2014 containing 5 sheets. Ex.P440 is the

explanation of accused No.6 regarding the articles seized under Ex.P439 containing 7 sheets. Ex.P441 is the disclosure statement containing 4 sheets which was made on 06.09.2014. Ex.P442 is the supplementary disclosure statement of accused No.6 giving details of chat IDs and e-mails IDs etc., containing two sheets which was conducted on 11.09.2014. Ex.P487 is the certified copy of e-mail extracted from the pen-drive which was in possession of accused No.6.

i) Like-wise, Ex.P488 is the certified copy of e-mail sent by accused No.6 at the time of Jama Masjid Blast in the year 2010 carried out in Delhi. Ex.P489 is the certified copy containing 17 sheets relating to customer application form in the name of Purva Shinde, identity proof and specimen signatures. Ex.P490 is the certified copy of Central Forensic Scientific Laboratory report of Handwriting Expert containing five sheets. Ex.P491 is the certificate under Section - 65B of Evidence Act in respect of Ex.P105. Ex.P492 is the certificate under Section - 65B of the Evidence Act issued in respect of Ex.P105. By producing the said documents and examining the aforesaid witnesses, the prosecution proved guilty of accused No.6, role played by him in commission of offence beyond

reasonable doubt. On consideration of the said aspects only, learned trial Court recorded conviction against accused No.6. In the light of the same, learned counsel for accused No.6 cannot contend that a fact already discovered from other sources cannot be discovered afresh even if relevant information is extracted from the accused. Thus, the facts in **Thimma v. State of Mysore**³⁵ relied upon by learned counsel for accused No.6 are altogether different to the facts of the present case.

66. Accused No.6 was arrested by Special Cell of Delhi Police on 06.09.2014 from Sharanpur Railway Station, Uttar Pradesh. Memo of arrest is also filed by the prosecution and the same was marked. In the present case, NIA arrested accused No.6 by way of producing PT warrant. Thus, learned counsel for accused No.6 cannot contend that the prosecution failed to prove arrest of accused No.6 in the present case.

67. It is also apt to note that the arrest of accused No.6 was effected and nineteen (19) electronic devices including DELL Laptop were seized from accused No.6. Therefore, learned counsel for accused No.6 cannot contend that the said recoveries and discoveries

³⁵. AIR 1971 SC 1871

were not made from accused No.54 of 2011. In a matter like this, accused No.6 cannot place reliance on the information obtained by him under Right to Information Act, 2005 (for short 'RTI Act'), to show that there was no arrest from Sharanpur Railway Station.

68. In a matter like this, minor omissions and contradictions can be ignored. As discussed above, accused No.6 cannot place reliance on the faulty/defect investigation as a defence and seek acquittal.

69. It is relevant to note that 69 Articles including 19 electronic devices which include DELL Laptop were seized under accused No.6 under Ex.P439 - seizure memo. The details of the same are specifically mentioned in the said seizure memo. Exs.P106-A, 439, 4389-A, 440, 441, 442, 487, 488 and 489 were marked through PW.140. Thus, accused No.6 cannot contend that recoveries were not proved by examining a public witness and there are contradictions of place of arrest in arrest memo etc. He cannot contend that mere marking of document as an exhibit does not dispense with its proof. Accused No.6 cannot contend that no independent witness was made as *panch* witness and he was not

examined. The further contention of accused No.6 is that electronic devices/seizures were in illegal custody.

70. As discussed above, PW.140, the Chief Investigating Officer in Crime No.54 of 2011 specifically deposed about the aforesaid discoveries and recovers including e-mail IDs, DELL Laptop etc. In the light of the said discussion, the contention of learned counsel for accused No.6 that Ex.P451, dated 16.04.2015, alleged discovery of information under Section - 27 of the Evidence Act is inadmissible cannot be accepted.

71. His further contention that Memorandum of deceased Nos.4 & 5 accused had not signed on the *panchanama* and upon deceased Nos.1 to 3, there is no signature of accused No.6, cannot be considered. The evidence of PW.111 - Syed Abdul Irshad, *panch* witness to the disclosure statement of accused No.6 and Ex.P326 is disclosure statement of accused No.6 and Ex.P327 - printouts of scanned copies retried in the disclosure *panchanama* are relevant. The same prove the role played by accused No.6 in preparation of fake IDs and supply of the same to other accused. As discussed above, accused No.6 cannot contend that photocopy is not admissible

in evidence and mere marking of the same as an exhibit does not dispense with its proof.

72. With regard to the contention of learned counsel for accused No.6 that there is non-compliance of Section - 65B of the Evidence Act insofar as Exs.P107, 106-A and P491 is also inadmissible in view of the fact that prosecution has marked Ex.P491 - certificate issued under Section - 65B of Evidence Act in respect of Ex.P107 (hard disk), Ex.P492 - certificate issued under Section - 65B of Evidence Act in respect of Ex.P105 chart extracts. Ex.P445 - certificate issued under Section - 65B of the Evidence Act authenticating the content of the CD.

73. There is no violation of procedure laid down under Section - 203 (4) of Cr.P.C. as contended by learned counsel for accused No.6 and cannot contend that as per Extraordinary Gazette file on record. ICERT, New Delhi has no *locus standi*/jurisdiction/authority to conduct Digital Forensic Analysis at any relevant point of time.

74. In the light of the aforesaid discussion, more particularly, the evidence of aforesaid witnesses, recoveries and discoveries, the

contention of learned counsel for accused No.6 that the contents of second supplementary charge sheet, depositions of the aforesaid witnesses lack the ingredients of Section - 120B of IPC is unsustainable. As discussed above, there is specific allegation against accused No.6. He has prepared fake IDs and supplied the same to accused Nos.2 to 5, who used the same for the purpose of receiving money through *hawala* and used the said money for execution of conspiracy. Therefore, the facts in **Yogesh**¹⁴ are different to the facts of the present case.

75. It is relevant to note that in **Bilal Hajar alias Abdul Hameed v. State, represented by Inspector of Police**³⁶, the Apex Court held in paragraph Nos.30 to 34 held as under:

“30. Reading of Section 120-A and Section 120-B IPC makes it clear that an offence of “criminal conspiracy” is a separate and distinct offence. Therefore, in order to constitute a criminal conspiracy and to attract its rigor, two factors must be present in the case on facts: first, involvement of more than one person and second, an agreement between/among such persons to do or causing to be done an illegal act or an act

³⁶. (2019) 17 SCC 451

which is not illegal but is done or causing to be done by illegal means.

31. The expression “criminal conspiracy” was aptly explained by this Court in *E.G. Barsay v. State of Bombay* [*E.G. Barsay v. State of Bombay*, (1962) 2 SCR 195 : AIR 1961 SC 1762 : (1961) 2 Cri LJ 828] . The learned Judge Subba Rao, J. (as his Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said : (AIR p. 1778, para 31)

“31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.”

32. Therefore, in order to constitute a conspiracy, meeting of minds of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy which is being hatched and nor is it necessary to prove their active part/role in such meeting.

33. In other words, their presence and participation in such meeting alone is sufficient. It is well known that a criminal conspiracy is always hatched in secrecy and is never an open affair to anyone much less to the public at large.

34. It is for this reason, its existence coupled with the object for which it was hatched has to be gathered on the basis of circumstantial evidence, such as conduct of the conspirators, the chain of circumstances leading to holding of such meeting till the commission of offence by applying the principle applicable for appreciating the circumstantial evidence for holding the accused guilty for commission of an offence. (See also *Baldev Singh v. State of Punjab* [*Baldev Singh v. State of Punjab*, (2009) 6 SCC 564 : (2009) 3 SCC (Cri) 66] .)”

76. In **Ram Sharan Chaturvedi v. The State of Madhya Pradesh**³⁷, the Apex Court held in paragraph Nos.20 to 23 as follows:

“20. In his evidence, PW-10 stated that on 12.06.2004, he caused the main gate of the branch to be closed by A-1, a contingent employee. Thereafter, on 14.06.2004, the sanitation employee obtained this set of keys

³⁷. 2022 LiveLaw (SC) 709

from the house of the Appellant, a fact used by the prosecution to imply that after the branch was locked on 12.06.2004, the Appellant was in possession of the keys to the main gate of the branch. On this, the Trial Court glossed over the lapse on the part of PW-10. This questionable observation of the Trial Court is as follows:

“It was admitted by Sushil Verma (PW-10) in the paragraph No. 30 of the cross-examination that locks could be locked as per the rules of the bank only by the authorised person. The accused Pradeep being not a casual worker, but even then he had committed error deliberately while handing over the key. The witness stated further in the paragraph No. 36 that the external, gate was got closed by the accused Pradeep. It is correct to say that he had no authority to close the gate. Thus the witness did not get the lock locked by the authorised person as per the rule of the bank, but the lock was locked by unauthorised person. But the errors committed by the witness do not exempt the accused from the consequences of the crime. It does not provide any benefit to the accused.” (emphasis supplied)

21. Apart from the fact that the Appellant by himself could not have operated the strong room and the safe of the Bank without the presence of the officer who was in the custody of the other set of keys, it is also important to note that the

prosecution completely failed in adducing any evidence to indicate the existence of any agreement between the Appellant on the one hand and A-1 and A-2 on the other. The link necessary for proving the charge of conspiracy is entirely missing.

22. The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of *State of Kerala v. P. Sugathan and Anr.* [(2000) 8 SCC 203], this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:

“12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...”

13. ...The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case

where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient...” (emphasis supplied)

23. The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600], this Court held:

“101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be

conscious and clear enough to infer their concurrence as to the common design and its execution.” (emphasis supplied)”

77. In **Sanjeev v. State of Kerala**³⁸, the Apex Court held in paragraph Nos.35 and 36 as under:

“35. After consideration of these depositions, we must decide whether the evidence on record is sufficient to establish a conspiracy under Section 120B, IPC. The ingredients to constitute a criminal conspiracy were summarised by this Court in **State through Superintendent of Police v. Nalini** [(1999) 5 SCC 253] (3-Judge Bench). They are as follows:

- i. Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.
- ii. The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.
- iii. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

³⁸. 2023 INSC 998

- iv. Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses.

36. These principles were followed in **Yakub Abdul Razak Memon v. State of Maharashtra** [(2013) 13 SCC 1] (2-Judge Bench), wherein this Court reiterated that to establish conspiracy it is necessary to establish an agreement between the parties. Further, the offence of criminal conspiracy is of joint responsibility, all conspirators are liable for the acts of each of the crimes which have been committed as a result of the conspiracy. [See also: *Arvind Singh v. State of Maharashtra* [(2021) 11 SCC 1] (3-Judge Bench); *Mohd. Naushad* (supra)].”

78. In the light of the aforesaid principle laid down by the Apex Court, as discussed above, the prosecution proved the aforesaid ingredients by examining PWs.81, 111, 134, 136, 139, 140 and 147 by producing the aforesaid exhibits. By the aforesaid witnesses and the documents, the prosecution has proved the retrieval of *jihadi* material, draft e-mails on the letter head of IM and also fake IDs

used by accused Nos.2 to 4 from the Laptop of accused No.6 at his instance of accused No.6.

79. It is relevant to note that on consideration of the said depositions and documents, learned trial Court held that accused No.6 created fake IDs used by accused Nos.2 to 4 for financial transactions and was in possession of Jihadi material and used to send e-mails after commission of bomb blasts in various places.

80. It is also trite to note that the trial Court also placed reliance on the circumstantial evidence led by prosecution and the principle laid down by the Apex Court in **Sharad Biridhichand Sarda v. State of Maharashtra**³⁹ including five (05) golden principles laid down by the Apex Court, to place reliance on the circumstantial evidence to record conviction against accused. In the present case, the circumstances relied upon by the prosecution forms a complete chain and on consideration of the same only, the trial Court recorded conviction against accused No.6. It is also apt to note that in paragraph Nos.652 to 659, the trial Court gave specific findings with regard to circumstantial evidence. In **Sharad Biridhichand Sarda**³⁹, the Apex Court held as under:

³⁹. (1984) 4 SCC 116

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71:AIR 1952 SC 343:1952 SCR 1091: 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198:1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71:AIR 1952 SC 343:1952 SCR 1091 : 1953 Cri LJ 129]:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be

proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793:1973 SCC (Cri) 1033:1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not

merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

In view of the above, the prosecution proved the guilt of accused No.6 beyond reasonable doubt.

81. As discussed above, the aforesaid witnesses categorically spoke the role played by accused No.6 in commission of offence. Nothing contra was elicited by accused No.6 during cross-examination of the said witnesses. On consideration of the said aspects only, learned trial Court recorded conviction against accused No.6. There is no error in it.

82. CONTENTIONS OF ACCUSED No.6 ON LEGAL ASPECTS:

Learned counsel for accused No.6 contended as follows:

i) There is violation of procedure laid down under Sections - 27 and 114 of the Evidence Act, Sections - 43, 43A and 43B of the UAP Act, Sections - 6 and 7 of the NIA Act and 100 of the Cr.P.C.

ii) In the light of the said submissions, it is relevant to note that Section - 27 of the Evidence Act deals with 'how much of information received from accused may be proved', and it says that provided that, when any fact is proved 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. This Court

in **Macharla Ramesh**²¹ considered the scope of Section - 27 of the Evidence Act and examined distinction between Sections - 25, 26 and 27 of the Evidence Act and held that recovery pursuant to confession made by accused is admissible. In the present case also, the confession of accused No.6 and recoveries and discoveries made from him pursuant to the same is admissible. In the light of the same, the contention of learned counsel for accused No.6 cannot be accepted.

iii) Section - 114 of the Evidence Act deals with 'Court may presume existence of certain facts, and it says that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations were also given. In the present case, learned trial Court presumed certain facts which were in existence while recording conviction against accused No.6. The said findings are in paragraph Nos.647 to 651 of impugned judgment with regard to accused No.6. Therefore, the said contention of learned counsel for accused No.6 is also unsustainable.

iv) With regard to the contention of learned counsel for accused No.6 that there is violation of procedure laid down under Sections - 43, 43A and 43B of UAP Act. Section - 43 deals with 'officers competent to investigate offences under Chapters - IV and VI. Section - 43 (c) says that in any case not relatable to Clause (a) or clause (ba), below the rank of a Deputy Superintendent of Police or a Police Officer of an equivalent rank, shall investigate any offence punishable under Chapter - IV or VI. In the present case, all the Officers are Deputy Superintendent of Police (Assistant Commissioner of Police or above). Therefore, there is no violation of procedure laid down under Section - 43 of the UAP Act. Section - 43A of UAP Act deals with power to arrest, search, etc. Section - 43B of UAP Act deals with procedure of arrest, seizure etc. The same is relevant and extracted as under:

“43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.”

As discussed above, the searches, seizures and arrests were strictly in accordance with the aforesaid procedure laid down under NIA Act. Learned counsel for accused No.6 except making a bald statement, failed to satisfy this Court with regard to violation of the aforesaid provisions. It is relevant to note that learned trial Court considered the said aspects while recording the conviction against accused No.6 with the findings in paragraph Nos.646 to 651 of the impugned judgment.

v) With regard to the contention of learned counsel for accused No.6 that there is violation of procedure laid down under Sections - 6 and 7 of the NIA Act, it is relevant to note that Section - 6 of the NIA Act deals with ‘investigation of scheduled offences’, and Section - 7 deals with ‘power to transfer investigation to State Government. The same are relevant and extracted as under:

“6. Investigation of Scheduled Offences.—(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled

Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

(8) Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction.”

“7. Power to transfer investigation to State Government.—While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

(a) if it is expedient to do so, request the State Government to associate itself with the investigation;
or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.”

The State Government on consideration of gravity of the offences in the present case, transferred the investigation to NIA *vide* Ex.P34 letter dated. Many of the aforesaid offences alleged against accused including accused No.6 are scheduled offence. Thus, there is no

violation of the procedure laid down under Sections - 6 and 7 of the NIA Act.

vi) With regard to the contention of learned counsel for accused No.6 that there is violation of Section - 100 of Cr.P.C., it is relevant to note that Section - 100 of Cr.P.C. deals with 'persons in charge of closed place to allow search'. Except making a statement that there is violation of Section - 100 of Cr.P.C., learned counsel for accused No.6 failed to satisfy this Court with regard to the said violation.

83. **MEMOS:**

i) Mr. R. Mahadevan, learned counsel for accused Nos.2 and 5 and Mr. Appam Chandra Sekhar, learned counsel for accused Nos.3 and 4 contended that after pronouncing of judgment by the learned trial Judge, when the matter was posted for hearing on sentence, the appellants filed memos before the trial Court stating that their counsel are not available and they were held up in Supreme Court, New Delhi. Therefore, they requested the trial Court to adjourn the matter even to hear on Sentencing Policy. Instead of adjourning the matter on consideration of the said memos, the

learned trial Court heard the accused on sentencing and imposed sentence of death penalty on the accused. Thus, the learned trial Court did not pass any order on the memos filed by the accused.

ii) Therefore, the appellants - accused Nos.2 to 5 sought a decision/judicial order on memos filed by them. On Memo, the learned trial Court cannot pass a judicial order. If the appellants want a judicial order, they have to file an Interlocutory Application, but they cannot file a memo. The said principle was also laid down by the High Court of Judicature at Hyderabad for the States of Telangana and the Andhra Pradesh in **Syed Yousuf Ali v. Mohd. Yousuf**⁴⁰. Even otherwise, after pronouncing the judgment and while hearing on sentence of imprisonment, the Court will hear the accused, but not learned counsel for the accused. In the light of the same, the aforesaid contention of learned counsel for accused Nos.2 to 5 cannot be accepted.

84. **DEFECT/FAULTY INVESTIGATION:**

i) Learned counsel for the appellants strenuously contended that the Investigating Officers did not conduct investigation properly. According to them;

⁴⁰. 2016 (3) ALD 235

- (a) There is delay in registration of FIR;
- (b) FIR does not contain full particulars;
- (c) Seizure procedure was not followed;
- (d) FSL Experts were not examined;
- (e) TIP was not conducted properly;
- (f) Opinion of Experts was not properly obtained;
- (g) Certificates under Section - 65B of the Evidence Act were not obtained;
- (h) *Panch* witnesses were not examined;
- (i) Doctors, who treated the injured persons, were not examined; and
- (j) Injured witnesses were not examined.

ii) In fact, the prosecution has examined the doctors, who treated the injured persons, and some of the injured persons. The other aspects with regard to delay and FSL reports will be considered in the following paragraphs. However, in a matter like this, the accused cannot take faulty/defect investigation as a defense and seek

acquittal. The said principle was also laid down by the Apex Court in **Dayal Singh v. State of Uttaranchal**⁴¹.

iii) Even if an investigation is flawed or partly affected, rest of the evidence must be scrutinized independently as held by the Apex Court in **Edakkandi Dineshan @ P. Dineshan v. State of Kerala**⁴².

iv) As discussed above, it is an organized crime. Therefore, minor omissions in conducting an investigation can be ignored. In a matter like this, the accused cannot take defect/faulty investigation as a ground for acquittal. Therefore, the contention of learned counsel for the appellants that the Investigating Officers did not conduct the investigation properly cannot be accepted.

