

Mumbai Suburban Serial blast case, 2006

(Popularly known as 7/11)

The charge-sheet was filed against the following 13 accused and other 15 absconding accused.

- 1) Kamal Ahmed Ansari (A1)
- 2) Tanveer Ansari (A2)
- 3) Mohd. Faisal Shaikh (A3)
- 4) Ehtesham Siddiqui (A4)
- 5) Mohd. Majid (A5)
- 6) Shaikh Mohd. Ali Alam (A6)
- 7) Mohd. Sajid Ansari (A7)
- 8) Abdul Wahid Shaikh (A8)
- 9) Muzzamil Shaikh (A9)
- 10) Suhail Shaikh (A10)
- 11) Zameer Ahmed Shaikh (A11)
- 12) Naveed Husain Khan (A12)
- 13) Asif Khan Bashir Khan (A13)

Considering the quality of evidence in the charge-sheet, it was expected that the case would be discarded at the charge-framing stage itself. But it didn't happen. The case ran the full course of its trial and the court handed out punishment of either death or life term to all the accused except one.

The judgement is very voluminous, running into 1839 pages, the highly compressed gist of which bringing out only the vital aspects of the case is given below

A] The most authentic evidence of CDRs discarded :

In the present age of mobile phones and advanced technology, the most authentic piece of evidence of a person's involvement or non-involvement in a crime is the Call Data Record (CDR) of his mobile phone. In this case the CDRs of mobile phones of many accused persons were found to be not at all tallying with the police version of their locations. e.g.

- 1) The CDR of A13's mobile no. 9867209894 showed that he was working in his office the whole day from 0905 hrs to 1825 hrs on 11-07-2006 i.e. the period when he allegedly put one of bombs in the train and when, as a result whereof the blast took place. The CDR also confirmed that on 06-07-2006 and 09-07-2006 he had not visited Shivajinagar

(Gowandi) or Bandra, where, according to the police version, he had gone on those days as a part of the conspiracy. The contents of the CDR were proved by the nodal officer of the mobile company Airtel.

- 2) The A1 claimed that on 09-07-2006 to 12-07-2006, when he was allegedly hatching the conspiracy in Mumbai, he was in Madhubani district of Bihar and that on 11-07-2006, i.e. the day when blasts actually took place in Mumbai, he was in his village Basopatti in Madhubani district. He further claimed that he had gone to Nepal for four hours on 11-07-2006. All these movements of the A1 have been confirmed by the CDR of his mobile phone which was proved by the deposition of the Principal Circle Nodal Officer of Bharti Airtel. The claim of the A1 was also corroborated by the entries in the register kept at the Indo-Nepal border, which indicated his name, timings of entry and exit, the number of his driving licence and the number of his two wheeler.
- 3) The CDR of the A4's mobile no. 9867139179 showed that from 07-07-2006 to 11-07-2006, he was at locations other than the ones where he was allegedly present according to the prosecution theory. The contents of the CDR proved that he spoke to his business contacts during that period, that he talked to his wife and mother who were in U.P., that he was in Mira Road at 1630 hrs and 1914 hrs during which period he was allegedly going to Churchgate and putting bombs in the train and that he was at his house in Mira Road, when the blasts occurred. The Nodal officer of the mobile company in his deposition confirmed the contents of the CDR in the court.

The CDRs of the above three persons also showed that they were not in contact with each other and with other accused persons. This evidence of the CDRs alone would have demolished the prosecution theory of conspiracy. But unfortunately the court discarded this important piece of evidence on the following two grounds.

- 1) That the nodal officers of the mobile companies were not technical persons and hence were not competent to prove the contents of the CDRs.
- 2) That the CDRs only gave the locations of the handset of the mobile and not of the person to whom it belonged as the mobile phone was not the body part of the person.

The court has apparently erred on both these counts as, all over the country the depositions of nodal officers are taken as the proof of the CDRs and all over the world, the

evidence of the CDR is considered as the clinching evidence of the person's presence or absence at a particular place unless the contrary is proved by adducing overriding evidence.

In this case, on the other hand, there was ample proof corroborating the CDRs e.g. in the case of A13 the muster record and the pay-slip record of his office and the evidence of persons working in his office and to whom he contacted or met during the period under consideration; in the case of A1 the register kept at the Indo-Nepal border and in the case of A4 his business contacts and family members who contacted him or to whom he contacted on mobile. But for the reasons best known to it, the prosecution did not produce the relevant records or examine important witnesses.

So far as the CDRs of other accused were concerned, they were not easy to come by. As the trial court turned down the request of the accused to make available to them the CDRs of their mobile phones, they had to approach the High Court and it was only after the High Court's order that some of them received the CDRs. But most of the CDRs were incomplete and in the case of the A11 it was suspected to be manipulated. A9 did not at all receive the data and in case of A2, the MTNL informed that it was unable to retrieve the old data. In fact, the court should have prevailed upon the MTNL to retrieve, with the help of its IT section, the old data which had been archived in magnetic tapes, as was done by Bharti Airtel. But the court did not do so.

Though the CDRs of A6, A7, A8 and A12 were proved by examining the nodal officers of the mobile companies, the court rejected the evidence of the CDRs on the grounds mentioned in the above three cases.

In case of CDRs which the accused alleged to be either incomplete or manipulated, the court ought to have allowed the accused to prove their claim by cross-checking their call records with the call records of the persons to whom they claimed to have called or from whom they had received calls during the period under review. In fact, the court itself ought to have done that. But unfortunately it did not do so.

Thus, the court has seriously erred in discarding or ignoring the clinching and the most authentic piece of evidence of the CDRs.

The Case of A5

Though the CDR of A5 has not been discussed in the judgement, there is sufficient documentary proof to show that he was in Kolkata & not Mumbai when the offence took place in

July 2006 or when he allegedly brought six Pakistani persons from Bongaon near Bangladesh border to Kolkata in May 2006.

As per his deposition on oath as a defence witness, and from the diary of his business it was evident he was at his shop in Kolkata from morning till evening on 8th, 9th and 11th July 2006; he was at his brother-in-law's house from 9th night till 10th morning and he was busy with his brother's daughter's engagement on 10th. So far his presence in Kolkata on 11th is concerned, apart from his presence in the shop as per the business diary, he had the more authentic proof of his having obtained a policy of ICICI and having paid the amount of the policy to the agent.

To prove that he was present in Kolkata throughout in the third week of May 2006, when he allegedly had gone out of Kolkata to bring six Pakistanis from Bongaon, he produced his business diary that was maintained daily and the more credible piece of evidence in the form of details of money that he personally deposited daily in Sahara Bank, during that period.

In spite of producing all the relevant records, the court was pleased to dismiss his claim on the ground that he failed to examine his brother-in-law & brother.

B] Confessional statements :

The whole prosecution case revolves round the confessional statements of 11 of the 13 accused persons. It is a settled law that the confessional statements have to be voluntary and the police should not resort to any threat, coercion, ill treatment, torture or inducement to extract confessions. But in the present case these pre requisites seem to have been observed more in breach raising serious doubts about the voluntariness of the confessional statements as described below.

- 1) There was more than two months' delay in recording the confessional statement of A1 to A4 and A9 to A11 and 25 days' delay in respect of A5 to A7 and A12.
- 2) A1 to A4 and A9 to A11 had been in police custody for more than two months. Apparently, they did not express their willingness to give confessional statements. If during that period the police wanted to record their confessions under duress, they would be required to produce the accused before judicial magistrate to record their confessions u/s 164 of Cr. P.C., as the provisions of MCOCA were not applied to the case till then. The police, apparently, did not want to take that risk. Therefore, in order to enable ATS officers to get the confessions of the accused recorded before senior police officers the

MCOCA was applied to the case and within days of its application confessional statements of 11 accused persons were recorded by the Deputy Commissioners of Police (DCPs).