85. EYE-WITNESSES:

i) Learned counsel for the appellants also contended that there are no eye-witnesses to the incident. Entire case rests on circumstantial evidence. But, according to the prosecution, PW.59 - Merugu Ilaiah is an eye-witness. PW.143 - Mr. T. Nageshwar Rao, Reporter, TV9, Telugu News Channel, who interviewed PW.59. It is relevant to discuss their evidence.

⁴¹. AIR 2012 SC 3046

⁴². 2025 INSC 28

ii) PW.59 deposed in his chief-examination as under:

“I am making a film now. I was working in HDFC Bank as sales officer during 2012-13. I got married in the year 2013 January, my wife is working in Pharmaceutical company at Banjara Hills. I used to drop my wife at Disukhnagar bus stop in the morning and used to receive her in the evening on the other side of the road bus stop. She used to call me from the bus when she was reaching Malakpet, so that I will be available at Dilsukhnagar to receive her. On 21-02-2013 around 06-30 pm., I reached Anand Tiffin center at Dilsukhnagar and I was waiting for my wife, meanwhile I had a cup of tea at Anand Tiffin center by parking my bike in between A1-mirchi center and Anand Tiffin center. One person brought a cycle with Tiffin carrier and parked the same in between two bikes. I observed because the cycle may fit between two bikes or not. I thought that the said person was idly seller and as such he got some bag containing Tiffin box on the carrier of the cycle. The witness identified the said person as Accused No.4 Mohd. Taseen Akhtar @ Hassan @ Monu (the witness identified A4 while the accused sat in their own sequence. The accused covered their faces for all the witnesses and removing such cover at the time of giving evidence). Then I crossed the road

to reach the bus stop where my wife gets down. By the time I cross the road there was an explosion near Venkatadri Theater and within seconds I heard another sound of explosion from Al-mirchi center side. There was lot of commotion and people were running in all direction and I also noticed huge fires and smoke. I along with my wife rushed to our home. Then I came to know through the news of TV channel that there was bomb blast at Dilsukhnagar and I returned to scene with curiosity. Then I noticed the police and other people and came to know that one blast was at Anand Tiffin center due to cycle bomb caused by a person having light beard. Meanwhile a media person came to me observing me conversing with others about my presence just few minutes before the blast. Then the TV9 Channel person took my interview after asking me to cover my face with a kerchief, then I narrated the whole incident to TV9 reporter which was telecast on the same night. I was examined by Police. I participated in the TI parade twice. At the time of first on 28-06-2014 TI parade I could not identify A4 due to lack of sufficient light and the long distance in between me and the accused and other non-suspects. But, in the second time on 09-07-2014 I identified A4 as I was permitted to go near and point out A4. Ex.P52 is my signature on TI proceedings dt.28-

06-2014. Ex.P53 is my signature on TI proceedings dt.09-07-2014.”

iii) During cross-examination, this witness admitted that during the first Test Identification Parade (for short ‘TIP’) conducted on 28.06.2014, he identified another person instead of accused No.4. What all he stated in his chief examination was not stated before the Magistrate.

iv) PW.143 deposed in his chief-examination as under:

“I am working as TV9 News Channel Senior Reporter for the past 11 years. On 21-02-2013 we came to know that bomb blasts took place at Dilsukhnagar at around 06-50 pm., and I reached scene of offence at 07-30 pm., I got video-graphed the scene of offence and dead bodies and the wreckage of the impact of the blasts. Then one person by name Merugu Illaiah (PW59) came to me and stated before me that he has seen one person having parked a cycle mounted a box which might have resulted in the blasts He also stated that the identification particulars of the said person, as the said person was having beard. He crossed the road after observing the said person and there was a blast. Then I requested the said person to give his interview, then he refused to do so out of fear, then I asked him to

cover his face with cloth and then he gave his interview. I also promised to him that I will not reveal his identity to any one and within ½ hour the same was tele-casted. Ex.P444 is the CD of the telecast. Ex.P445 is the certificate Under Section 65-B of Indian Evidence Act provided by me authenticating the content of the CD. Ex. P446 is the letter addressed to the Managing Director TV9 requesting for providing the said telecast by NIA Police. Ex. P446 was received by me. I was examined by the Police. I provided the details of Merugu Illaiah to the NIA Police in September, 2013.”

v) During cross-examination, this witness admitted that in Ex.P446, there is no mention of the name of the person whom he interviewed, but it was only mentioned that he was a ‘masked person’. In Ex.P446, there is no mention that he was the Reporter of TV9 who interviewed the masked man. The name of the person whom he interviewed on 21.02.2013 is not mentioned in Ex.P445 (certificate). He did not state in his 161 Cr.P.C. statement dated 12.06.2014 before the NIA Police about the name of the person whom he interviewed on 21.02.2013 as by that time the name and

particulars of the person were not known to him. He interviewed the mask man on 21.02.2013 at about 10.00 P.M.

vi) PWs.1 and 2 are also eye-witnesses. Their depositions will also be discussed contextually in subsequent paragraphs.

vii) Thus, the appellants failed to elicit anything contra from the aforesaid witnesses. Therefore, learned counsel for the appellants cannot contend that there are no eye-witnesses to the incident and PWs.59 and 143 are not eye-witnesses.

viii) It is relevant to note that eye-witnesses are eyes and ears of justice and where the eye witnesses' evidence is found available and trustworthy, hypothetical answers given by other witness including doctors cannot decrease the value of eye-witness. The said principle was also held by the Apex Court in **Ramakant Roy v. Madan Rao**⁴³.

ix) It is apt to note that on consideration of the said aspects, the learned trial Court convicted the appellants *vide* the impugned judgment.

⁴³. AIR 2004 SC 77

86. TEST IDENTIFICATION PARADE (TIP):

i) Rule - 34 of the Criminal Rules of Practice and Circular Orders, 1990 deals with 'identification parades. It is relevant to extract and the same is extracted as under:

“34. Identification parades:- In conducting identification parades of suspects, the Magistrate shall observe the following Rules.

- (i) (a) The Police should send a requisition for holding identification parade by the Magistrate as nominated by the Sessions Judge. On such requisition, the Magistrate shall conduct the identification parade as expeditiously as possible.
- (b) Where bail application is pending for the release of the accused and on being informed so by the Police Officer, the Magistrate shall as far as possible fix a date earlier to the date of arguments on the bail application and hold the identification parade.
- (ii) (a) As far as possible, non-suspects selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall if possible, either arrange for similar wear to other or induce the suspected person to remove such garment.
- (b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.

- (iii) (a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.
- (b) Before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall also be asked to state the marks of identification by which he can identify the suspects.
- (c) Each witness shall be fetched by a peon separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting to see the persons paraded.
- (iv) Every circumstances connected with the identification including the act if any attributed to the person who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not. Particularly any objection by any suspect to any point in the proceeding shall be recorded.”

ii) It is relevant to note that in the present case, PW.98 - learned XIX Metropolitan Magistrate of Cyberabad at Kukatpally, conducted TIP proceedings of accused No.2 on 19.10.2013 *vide* Ex.P257. In his deposition, he has deposed as under:

“In pursuance of such proceedings the Chief Investigating Officer, National Investigating Agency, Hyderabad has filed a requisition before me to conduct Test Identification Parade in respect of the above named accused through the

witnesses as mentioned in the requisition of NIA filed before me which is Ex.P255 (4 Sheets).

Accordingly I addressed a letter to the Jail Authorities of Cherlapally fixing the date of TIP as 19-10-2013 under Ex.P256. I issued summons to nine witnesses as mentioned in Ex.P255 directing them to appear before Central Prison Cherlapally on 19-10-2013.

On 19-10-2013 I reached Central Prison Cherlapally along with my laptop and printer to conduct TI proceedings. I reached the Jail premises by 10:30 am., I deposited my personal cell phone with Jail staff and entered into Chambers of Deputy Superintendent of Prison and secured the presence of the witnesses and identified them with the help of summons which I issued. I recorded the statements of Ms.Nabees (1st witness), Mr. Stephen Felex Squares (PW71, 2nd witness), Mr. Muttu Ravi Denakar (PW69, 3rd witness), Mr. Devaraj Shet (PW70, 4th witness), Mr. P. Venkateshwarlu (PW75, 6th witness), Mr. Shaik Riyaz (7th witness), Mr. Mohan Lal Sencha (PW58, 8th witness), Mr. Khaja Pasha (PW56, 9th witness). One witness by name Raju Shetty (Witness No.5) remained absent. I recorded the statements of the above witnesses. At the time of recording of my statements no jail staff member and any police official were present. I asked the

witness whether the Police have shown any photographs of the suspect, for which the witnesses replied in negative. I instructed the witnesses to remain in the same place and reached Conference Hall where I conducted TIP. In Conference Hall except myself nobody was present. I secured the presence of suspected person the accused No.2 Aasadullah Akthar @ Haddi @ Daniyal, S/o. Dr. Javeed Akthar, Age: 28 years, R/o.Bazbahadur, Azamgarh, Uttar Pradesh State. I have identified the suspect with the help of prisoner identification card and confirmed that the person before me was the right person in respect of whom I have to conduct TIP. The suspect was wearing Muslim cap, having beard and wearing pants and shirt. At the instance of suspect five non-suspects of same age, and body built and attire and other physical features were selected from among the inmates of the jail. All the non-suspects and suspect were wearing Muslim cap. Then I asked the suspect to change his dress if he so desires. Then I asked the suspect and five non-suspects to stand in a row. Accordingly, they stood in a row and the suspect took third position in the row from left to right. Then I instructed the jail staff member who was outside the room to bring first witness. The witness came in burka and identified the suspect.

I sent the first witness to ladies' barrack in the jail.

I have informed the suspect that he was at liberty to change his dress and position. The suspect stood in fourth position in the row, then I instructed the jail staff member who was the outside the room to bring the second witness from the Chambers of Deputy Superintendent. The witness came and identified the suspect. I sent the second witness to male barrack in the jail.

Then I informed to the suspect that he was at liberty to change his position and dress but the suspect did not change his dress and took third position in the row. Then I instructed the jail staff member who was the outside the room to bring third witness. The witness came and identified the suspect. I sent the witness to male barrack.

Once again, I informed to suspect that he is at liberty to change his attire and position. The suspect did not change his dress, but he took second position in the row. Then I instructed the jail staff member who was outside the conference hall to bring forth witness. Accordingly, fourth witness was brought to my room and this witness also identified the suspect who was in second position in the row. I sent the witness to male barrack.

The fifth witness by name Raju Shetty was not present.

Once again, I informed to suspect that he is at liberty to change his attire and position. The suspect did not change his dress, but he took fifth position in the row. Then I instructed the jail staff member who was outside the conference hall to bring sixth witness. Accordingly, sixth witness was brought to my room and this witness also identified the suspect who was in fifth position in the row. I sent the witness to male barrack.

Once again, I informed to suspect that he is at liberty to change his attire and position. The suspect did not change his dress, but he took second position in the row. Then I instructed the jail staff member who was outside the conference hall to bring seventh witness. Accordingly, seventh witness was brought to my room and this witness also identified the suspect who was in second position in the row. I sent the witness to male barrack.

Once again, I informed to suspect that he is at liberty to change his attire and position. The suspect did not change his dress, but he took sixth position in the row. Then I instructed the jail staff member who was outside the conference hall to bring eighth witness. Accordingly, eighth witness was brought to my room and this witness also

identified the suspect who was in sixth position in the row. I sent the witness to male barrack.

Once again, I informed to suspect that he is at liberty to change his attire and position. The suspect did not change his dress, but he took first position in the row. Then I instructed the jail staff member who was outside the conference hall to bring ninth witness. Accordingly ninth witness was brought to my room and this witness also identified the suspect who was in first position in the row. I sent the witness to male barrack.

Ex.P257 is the Test Identification parade proceedings (15 sheets) including the statements of the witnesses.

I have obtained the signatures of the non-suspects who participated in the proceedings on the 15th sheet of Ex.P257. At this stage I asked the suspect as to whether he has got any objection for the manner in which the proceedings are conducted. The suspect said nothing. I instructed the jail authorities to send away the witnesses from the jail premises and concluded my proceedings at 02-30 pm.

Then once again on 22-10-2013 I conducted Test identification parade in respect of the same suspect through the witnesses namely Raju Shetty (5th witness in earlier proceedings who was absent on 19-10-2013 and 1st witness in the

present proceedings) and Shaik Ismail (PW57, 2nd witness).

I issued summons to the above named two witnesses to appear before Central Prison, Cherlapally on 22-10-2013 at 10-30 am., Accordingly they appeared at Central Jail, Cherlapally on 22-10-2013. I recorded their statements and obtained signatures. Then I secured the presence of suspect (accused No.2) to the conference hall and ascertained his identity with jail ID card. The suspect has selected five non-suspects from among the inmates of jail. The suspect was wearing pant and shirt and Muslim cap. He was having beard. The non-suspects were identical in their physical features and age group. Then I informed the suspect that he is at liberty to change his dress, if he so desires. But he did not change his dress.

I asked the suspect and non-suspect to stand in a row. Accordingly, they stood in the row forming from left to right. The suspect took first position in the row. Then I instructed the jail staff member who was outside the conference hall to bring first witness Raju Shetty. Accordingly, first witness Raju Shetty was brought to my room and this witness identified the suspect who was in first position in the row. I sent the witness to male barrack.

I asked the suspect and non-suspect to stand in a row. Accordingly, they stood in the row forming from left to right. The suspect took sixth position in the row. Then I instructed the jail staff member who was outside the conference hall to bring second witness Shaik Ismail (PW57). Accordingly, second witness Shaik Ismail (PW57) was brought to my room and this witness identified the suspect who was in sixth position in the row. I sent the witness to male barrack.

At this stage, I asked the suspect as to whether he has got any objection for the manner in which the proceedings are conducted. The suspect said nothing. I instructed the jail authorities to send away the witnesses from the jail premises and concluded my proceedings at 11-50 am., Ex. P258 is the Test identification proceedings dt. 22-10-2013 (7 sheets) along with statements of the witnesses and signatures of the non-suspects.

iii) During cross-examination, this witness admitted as under:

“On 11-10-2013 I issued summons to the witnesses. I did not mention specifically in sheet No.15 of Ex.P257 and the last sheet of Ex.P257 about the height, complexion, and color of dresses worn by the non-suspects. The witness volunteers that he mentioned in para No.7 of

Ex.P257 and Ex.P258. It is true that I stated in both the proceedings in Ex.P257 that the suspect was in white in complexion and was wearing trousers and full sleeved shirt, and he had well grown black coloured beard. It is true that I did not specifically mention in my proceedings under Ex. P257 in para No.7 that the non-suspects are also having full grown beard. The witness volunteers that I generally noted that their appearance is identical. It is true that I did not specifically mention in my proceedings under Ex.P257 in para No.7 that the non-suspects were of white complexion and were wearing similar dresses as that of the suspect. The witness volunteers that i generally noted that their appearance is identical.

Q: I put it to you: Have you asked the witnesses whether they have prior acquaintance with the suspects?

Answer by the witness: No

The witness volunteers that he put a question to the witness whether they had any occasion to see the suspect after his arrest and for which the witnesses answered negative. It is true that I have written in the proceedings vide Ex.P257 and Ex.P258 in para No.7 that the features of and non-suspects are "identical". But the appropriate word would be "similar". It is true that I did not

mention in my proceedings vide Ex. P257 and Ex. P258 that I asked the witnesses about the identification marks and facial features of the suspects whom they propose to identify. The witness volunteers that the same were mentioned in the statements of the witnesses. I did not mention in Ex. P257 and Ex.P258 that I asked the witnesses about the exact individual specific overtacts of the suspects. The witness volunteers that it is written in the statements of witnesses. I did not ask the suspects and non-suspects to bring their spare dresses to be used during the Test Identification Parade. The witness volunteers that no spare dresses will be available in the jail premises and as such I did not put that question but I asked the suspect and non-suspects to change their dresses among them. It is true that I have permitted the witnesses to wear black mask during the identification parade proceedings to hide their identities from the accused. The witnesses did not specifically state before me that they are afraid of the accused and as such they want to wear black masks while identifying the accused. I did not ask the witnesses to produce their ID proof as to their identity. The witness volunteers that he identified the witnesses basing on the summons. The suspect selected the non-suspects from among the inmates of the jail. It is true that in my TI proceedings vide Ex.P257 and

Ex P258 I did not specifically mention the name of the witnesses, and that they were also having long beard and Muslim caps who were brought by the attender at the time of identification of the accused. I only referred to them as first witness, second witness etc., I did not mention the descriptive particulars of my laptop and my printer I used were supplied by the Hon'ble High Court. PW55 (Periki Venkateshwarlu) stated before me that he is a private employee working in Santhosh Lorry Transport, Peeplepahad Village, Chotuppal Mandal, Nalgonda District. It is true that PW55 stated before me in the Test Identification parade proceedings that he got one elder brother Mr.P.Brahmaiah who has got one tin sheeted shed in Abdullapurmet, Hayathnagar Mandal, Ranga Reddy District. PW62 stated before me in his statement before conducting Test Identification parade that he has got a house in Abdullapurmet and Mr.Brahmaiah has got tin sheeted shed adjoining my house and that four young persons joined as tenants in the house of Brahmaiah. It is true that PWS6 did not state in his statement about the descriptive particulars of the old cycle he sold. It is true that PW57 did not state in his statement about the descriptive particulars of the cycle he sold. It is true that PW62 stated before me that the tenants have left the house abruptly on the next day of blasting in

Dilsukhnagar. It is true that I did not specifically mention that I have taken precautions to ensure that the witness after the identification parade does not come in to contact with the other waiting witnesses. The witness volunteers that after identification of the suspect each witness was sent to separate barrack in the jail. It is not true to suggest that the suspect stated before me that all the witnesses saw him in NIA office during his police custody and as such they identified him in the test identification parade. It is not true to suggest that I have not followed the procedure as contemplated by Law.”

Thus, nothing contra was elicited during cross-examination of the aforesaid witness.

iv) PW.114, learned III Metropolitan Magistrate, Hyderabad, conducted TIP proceedings of bicycles (MOs.5 and 6) *vide* Ex.P46 by summoning PWs.56 and 57. He deposed in his chief-examination as under:

“Previously I worked as III Metropolitan Magistrate at Hyderabad between 05-04-2014 to 31-07-2014. On the requisition filed by the Chief Investigating Officer, DSP, NIA, Hyderabad to conduct Test Identification Parade of seized damaged two bicycles from the scene of offence in this case and in view of the proceedings of the

Hon'ble Chief Metropolitan Magistrate, Hyderabad dt.28-05-2014 nominating me to conduct Test Identification parade of the said two bicycles Mo.5 and Mo.6 and issue summons to the witnesses to PW56 and PW57 Md. Khaja Pasha and Shaik Ismail respectively, I issued summons to them fixing the Test Identification parade on 07-06-2014, on which date, the Chief Investigating Officer filed memo with served summons of the witnesses. The said witnesses were present and I recorded their statements which were incorporated with proceedings i.e., Ex. P46.

After recording the statements of the witnesses I entered into the Court Hall where the Chief Investigating Officer produced two half damaged cycles with dents whose details are mentioned in the Test identification proceedings. The CIO also produced four damaged similar parts of the cycles of the two material objects No.5 and 6 seized in the case as directed by the Court. The description of the said four items are with the company emblems of one Atlas Company and one A1 Company and two Hero Company.

The Mo.5 and 6 are mixed with the said damaged cycles. Later I called PW56 by name Md. Khaja Pasha and asked him to identify the cycle sold by him to unknown persons. He

identified the material object No.6 on seeing the English letters 'KW' on the handle and also the fork of the cycle as if it is a Herculas cycle part and also ralco tyre and I asked him to leave the Court hall. I called the second witness, PW57 Shaik Ismail and asked him to identify the cycle which was sold by him to unknown persons. He identified Mo.5 which is half of the damaged cycle produced by CIO stating that the cycle is make of 'Atlas' as written on the fork frame and also Ganga tyre, then I asked the witness to leave the Court Hall. The Proceedings under Ex.P46 were concluded. Ex.P46 is the Test Identification Parade Proceedings conducted by me. I also obtained signatures of PW56 and 57 on their statements. Ex.P333 is the requisition filed by the Chief Investigating Officer, NIA, Hyderabad before me. Ex. P334 is the proceedings Chief Metropolitan Magistrate, Hyderabad dt 28-05-2014 nominating me to conduct Test identification parade. I submitted Ex. P46 with its enclosures Ex.P333, P334 with a covering letter which is Ex P335 to Additional Metropolitan Sessions Judge-cum-Special Judge for NIA Cases, Hyderabad on 14-07-2014.”

v) During cross Examination, he has admitted as under:

“It is true that in Ex.P46 both the witnesses PWS6 and PW57 stated before me in their statements that they sold one old cycle each to two unknown persons in the month of January, 2013. It is true that in Ex.P46 both the witnesses PW56 and 57 did not state before me the descriptive particulars of the old cycles sold by them to the unknown persons. It is true that in Ex. P46 both the witnesses PW56 and 57 did not state before me the descriptive particulars of the unknown persons to whom they sold the cycles. It is true that in Ex. P46 the slips signed by the panch witnesses were not available on the material objects Mo.5 and 6.

Re-Examination:

I did not ask PW56 and 57 about the descriptive particulars of the cycles and unknown persons who purchased both the cycles.”

Thus, accused failed to elicit anything contra from PW.114.

vi) PW.130, VIII Metropolitan Magistrate, Cyberabad also conducted TIP *vide* Ex.P415 proceedings. He deposed in his chief-examination as under:

“Presently I am working as VIII Metropolitan Magistrate, Cyberabad since April, 2014. I have received the nomination letter from Hon'ble 11

Additional Assistant Sessions Court vide Dis.No.249/2014 dt.12-06-2014 to conduct test Identification parade of the accused No.3 Zia-ur-Rahman @ Waqas @ Javed Ahmed @ Nabeel Ahmed and the Accused No.4 Mohd Taseen Akhtar @ Hassan @ Monu on that as per the procedure I have issued summons to the witnesses and taken permission from the concerned Authority to go and conduct test identification proceedings at Cherlapally Jail on 28-06-2014 I issued summons to all the witnesses. Ex.P414 is the Nomination letter. On 28-06-2014 I proceeded to Central Prison Cherlapally and conducted the test identification proceedings of A3 and A4. For accused No.3 list of 14 witnesses were given and for A4 the list of 8 witnesses were given. The proceedings were conducted in the Conference Hall of the Jail which was not visible from the other portions of the jail. As per the list of witnesses LW1 to 7 witnesses were common for the both the accused as such the non-suspects were selected keeping in view the similar age, height, similar complexion in appearance. Even I asked the suspects whether they have any objections for these proceedings and they replied that they have no objections. Thereafter the suspects and non-suspects stood in a row from left to right. The proceedings were typed by my Typist simultaneously. All the

proceedings are recorded as per the procedure and while conducting the proceedings no one was present except the witnesses, suspects and non-suspects, myself and my Typist. All the precautions were taken while conducting the proceedings and the witnesses were also not allowed to meet the other witnesses who have already undergone the process of test identification proceedings Ex.P415 is the proceedings of test identification parade dt. 28-06-2014 conducted at Central Prison Cherlapally containing 16 sheets. The said proceedings were typed to my narration simultaneously and the signatures of suspects and non-suspects are also obtained in Ex. P415. Ex. P416 is the letter addressed to the Hon'ble I Additional Metropolitan Sessions Judge-cum-Special Judge for NIA Cases, Hyderabad enclosing the proceedings under Ex. P415. Ex.P44, 45, 51, 47, 58, 52, 73, 413, 82 are the signatures of the witnesses which form part of Ex.P415."

vii) During cross-examination, this witness has admitted as under:

"It is true that I did not examine the witnesses and record their statements before conducting Test Identification parade. It is true that the witnesses did not attribute any individual specific

overtacts at the time of identifying the suspects. The witness volunteers that I did not ask the witness specifically about the individual overtacts of the persons whom they identified. It is true that I did not ask the witnesses whether they participated in test identification parade in this case earlier and the witnesses also did not voluntarily state before me that whether they participated in test identification parade in this case earlier. It is true that the witnesses were wearing starts/handkerchiefs while identifying the suspects. It is true that the witnesses did not complain before me that the distance between them and the accused is too long and that there was very poor light causing poor visibility as such they could not identify some of the suspects. It is true that I did not mention specifically in Ex.P415 about the facial descriptions, height and colour of dresses worn by the non-suspects. It is true that I did not give any directions to the jail Authorities to provide the suspects with additional dresses for use during Test identification parade. The witness volunteers that I have informed the suspects that they can change their dresses. It is true that one witness by name Shaik Riyaz (PW62) did not identify both the suspects in my proceedings under Ex.P415. It is true that P.Venkateshwarlu (PW55) did not identify A3 during the Test Identification

proceedings vide Ex.P415. Similarly (PW58) MohanLal did not identify A3 in my proceedings vide Ex.P415. Similarly Khaja Pasha (PW56) did not identify A3 in my proceedings vide Ex.P415. Similarly Shaik Ismail (PW57) did not identify both the suspects in my proceedings vide Ex.P415. Similarly T.Venkatesh (PW67) did not identify A4 i.e., Tahseen Akthar in my proceedings vide Ex.P415. Similarly Merugu Illaiah (PW59) did not identify both the suspects in my proceedings vide Ex.P415. Similarly Abu Bhakar (PW72) did not identify A3 but wrongly identified another non-suspect. Similarly M.P.Chanderan (PW73) did not identify A3 and identified some other non-suspect wrongly. It is true that in Ex.P415 I have mentioned that both the suspects have complained before me that the Police have brought some persons and showed them to those persons when they were in Police Custody.”

viii) PW.139, VIII Metropolitan Magistrate, Cyberabad also conducted TIP *vide* Ex.P415 proceedings. He deposed in his chief-examination as under:

“I am presently working as XIII Metropolitan Magistrate, Cyberabad, RR District at LB Nagar. Previously I worked as AJCJ-cum-XVI

Metropolitan Magistrate, Cyberabad, RR District
at Kukatpally. Miyapur from 2012 to 2015

On 09-07-2014 received requisition from Deputy Superintendent of Police, Chief Investigating Officer, NIA, Hyderabad to conduct the TI parade of the Accused No.3 Zia-ur-Rahman @ Waqas @ Javed Ahmed @ Nabeel Ahmed and the Accused No.4 Mond. Taseen Akhtar @ Hassan @ Monu. Accordingly, I fixed the date of parade on 26-07-2014 at Central Prison, Cherlapally and issued summons to the witnesses. I submitted a letter to Hon'ble MSJ, RR District seeking permission to conduct TI parade proceedings and also addressed a letter to Jail Authorities, Cherlapally Central Prison asking them to make necessary arrangements.

On 26-07-2014 at 10:30 am I reached the Central Prison to conduct Ti parade. The Police concerned produced the witnesses i.e., PW57, 59, 72, 73 and 124 after duly serving summons on them. Then verified the summons and particulars of the witnesses i.e., PW57, 59, 72, 73 and 124 mentioned in the requisition and recorded the preliminary statements of them in the Office Room of Deputy Superintendent. Central Prison, Cherlapally.

The witnesses expressed their capability to identify the suspects. The statements of the

witnesses i.e., PW57, 59, 72, 73 and 124 are enclosed along with the proceedings. Thereafter I asked the witnesses to sit in rooms allotted to them at the Ingate of Central Prison Thereafter I proceeded to the Conference Hall located at the Upper Floor of Central Prison where the parade proceedings are arranged. I directed the Jail Authorities to produce five non-suspects who are having similar features, height, general appearance, complexion as that of the accused No.3/suspect. I obtained the names and signatures/thumb impressions of the non-suspects and enclosed along with the proceedings.

I called for A3. All the non-suspects were standing in a row then I asked A3 to choose his position in the row and he choose and stood in between non-suspect 2 and non-suspect 3. Then I asked my attender to bring the witnesses PW124, 72, 73 who identified A3 one after the other and precaution was taken that the witness after identification does not meet the other witnesses and there is no chance of access among the witnesses to interact with each other during the proceedings. Then after handing over the non-suspects to the Jail Authorities I recorded the statements of the suspect/accused No.3 and he stated that he has no grievance and no objection in the manner in which the TI parade proceedings

were conducted by me. Then the accused No.3 was handed over to the Jail Authorities.

Thereafter directed the Jail Authorities to produce another set of five non-suspects who are having similar features, height, general appearance, complexion as that of the accused No.4/suspect obtained the names and signatures/thumb impressions of the non suspects and enclosed along with the proceedings.

I called for A4 All the non-suspects were standing in a row then I asked A4 to choose his position in the row and ne choose and stood in between non-suspect 2 and non-suspect 3. Then I asked my attender to bring the witnesses PW59, 57 who identified A4 one after the other and precaution was taken that the witness after identification does not meet the other witnesses and there is no chance of access among the witnesses to interact with each other during the proceedings. Then after handing over the non-suspects to the jail Authorities I recorded the statements of the suspect/accused No.4 and he stated that he has no grievance and no objection in the manner in which the TI parade proceedings were conducted by me. Then, the accused No.4 handed was handed over to the Jail Authorities.

During the TI parade proceedings of A3 and A4 I have taken all the precautions and asked A3 and

A4 respectively in their proceedings whether they wish to change their position in the row or they would like to change their dress or shirt with that of non-suspect but A3 and A4 stated 'No', in their respective proceedings.

I have taken all the precautions and followed the procedure as per the Provisions prescribed under rule 34 of Criminal Rules of Practice while conducting TI parade. Further I have taken care that neither the Police Officials nor the Jail Personnel are present at the time of Ti parade. Thereafter I concluded the proceedings at 01-30 pm. Along with the proceedings I enclosed preliminary statements of the witnesses for A3 and A4 and also the list of non-suspects for A3 and A4 and served summons and statement of the suspects A3 and A4. Ex P437 is the TI proceedings conducted by me on 26-01-201 including the statements of the witnesses, signatures of suspects a non-suspects containing 13 sheets. The entire proceedings drafted in my handwriting. Ex.P2437 proceedings were sent to the Hon'ble I Metropolitan Sessions Judge-cum-Special NIA Court, Nampally, Hyderabad, through incharge Magistrate under Ex.P438 Covering letter.”

ix) During cross-examination, this witness has admitted as under:

“It is true that it is mentioned in Ex.P437 that I received the requisition from the DSP, Chief Investigating Officer, NIA, Hyderabad to conduct the TI proceedings on 09-07-2014, The witness adds that the Hon'ble Metropolitan Sessions Judge, Cyberabad, RR District has . nominated me and relevant papers were received through Hon'ble Metropolitan Sessions Judge, Cyberabad, RR District but the same is not mentioned in Ex.P437. It is true that before conducting the parade I submitted a letter to the Hon'ble Metropolitan Sessions Judge Cyberabad, RR District for permission to conduct TI parade and also letter addressed to the Jail Authorities for making necessary arrangements. It is true that I have not mentioned in Ex.P437 that after receiving my letter, the Hon'ble Metropolitan Sessions Judge Cyberabad, RR District accorded me permission/nominated me to conduct Ti parade in this case. The witness volunteers that I received Nomination Orders from the Hon'ble Metropolitan Sessions Judge Cyberabad, RR District even prior to sending the said Letter but the same is not mentioned in Ex.P437. It is true that the Chief Judicial Magistrate of Ranga Reddy District did not issue any directions

nominating me to conduct TI parade in this case. The witness volunteers that the Hon'ble Metropolitan Sessions Judge, Cyberabad, RR District nominated me for conducting Ti parade but the same is not mentioned in Ex.P437. I do not remember whether the suspects were sporting long beards at the time of conducting the TI parade under Ex.P437. It is true that all the witnesses did not attribute the exact Individual specific overt acts against the suspects A3 and A4 and the circumstances in which they saw the suspects earlier. The witness, volunteers that the witnesses gave identification particulars of the suspects. It is true that I did not ask the witnesses whether they admit prior acquaintance with the suspects whom they identified. The witness adds that the question No.6 as recorded in the statement it is questioned as "Did you see the suspect at any time after the Incident?" and the witnesses answered as "No". It is true that I did not mention the approximate height, weight and facial features and identification marks of the non-suspects in the proceedings under Ex.P437. The witness adds that the non-suspects were having similar feature, height, general appearance, complexion as that of the accused No.3 and 4 as mentioned in the proceedings. It is true that I did not mentioned in Ex.P437 that I verified the ID proof of the witnesses before

conducting the TI parade. The witness adds that I verified the ID proofs of the witnesses and after being satisfied with their identity then only I proceeded to conduct TI parade. It is true that I did not ask the witnesses whether they had attended TI parade earlier in this case in respect of the same suspects viz., the accused No.3 and 4. I do not remember exactly whether it was mentioned in requisition given to me to conduct the TI parade that the same witnesses were already summoned by Hon'ble VIII Metropolitan Magistrate (PW130) to identify A3 and A4 on 28-06-2014.

I do not remember whether I asked the Chief Investigating Officer, NIA, Hyderabad that earlier any TI parade was conducted by another Magistrate in respect of A3 and A4 with the same witnesses who participated in the proceedings conducted by me. It is true that in my proceedings i.e., Ex.437 it is not mentioned whether any earlier TI parade was conducted or not by PW130 in respect of the same witnesses and the same accused No 3 and 4. It is true that after conclusion of entire proceedings under Ex. P437 I took the signatures the accused No.3 and 4 after their answering of the questions posed by me on the 12th and 13th sheet of my proceedings under Ex.P437. It is not true to suggest that A3 and A4 stated before me that they were shown to

these five witnesses during their Police custody in NIA office and also that earlier TI parade was conducted on 28-06-2014 by the Hon'ble VIII Metropolitan Magistrate in which the same witnesses were summoned to the jail and they did not identify the accused No.3 and 4 at the time of making their statements before me after the conclusion of the proceedings under Ex.P437. It is true that in Ex. P437 there is no stamp and seal of the Court of the XVI Metropolitan Magistrate, Cyberabad, RR District. The witness volunteers that on the first page mentioned my Name and Designation. It is true whenever a requisition for TI parade it will be allotted a Miscellaneous Petition Number by the Hon'ble Metropolitan Sessions Judge, RR District and only after that it will be sent to the concerned Magistrate who is nominated thereon to conduct the TI parade. It is true in Ex. P437 there is no mention of the Crl.M.P.No. allotted to these proceedings for nominating me to conduct the proceedings under Ex.P437. It is not true to suggest that as the Crl.M.P.No. is not mentioned in my proceedings under Ex. P437, there is no record in respect of these proceedings in my Court. It is not true to suggest that I did not follow procedure prescribed by Law for conducting Test Identification parade vide Ex.P437 and that I conducted these proceedings without any Nomination from the

Hon'ble Metropolitan Sessions Judge, Cyberabad,
Ranga Reddy District at LB Nagar.”

Thus, nothing contra was elicited from him during cross-examination.

x) As discussed above, learned counsel for the appellants contended that TIP was not conducted as per the procedure laid down under Rule - 34 of the Criminal Rules of Practice. They placed reliance on the admissions made by the aforesaid witnesses during cross-examination, but they failed to elicit anything contra to contend that TIP was conducted in violation of the procedure laid down under Rule - 34 of the Criminal Rules of Practice. Therefore, the contention of learned counsel for the appellants that the said TIP is liable to be vitiated and the accused are entitled for benefit of doubt is unsustainable.

xi) As discussed above, there is no violation of procedure laid down under Rule - 34 of the Criminal Rules of Practice by PWs.98, 114, 130 and 139 in conducting TIP. Learned counsel for the appellants made their submissions on the said aspects before the learned trial Court, and on consideration of the said submissions, the learned trial Court referring to the provisions of Criminal Rules of

Practice, Code of Criminal Procedure and the Evidence Act and also decisions of various High Courts and the Apex court in paragraph Nos.530 to 549 held in paragraph No.550 as under:

“550. At this stage the learned Special Public Prosecutor submitted that the identification of Accused by witnesses in the court was an examination in itself for the reason of the steps taken by the accused during the course of trial in the court, by hiding their faces with scarfs, showing their faces only during identification in the court by the witnesses and adopting the procedure of sitting in their own different sequence for every witness, wearing same type of dressing and sporting similar beard and hair style. In the present case on hand, the accused No.2 was identified by PW55, PW56, PW57, PW58, PW60, PW62, PW64, PW65, PW67, PW69, PW70, PW71, PW81, PW91, PW92, PW99, PW124, PW127, PW131, PW141. The accused No.3 was identified by PW55, PW58, PW64, PW65, PW67, PW68, PW70, PW72, PW73, PW112, PW116, PW118, PW124, PW126, PW127, the accused No.4 was identified by PW54, PW57, PW58, PW59, PW67, PW82, PW83, PW116, PW118, the accused No.5 was identified by PW72, PW81, PW99, PW131, the accused No.6 was identified by PW111, PW147.