- 3) Most of the DCPs who recorded the confessions were actively helping the ATS in the investigation of the case, which fact was admitted by the then Commissioner of Police, Mumbai, Mr. A.N. Roy in his deposition in the court. That meant the DCPs were an interested party. This fact goes against the very spirit of recording of the confessional statement before an independent & unprejudiced authority.
- 4) In all the confessional statements, the preliminary question and answer parts recorded by different DCPs, the notings of the DCPs and the certificates signed by them were almost copy pastes of each other, so much so that there were same mistakes, same corrections and same changes in all the statements. In short, seven DCPs committed common mistakes, did common correction and changes. Inference : All the confessional statements were prepared by the ATS officers and were supplied to the DCPs for completing the formalities.
- 5) After the alleged confessional statements had been recorded but before they were signed by the concerned accused, they were again sent to the custody of the **ATS**, apparently fearing that they would refuse to sign, if sent to the judicial custody in the intervening period. These cannot be said to be voluntary statements.
- 6) The accused were subjected to inhuman third degree torture as is evident from the medical records given below :

A1 – OPD papers dated 15-08-2006 : Giddiness, ear-pain, loss of hearing

OPD papers dated 23-09-2006 : Patient moaning; pain in groin, pricking pain in inguinal Region; referred to emergency medical registrar. Medical officer Dr. Gond admitted in the cross examination that if a person is kicked in the scrotum he can sustain such injuries.

OPD papers dated 25-09-2006 : History of vomiting twice on the earlier day; patient complained of pain in abdomen, back and inguinal region from three days; x-ray advised; referred to emergency surgical registrar. (Experts viz. Dr. Dongre and Dr. Amit

Sharma who treated A1 on 23-09-2006 and 25-09-2006 were not examined)

OPD papers dated 27-09-2006 : Back pain for the last five days alongwith pain in abdomen

What was significant was that four days thereafter i.e. on 01-10-2006 the accused expressed his willingness to give confessional statement and it was recorded on 03-10-2006 and 04-10-2006.

A2 – OPD papers dated 26-09-2006 : Two loose motions and abdomen pain.

A6 – OPD papers of 03-10-2006 : Complaint of shoulder pain; referred to orthopaedic surgeon.
(Medical officer Dr. Gond admitted that there can be pain in scapula (shoulder region) if a person is hanged at a height by tying his hands by a rope)

OPD papers dated 19-10-2006 : Complaint of giddiness, pain in left scapula.

A9 – OPD papers dated 26-09-2006 : Two bouts of loose motion.

A10 – OPD papers dated 27-07-2006 : Complaint of chest pain in the left region for the last six hours; typical chest pain on the left side radiating towards the left arm; referred to experts i.e. EMS.

A11 – OPD papers dated 03-08-2006 : Two bouts of loose motion.

OPD papers dated 02-09-2006 : Fluid filled lesion over lower lip; history of fever for three days; referred to specialist.

OPD papers dated 22-09-2006 : Complaint of loose motion and vomiting.

A7

OPD papers dated 24-10-2006 : Patient fainted

OPD papers dated 25-10-2006 : Complaint of giddiness.

On 22-10-2006 he was taken to his residence for search. His mother noticed marks below both eyes, swelling on face & on both hands, skin peeled off and accused limping. Therefore, she

filed a M.A. no. 302/06 on 24-10-2006 in the court. The court directed that he be sent for complete body check up to JJ Hospital. In the examination eleven injuries were found (eight contusions, two scabs and epithermal skin exfoliation on both buttocks) all of which were 5 to 7 days old i.e. during the period of the police custody.

When the accused was produced before the court after a couple of days, the Hon'ble court was pleased to pass following order, "The accused did not make any complaint of assault by police on 25-10-2006 and 26-10-2006. The M.A. (filed by his mother) is therefore disposed off and accused transferred to judicial custody"

A13 –

On 13-10-2006 A13 was admitted in a hospital in serious condition. He was referred to experts i.e. EMS for investigation. (But the findings of the EMS were not produced in the court)

From the nature of complaints and nature of injuries of the above accused, one can imagine the degree of torture and the extent of torture to which they would have been subjected to. The fact that within days of such inhuman torture, the accused expressed their willingness to give the so called confessional statements is sufficient to infer that the confessional statements were not voluntary but were extracted forcibly.