However the accused were identified by the above witnesses for the reasons that their faces were printed in their minds because no prudent man wearing jean pants and T-shirts would purchase cycles and the big size cookers and secondly when the witnesses got an opportunity to see the faces for a long time when they were staying at Abdullapurmet, Zyphyr Heights, Mangalore, Malakpet parking area, scene of offence by PW143. Therefore this Court has no hesitation to hold that the learned Magistrates followed the procedure prescribed in the Criminal Rules of Practice in conducting Test Identification Parades. Moreover the Sessions Judge as referred in the Criminal Rules of Practice including the Assistant Sessions Judge can nominate the Magistrate for conducting Test Identification Parade. Moreover the objection raised by the learned counsel for the accused with regard to the nomination of Magistrate for TIP and for 164 Cr.P.C statements is neither illegality nor irregularity which vitiates the proceedings U/Sec.460 and 461 of Cr.P.C, which reads as: 460. Irregularities which do not vitiate proceedings. If any Magistrate not empowered by law to do any of the following things,namely:- (a) to issue a search-warrant under section 94; (b) to order, under section 155, the police to investigate an offence; (c) to hold an inquest under section

176; (d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction; (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190 ; (f) to make over a case under sub-section (2) of section 192; (g) to tender a pardon under section 306 ; (h) to recall a case and try it himself under section 410 ; or (i) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered. Section 461 Cr.P.C: Irregularities which vitiate proceedings: If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely: (a) attaches and sells property under section 83; (b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority; (c) demands security to keep the peace; (d) demands security for good behaviour; (e) discharges a person lawfully bound to be of good behaviour; (f) cancels a bond to keep the peace; (g) makes an order for maintenance; (h) makes an order under section 133 as to a local nuisance; (i) prohibits, under section 143, the repetition or continuance of a public nuisance; (j) makes an order under Part C or Part D of Chapter X; (k)

takes cognizance of an offence under clause (c) of subsection (1) of section 190 (l) tries an offender; (m) tries an offender summarily; (n) passes a sentence, under section 325, on proceedings recorded by another Magistrate; (o) decides an appeal; (p) calls, under section 397, for proceedings; or (q) revises an order passed under section 446, his proceedings shall be void.”

xii) Thus, the learned trial Court on consideration of the said submissions, depositions of the aforesaid witnesses and the procedure laid down under Rule - 34 of the Criminal Rules of Practice held as above. There is no error in the said finding.

87. NON-RECORDING OF DYING DECLARATION:

i) Learned counsel for the appellants further contended that the Investigating Officer did not record dying declarations.

ii) In the present case, there are 18 deaths and injuries to 131 persons. To prove the offences, the prosecution has examined the above said witnesses and got marked the aforesaid documents.

iii) In the light of the said submission, it is relevant to note Section - 32 of the Evidence Act deals with ‘statement of relevant

fact by person who is dead or cannot be found, etc., is relevant' and the same is extracted as under:

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :

- (1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

- (2) Or is made in course of business. - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.
- (3) Or against interest of maker. - When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him to a criminal prosecution or to a suit for damages.
- (4) Or gives opinion as to public right or custom, or matters of general interest. - When the statement gives the opinion of any person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any

controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship. -

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs. -

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in document relating to transaction mentioned in section 13, clause (a). -

When the statement is contained in any deed, will or other document which relates

to any such transaction as is mentioned in section 13, clause (a).

(8) Or is made by several persons and expresses feelings relevant to matter in question. - When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question. Illustrations.

Illustrations

(a)....”

iv) There is no dispute that solely basing on the dying declaration, conviction can be recorded. It is a crucial piece of evidence. Reliability or otherwise can be considered by the trial Court. Dying Declaration does not require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any tutoring.

v) But, at the same time, non-recording of dying declaration is not fatal to the case of prosecution, more particularly in a matter like this. On consideration of the evidence, both oral and documentary, the learned trial Court convicted the appellants - accused Nos.2 to 6. Therefore, the contention of learned counsel for the appellants that in the present case, dying declarations of the deceased were not

recorded and on the said ground, the accused are entitled for acquittal cannot be accepted.

vi) It is apt to note that the appellants herein did not raise the said contention during trial before the trial Court and there was no cross-examination of the Investigating Officers on the said aspects. Therefore, there is no discussion/finding by the trial Court in the impugned judgment on the said aspect.

88. JURISDICTION OF TRIAL COURT:

i) Accused Nos.2 to 5 filed a writ petition *vide* W.P. No.27445 of 2016 challenging the jurisdiction of V Additional Metropolitan and Sessions Judge, Rangareddy District at L.B. Nagar, for trial of offences under NIA Act on various grounds. *Vide* order dated 29.08.2016, this Court dismissed the said writ petition. Challenging the said order, they have filed a Special Leave Petition *vide* SLP (Crl.) No.7014 of 2016 before the Hon'ble Supreme Court. *Vide* order dated 14.09.2016, the Apex Court dismissed the said SLP. They have also filed a review petition *vide* R.P. (Crl.) No.818 of 2016, to review the order dated 14.09.2016 in SLP (Crl.) No.7014 of 2016. The Apex Court dismissed the said review petition on 15.12.2016.

ii) In the light of the above, learned counsel for the appellants cannot contend that learned V Additional Metropolitan and Sessions Judge, Rangareddy District at L.B. Nagar for the trial of offences under the NIA Act has no jurisdiction. The learned trial Court pronounced the judgment on 13.12.2016, and on hearing the accused on sentence, *vide* order dated 19.12.2016, the learned trial Court awarded death penalties on the accused. There is no error in it.

89. **SANCTION PROCEEDINGS:**

i) Learned counsel for accused would contend that the sanctions obtained against accused Nos.2 and 5 *vide* Exs.P393, accused Nos.1, 3 and 4 *vide* Ex.P394 and accused No.6 *vide* Ex.P395 are without following due process as contemplated under UAP Act. They further contended that before granting sanction, Recommendation of Review Committee has to be obtained as contemplated under Section - 45 (2) of UAP Act and on the basis of the same, sanction has to be accorded. Without following mandatory procedure, the sanctions accorded under Section - 45 (1) (i) of UAP Act are invalid and do not hold any significance. As far as accused No.6 is concerned, sanction in respect of Sections - 3 and 5 of ES Act was not accorded against him and that no independent sanction

was taken. Thus, the conviction recorded by learned trial Court for the offences under UAP Act and other provisions of law is bad in law.

ii) Whereas, learned Special Public Prosecutor for NIA would contend that the sanctions obtained against the accused are valid and that the accused have not challenged the issuance of sanctions at any point of time during trial. He further contended that after perusing and examining the entire record and facts of the case and on finding a *prima facie* case against the accused. Even to prove the sanctions, the prosecution examined PWs.119, 120, 132 and 156.

iii) In view of the aforesaid rival submissions, before dealing with the said issue, it is relevant to note Section - 45 of UAP Act, Sections - 3, 5 and 7 of ES Act and Section - 196 of Cr.P.C. and the same are as under:

“45. Cognizance of offences.—(1) No court shall take cognizance of any offence—

- (i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;
- (ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the

State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.”

“3. Punishment for causing explosion likely to endanger life or property.—Any person who unlawfully and maliciously causes by—

(a) any 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, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than (ten years, and shall also be liable to fine;

(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, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.”

“5. Punishment for making or possessing explosives under suspicious circumstances.—

Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, 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, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

“7. Restriction on trial of offences.—No court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.”

iv) PW.119, the then District Collector, deposed in his chief-examination as under:

“I am working as VC & MD APIIC at Hyderabad since 1st September, 2015 Previously I worked as Collector and District Magistrate, Ranga Reddy District from July, 2013 to June, 2014. I received requisition from SP & CIO, NIA, Hyderabad vide C.No.SP/NIA/2013-14 dt. 10-01-2014 requesting issuance of Prosecution Orders U/Sec. 3 & 5 of Explosives Substances Act, 1908 which is marked as Ex. P391. Under the Powers conferred U/Sec. 7 of Explosive Substances Act I issued sanction proceedings giving permission to prosecute the accused namely Accused No.2 Asadullah Akhtar @ Haddi @ Tabrez @ Daniyal @ Asad, Accused No.5 Mohammed Ahmed Siddibapa @ Yasin Bhatkal @ Sharukh on 21-02- 2014 for prosecuting the accused persons for the offences U/Sec.3 and 5 of Explosive Substances Act. The said sanction order is Ex P392 and it bears my seal and signature.”

a) In the cross-cross-examination of the aforesaid witness, no material contradictions have been elicited to disprove the case of the prosecution

v) PW.120, the then under Secretary deposed in his chief-examination as under:

“I have been working as Under Secretary, Ministry of Home Affairs, Government of India since 2012. I received two proposals from NIA along with Investigation reports containing statements of the witnesses and other related documents seeking sanction of Central Government for prosecuting Accused No. 1 Mohammad Riyaz @ Riyaz Bhatkal @ Ismail Shahbandri @ Riyaz Ismail Shahbandri, Accused No.2 Asadullah Akthar @ Haddi @ Tabrez @Daniyal @ Asad, Accused No.3 Zia ur Rahaman @ Waqas @ Javed @ Ahmed @ Nabeel Ahmed, Accused No.4 Mohd Taseen Akhtar @ Hassan @ Monu, Accused No.5 Mohammed Ahmed Siddibapa @ Yasin Bhatkal @ Sharukh. Firstly the proposal was referred to the Authority constituted U/Sec.45 (2) of JAP Act comprising of Justice Sri K. Rama Murthy, Retire High Court Judge and Sri K.D. Singh, Former Law Secretary for making Independent review of the evidence gathered in the course of investigation by NIA. Based on the recommendations of the Authority and perusal of ay records and application of mind I issued prosecution sanction for prosecuting all the above

five accused with the approval of Home Secretary.

The first sanction was issued on 28-02-2014 against A2 and A5 under Ex. P393 which is faxed by our Office. The second sanction was issued on 10-09-2014 against A1, A3 and A4 under Ex. P394 (3 sheets) along with covering letter under Ex. P394-A which is the copy sent to the DG, NIA. I'm authorized to sign on behalf of the Hon'ble President of India in accordance with Authentication (Orders and other Instruments) Rules, 2002."

a) In the cross-examination of the aforesaid witness, no material contradictions have been elicited to disprove the case of the prosecution

vi) PW.132 - Mr. N. Sridhar, the then Collector and District Magistrate, Rangareddy District, deposed in his chief-examination as under:

"I am working as Chairman and Managing Director, Singareni Collieries Company Limited since 1 January, 2015. Previously worked as Collector and District Magistrate, Ranga Reddy District from June, 2014 to December, 2014. I received requisition from SP & CIO, NIA, Hyderabad vide C.No.SP-NIA/2013-14 dt 26-06-

2014 requesting issuance of Prosecution Orders U/Sec.3 & 5 of Explosives Substances Act, 1908. Under the Powers conferred U/Sec. 7 of Explosive 15 Substances Act I issued sanction proceedings giving permission to prosecute the accused namely Accused No.3 Zia-ur-Rahman @ Waqas @Javed @ Ahmed @ Nabeel Ahmed, Accused No 4 Mohd Taseen Akhtar @ Hassan @ Monu on 11-08-2014 for prosecuting the accused persons for the offences U/Sec 3 and 5 of Explosive Substances Act. The said sanction order is marked as Ex. P420 and it bears my seal and Signature.”

a) In the cross-examination of the aforesaid witness, no material contradictions have been elicited to disprove the case of the prosecution.

vii) PW.156, the then Collector, Hyderabad, deposed in his chief-examination as under:

“I am working as Commissioner of Excise, Govt. of Andhra Pradesh since 3rd of November, 2015, Previously I worked as District Collector, Hyderabad from July, 2013 to January 2015 I received requisition from SP & CIO, NIA, Hyderabad vide C.No SP/NIA/2013-14 dt 10-01-2014 requesting issuance of Prosecution Orders U/Sec 3 & 5 of Explosives Substances Act, 1908

which is marked as Ex P483 (True copy) Under the Powers conferred U/Sec. 7 of Explosive Substances Act issued sanction proceedings giving permission to prosecute the accused namely Accused No.2 Asadullah Akthar @ Haddi @ Tabrez @ Daniyal @ Asad, Accused No.5 Mohammed Ahmed Siddappa @Yasin Bhatkal @ Sharukh on 10-03-2014 for prosecuting the accused persons for the offences U/Sec.3 and 5 of Explosive Substances Act The said sanction order is Ex P484 and it bears my seal and signature.

I received requisition from SP & CIO. NIA. Hyderabad vide C No. SP/NIA/2013-14 dt 26-06-2014 requesting issuance of Prosecution Orders U/Sec 3 & 5 of Explosives Substances Act, 1908 which is marked as Ex P485 (True copy). Under the Powers conferred U/Sec. 7 of Explosive Substances Act, I issued sanction proceedings giving permission to prosecute the accused namely Accused No. 3 Zia ur Rahaman @ Waqas @ Javed @ Ahmed @ Nabeel Ahmed and Accused No 4 Mohd Taseen Akhtar @ Hassan @ Monu on 19.07.2014 for prosecuting the accused persons for the offences U/Sec.3 and 5 and Set Explosive Substances Act. The said sanction order is Ex. P486 and it bears my seal and signature.”

a) In the cross-examination of the aforesaid witness, no material contradictions have been elicited to disprove the case of the prosecution.

viii) Perusal of sanction orders *vide* Exs.P392, 393, 394, 395 would reveal that Ex.P393 is the sanction order dated 28.02.2014 in respect of accused Nos.2 and 5, Ex.P394 - sanction order dated 10.09.2014 is in respect of accused Nos.1, 3 and 4, while Ex.P395 - sanction order, dated 27.05.2015 is in respect of accused No.6. Ex.P392 sanction order dated 21.02.2014 is the sanction order issued by PW119 granting permission for the prosecution of Accused Nos.2 and 5 under Sections - 3 and 5 of the ES Act. It bears the official seal and signature of PW119. During cross-examination, he has stated the circumstances under which he made the requisition *vide* Ex. P391.

ix) As stated above, Ex.P394 is the second sanction dated 10.09.2014 against accused Nos.1, 3 and A4. It also received recommendations from the Authority constituted under Section - 45 (2) of the UAP. PW.120 deposed about the said document stating that the sanctions were granted after due diligence and approval from the Home Secretary. Ex.P394-A is the covering letter sent to the DG, NIA. Ex.P394-B is the attested copy of the sanction order of accused

Nos.1, 3 and 4 for their prosecution. Ex.P394-C is the recommendation of the Review Committee proceeding along with the enclosed letter given by Mr. K. Ramamurthy recommending sanction against accused No.1. Ex.P395 is the sanction dated 27.05.2015 against accused No.6.

x) It is also apt to note that PW132 deposed with regard to issue of the sanction order on 11.08.2014 in respect of accused Nos.3 and 4 and the same was marked as Ex.P420. The same was based on the requisition received from the SP & CIO, NIA, Hyderabad, and granted permission for prosecuting accused under Sections - 3 and 5 of the ES Act. PW156, the then Commissioner of Excise, Government of Andhra Pradesh, deposed about issuing of sanction order on 10.03.2014 against accused Nos.2 and 5 and the same is marked as Ex. P484, which was also granted based on the requisition received from SP & CIO, NIA, Hyderabad and accorded permission for prosecuting the said accused under Sections - 3 and 5 of the ES Act. PW156 also deposed about issuing the sanction order on 19.07.2014 in respect of accused Nos.3 and 4 and the same was marked as Ex.P486, which was granted based on the requisition

received from SP & CIO, NIA, Hyderabad, and provided permission for prosecuting them under Sections - 3 and 5 of the ES Act.

xi) Considering the aforesaid evidence and the documents, the learned trial Court discussed with regard to the sanction proceedings in the impugned judgment at paragraph Nos.392, 575, 396, 397, 398, 400, and 401 and arrived at a conclusion that the sanctions were issued by competent authorities (PWs.119, 120, 132 and 156) after due process and application of mind. Thus, there is no error in it.

xii) In **State of Maharashtra v. Mahesh G. Jain**⁴⁴, the Apex Court held as to the valid sanction as under:

“**14.1.** It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was

⁴⁴. (2013) 8 SCC 119

arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

xiii) The learned trial Court also observed that valid sanctions were issued for prosecuting the accused, considering the material on record. In view of the same, the contention of the learned counsel for accused that the sanction proceedings were not in accordance with the provisions of the UAP Act and ES Act is unsustainable.

90. COGNIZANCE:

i) Learned counsel for the appellants straneously contended that learned trial Court did not give reasons while taking cognizance of the aforesaid offences against the appellants. However, the accused did not question the cognizance order and learned trial Court on consideration of entire evidence, both oral and documentary, recorded conviction against the accused. At the appeal stage, accused cannot contend that cognizance order is in violation of the procedure laid down under Section - 190 of Cr.P.C.

ii) In **S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited**⁴⁵, the Apex Court held as under:

“12. The expression cognizance□ has not been defined in the Code. But the word cognizance is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means become aware of and when used with reference to a Court or a Judge, it connotes to take notice of judicially. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. Taking cognizance does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected

⁴⁵. AIR 2008 SC 1213

commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance. Chapter XIV (Sections 190-199) of the Code deals with Conditions requisite for initiation of proceedings. Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) thereof is material and may be quoted in extenso.

1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

iii) In the light of the aforesaid principle, the aforesaid contention of learned counsel for the appellants cannot be accepted.

91. **CONSPIRACY AND SUM AND SUBSTANCE OF
THE FINDINGS OF THIS COURT:**

i) In view of the aforesaid discussion, learned trial Court having considered the entire evidence, both oral and documentary, arrived at the conclusion that the accused persons have committed the aforesaid offences.

ii) The evidence let in by the prosecution would disclose the role of each accused in commission of the aforesaid offences. The evidence with regard to the role of accused No.3, who is expertise in preparation of IEDs, using of hand grenades, training in weapons including small arms, like Pistol and other weapons, such as AK-47, Light Machine Gun, Rocket Launchers, would disclose that he came to India from Pakistan and joined the other accused, conspired with them and participated in several bomb blasts across the Country including the subject crime.

iii) Section - 10 of the Evidence Act deals with ‘things said or done by conspirator in reference to common design’ and the same is extracted as under:

“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 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.”

iv) With regard to the role of other accused is also clear in commission of the aforesaid offences. During chat of accused No.5 with accused No.1, accused No.5 advised accused No.1 to make thin boat shaped IED for the blast of 1 kg. explosive each as the same would be easy for carrying even by tying on the stomach. He also advised to use Picric Acid as small IEDs will have more impact. On the instructions of accused No.1, accused No.2 went to Mangalore and thereafter came to Hyderabad by booking ticket from VRL Travel Agency disclosing his name as Danish and contacted accused No.4, who took him to Abdullapurmet and stayed there in a rented house took by accused No.4. After staying there for three days, accused No.2 left for Mangalore by VRL Travels in the name of ‘Danish’. He along with accused No.3 brought the explosive material by the

said Travels and reached the Hyderabad on 16th February and kept the said material in the rented house at Abdullapurmet.

v) As per the instructions of accused No.1, they conducted recce in the areas of Malakpet, Abids, Koti etc., and thereafter, they decided to plant the bombs in Dilsukhnagar. The place and time was also selected. They purchased a plastic sheet of one meter from a shop for packing and filling the explosives inside the cooker. Before conducting blasts, they conducted a test blast near Abdullapurmet. On 20.02.2013, accused No.2 and 4 purchased an old cycle from one cycle repairer shop. On the same day at about 9.00 P.M., accused No.2 and 3 went to Mahalakshmi Steel Shop, where they stayed at entrance of the shop, while accused No.4 went inside the shop and purchased two 7½ litres capacity pressure cookers of Ganga Make for preparing the IED. They returned to Abdullapurmet house and engaged in preparation of IEDs. They kept plastic sheet inside the cooker and filled with explosive material.

vi) On 21.02.2013, accused Nos.2 and 4 purchased cycles from *jummerath bazaar*. Thereafter, accused No.3 prepared the IED by fixing the time for explosion at 7.00 P.M. After completing their preparation of IEDs, they vacated the house at Abdullapurmet,

reached the spot. After planting the IEDs, accused Nos.2 and 3 left to Malakpet on foot and from there to Lakdikapool in an auto-rickshaw, while accused No.4 left to an unknown place. Thereafter, they learnt that two IEDs were exploded successfully. In the said blasts, 18 persons were died including one unborn child and 131 were injured. Thus, it is an organized crime. All these circumstances form a complete chain of events in commission of the aforesaid offences by the accused. The prosecution proved the same by examining the relevant witnesses and producing the relevant documents. Considering the same, learned trial Court recorded conviction against the accused. Therefore, there is no error in it for the reason it falls under '**the rarest of rare case**'. However, the trial Court acquitted accused Nos.2 to 6 for the offences under Sections - 10, 20, 38 (2) and 39 (2) of the UAP Act. The NIA did not prefer any appeal challenging the said acquittal and, therefore, it attained finality.

vii) On consideration of gravity of offence, conspiracy and the manner in which the offence was committed, learned trial Court recorded conviction against the accused and imposed the aforesaid sentences including capital punishment of death penalty, holding that

it is a rarest of rare case and capital punishment of death penalty can be imposed on the accused.

92. **DOCTRINE OF RAREST OF RARE CASE:**

i) The Constitutional validity of the death penalty, upheld in **Bachan Singh v. State of Punjab**⁴⁶ stands as the unassailable cornerstone of capital sentencing jurisprudence, mandating its imposition only in the rarest of rare cases, where the alternative of life imprisonment is unquestionably foreclosed. This standard is a rigorous, inviolable framework that ensures judicial discretion is exercised with application of judicial mind, neither capricious nor disproportionate. The balance struck therein is a testament to the dignity of human life, yet it acknowledges that offences of monstrous magnitude and depravity exist that to withhold the ultimate penalty would be a dereliction of this Court's duty. This doctrine, forged in the crucible of constitutional mandate, compels us to confront the grim reality of crimes that shatter the bounds of civilized tolerance, demanding a sanction commensurate with its horror.

ii) The imposition of the death penalty, as a sanction of last resort, is governed by a jurisprudence crafted by the Apex Court,

⁴⁶. (1980) 2 SCC 684

finding its genesis in **Bachan Singh**⁴⁶ wherein it upheld the constitutional sanctity of the death penalty under Section - 302 of IPC read with Section - 354(3) of the Cr.P.C., decisively rejecting mandatory capital punishment in favor of guided judicial discretion.

iii) Constitution Bench of the Apex Court in **Bachan Singh**⁴⁶, after thorough discussion, rejected the challenge to the constitutionality of the said provisions and noted that “Aggravating” as well as “Mitigating Circumstances” to be considered for imposition of sentence of death.

iv) The Apex Court opined that death is permissible only in the "rarest of rare" cases, where the alternative of life imprisonment is "unquestionably foreclosed." Rooted in Article 21's sacrosanct guarantee of life and liberty, this doctrine mandates a bifurcated process—guilt determination followed by a sentencing hearing—ensuring fairness and proportionality as non-negotiable imperatives. It demands a meticulous balancing of aggravating circumstances, pertaining to the crime's nature and impact, against mitigating factors, such as the accused's age, socio-economic status, or reformatory potential, a framework refined in **Machhi Singh v. State**

of Punjab⁴⁷ to include the "collective conscience" as a societal barometer.

v) A three-Judge Bench of the Apex Court in **Machhi Singh**⁴⁷ after analyzing the Constitution Bench decision in **Bachan Singh**⁴⁶ held the following propositions for determination of rarest of rare cases:

"Death Sentence

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence-in-no-case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to

⁴⁷. (1983) 3 SCC 470

the community for this protection. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self- preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so 'in rarest of rare cases' when its collective conscience 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. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

For instance,

- (i) when the house of the victim is set aflame with the end in view to roast him alive in the house;

- (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death;
- (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner;

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make

them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in 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.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is

committed for political or similar reasons other than personal reasons."

In this background, the guidelines indicated in Bachan Singh's case (supra) have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case:

"(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

In order to apply these guidelines, inter alia, the following questions may be asked and answered:

"(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

The principles laid down in **Machhi Singh** (supra) offer an instructive formulation of the circumstances that demand capital punishment. While the protection of life remains the bedrock of our legal order, the Apex Court opined that, society may rightfully withdraw such protection when a crime's grotesque, diabolical, or cruel nature shakes the collective conscience to its core. The manner of commission, the underlying

motive, the social abhorrence it evokes, the scale of destruction, and the identity of the victim all serve as immutable considerations, ensuring that the penalty is neither routine nor indiscriminate but applied with a scrutiny that befits its irreversible gravity. This Court stands resolute with the Honourable Supreme Court that the death penalty is not a last resort option but also a judicial imperative in cases where the crime's enormity obliterates all other lesser sanctions.

vi) The Apex Court in **Haresh Mohandas Rajput v. State of Maharashtra**⁴⁸, while dealing with the situation where the accused murdered a woman by stabbing her multiple times in a brutal premeditated manner and if that warrants a death sentence. The Apex Court upheld the death sentence, ruling that the death penalty is permissible in exceptionally heinous crimes falling under the "rarest of rare" category, with no mitigating circumstances referring to the guidelines laid down in **Bachan Singh**⁴⁶ and the principles outlined in **Machhi Singh**⁴⁷ and opined as follows:

“19. In Machhi Singh v. State of Punjab this Court expanded the “rarest of rare” formulation beyond the aggravating factors listed in Bachan Singh to cases where the “collective conscience”

⁴⁸. AIR 2011 SC 3681

of the community is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between the aggravating and the mitigating circumstances.”

After so stating, the Court ruled thus:

“20. The rarest of the rare case” comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of “the rarest of the rare case”. There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on

any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and [pic]meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded. (See C. Muniappan v. State of T.N[172]., Dara Singh v. Republic of India[173], Surendra Koli v. State of U.P.[174], Mohd. Mannan[175] and Sudam v. State of Maharashtra[176].)

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether the death sentence should be awarded, would depend upon the factual scenario of the case in hand.”

vii) The factual matrix before us is stark, unyielding, and demands our unflinching attention. The accused, propelled by a calculated design to destabilize the social order, executed a

meticulously planned attack upon a bustling urban locale, a place of confluence for innocent civilians-men, women, and children untainted by any conflict. This was no spontaneous outburst; it was a cold-blooded conspiracy, marked by the deployment of sophisticated explosives, synchronized detonations, and a strategic selection of targets to maximize carnage and despair. The toll is staggering: lives extinguished, families irreparably broken, and a pervasive sense of insecurity etched into the national consciousness. The scale of destruction, both immediate and enduring, elevates this offense beyond conventional criminality, placing it in a realm where ordinary punishment falters. With unassailable certainty we believe that such an act of terror so deliberate, so devastating transcends the pale of routine adjudication, compels the "rarest of rare" doctrine's most stringent and uncompromising application to restore justice's equilibrium.

viii) The gravity of this crime lies not merely in its physical toll but in its audacious, unpardonable challenge to the sovereign integrity of the State. It is an affront to the rule of law, a deliberate endeavor to supplant order with chaos, and a direct assault on the democratic values this Court is sworn to uphold with unrelenting

vigor. In such circumstances, we are tasked with determining whether any sanction short of death can restore the equilibrium of justice, a question Apex Court has answered with resounding affirmation in **Mukesh v. State**⁴⁹ wherein the accused gang-raped and fatally injured a young woman in a bus in Delhi, succumbing to her injuries shortly after she was abandoned. The Apex Court upheld the death penalty, stating it is justified in cases of extreme depravity and “Where a crime is committed with extreme brutality and the collective conscience of the society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty. By not imposing a death sentence in such cases, the Courts **Yakub Abdul Razak Memon**²⁰. In may do injustice to the society at large. In **Yakub Abdul Razak Memon**²⁰, wherein the accused was convicted for his role in planning the 1993 Mumbai bombings, which killed over 250 people and caused widespread destruction. The Apex Court upheld the death penalty, holding it appropriate for crimes threatening national security and public order, especially those involving terrorism.

⁴⁹. (2017) 6 SCC 1

ix) In **Devender Pal Singh v. State of NCT of Delhi**⁵⁰, the Apex Court held that death sentence may be warranted when the murder is committed in an extremely brutal manner; or for a motive which evinces total depravity and meanness e.g. murder by hired assassin for money or reward, or cold blooded murder for gains. Death sentence may also be justified:

“(i) When the crime is enormous in proportion.

For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons or a particular caste, community, or locality are committed.

(ii) When the victim of murder is an innocent child or a helpless woman or old or infirm person or a person vis-à-vis, whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.”

x) As discussed above, when terror bombings strike with calculated ferocity at innocent civilians, the death penalty emerges as the only sanction capable of matching the crime’s existential threat. When an offence is not merely a crime against individuals but an assault on civil order itself, the weight of justice must correspond unflinchingly to the enormity of the transgression. This attack at

⁵⁰. AIR 2002 SC 1661

Hyderabad, deliberately targeting civilians in busy streets with a series of coordinated bombings, represents an act that transcends ordinary criminality.

xi) In **Mohd. Mannan @ Abdul Mannan v. State of Bihar**⁵¹, wherein the accused was sentenced to death for kidnaping, raping and killing a minor girl and causing disappearance of evidence, distinguishing between ordinary murders and brutal murders observed:

“23. It is trite that death sentence can be inflicted only in a case which comes within the category of the rarest of rare cases but there is no hard-and-fast rule and parameter to decide this vexed issue. This Court had the occasion to consider the cases which can be termed as the rarest of rare cases and although certain comprehensive guidelines have been laid to adjudge this issue but no hard-and-fast formula of universal application has been laid down in this regard. Crimes are committed in so different and distinct circumstances that it is impossible to lay down comprehensive guidelines to decide this issue. Nevertheless it is widely accepted that in deciding this question the number of persons killed is not decisive.

⁵¹. (2011) 5 SCC 317

24. Further, the crime being brutal and heinous itself does not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and a just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer de hors their personal opinion and inflict death penalty. These are the broad guidelines which this Court had laid down for imposition of the death penalty”.

xii) The destruction it wrought, the lives it claimed, and the terror it instilled place it in a category beyond conventional crime, necessitating an assessment under the strictest application of **Bachan Singh**⁴⁶ and **Machhi Singh**⁴⁷. The attack was not an impulsive act but the product of an extensive conspiracy, executed with precision and supported by a network of external actors. Every stage, from training to execution, was marked by calculated intent. The accused, acting in concert with others, embarked upon a meticulously planned operation designed to inflict maximum casualties. The strategic selection of targets—densely populated areas ensuring the highest number of deaths and injuries—underscores the deliberate nature of the offence. Such cases demand an analysis not merely of individual culpability but of the systemic and premeditated manner in which terror was unleashed upon unsuspecting civilians. Such acts of terror, aimed at annihilating the very foundations of societal stability, necessitate death penalty as the sole bulwark of justice and order.

xiii) Applying the jurisprudence elucidated above, the crime's execution reveals a depravity that defies comprehension: explosives strategically deployed to devastate an indiscriminate nature of the killings. The motive—rooted in an organized effort to disrupt peace

and tranquility of the state—reveals a level of depravity that places it beyond the realm of offences where reform and rehabilitation remain a relevant consideration. The victims, defenseless men, women, and children, were chosen not for who they were as individuals but for what they represented—a society targeted in its entirety. The motive, to terrorize and dismantle societal order, aligns with **Machhi Singh's**⁴⁷ first category of depraved intent, while its manner, indiscriminate slaughter satisfies the second category of extreme brutality. Its anti-social nature, a war against the State akin to **Yakub Memon**²⁰, fits the third category, and its magnitude lives lost and enduring trauma—meets the fourth. The fifth category, victim vulnerability, is evident in the targeting of innocents, echoing **Machhi Singh's**⁴⁷ own inexorable reasoning. The confluence of these factors obliterates all scope for leniency, rendering the death penalty the only sanction capable of addressing this crime's unparalleled horror.

xiv) The "crime test" yields premeditation, barbarity, and existential threat; the "criminal test" finds no mitigation. In the framework set forth in **Bachan Singh**⁴⁶, sentencing must be conducted on a two-pronged basis:

- The Crime Test – Examining the nature of the offense, including its brutality, premeditation, impact on society, and potential for deterrence.
- The Criminal Test – Assessing the personal circumstances of the accused, such as age, reformability, and mitigating factors.

The crime test unveils a meticulously orchestrated assault on humanity's core, while the criminal test reveals no shred of mitigation to temper justice's demand—thus mandating the death penalty as the inevitable culmination of this dual inquiry.

xv) A convict becomes a menace and a threat to the harmonious and peaceful coexistence of society when his actions are not the result of a momentary lapse but are premeditated, meticulously executed, and demonstrative of extreme depravity. The collective conscience, so palpably outraged, demands the ultimate sanction—not as retribution, but as a necessary affirmation of justice. Where the offence is committed with deliberate planning, with no scope for repentance or reform, the referral court must necessarily consider whether the death penalty is the only appropriate punishment. The law does not mandate the imposition of capital punishment in every case of murder, but where the crime is so brutal, grotesque, diabolical, or revolting that it shocks the collective

conscience of society, the imposition of the death penalty may become imperative.

xvi) The philosophical moorings of capital punishment, as expounded by Montesquieu in *The Spirit of the Laws*, resonate with commanding force here: "The capital punishment represents a kind of retaliation, by which society withdraws protection from a citizen who has sought to destroy another citizen... The penalty thus employed may be described as the medicine for a social malady." The accused, by their assault, have severed the societal compact. Here, the accused, by their calculated assault on the innocent, have severed the bonds of societal compact and it would be to undermine the gravity of their offense and imperil the health of the body politic, as the **Machhi Singh**⁴⁷ and reaffirmed in **Yakub Memon**²⁰.

xvii) The principle that death is an exceptional penalty applies to offences that challenge the very fabric of law and governance. Here, the carnage inflicted, the economic devastation caused, and the sustained fear generated by the act render the alternative of life imprisonment not only inadequate but incompatible with the principles governing sentencing in the gravest cases. Whether a case

falls within the “rarest of rare” category must be determined by a careful analysis of its facts and circumstances. The court must take into consideration both the aggravating and mitigating factors to conclude whether there exists something so uncommon about the crime that the sentence of life imprisonment would be grossly inadequate. Where the crime is of such an egregious nature that it shakes the foundations of the legal order and strikes at the very heart of societal harmony, the only punishment that can meet the ends of justice may be the death penalty.

xviii) In **Shankar Kisanrao Khade v. State of Maharashtra**⁵² wherein the victim was murdered by strangulation after repeated rape and sodomisation of a 11 year old minor girl with intellectual disability, the Apex Court surveyed a large number of cases on either side, where death sentence was upheld/awarded or where it was commuted; and pointed out the requirement of applying ‘crime test’, ‘criminal test’ and ‘rarest of rare test’. The Apex Court while commuting the death sentence to life imprisonment recounted, with reference to previous decisions, the aggravating circumstances

⁵². (2013) 5 SCC 546

(crime test) and the mitigating circumstances (criminal test). The

Apex Court held as under:

“52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are “crime test”, “criminal test” and the “R-R test” and not the “balancing test”. To award death sentence, the “crime test” has to be fully satisfied, that is, 100% and “criminal test” 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the “criminal test” may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is “society-centric” and not “Judge-centric”, that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual

assault and murder of intellectually challenged minor girls, suffering from physical disability , old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges. (emphasis and extra emphasis supplied)”

xix) The evolution of sentencing jurisprudence has been guided by a measured balance between the severity of the crime and the proportionality of punishment, ensuring that judicial discretion operates within principled boundaries. The ‘rarest of rare’ doctrine stands as a testament to this balance, providing a structured yet flexible standard that allows courts to weigh the enormity of an offence against mitigating factors, if any. It is not merely a threshold for determining eligibility for the death penalty but an examination of the circumstances where justice, in its fullest sense, necessitates the gravest sentence.

xx) The framework laid down in **Machhi Singh**⁴⁷ serves as a valuable lens through which the application of capital punishment is assessed. The considerations enumerated therein—ranging from the

manner of execution to the scale of impact—are neither rigid nor exhaustive but rather indicative of the kind of offences that warrant the ultimate penalty. Over time, these principles have not only guided sentencing in individual cases but have reinforced the consistency of judicial approach, ensuring that the gravity of a crime is met with an equally reasoned response.