In their written statements u/s 313 of the Cr. P.C. and in their applications for retraction of confessional statements, the accused have stated that the ATS officers had threatened them not to complain about torture or beating whenever they were produced before the Magistrate or the court for remand or were taken to medical officers for treatment. Considering the grave nature of injuries sustained by them or serious conditions of some of them it was improbable almost impossible that they would not complain to the court or to the medical officers about the ill-treatment and torture. But there was no mention of any complaint of ill-treatment in the court record or medical record. This fact was enough to believe their statements, that they had been forewarned by ATS officer against making any complaint. However, the honorable court in its judgement dismissed their statements saying ".....unless the accused complain to the court or to the medical officer, no inference of ill-treatment can be drawn." and accepted the confessional statements as voluntary.

Request for retraction of confessional statements not conceded : The Court rejected the application of the accused for retraction of their confessional statements saying that there was no doubt about the voluntariness of the confessional statements.

C] Recoveries and Seizures

The police recovered incriminating material like RDX, articles having traces or spots of RDX, chemicals, printed circuit boards, triggering devices, cooker parts, Maruti car etc. at the instance of 7 accused persons. The court seemed to have taken these recoveries to be genuine only on the basis of what it called ‘the cogent and convincing evidence of the police officers & the panch witnesses and the contents of the memoranda and panchnamas’. He has also given undue importance to the station diary entries having made by the officers before leaving the police station for recovery and after returning to the police station and has accepted the recoveries by saying “contemporaneous record in the nature of the station-diary entries establish the factum of search & seizures.”

The judge ought to have known that manipulated panchnamas are more perfect in their contents and timings than true panchnamas. And so far as the station-diary of police station is concerned, it is not a sacred document nor does it contain the true account of events as and when they take place. Station-diary is a purely police document. It is written by the police, kept at the police station and its copies are sent only to police officers. It can be manipulated or modified or interpolated at will, to suit the police requirements. Therefore, merely on the basis of the contents of panchnamas and entries in the station diary, the recoveries should not have been accepted by the court as true. In fact, there are many circumstances concerning the recoveries, as detailed below, which seriously mar the genuineness of the memoranda of recoveries and the consequent seizures.

- 1) A bag containing rubber rings of cooker, electric wires, circuits, plastic bags with traces of RDX etc. was recovered at the instance of A3, after a lapse of three months of the incident and that too, lying barely 7 to 8 feet from the railway track near Dahisar railway station.
- 2) The Maruti car allegedly used for transporting RDX & other material was recovered at the instance of A12, as late as three months and eleven days after the blast, but the traces of RDX were still present in the car. And surprisingly, the driver Rizwan Khot who has

been using the car all along, was not examined by the prosecution on the flimsy pretext that he was not available at the given address.

- 3) In the case of recovery of white powder, granules, detonator and RDX at the instance of A13, one of the panch witness viz. Kevalchand Jain had a criminal record and the other viz. Jitendra Jain had acted as a panch witness in many police cases.
- 4) Panch witness Raju Tapi in the recovery of articles used for making timer circuit at the instance of A7, had earlier acted as a panch witness in previous cases and was of undesirable character as he had given a bond for good behavior in chapter proceeding under Cr. P.C.
- 5) In the case of the recovery of black and white spots on the inner side of a wooden bed in the house of A6, even when the credibility of the Panch witness Pritam Mhatre was thoroughly impeached by reason of his being the 'stock' panch of the police and the ATS, and when the court itself rejected his evidence, the contents of the panchnama were accepted as proved on the basis of the statement of a third person (the brother of A6) who simply stated that "the police had come to his house on 29-09-2006 and they had taken 'something'."
- 6) While deposing in the court to prove the recovery of three chemical bottles from the locker of A2 in Sabu Siddique Hospital, the Panch witness Chandrakant Shigwan stated that the accused did not say anything before him and that he had put all his signatures in the office of Police Inspector Rathod.

These are only sample cases. The prosecution case is replete with such infirmities in recovery panchnamas. In spite of that the court was pleased to accept all the memoranda and the consequent recoveries.

D] Important witnesses :

Of the total number of 192 witnesses examined by the prosecution, the most important ones are six – two taxi drivers and four train commuters (travellers); - who have supposedly clearly seen some accused persons and identified important ones among them. The points that create serious doubts about their credibility are as given below.

- 1) There were two taxi drivers – Rajesh Satpute and Santosh Singh. They separately ferried two accused each on 11-07-2006, i.e. the day of the blasts, from Carter Road Bandra to Churchgate and from Perry Cross Bandra to Churchgate, respectively. And after a lapse of four months they were ‘traced’ by the police.
- 2) During the past four months, they might have ferried thousands of passengers. In spite of that, they could give the graphic description of the accused, their ages, the languages they spoke, their accent, timing of their hiring the taxis, points from where to where they were taken, exact time of dropping them at churchgate, denomination of the currency notes given by them and so on and identified the accused in identification parades. The taxi drivers’ amazing memory has been explained in the judgement thus – ‘The memory of the person is triggered when the facts are refreshed’.
- 3) The same is the case with the four travellers in local trains. They had seen two accused each, entering the compartment and keeping their bags suspected to be containing bombs on the racks on the day of the incident, and 3 months later after reading in the news papers about the arrest of 13 accused in the case, approached the police and identified one important accused each in the identification parade. As regards, the travellers suddenly recollecting details of three months old facts, the court has said “The trigger for their memory was provided by the information in the news-papers and the T.V.”
- 4) One of the travellers – Subhash Nagarsekar – admitted that he had two mobile phones; but he refused to give their numbers, saying that he apprehended danger to his life. That was apparently a lame excuse. How didn’t he apprehend danger while deposing openly in the court? But the court accepted his plea and snubbed the defence counsel.
- 5) So far as the mobile phones of two taxi drivers and remaining three travellers were concerned, there has been no discussion concerning them in the judgement. Those mobiles, if probed, would have told the real story. But it appears that this vital point either did not occur to the defence counsels or they were discouraged from touching that point. Given the tone and tenor of the proceeding, the later possibility appears more probable. In fact, the court should have, proactively called for their record and verified the facts.
- 6) When it was pointed out to Kishore Shah, one of the four travellers, that the explosion took place on the left side of the bogie whereas he had stated that the accused kept their

bag on the right side rack of the bogie when facing towards Virar, he told the court that he was confused between the right side and left side and the east and the west and that he did not remember what he had stated before the police. The court accepted his clarification and his evidence.

- 7) When the train numbers and their timings given by the travellers were cross-checked with the railways control room charts which had been proved in the court by a railway official, some of them were found to be not correct. The railway officer had clarified in his deposition that the charts were not filled manually but were filled up automatically as per the system. But the court was pleased to discard the railway officer's evidence and accept the traveller's evidence saying, "The train control charts cannot be relied upon for holding that the witness is giving a false evidence."

E] Miscellaneous :

There are some other points which create serious doubts about the genuineness of the prosecution case.

- 1) It is not known how the information that the user of phone number 9934610679, Kamal (A1) from Basopatti (Bihar) was involved in the blast case, was received by the police.
- 2) It is not clear from the prosecution case whether mobile phones with remote controls were used or timer devices were used to activate the bombs. If they were timer devices, whether they were circuit boards or Quartz watches.
- 3) All the bombs were allegedly kept in pressure cookers; but there is no mention of pressure cookers in any of the so called confessional statements.
- 4) The narco analysis test reports in respect of the accused were not produced in the court.
- 5) Adv. Shahid Azmi who was assiduously and meticulously defending 8 of the accused was murdered under suspicious circumstances, the detection of which was equally suspicious.
- 6) An honest police officer Vinod Bhatt, who was in the investigation team of the ATS, committed suicide under suspicious circumstances. It was rumoured that he could not withstand the pressure of superior officers for doing a wrong investigation.