xxi) In adjudicating matters of such consequence, Courts have consistently been called upon to recognize not just the individual act but its wider implications. The doctrine does not exist in isolation but operates within a broader legal framework that considers the deterrent effect of sentencing, the interests of victims, and the expectations of a society that entrusts the judicial system with the responsibility of upholding justice. The sentencing process, particularly in cases that involve large-scale devastation, necessarily accounts for the enormity of loss and the lasting impact on public consciousness. In matters of sentencing, the law mandates a balancing of aggravating and mitigating circumstances. While every murder is heinous, the degree of brutality, the depravity of mind, and the diabolic nature of the crime differ from case to case. There can be no straitjacket formula for the imposition of the death penalty; rather,

each case must be assessed on its own merits. The background of the criminal, his psychology, his social conditions, and the effect of imposing an alternative punishment on society at large must be taken into consideration. A crime committed due to a personal enmity or mutual hostility may not warrant the extreme penalty of death. However, an organised crime that is aimed at causing large-scale destruction or mass murders of innocent people must necessarily be viewed in a different light. Such crimes, by their very nature, obliterate any scope for leniency and warrant highest imposition of penalty as a necessary deterrent.

xxii) In **Mahesh v. State of M.P**⁵³, wherein the accused committed 5 murders over caste communal dispute and the Apex court deprecated the practice of taking a lenient view and not imposing the appropriate punishment observing that it will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. The court held that "To give a lesser punishment to the appellants would be to render the justice system of this country suspect. The common man will lose faith in the courts. In such cases, he

⁵³. AIR 1987 SC 1346

understands and appreciates the language of deterrence more than the reformatory jargon"

xxiii) In **Bantu v. State of U.P**⁵⁴, the Apex Court while confirming the death sentence of an accused raping and murdering a six-year old girl, following its decision in **Sevaka Perumal v. State of T.N**⁵⁵, wherein four young boys were murdered and the accused death sentence was confirmed, re-iterated the same view observing as under:

"Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

xxiv) A three-Judge Bench in **Swamy Shraddhananda v. State of Karnataka**⁵⁶ wherein the appellant killed his wife, the apex court while commuting the sentence, noted the new age crimes and by elucidating:

⁵⁴. (2008) 11 SCC 113

⁵⁵. AIR 1991 SC 1463

⁵⁶. (2008) 13 SCC 767

"43. In Machhi Singh the Court crafted the categories of murder in which 'the Community' should demand death sentence for the offender with great care and thoughtfulness. But the judgment in Machhi Singh was rendered on 20-7-1983, nearly twenty-five years ago, that is to say a full generation earlier. A careful reading of the Machhi Singh categories will make it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983 the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in the course of those offences were yet to become a menace for the society compelling the Legislature to create special slots for those offences in the Penal Code. At the time of Machhi Singh, Delhi had not witnessed the infamous Sikh carnage. There was no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies. There were no mafia cornering huge government contracts purely by muscle power. There were no reports of killings of social activists and 'whistle blowers'. There were no reports of custodial deaths and rape and fake

encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in Bachan Singh, therefore, we respectfully wish to say that even though the categories framed in Machhi Singh provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in Bachan Singh itself."

xxv) The principle that life imprisonment is the rule and death an exception finds its application where the alternative option is unquestionably foreclosed. It is in such cases that judicial conscience aligns with societal conscience, affirming that the law, while protective of life, must also recognize when the deprivation of life is the only appropriate response. This is not a departure from the fundamental values that underpin the legal system but rather their reaffirmation—an acknowledgment that the sanctity of life, while inviolable in most circumstances, cannot extend protection to those who have, by their own deliberate and calculated actions, annihilated it on an unprecedented scale.

xxvi) In **Susheel Murmu v. State Jharkhand**⁵⁷, kidnapped and murdered a 9 year young boy as a ritual sacrifice. The Apex Court upheld the death sentence, deeming the crime "rarest of rare" due to its barbaric nature and lack of remorse. The Apex Court held as under:

“In rarest of rare cases the collective conscience of the society 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, death sentence can be awarded. The Apex Court considered the circumstances that may entertain such sentiments of the community including. (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. (2) When the murder is committed for a motive which evinces total depravity and meanness misusing the position of trust etc.’

xxvii) The nature of the offence, the meticulous planning, the scale of casualties, and the complete absence of mitigating factors leave no ambiguity in the application of this settled doctrine as is no

⁵⁷. (2004) SCC (Crl) 529

longer *res integra*. In such cases, sentencing is not a matter of judicial inclination but the logical culmination of principles that have long been established and consistently upheld. It is in these instances that the judicial function extends beyond the mere adjudication of guilt and assumes its full responsibility—to ensure that the gravity of a crime is met with the weight of justice it demands. Terror bombings, like the one before us, epitomize the "rarest of rare" paradigm, where the death penalty stands as the sole instrument capable of redressing such an unpardonable assault on humanity.

xxviii) In the current fact scenario, the "rarest of rare" threshold is not merely crossed but obliterated. The balance of aggravating and mitigating circumstances tilts favourably towards the former, rendering life imprisonment as insufficient recompense for a crime of such monstrous proportions. Drawing from all the authorities mentioned *supra*, the death penalty emerges as the just and proportionate response—a bulwark against terror and a testament to the rule of law. When terror strikes the innocent with such calculated savagery, the law shall rise with equal and unrelenting force to protect justice's sanctity and the nation's soul.

xxix) The constitutional mandate to reserve the death penalty for exceptional cases as affirmed in **Bachan Singh**⁴⁶ has guided through decades of jurisprudential evolution. Building upon this foundation and the insights of **Machhi Singh**⁴⁷, the introduction of Doctrine of Systemic Enduring Harm (DSEH) emerges as a natural extension of these principles. It offers a structured approach to address crimes that strike at the core of societal stability—such as orchestrated acts of terror—ensuring that the ultimate sanction aligns with both justice and necessity. DSEH further refines the "rarest of rare" doctrine, providing lucidity over such rare instances where the fabric of collective existence is imperiled.

xxx) DSEH rests upon a precise, dual inquiry, structured as a two-pronged test to guide the imposition of the death penalty with exacting clarity. The first prong demands that the offense inflict a deep and lasting wound upon society—manifested through widespread disruption, economic ruin, or enduring collective anguish—beyond the reach of ordinary remedies; it is a threshold met only when the crime's consequences so fundamentally impair the social order that no measure short of the ultimate sanction imperative to protect collective life, ensuring that the death penalty

responds to threats that imperil the nation's stability, as might occur in acts of orchestrated terror. The second prong requires accused's pivotal involvement and demonstrated intent reveal a character wholly incompatible with reformative justice; it insists upon evidence-such as calculated premeditation or unyielding ideological commitment-that the offender's active role in the act and rejection of societal norms preclude any hope of redemption. Together, these criteria ensure a balanced focus on the magnitude of the crime and the culpability of the offender, harmonizing with established sentencing principles while addressing the unique nature of systemic offenses with a disciplined and proportionate judicial response.

xxxi) Where the "rarest of rare" doctrine has long served as a bulwark of proportionality, this new doctrine (DSEH) provides a refined lens for crimes that transcend individual loss to threaten societal survival. It directs judicial attention to the objective scale of devastation and the offender's irremediable agency, as seen in acts like terror bombings that fracture national resilience. The requirement of deep and lasting societal harm identifies those offenses whose consequences echo beyond immediate victims, while the focus on the offender's pivotal involvement and intent isolates

perpetrators whose deliberate role and mindset preclude lesser measures. This approach strengthens the existing framework, ensuring that the death penalty is imposed only where both the crime's gravity and the offender's disposition compel such a response.

xxxii) In **Ravindra Trimbak Chouthmal v. State of Maharashtra**⁵⁸, is perhaps among the earliest cases where consecutive sentences were awarded. This was not a case of rape and murder but one of causing a dowry death of his pregnant wife. It was held that it was not the “rarest of rare” cases “because dowry death has ceased to belong to *that* species of killing”. The death sentence was, therefore, not upheld. Since the accused had attempted to cause disappearance of the evidence by severing the head and cutting the body into nine pieces, this Court directed that he should undergo the sentence for that crime after serving out his life sentence. It was held as under:

“10. We have given considered thought to the question and we have not been able to place the case in that category which could be regarded as the ‘rarest of the rare’ type. This is so because

⁵⁸. (1996) 4 SCC 148

dowry death has ceased to belong to *that* species of killing. The increasing number of dowry deaths would bear this. To halt the rising graph, we, at one point, thought to maintain the sentence; but we entertain doubt about the deterrent effect of a death penalty. We, therefore, resist ourselves from upholding the death sentence, much though we would have desired annihilation of a despicable character like the appellant before us. We, therefore, commute the sentence of death to one of RI for life.

11. But then, it is a fit case, according to us, where, for the offence under Sections 201/34, the sentence awarded, which is RI for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder—the atrocious way in which the head was severed and the body was cut in nine pieces. These cry for maximum sentence. Not only this, the sentence has to run consecutively, and not concurrently, to show our strong disapproval of the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body. To these sentences, we do not, however, desire to add those awarded for offences under Sections 316 and 498-A/34, as killing of the child in the womb

was not separately intended, and Section 498-A offence ceases to be of significance and importance in view of the murder of Vijaya.

12. The result is that the appeal stands allowed to the extent that the sentence of death is converted to one of imprisonment for life. But then, the sentence of seven years' RI for the offence under Sections 201/34 IPC would start running after the life imprisonment has run its course as per law.” (emphasis in original)

Since imprisonment for life means that the convict will remain in jail till the end of his normal life, what this decision mandates is that if the convict is to be released earlier by the competent authority for any reason, in accordance with procedure established by law, then the second sentence will commence immediately thereafter.”

xxxiii) In **Ronny v. State of Maharashtra**⁵⁹ is also among the earliest cases in the recent past where consecutive sentences were awarded. The three accused, aged about 35 years (two of them) and 25/27 years had committed three murders and a gang rape. The Apex Court converted the death sentence of all three to imprisonment for life since it was not possible to identify whose case would fall in the

⁵⁹. (1998) 3 SCC 625

category of the “rarest of rare” cases. However, after awarding a sentence of life imprisonment, the Apex Court directed that they would all undergo punishment for the offence punishable under Section 376(2)(g) IPC consecutively, after serving the sentences for other offences. It was held as under:

“47. Considering the cumulative effect of all the factors, it cannot be said that the offences were committed under the influence of extreme mental or emotional disturbance for the whole thing was done in a pre-planned way; having regard to the nature of offences and circumstances in which they were committed, it is not possible for the Court to predict that the appellant would not commit criminal act of violence or would not be a threat to the society. A-1 is 35 years old, A-2 is 35 years old and A-3 is 25 (sic 27) years old. The appellants cannot be said to be too young or too old. The possibility of reform and rehabilitation, however, cannot be ruled out. From the facts and circumstances, it is not possible to predict as to who among the three played which part. It may be that the role of one has been more culpable in degree than that of the others and vice versa. Where in a case like this it is not possible to say as to whose case falls within the ‘rarest of the rare’ cases, it would serve the ends of justice if

the capital punishment is commuted into life imprisonment. Accordingly, we modify the sentence awarded by the courts below under Section 302 read with Section 34 from death to life imprisonment. The sentences for the offences for which the appellants are convicted, except under Section 376(2)(g) IPC, shall run concurrently; they shall serve sentence under Section 376(2)(g) IPC consecutively, after serving sentence for the other offences.”

xxxiv) In **Sandesh v. State of Maharashtra**⁶⁰, the Apex Court converted the death penalty awarded to the accused to imprisonment for life, inter alia, for the rape of a pregnant lady, attempted murder and the murder of her mother-in-law with a further direction that all the sentences were to run concurrently.

xxxv) In **Sanaullah Khan v. State of Bihar**⁶¹, the death sentence awarded to the accused for the murder of three persons was converted by this Court to imprisonment for life for each of the three murders and further the sentences were directed to run concurrently.

93. In view of the aforesaid discussion and the principle laid down by the Apex Court in rarest of rare cases, it can be held that the

⁶⁰. (2013) 2 SCC 479

⁶¹. (2013) 3 SCC 52

present case also falls under the category of 'rarest of rare' wherein no lenient view shall be taken by the Court keeping in view the *modus operandi* of the accused in commission of offences, wherein 18 deaths occurred and caused injuries to 131 people, whose families suffered a lot of mental agony and financial loss and further traumatized the entire State.

94. **DOCTRINE OF RAREST OF RARE CASE AND DEATH PENALTY:**

i) As discussed above, in the present case, the trial Court imposed death penalties on accused Nos.2 to 6. Pursuant to the same, learned trial Court addressed a letter vide Dis.No.812 of 2016, dated 19.12.2016 to this Court seeking confirmation of capital punishment of death under Section - 366 of the Cr.P.C. Pursuant to the said letter, this Court registered the same as Referred Trial (R.T.) No.1 of 2016.

ii) Death Penalty is a means of retributive justice which says to balance crime with punishment. Many uses to state that death penalty will teach society the seriousness of crime, but by following retribution principle, we cannot teach society to end violence by violence it result more violence. The continuance of death penalty is

the retribution theory of punishment. This theory is founded on the principle of *lex talionis* and that a just punishment is one which inflicts the same amount of pain to the offender as he caused to the victim. The retentionists argue that since death penalty is prescribed in those cases where the accused has caused the death of another person, it is very much reasonable and justified that law takes the life of the offender to give retribution to the family of the deceased. However, the abolitionists expose the absurdity in this hypothesis by arguing that modern punishment is not founded on the principle of retribution because if this was the case then, no punishment can be given to rapists, thieves and whole lot of other criminals. Instead, they argue that reformation and rehabilitation is the primary purpose of punishment, which is defeated if death penalty is awarded to an offender. the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable.

iii) The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reported on the proper standards required by international law in death penalty cases. Included in those recommendations is the requirement that “all mitigating factors must be taken into account which would appear to exclude the possibility of sentence passed without consideration of the individual circumstances of the defendant. The dignity of man, his sovereignty, the sign that he accedes to universal right and rises above animality is that he rises above biological life, puts his life in play in the law, risks his life and thus affirms his sovereignty as subject or consciousness. A law that would refrain from inscribing the death penalty within it would not be a law; it would not be a human law, it would not be a law worthy of human dignity.”

94.1 **HISTORICAL BACKGROUND:**

i) Capital punishment has a long history and has been present in almost every country. In ancient Greece, it was used for various crimes like murder, treason, arson, and rape under Draco's laws in the 7th Century BCE. However, the philosopher Plato argued for a more selective application, advocating its use only for the most serious cases. The Romans also employed the death penalty for a

range of offenses, although citizens were briefly exempt during the republic. Sir Henry Maine observed that while the Roman Republic didn't abolish the death penalty, its infrequent use was influenced by other punishments like exile and specific procedural considerations. This historical context emphasizes how capital punishment has evolved over time, shaped by societal values, philosophical beliefs, and legal frameworks. Understanding this history is crucial for informed discussions about the death penalty's morality and effectiveness today”.

ii) The root of death penalty laws was traced as far back in Babylon law. Hammurabi who was first metropolis, the king of Babylon issued a set of law to his people called Hammurabi Code. Babylon civilization started in XIX Century B.C. till VI Century B.C. Hammurabi was the first written code. Hammurabi Code provide harsh standard by which Babylon could order their lives and treat one another. The establishment of death penalty was initiated through Hammurabi Code of Babylon in 18th Century." In Hammurabi Code crime against high class people having a large amount of money considered more serious then poor people.

iii) The Indian courts have witnessed turbulence. Several judgments of the Indian Supreme Court have expressed disquiet at the unpredictable ways in which the rarest of the rare test laid down in **Bachan Singh**⁴⁶ has been applied. In **Santosh Kumar Satishbhushan Bariya v. State of Maharashtra**⁶², the Apex Court held that “there is no uniformity of precedents, to say the least. In most cases, the death penalty has been affirmed or refused to be affirmed by us, without laying down any legal principle”. Indeed, as the Law Commission of India pointed out, the Apex Court itself has come to doubt the possibility of a principled and consistent implementation of the “rarest of rare test”. This, in turn, led the Commission to recommend that the death penalty be abolished for all crimes other than terrorism related offences and waging war.

94.2. Learned counsel for the appellants placed reliance on the principle laid down by the Apex Court in **Navjot Sandhu**³⁴. The said case is in relation to attack on Parliament, wherein the Trial Court convicted the accused therein including Navjyot Singh and others. Death penalty was awarded to the main accused including Mohammad Afzal Guru. The Division Bench of the High Court

⁶². 2009 INSC 808

dismissed the appeals of Mohd. Afzal and Shaukat Hussain Guru and confirmed the death sentence imposed on them. However, it acquitted some of the accused including Afsan Guru (Navjot Sandhu) due to lack of evidence against her. The Apex Court confirmed the death sentence of Afzal Guru, but commuted the death sentence of another accused to life imprisonment.

i) In **Union of India v. V. Sriharan alias Murugan**⁶³, which is a case of assassination of Former Prime Minister, Rajiv Gandhi. In the said case, the **trial Court awarded death sentence to seven accused** including V. Sriharan @ Murugan and life imprisonment and varying punishments were awarded to others. The Madras High Court **upheld the convictions** and death sentences. The Apex Court commuted the death sentences of three main accused (Murugan, Santhan, and Perarivalan) **to life imprisonment** due to inordinate delay in deciding their mercy petitions. The Apex Court also explained the scope of life imprisonment and held that life imprisonment means imprisonment for the rest of the life of the convict till his/her last breath.

⁶³. (2016) 7 SCC 1

ii) In **Adambhai Sulemanbhai Ajmeri**⁸ relating to attack on Akshardham Temple. In the said Court, the Special Court convicted Adambhai Sulemanbhai Ajmeri and Abdul Kayum @ Muftisaab Mohmedbhai and awarded them death penalty, and the same was upheld by the High Court, whereas, the Apex Court acquitted all six persons including the two on death row.

iii) In **Yakub Abdul Razak Memon**²⁰ in relation to Bombay Blast Case. In the said case, the Special Court for TADA, on consideration of entire evidence, both oral and documentary, found Yakub Memon guilty of criminal conspiracy and under various Sections of TADA, IPC, ES Act and the Arms Act. He was sentenced to death for his role in the conspiracy and for facilitating acts of terrorism. The Bombay High Court held that since it was a TADA case, it did not hear an appeal in the conventional sense and that under TADA, appeals lie directly to the Hon'ble Supreme Court. Thus, there was no High Court ruling in this matter. Further, the Apex Court upheld the conviction of death penalty in respect of Yakub.

iv) In **Mohd. Arif alias Ashfaq v. State (NCT of Delhi)**⁶⁴

relation to attack on the Red Fort, the trial Court convicted Arif and imposed death sentence on him. The Delhi High Court upheld the conviction and death sentence and the Apex Court also upheld the conviction and the death penalty. The Apex Court held in paragraph No.213 as under:

“213. This was, in our opinion, a unique case where Red Fort, a place of paramount importance for every Indian heart was attacked where three Indian soldiers lost their lives. This is a place with glorious history, a place of great honour for every Indian, a place with which every Indian is attached emotionally, and a place from where our first Prime Minister delivered his speech on 15-8-1947, the day when India broke the shackles of foreign rule and became a free country. It has since then been a tradition that every Hon'ble Prime Minister of this country delivers an address to the nation on every 15th August to commemorate that great event. This fort was visualised and constructed by the Mughal Emperor Shahjahan who is known as “Shahjahan the builder”. It took nine years for its completion. It was here that Shahjahan ascended the throne on 18-4-1648 amidst recitation of sacred aayates of *Holy Quran* and mantras from Hindu scriptures. The great historical monument thereafter saw the rule of

⁶⁴. (2011) 13 SCC 621

number of Mughal Emperors including Aurangzeb. It also saw its most unfortunate capture by Nadir Shah. It was in 1837 that the last Mughal Emperor Bahadur Shah Zafar II took over the throne.

214. It must be remembered that it was during the empire of Bahadur Shah Zafar II that the First War of Independence was fought. Red Fort became the ultimate goal during that War of Independence which broke out in the month of May 1857. The Fort breathed free air for a brief period. But ultimately in the month of September 1857, it was captured by the British. Red Fort is not just one of the several magnificent monuments that were built by the Mughal emperors during their reign for nearly three centuries. It is not just another place which people from within and outside the country visit to have a glimpse of the massive walls on which the Fort stands or the exquisite workmanship it displays. It is not simply a tourist destination in the capital that draws thousands every year to peep and revel into the glory of the times bygone. Its importance lies in the fact that it has for centuries symbolised the seat of power in this country. It has symbolised the supremacy of the Mughal and the British empires just as it symbolises after Independence the sovereignty of the world's largest democratic republic. It is a national symbol that evokes the feelings of nationalism amongst the countrymen and reminds them of the sacrifices that the freedom fighters made for the liberation of this country from foreign rule.

215. No wonder even after the fall of the Fort to the British forces in the First War of Independence in 1857 and the shifting of the seat of power from Red Fort to Calcutta and later to New Delhi, Pt. Jawahar Lal Nehru after his historic “Tryst with Destiny” speech unfurled the tricolour from the ramparts of Red Fort on 15-8-1947. That singular event symbolised the end of the British rule in this country and the birth of an independent India. An event that is relived and re-acted every succeeding year since 1947, when every incumbent Prime Minister addresses the nation from atop this great and historic Fort reminding the countrymen of the importance of freedom, the need for its preservation and the values of constitutional democracy that guarantees the freedoms so very fundamental to the preservation of the unity and integrity of this country. **An attack on a symbol that is so deeply entrenched in the national psyche was, therefore, nothing but an attack on the very essence of the hard-earned freedom and liberty so very dear to the people of this country.**

216. An attack on a symbol like Red Fort was an assault on the nation's will and resolve to preserve its integrity and sovereignty at all costs. It was a challenge not only to the army battalions stationed inside the monument but the entire nation. It was a challenge to the very fabric of a secular constitutional democracy this country has adopted and everything that is good and dear to our countrymen. It was a blatant, brazenfaced and

audacious act aimed to overawe the Government of India. It was meant to show that the enemy could with impunity reach and destroy the very vitals of an institution so dear to our fellow countrymen for what it signified for them. It is not for no reason that whosoever comes to Delhi has a yearning to visit Red Fort. It is for these reasons that this place has become a place of honour for Indians.

217. No one can ever forget the glorious moments when the Indians irrespective of their religions fought their First War of Independence and shed their blood. It was, therefore, but natural for the foreigner enemies to plan an attack on the army specially kept to guard this great monument. This was not only an attack on Red Fort or the army stationed therein, this was an arrogant assault on the self-respect of this great nation. It was a well thought out insult offered to question the sovereignty of this great nation by foreign nationals. Therefore, this case becomes a rarest of the rare case. **This was nothing but an undeclared war by some foreign mercenaries like the present appellant and his other partner in conspiracy Abu Shamal and some others who either got killed or escaped. In conspiring to bring about such kind of attack and then carrying out their nefarious activities in systematic manner to make an attack possible was nothing but an attempt to question the sovereignty of India. Therefore, even without any reference to any**

other case law, we hold this case to be the rarest of the rare case.

218. Similar sentiment was expressed by this Court in *State (NCT of Delhi) v. Navjot Sandhu* [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] . The Court expressed its anguish in the following words: (SCC pp. 759-60, para 252)

“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 the rarest of rare cases. The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperilling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of the Government of India and engaging in a combat with the security forces is a terrorist act of the gravest severity. It is a classic example of the rarest of rare cases. This question of attack on the army and the killing of three soldiers sent shock waves of indignation throughout the country. We have no doubt that the collective conscience of the society can be satisfied by capital punishment alone.”

219. We agree with the sentiments expressed in *Navjot Sandhu case* [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] : (SCC p. 760, para 253)

“253. ... The challenge to the unity, integrity and sovereignty of India by these acts of terrorists and

conspirators, can only be compensated by giving maximum punishment to the person who is proved to be the conspirator in this treacherous act.”

220. A conspiracy to attack the Indian Army unit stationed in Red Fort and the consequent unprovoked attack cannot be described excepting as waging war against India and there can be no question of compromising on this issue. The trial court has relied on a number of other cases including *Navjot Sandhu* [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] as also *State v. Nalini* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] . We do not want to burden the judgment by quoting from all these cases.

223. During the whole debate the learned defence counsel did not attempt to bring any mitigating circumstance. In fact, this is a unique case where there is one most aggravating circumstance that it was a direct attack on the unity, integrity and sovereignty of India by foreigners. Thus, it was an attack on Mother India. This is apart from the fact that as many as three persons had lost their lives. The conspirators had no place in India. The appellant was a foreign national and had entered India without any authorisation or even justification. This is apart from the fact that the appellant built up a conspiracy by practising deceit and committing various other offences in furtherance of the conspiracy to wage war against India as also to commit murders by launching an unprovoked attack on the soldiers of the Indian Army. We,

therefore, have no doubts that death sentence was the only sentence in the peculiar circumstance of this case.”

v) In **Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid v. State of Maharashtra**⁶⁵ in relation to attack in Hotel Taj Mahal Palace, on consideration of organized crime, offences, conspiracy and seriousness of offences and also on consideration of evidence, both oral and documentary, the trial Court awarded death sentence and the same was upheld by the Bombay High Court as well as the Apex Court. The relevant paragraph Nos.564 and 565 of the judgment are as follows:

“564. This case has the element of waging war against the Government of India and the magnitude of the war is of a degree as in no other case. And the appellant is convicted on the charge, among others, of waging war against the Government of India.

565. This case has shocked the collective conscience of the Indian people as few other cases have.”

⁶⁵. (2012) 9 SCC 1

vi) In **Central Bureau of Investigation v. Sakru Mahagu Binjewar**⁶⁶, the Apex Court laid down the circumstances under which death penalty can be imposed. Paragraph No.20 of the said judgment is relevant and the same is extracted as under:

“20. It needs no elaborate discussion that the judicial discretion conferred upon a Court in the matter of awarding sentence is an onerous duty which has to be exercised keeping in view the settled and binding dictates including the Doctrine of Proportionality for assigning justifiable reasons to award the death penalty and also to keep in mind the Doctrine of Reform and Rehabilitation. [Ref: **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498**]”.

vii) Learnd counsel for the appellants vehemently contended that the trial Court cannot impose death penalties twice or thrice in the manner stated above and the same amounts to double jeopardy. In the light of the said submission, it is apt to note that ‘doubt jeopardy’ ensures that an individual once acquitted or convicted, cannot be tried again for the same offence as enshrined in Article -

⁶⁶. AIR 2019 SC 3550

20 (2) of the Constitution of India and elaborated under Section - 300 of the Cr.P.C.

viii) In the present case, on consideration of the entire evidence, both oral and documentary, learned trial Court recorded conviction against the appellants for the aforesaid offences and imposed sentences in the manner stated above including death penalties. Normally, in criminal cases other than life and death penalty cases, trial Court directs that sentences of imprisonment shall run concurrently. But, in the present case, learned trial Court cannot direct that death penalties shall run concurrently since death penalties would be executed only once. The Apex Court considered the said aspect in **Muthuramalingam v. State**⁶⁷ and held that life imprisonments cannot be directed to run concurrently. Paragraph No.31 is relevant and the same is extracted as under:

“31. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or

⁶⁷. (2016) 8 SCC 313

commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.”

95. **MITIGATING CIRCUMSTANCES:**

a) We have heard learned counsel for the appellants - accused Nos.2 to 6 and learned Special Public Prosecutor for NIA at length in R.T. No.1 of 2016 and Criminal Appeal No.1299 of 2016. During the course of hearing, it was brought to the notice of this Court regarding the appointment of a mitigator by the Hon’ble Supreme Court in several Special Leave Petitions and by this Court in Referred Trials and Criminal Appeals. However, Mr. R. Mahadevan, Mr. Appam Chandra Sekhar, learned counsel appearing for accused Nos.2 to 5 vehemently opposed for appointment of a mitigator.

b) After hearing both sides, *vide* orders dated 22.11.2023, this Court appointed Ms. C.P. Shruthi as mitigator to assess the conduct and behavior of accused Nos.2 to 5, who are in Central Prison, Tihar, New Delhi, while Ms. Neha Kangralkar as mitigator to assess the conduct and behavior of accused No.6, who is in Central Prison, Cherlapally, Medchal - Malkajgiri District, Telangana State, and also

to carry out their psychological evaluations, with the following directions:

- i. The respondent-State shall place the reports of all the Probation Officers relating to accused Nos.2 to 6 within eight (8) weeks;
- ii. The Superintendents of Central Jail, Tihar, New Delhi and Cherlapally, Medchal - Malkajgiri District, Telangana State, shall submit reports concerning the nature of works which have been performed by accused Nos.2 to 6 while in jail and reports with regard to their conduct and behavior while in jail within a period of eight (8) weeks;
- iii. The Superintendent/Professor of Psychiatry, The Institute of Human Behavior and Allied Sciences (IHBAS), formerly known as Hospital for Mental Diseases, Shahdara, New Delhi, and The Superintendent/Professor of Psychiatry, Institute of Mental Health, Erragadda, Hyderabad, shall constitute a suitable team to carry out a psychological evaluation of accused Nos.2 to 5 and accused No.6, respectively. The report of the evaluation shall be submitted to this Court through the Public Prosecutor, High Court for the State of Telangana, within a period of eight (8) weeks;
- iv. Ms. C.P. Shruthi and Ms. Neha Kangralkar, who are associated with Project 39A of the National Law

University, Delhi, are permitted to have access to accused Nos.2 to 5 and accused No.6, who are presently lodged in Central Prisons of Tihar, New Delhi and Cherlapally, Medchal - Malkajgiri District, Telangana State, respectively, to conduct multiple in-person interviews to collect information relevant to sentencing and to submit Mitigation Investigation Reports on behalf of the accused Nos.2 to 5 and accused No.6 through their Advocates-on-Record within eight (08) weeks;

- v. The Superintendents of Central Prison of Tihar, New Delhi and Cherlapally, Medchal - Malkajgiri District, Telangana State, are directed, for the sake of confidentiality, that these interviews shall be conducted in a separate interviewing space in the presence of any prison official or police staff being within earshot distance, and audio recorders be permitted to be used to record the interviews;
- vi. The Superintendents of Central Prison, Tihar, New Delhi, and Cherlapally, Medchal - Malkajgiri District, Telangana State, are also directed that persons nominated by Ms. C.P. Shruthi and Ms. Neha Kangralkar are permitted to assist them in conducting the aforesaid interviews including translations, if necessary, on the request made by them;

- vii. Permissions are also granted to Ms. C.P. Shruthi and Ms. Neha Kangralkar to obtain documents pertaining to the accused persons including but not limited to medical records, jail conduct, certificates of any educational, vocational, or employment opportunities undertaken, etc., that the accused persons may wish to submit for sentencing information; and
- viii. However, the Superintendents of Central Prison, Tihar, New Delhi, and Cherlapally, Medchal - Malkajgiri, Telangana State, shall provide necessary protection to Ms. C.P. Shruthi and Ms. Neha Kangralkar, in conducting the aforesaid interviews etc.;
- ix. Both the Superintendents of Central Prisons, Tihar, New Delhi, and Cherlapally, Medchal - Malkajgiri District, Telangana State, shall video record the entire proceedings; and
- x. NIA shall pay an amount of Rs.50,000/- (Rupees Fifty Thousand Only) each to the aforesaid mitigators.

Pursuant to the aforesaid directions, the aforesaid Mitigators filed their respective reports in respect of accused Nos.2 to 6.

c) As discussed above, *vide* order dated 22.11.2023, this Court appointed Ms. C.P. Shruthi and Ms. Neha Kangralkar, as mitigators to assess the conduct and behavior of accused Nos.2 to 5

and accused No.6, respectively and carry out their psychological evaluations and file reports.

d) In compliance with the said order, Ms. C.P. Shruthi and Ms. Neha Kangralkar, Mitigators, filed reports on 17.05.2024, 22.03.2024, 15.05.2024 and 22.03.2024 in respect of accused Nos.2 to 6, respectively. In the said reports, they have specifically mentioned about the objective statement, purpose of report, methodology, limitations, summary, life in prison, psychological distress including solitary confinement, continued ties with family, coping on death row, etc., and ultimately gave their conclusions and recommendations.

i) With regard to accused No.2, the mitigator's conclusion and recommendations are as follows:

“XII. Conclusion and recommendations:

48. Towards the end of the mitigation interviews, I asked Asad what were his hopes about his future and he responded by saying that he feared going out and living outside. He does not think he can live a normal life outside because of his experiences in prison. He said "मैं अपने फॅमिली को भी यही बोलना चाहता हूँ की केस को छोड़ दें। जो होता है होने दें। बस फॅमिली की वजह से हम रुके हुए हैं नहीं तो मैं ज़्यादा समय रुक नहीं पाऊँगा। मैं नहीं ज़्यादा रह पाऊँगा यहाँ तो मैं चाहूँगा की फॉ

सीहीहोजाँ।" (*"I want to tell my family to let go of the case. Whatever happens, let it happen. I am waiting because of my family, otherwise I do not think I can wait too long. I cannot stay here for too long so I would want to be hanged."*) Research suggests that such thoughts and ideas of suicidality or passive suicide are indicative of the conditions of the death row that create an ecosystem that is a constant reminder of impending and uncertain death. (Toch et al., 2018). A research study conducted by Project 39A, National Law University titled *'Deathworthy: A Mental Health Perspective of the Death Penalty'* notes that, *"while few death row prisoners spoke about wanting to die when they got the death sentence, it was life under the sentence of death that to many more was painful and dark"*. The current state Asad is in is reflective of the extreme distress that he has been experiencing in prison.

49. Since his arrest and incarceration, Asad has had recurrent episodes of what appears to be sleep paralysis. It causes him so much distress and anxiety that he fears falling asleep. He described these episodes as his soul leaving his body and him having to put a lot of effort into bringing it back with force. These episodes are usually accompanied by intense fear where he almost chokes. He has also been experiencing anxiety, sleeplessness, palpitations, and distress for the past 11 years of his incarceration. The two head injuries that he suffered in prison in 2017 and 2019 have only magnified his condition further. He has had persistent headaches, and issues with

concentration, focus, and memory. He struggles to make sense of time and space at times and feels like the entire year after his head injury has been a blur and finds it hard to recall the details of what that year was like. He has also had trouble with exposure to light and sound since his headache and also struggles to comprehend conversations sometimes. He has also become slow, "हाँ, येलगताहैकीपहलेकीतरहनहींहूँ। अब थोड़ा दिमाग slow हो गया है।" (*"Yes, I feel like I am not what I used to be. Now my brain has become slower."*) These experiences seem to have brought about a change in Asad's personality, though he tries to hide those changes from his mother.

50. The signs and symptoms that Asad is exhibiting may be indicative of a Traumatic Brain Injury. The events and incidents in jail that have contributed to these symptoms seem to have had a compounding effect on him and have magnified his vulnerabilities. While Asad may seem completely functional at first instance, it is only through sustained conversations over a period of time and rapport building that his distress becomes evident. Other than his co prisoners and the strong ties he has with his family, there is very little support that he has to cope with his experiences. His experience of pain and agony manifesting in his symptoms makes the sentence disproportionate, as it does not account for this additional suffering, even if it is unintended. Continuing to keep Asad on death row will only inflict further harm on him and the punishment may need to be adjusted in order to

avoid an unduly differential impact on him. It is recommended that there be a deeper inquiry into his psychological symptoms that have stemmed from the head injuries and also what could possibly be an anxiety disorder and sleep disturbance. Appropriate care and treatment should be provided to Asad so as to reduce any further psychological harm. Additionally, the mitigation circumstance in this case including Asad's young age, early family background indicative of strong community ties, illegal solitary confinement, psychological ailments in prison, continued family ties and satisfactory conduct in jail indicate that life imprisonment is not 'unquestionably foreclosed in this case.'

ii) With regard to accused No.3, mitigator's conclusions are as follows:

"XI. Conclusion:

51.Zia was arrested and sentenced to death at the age of 26. He had barely begun to come to terms with his arrest when he was lodged in solitary confinement where he spent 24 hours of his day in a cell behind iron doors, with reduced external environmental stimuli, lack of sustained contact with his family, and minimal human interaction. He was denied access to the most basic facilities like the stipulated amount of exposure to full sunlight, phone calls to his family, access to recreational facilities, access to the library, and other prison activities.

52. Not only was Zia deprived of opportunities for growth and engagement, he was instead exposed to such inhuman conditions of incarceration from a young age that has had a detrimental impact on Zia's psyche. He experiences memory lapses, disturbances in his sleep and appetite, hyperresponsivity to light and sound, hallucination like experiences and paranoia which have impacted his cognition and thinking and also impaired his functioning to a certain extent. He has also been suffering multiple physical health ailments in the last few years including diminishing vision, bilateral knee pain and allergic rhinitis. His medical documents from the jail indicate that he has had a number of tests and surgery done for his issues with the vision and he spoke about continuing to see spots in his vision. This has impacted his everyday life to a great extent. He spoke of not being able to differentiate between colours in the dark.

53. Zia feels completely hopeless about his life in prison, the case and what the future holds for him. This was quite evident during the interview where he repeatedly said "आपनेबिखेरदियासबकुछ" (you have scattered all the memories that I had been suppressing) during the interviews. It was clear that speaking about the past and especially his family had been traumatic for him. All these years in prison he has been coping with it by forgetting memories of his family or not engaging with those memories that otherwise provided him support and joy. He copes with these experiences by suppressing his

thoughts and feelings and becomes quiet when any attempt is made to unravel it. The fact that he had trouble sleeping shows that despite his best efforts he has not been able to detach himself and in fact it is clear that he is so fragile that even the slightest reminder causes him a lot of distress. He has tried to cope with his deteriorating mental health by using the very few tools available to him, including his faith.

54. The constant exposure to stressors that have been adding up since his incarceration has now reached a point where it is hard to differentiate what Zia has been feeling and what he has become. He seems sad, resigned and hopeless and it was hard to say if he had become like this as a result of his experiences in prison if it was his personality. His experiences and research indicate the possibility of Zia experiencing trauma. Solitary confinement, violence are considered traumatic or potentially traumatic events and there is a significant positive correlation between solitary confinement and Post Traumatic Stress Disorder (PTSD) given the serious environmental, physical and psychological deprivation that it causes. (Haney, 2018) Many of the responses and symptoms suffered by those who have spent time in solitary are similar to the reactions and symptoms exhibited by torture and trauma victims, including post-traumatic stress disorder (PTSD). (Piper & Berle, 2019) (Haney, 2018). Some of the experiences Zia describes such as memory gaps, episodes where he is seeing his

mother, suppression of emotions could also be indicative of Complex PTSD (C-PTSD) particularly given the prolonged, uncertain and repeated nature of trauma that he has been exposed to and it needs to be enquired further. Zia requires psychological help, including counselling, so that he can regain a sense of self and self-worth for a meaningful life. Continuing imposition of the death sentence is likely to further the psychological harm that he is currently experiencing.”

iii) With regard to accused No.4, mitigator’s conclusions are as follows:

“J.Conclusion:

69. Tahseen's young age, taken along with his life history, underscores a genuine probability of reformation (Bachan Singh) His life before incarceration indicates that he has had strong ties in the community and positive role models growing up as a result of which he has inculcated pro social traits. Mofil Khan & Anr. v. State of Jharkhand (2021) 20 SCC 162 (Paragraph 17) He grew up as a caring and responsible individual. Lehna v. State of Haryana, (2002) 3 SCC 76 (Paragraph 20). He had a flourishing life but has now been reduced to a shadow of his former self because of the extreme harsh conditions in which he has spent the last many years. Tahseen has also had to endure colossal psychological trauma by having to bear harsh and dehumanising conditions during his prolonged solitary confinement. Though Tahseen, like

many prisoners who are kept in such segregated and alienated conditions, also suffered immense despair and psychological harm, he managed to also develop insight into his problem and was solution oriented in his approach.

70. Despite not having access to any formal reformatory activities in prison, he is making an attempt to adjust to his circumstances in prison and is working towards making it better for himself and those around him by helping draft applications and writs. He has also reflected on his time in prison and consciously tried to change the way in which he responds to distressing situations. Tahseen is currently only 33 years old and has his entire life ahead of him. His previous educational background, knowledge that he has acquired in prison and his solution-oriented approach can be put to use if his death sentence is commuted. Being off the death sentence will ensure that he has a reasonable chance of growth by meaningfully engaging in prison reformatory activities and work in prison, all of which has been denied to him in the past 10 years.

71. All of the above, i.e., Tahseen's young age at the time of his arrest, education, continued ties and involvement with the family, attempts to help others, his ability to continue working on himself amply illustrate that if convicted, Tahseen should not be condemned to death. Instead, he should be given a meaningful chance to engage in educational and vocational opportunities not

only to act on his potential for reform but also to reduce his psychological suffering. The alternative of life imprisonment is not unquestionably foreclosed for Tahseen.”

iv) With regard to accused No.5, the mitigator’s conclusions are as follows:

“X.Conclusion:

43. The mitigation investigation in this case is still in its early stages and is yet to uncover the psychological impact of incarceration and solitary on Ahmed. However, the defense team has uncovered an enormous amount of information about the unusual experiences and perceptions that Ahmed has been experiencing including paranoia like thoughts, hallucination like experiences that have impacted all his senses (visual, auditory, olfactory, tactile), insomnia, weakness, haziness in vision, impact of lack of human interaction etc. Ahmed is currently 41 years old and has been on death row for 11 years. He has already suffered 1717 days of intense solitary confinement (illegal). Ahmed was lodged in solitary confinement where he spent 24 hours of his day in a cell behind iron doors, with reduced external environmental stimuli, lack of human interaction which have impacted his psychological health severely. He was denied access to the most basic facilities like stipulated amount of exposure to full sunlight, phone calls to his family, access to recreational facilities, access to library and other prison

activities. Such inhuman conditions of incarceration have had a detrimental impact on Ahmed's psyche. While Ahmed articulates some of these symptoms as his conscious efforts to cope in solitary, it seems like this is his way of rationalising what he has been experiencing. The way Ahmed interprets and makes sense of these experiences need to be explored further. Many of these symptoms align with the detrimental impact of solitary confinement documented in research and empirical studies. Due to paucity of time, a detailed and comprehensive psychological examination to understand Ahmed's condition better could not be done. If Ahmed is continued to be kept in solitary for prolonged periods, he is likely to slip into further psychological harm and distress. A deeper probe into his psychological history and current state is required to prevent any further suffering and harm.

44. Despite the suffering Ahmed has been put through, he remains calm and has been finding ways to cope with the isolation and psychological impact of solitary in a way that is not harmful to others. In the absence of a nominal roll, I received an email from jail no. 2 noting Ahmed's conduct to be satisfactory in the past year. [Annexure 5, pg 34 [He tries to keep himself engaged by tending to plants in his block, reading books whenever he is able to get access to them and being a pillar of strength for his family and his wife, Zahida. Despite having been away from them for decades, Ahmed continues to be a strong

source of emotional support for them. The Hon'ble court is requested to take into account Ahmed's current psychological state and his life history while considering an appropriate punishment for him.”

v) With regard to accused No.6, mitigator's conclusions are as follows:

“IX. Conclusion:

53. The comprehensive mitigation exercise conducted with Ajaz and his family members revealed circumstances and life experiences that had not been presented to the lower court previously. The extensive and in-depth interviews with Ajaz for approximately 40 hours bring forth his life in incarceration and experience in solitary, his strong continuing ties with his family and his personality which depicts his abilities to empathise and reintegrate in the society. In **Santosh Kumar Satish Bhushan Bariyar v State of Maharashtra (2009) 6 SCC 498 (para 66)**, the Hon'ble Court stated that life imprisonment is unquestionably foreclosed only when court has provided clear evidence as to why a convict is not fit for any kind of reformation or rehabilitation (Bariyar, para 66). The Court further stated that the courts should thoroughly assess both aggravating and mitigating factors, considering both the offence and the offender, regardless of the seriousness or type of crime being examined (Bariyar, para 72). Ajaz was arrested at the age of 28. After spending a decade in prison, Ajaz has evolved

by becoming more empathetic and assists fellow inmates with daily tasks and legal matters. During his prison term, Ajaz has displayed behaviours that speak about his abilities to reintegrate and contribute to the well being of his family and the society. He aimed to enrol in law programs and other courses multiple times but could not due to various limitations in prison. His motivation to pursue legal education stems from a desire to take responsibility for his family upon release and to help those in need. The Hon'ble Court in **Dnyaneshwar Suresh Borkar v. State of Maharashtra (2019) 15 Supreme Court Cases 546** (Dnyaneshwar. para 4) and **Mahesh Dhanaji Shinde v. The State of Maharashtra** (Mahesh. para 29) highlighted factors such as the appellant's young age, positive conduct while incarcerated, and dedication to self-improvement through education as indicators of their potential to reform and live a meaningful life, if given a second chance.

54. In **Rajendra Pralhadrao Wasnik v State of Maharashtra (2019) 12 SCC 460** the Hon'ble Court stated that factors like behaviour and conduct in jail, conduct on bail, medical evidence of psychological makeup, and family interactions can be used as indicative of a person's probability of reformation and reintegration (Wasnik, para 45) As per the jail report, Ajaz's conduct has been certified satisfactory [Annexure A-9, Pg. 81] and his psychological makeup consists of constantly pushing himself to see the brighter side of things in the face of

adversities. Furthermore, Ajaz has continued to have strong emotional ties with his family. The family has been maintaining contact with Ajaz via phone calls and tries to visit Ajaz regularly. Due to their current financial situation, they are able to visit him once every six months. The pain of not knowing Ajaz's fate is unbearable for the family. They long to hold him, to comfort him, but they feel helpless. After Ajaz's arrest, his older brother Imtiaz, decided to study law and understand its intricacies to help his brother's case. All these factors are evidence of Ajaz's continued emotional ties with his family and his ability to have long standing interpersonal ties.

55. In **Channulal Verma v. State of Chhattisgarh (2019) 12 SCC 438** emphasised on the importance of appellant's efforts in not submitting to feelings of hopelessness and conscious efforts to lead a good life in prison as an indication of reformation (Channulal, Para 15). Ajaz lives by principle that forbids him from submitting to feelings of hopelessness, Despite facing moments of monotony and helplessness during his time in prison, he has faith in the judiciary and tries to cope with these emotions by maintaining discipline in his life and by preparing himself to be a better son, brother and a father after his release. In the case of **Vinter and ors v. The United Kingdom** recognised 'hope' as an important and constitutive element of a human person. It further stated that even those who commit the most heinous crimes, still possess their intrinsic humanity, and have the potential for change and rehabilitation within them.

56. The Hon'ble Supreme Court in **Sunil Batra v. Delhi Administration and ors (1978) 4 SCC 494** (Sunil Batra, para 107) criticised solitary confinement: (a) seclusion of the prisoner (b) from the sight of other prisoners, and (c) from communication with other prisoners while being in full view as unconstitutional. Ajaz has spent a total of 348 days in solitary confinement till date. During this period there were no inmates in sight, and there were no inmates in his adjacent cells, either. Some sunlight could come through the cell gate, but it was not sufficient, and it was not possible to see without the help of tube light in the room. The tube lights were switched on for 24*7. The only few colours in the surrounding were shades of grey, light orange-coloured floor, blackish-coloured grills, and blue shades of sky.

57. As per the mandate set out by the Hon'ble Court in **Manoj and others vs. State of Madhya Pradesh 2023 2 SCC 353** (para 228, Manoj), the consideration of various factors such as age of the accused, early and current family background, education, employment, and probability of the accused to reform and rehabilitate, psychological make up are important before imposing the death penalty is crucial. Further, the Hon'ble Supreme Court has also given importance to the personality of the accused in **Lehna v. State of Haryana (2002) 3 SCC 76 (para 14)**, when deciding whether the death sentence is the only appropriate punishment in a case. Ajaz was merely 28 years old when he was arrested. Today in 2024,

Ajaz has spent around 10 years in prison and 8 of those on death row. The mitigation report narrates how Ajaz has had a regular peaceful middle class upbringing and took on the responsibility of his education and employment. Ajaz has evolved into an empathetic person and his experiences in prison have taught him to look beyond his own needs and help those in need around him in prison. Ajaz continues to remain hopeful, despite the conditions of his incarceration, and has made efforts to enroll in educational programs. There is nothing to indicate that if convicted Ajaz can be said to be "extremely culpable" and that the alternative of life imprisonment is "unquestionably foreclosed".

e) Both Mr. R. Mahadevan, learned counsel for accused Nos.2 and 5 and Mr. Appam Chandra Sekhar, learned counsel for accused Nos.3 and 4, vehemently opposed for appointment of mitigators while hearing the appeal. According to them, this Court has to appoint mitigators to assess the psychological and other conditions of accused only on confirming the death penalty imposed by the learned trial Court. While hearing appeal, without coming to a conclusion as to whether the appeal has to be allowed or dismissed and to confirm death penalty or not, this Court cannot appoint mitigators to assess

the psychological and other conditions of accused. It will create fear in the minds of the accused.

f) But, on consideration of the said submissions and also the principle/guidelines laid down by the Apex Court in **Manoj v. State of Madhya Pradesh**⁶⁸, this Court appointed the aforesaid two (02) mitigators. In the said judgment, the Apex Court categorically held that mitigators can be appointed at any stage. Therefore, the contention raised by learned counsel for accused Nos.2 & 5 and 3 & 4 with regard to appointment of mitigators while hearing appeal cannot be permissible is unsustainable.

g) Keeping in view the gravity of offences committed by the accused, the mitigating circumstances in the present case are not significant enough warranting the remission of the sentences of the accused.

96. CONCLUSION:

i) We also found that apart from the reasons given in the impugned judgment, the learned trial Court has taken into consideration all the relevant facts and circumstances and chosen to award death penalty, life imprisonment and other sentences as

⁶⁸. (2023) 2 SCC 353

mentioned in the above against the appellants herein. This Court has also independently considered the submissions made on behalf of the appellants and also perused the testimonies of the concerned witnesses. We find that the learned trial Court has properly appreciated the testimonies of witnesses and has recorded sound and tenable reasons for awarding the aforesaid sentences against the appellants herein. In our considered opinion, the discretion exercised by the learned trial Court in awarding sentence of imprisonments cannot said to be arbitrary or unreasonable.

ii) We have given a liberal and expansive scope to the mitigating circumstances. We have also meticulously considered the reports of the State as regards the psychological and Psychiatrist evaluation. The report of the Probationary Officer, the report of the concerned persons and having taken a holistic view of all the aggravating and mitigating circumstances as well as the probability of reformation of the convict, we are of the considered view that this is a fit case to confirm the death penalty awarded by the trial Court.

iii) Section - 366 of Cr.P.C. deals with submission of Death Sentences for confirmation. As discussed above, learned trial Court

addressed a letter vide Dis.No.812 of 2016, dated 19.12.2016 to this Court seeking confirmation of capital punishment of death under Section - 366 of the Cr.P.C. Pursuant to the said letter, this Court registered the same as Referred Trial (R.T.) No.1 of 2016.

iv) In **Kunal Majumdar v. State of Rajasthan**⁶⁹, the Apex Court held as under:

“15. In a case for consideration for confirmation of death sentence under Section 366 (1) Cr.P.C., the High Court is bound to examine the Reference with particular reference to the provisions contained in Sections 367 to 371 Cr.P.C. Under Section 367, Cr.P.C., when Reference is submitted before the High Court, the High Court, if satisfied that a further enquiry should be made or additional evidence should be taken upon, any point bearing upon the guilt or innocence of the convict person, it can make such enquiry or take such evidence itself or direct it to be made or taken by the Court of Sessions. The ancillary powers as regards the presence of the accused in such circumstances have been provided under sub-Clauses (2) and (3) of Section 367, Cr.P.C. Under Section 368, while dealing with the Reference under Section 366, it

⁶⁹. (2012) 8 SCR 706

inter alia provides for confirmation of the sentence or pass any other sentence warranted by law or may annul the conviction itself and in its place convict the accused for any other offence of which the Court of Sessions might have convicted the accused or order for a new trial on the same or an amended charge. It may also acquit the accused person. Under Section 370, when such Reference is heard by Bench of Judges and if they are divided in their opinion, the case should be decided in the manner provided under Section 392 as per which the case should be laid before another Judge of that Court who should deliver his opinion and the judgment or order should follow that opinion. Here again, under the proviso to Section 392, it is stipulated that if one of the Judges constituting the Bench or where the appeal is laid before another Judge, either of them, if so required, direct for rehearing of the appeal for a decision to be rendered by a larger Bench of Judges.

17. We are, however, duty bound to state and record that in a Reference made under Section 366 (1) Cr.P.C., there is no question of the High Court short-circuiting the process of Reference by merely relying upon any concession made by the counsel for the convict or that of counsel for the State. A duty is cast upon the High Court to

examine the nature and the manner in which the offence was committed, the mens rea if any, of the culprit, the plight of the victim as noted by the trial Court, the diabolic manner in which the offence was alleged to have been performed, the ill-effects it had on the victim as well as the society at large, the mindset of the culprit vis-à-vis the public interest, the conduct of the convict immediately after the commission of the offence and thereafter, the past history of the culprit, the magnitude of the crime and also the consequences it had on the dependants or the custodians of the victim. There should be very wide range of consideration to be made by the High Court dealing with the Reference in order to ensure that the ultimate outcome of the Reference would instill confidence in the minds of peace loving citizens and also achieve the object of acting as a deterrent for others from indulging in such crimes.”

v) A corollary of the entire discussion made herein above is that there is absolutely no chance of reformation or rehabilitation of the convict. Life imprisonment would be completely futile since the sentencing aim of reformation is completely unachievable. Having given due consideration to all the aggravating and mitigating circumstances, we are of the firm view that this is a fit case wherein

the death penalty awarded by the learned Sessions Court needs to be confirmed.

vi) The appellants failed to make out any case warranting interference by this Court to set aside the impugned judgment. The present Criminal Appeal filed by the appellants fails and the same is liable to be dismissed.

vii) We, accordingly, confirm the sentence of the death, awarded by the learned trial Court to the appellants - accused Nos.2 to 6 - convicts.

viii) A certified copy of the judgment shall immediately be given to the convicts, free of cost, in view of the proviso to Sub-Section (2) of Section - 363 of the Cr.P.C.

ix) The convicts are informed about their right to prefer an appeal before the Hon'ble Supreme Court within thirty (30) days.

97. **RESULT:**

i) The Criminal Appeal is accordingly dismissed confirming the judgment dated 13.12.2016 in Special Sessions Case No.01 of 2015, passed by learned trial Judge for the trial of Scheduled Offences Investigated by National Investigation Agency - cum - V

Additional Metropolitan and Sessions Judge, Rangareddy District at
L.B. Nagar, Telangana State.

ii) Reference is answered accordingly confirming the death
penalty imposed on accused Nos.2 to 6 by learned trial Court *vide*
judgment dated 13.12.2016 in Special S.C. No.1 of 2015.

As a sequel thereto, miscellaneous applications, if any,
pending in the Criminal Appeal, stand closed.

K. LAKSHMAN, J

P. SREE SUDHA, J

8th April, 2025

Mgr